

~~441-9.3~~  
Judgment  
5.2, 1955

IN THE PRIVY COUNCIL

No. 6 of 1953

ON APPEAL

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

UNIVERSITY OF LONDON  
W.C. 1

25 OCT 1956

INSTITUTE OF ADVANCED  
LEGAL STUDIES

BETWEEN

ELIZABETH ANIMA (Defendant)

Appellant

44808

- and -

AKWASI AHYEYE substituted for  
KWAME DWAA, Plaintiff

Respondent

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RECORD OF PROCEEDINGS

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A. L. BRYDEN & WILLIAMS,  
53, Victoria Street,  
London, S.W.1.

Solicitors for the Appellant

T. L. WILSON & CO.,  
6, Westminster Palace Gardens,  
Artillery Row,  
London, S.W.1.

Solicitors for the Respondent.

IN THE PRIVY COUNCIL

No. 6 of 1953

ON APPEAL

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

BETWEEN

ELIZABETH ANIMA (Defendant) Appellant

- and -

AKWASI AHYEYE (substituted for  
Kwame Dwaa, Plaintiff) Respondent

INDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>IN THE SUPREME COURT</u>		
1	Writ of Summons	10th November 1938	1
2	Particulars of Claim	10th November 1938	3
3	Court Notes of Compromise and Order thereon	23rd March 1939	4
4	Motion for directions	11th May 1939	5
5	Affidavit in support of No. 4	11th May 1939	6
6	Court Notes on motion	25th May 1939	7
7	Motion to construe Order made 23rd March, 1939	16th June 1939	8
8	Affidavit in support of No. 7.	28th June 1939	9
9	Court Notes on Motion	(30th June 1939 ( 3rd July 1939	10

No.	Description of Document	Date	Page
10	Motion for special leave to review Order of 23rd March 1939	12th July 1939	11
11	Affidavit in support of No.10	17th July 1939	11
12	Court Notes on Motion	24th July 1939	12
13	Motion by Plaintiff to restrain Fourth Defendant	27th November 1940	13
14	Affidavit of Plaintiff in Support of No.13	November 1940	13
15	Court Notes refusing motion	3rd December 1940	15
16	Motion by Plaintiff for leave to proceed to execution etc.	16th February 1950	16
17	Affidavit in support of No.16.	17th February 1950	17
18	Court Notes dismissing Motion	22nd February 1950	18
19	Motion by Plaintiff for review of Order dated 22nd February 1950.	4th March 1950	19
20	Affidavit in support of No.19	6th March 1950	20
21	Court Notes ordering application to be made on Notice	11th March 1950	22
22	Motion on Notice by Plaintiff for review of Order dated 22nd February 1950	13th March 1950	22
23	Affidavit in support of No.22.	13th March 1950	23

No.	Description of Document	Date	Page
24	Affidavit in opposition to No.22.	16th March 1950	24
25	Court Notes of argument of Motion	18th March 1950	25
26	Decision on Motion for Review	30th March 1950	26
27	Court Notes granting Final Leave to Appeal	15th July 1950	31
	<u>IN THE WEST AFRICAN COURT OF APPEAL</u>		
28	Grounds of Appeal	18th July 1950	31
29	Court Notes of Argument	9th January 1952	33
30	Judgment	9th January 1952	34
31	Motion by Appellant for Final Leave to appeal	23rd May 1952	37
32	Court Notes granting Final Leave to Appeal	27th June 1952	38
	<u>IN THE PRIVY COUNCIL</u>		
33	Order of Revivor	24th June 1954	38

E X H I B I T S

Mark	Description	Date	Page
A.	Court Notes on Motion (printed as Item 12 in Record)	24th July 1939	12
B.	Letter from Registrar Supreme Court to Madam Akosua Mensah	27th May 1940	40
C.	Court Notes of Compromise and Order thereon (printed as Item 3 in Record)	23rd March 1939	4

DOCUMENTS TRANSMITTED BUT NOT PRINTED

Description	Date
<u>IN THE SUPREME COURT</u>	
Motion by Applicant for leave to Appeal	5th April 1950
Affidavit in support	6th April 1950
Court Notes ordering substituted Service	14th April 1950 and 8th May 1950
Court Notes granting Conditional Leave to Appeal	3rd June 1950
Notice of Appeal	10th June 1950
Bond for Costs on Appeal	20th June 1950
Justification of Sureties	20th June 1950
Motion by Appellant for Extension of time, with Affidavit in support	30th June 1950
Court Notes granting Extension of time	3rd July 1950
Motion by Appellant for Final Leave to appeal, with Affidavit in support	5th and 14th July, 1950.
<u>IN THE WEST AFRICAN COURT OF APPEAL</u>	
Notice of Intention to Appeal	12th January 1952
Motion for Conditional Leave to Appeal	15th January 1952
Affidavit of Appellant in support of Application for Leave to Appeal	18th January 1952
Court Notes granting Conditional Leave to Appeal	26th February 1952
Notice of Appeal	10th April 1952
Motion by Appellant for approval of Sureties.	10th April 1952
Affidavit of Appellant supporting Application.	16th April 1952
Court Notes approving Sureties	17th May 1952
Bond for Costs on Appeal	21st May 1952
Justification of Sureties	21st May 1952
Affidavit of Appellant in support of Application	23rd May 1952

IN THE PRIVY COUNCIL

No. 6 of 1953

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

BETWEEN

ELIZABETH ANIMA (Defendant) Appellant

- and -

AKWASI AHYIYE (Substituted for  
Kwame Dwaa, Plaintiff) Respondent

10

RECORD OF PROCEEDINGS

No. 1.

WRIT OF SUMMONS

No.71/1938.

Suit No.71/38

In the Supreme  
Court.

No. 1.

IN THE SUPREME COURT OF THE GOLD COAST  
ASHANTI  
DIVISIONAL COURT HOLDEN AT KUMASI.

Writ of Summons

10th November,  
1938.

(Kwame Dwaa of Kumasi. Plaintiff

( and

Between (1. Kwame Amankwatia (Bantamahene)  
(2. Kwame Atta  
(3. J.B. Abaidoo  
(4. Elizabeth Anima, Defendants

20

To Bantamahene Kwame Amankwatia, Kwame Atta, J.B. Abaidoo and Elizabeth Anima all of Kumasi YOU ARE HEREBY COMMANDED in His Majesty's name to attend before this Court at Kumasi on Monday the 5th day of December, 1938, at 8.30 o'clock in the forenoon, then and there to answer a Suit by Kwame Dwaa of Kumasi against you. The Plaintiff claims - A Declaration of title to the Compound House situate on Leasehold premises No.23 Bantama, Kumasi as per particulars attached.

30

In the Supreme Court.

2. The Plaintiff further claims £120 damages for trespass, wrongful sale, use and occupation.

Value of Compound House £280.

No. 1.

Writ of Summons 1938. Issued at Kumasi the 10th day of November,

10th November, 1938 - continued.

Sum claimed	£ 120. 0. 0
Court fees	6. 0. 0
Filing Copy	2. 0
Bailiff's fees	8. 0
	<u>£ 126.10. 0</u>

10

CERTIFICATE OF SERVICE BY BAILIFF

Upon 16th, 17th and 19th days of November, 1938 this summons was served by me on Kwame Amankwatia, Elizabeth Anima and J.B.Abaidoo Defendants. This I did by serving a copy of the above summons (and the particulars of demand) on the said defendant personally at Kumasi.

(Sgd.) C. B. ATTOH  
BAILIFF OF SUPREME COURT.

CERTIFICATE OF NON SERVICE

20

2nd Defendant Kwame Atta could not be found at Kumasi on 16th, 17th and 19th November 1938 and up to the present, I understand he is gone to a village whose name is not known.

(Sgd.) C. B. ATTOH  
21.12.38.

CERTIFICATE OF SERVICE

Upon the 13th day of January, 1939 a copy of this Summons with particulars and hearing Notice was served by me on Kwame Atta personally at Kumasi.

30

(Sgd.) C. B. ATTOH  
BAILIFF.

No. 2.

In the Supreme  
Court.PARTICULARS OF CLAIM

IN THE SUPREME COURT OF THE GOLD COAST  
ASHANTI  
DIVISIONAL COURT KUMASI.

No. 2.

Particulars  
of Claim.PARTICULARS:10th November,  
1938.

10 About 20 years ago the Plaintiff was given a piece of land by the then Bantamahene on which he erected a Compound House. Neither Kwame Kyem, the then Bantamahene nor any of his successors ever demanded ground rent from the Plaintiff and the Plaintiff has never at any time paid ground rent to any one.

The Plaintiff left his Compound House in Kumasi in charge of one John Mensah and stayed in the Bush, and through him the Plaintiff has been paying his Town rate of £2 a year regularly.

20 On the Plaintiff's return to Kumasi he was made to understand his Compound House has been sold by the 1st Defendant through the 2nd Defendant, that the 3rd Defendant was the Auctioneer and the 4th Defendant the Purchaser.

Neither the Plaintiff nor his Agent John Mensah was served with a writ of summons before the said Compound House was sold.

The Plaintiff therefore prays a declaration of title to his Compound House on Leasehold premises No. 23 and £120 damages for wrongful sale, trespass, use and occupation.

30

(Sgd.) EVELYN BROWN.



In the Supreme  
Court.

No. 3.

COURT NOTES OF COMPROMISE AND ORDER THEREON

No. 3.

Court Notes of  
Compromise and  
Order thereon.

23rd March,  
1939.

In the Supreme Court of the Gold Coast, Ashanti.  
At a Divisional Court held at Kumasi on Thursday,  
the 23rd day of March, 1939, before His Honour  
Mr. Justice Bannerman, O.B.E.

Kwame Dwaa

v.

1. Kwame Amankwatia Bantamahene
2. Kwame Atta
3. J.B. Abaidoo
4. Elizabeth Anima.

10

Declaration of title to a Compound House situ-  
ate on Leasehold premises No.23, Bantama, Kumasi  
and £120 damages for trespass, etc.

Mr. Evelyn Brown for the Plaintiff.

The 1st Defendant is present in person

The 2nd Defendant - absent - served

The 3rd Defendant present.

The 4th Defendant - served - absent but is repre-  
sented by her mother, Akosua Mansah.

20

This case is, by consent, settled as follows :-

1. The 4th Defendant is to give up possession  
of the house in dispute within a fortnight  
from to-day's date.
2. The 1st Defendant is to pay the 4th Defendant  
the sum of £30.2.0. being purchase price.  
This amount is to be paid within a fortnight  
from to-day's date.
3. The Plaintiff is to pay the 1st Defendant the  
sum of £11.16.0. within a fortnight from to-  
day's date.
4. The Plaintiff wholly and unconditionally aban-  
dons his claim for £120 damages in his writ  
of summons.

30

- 5. The Plaintiff unconditionally withdraws the case against the 2nd and 3rd Defendants with costs.
- 6. The Plaintiff is to receive the sum of £12.12.0 from the 1st Defendant being assessed costs herein.
- 7. The Plaintiff is to pay the 4th Defendant the sum of £7. upon production of receipts by the Court for ground rents.

In the Supreme Court.

No. 3.

Court Notes of Compromise and Order thereon.

23rd March, 1939 -

continued.

10

Judgment accordingly.

(Sgd.) WOOLHOUSE BANNERMAN.

(Sgd.) EVELYN BROWN  
Solicitor for Plaintiff.

Their

Kwame Amankwatia

x

Akosua Mansah

x

For and on behalf of  
4th Defendant.

Marks

(Sgd.) J. B. ABAIDOO  
3rd Defendant.

20

Witness to marks:

(Sgd.) SAM. K. BANSON,  
Court Registrar.

No. 4.

MOTION FOR DIRECTIONS.

IN THE SUPREME COURT OF THE GOLD COAST  
ASHANTI  
DIVISIONAL COURT KUMASI.

No. 4.

Motion for  
Directions.

11th May 1939.

IN THE MATTER OF :-

Kwame Dwaa

Plaintiff

30

v.

1. Kwame Amankwatia. Bantamahene,

2. Kwame Atta,

3. J.B. Abaidoo.

4. Elizabeth Anima,

Defendants

Motion Ex-Parte of Ben Tamakloe of Counsel for and

In the Supreme Court.

No. 4.

Motion for Directions.

11th May 1939 continued.

on behalf of the 4th Defendant herein supported by an Affidavit of Elizabeth Anima Praying this Honourable Court to set aside its Order made on the 23rd day of March, 1939, or for direction.

Upon such terms and conditions as to this Honourable Court shall seem just.

TO BE MOVED on Thursday the 18th day of May, 1939 at 8.30 o'clock in the forenoon or so soon thereafter as Counsel can be heard.

Dated at Kumasi this 11th day of May, 1939.

10

(Sgd.) Ben Tamakloe,  
COUNSEL FOR ELIZABETH ANIMA  
4th Defendant.

THE REGISTRAR,  
DIVISIONAL COURT,  
KUMASI.

No. 5.

Affidavit in Support of No. 4.

11th May 1939.

No. 5.

AFFIDAVIT IN SUPPORT OF NO. 4.

(Title as in No.4)

AFFIDAVIT OF ELIZABETH ANIMA THE 4th DEFENDANT.

20

I, ELIZABETH ANIMA of Bantama-Kumasi make oath and say as follows :-

1. That I am the 4th Defendant herein.
2. That the Plaintiff claims a Declaration of Title to the Compound House situate on Leasehold premises No.23, Bantama, Kumasi, and £120 damages for wrongful sale, trespass, use and occupation.
3. That on or about the 23rd day of March, 1939, the above case was held at the Divisional Court, Kumasi before His Honour Mr. Justice Bannerman, O.B.E., and the following order was made by the Court by consent.
4. That I the 4th Defendant is to give up possession of the House in dispute within a fortnight from the 23rd day of March, 1939.

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- 5. That the first Defendant is to pay me the sum of £30.2.0. being purchase price. This amount was to be paid within a fortnight from the 23rd day of March, 1939.
- 6. That the Plaintiff is to pay me the sum of £7.0.0. upon production of receipt for ground rents.
- 7. That the first Defendant has failed to pay the £30.2.0. to me as ordered by the Court.
- 10 8. That the Plaintiff has also failed to pay me the £7.0.0. ground rents as ordered by the Court.
- 20 9. In view of the failure of the first Defendant and the Plaintiff respectively in complying with the said order of the Court, I make this affidavit in support of Counsel's application on my behalf praying for dissolution of the Order of this Honourable Court made on the 23rd day of March, 1939, or for direction of this Honourable Court.

In the Supreme Court.

No. 5.

Affidavit in Support of No. 4.

11th May 1939 - continued.

SWORN at Kumasi this 11th) day of May, 1939. ) (Sgd.) ELIZABETH ANIMA.

Before me,

(Sgd.) FRANK ? COMMISSIONER FOR OATHS.

No. 6.

COURT NOTES ON MOTION.

In the Supreme Court of the Gold Coast, Ashanti. At a Divisional Court held at Kumasi on Thursday the 25th day of May, 1939, before His Honour Mr. Justice Bannerman, O.B.E.

No. 6.

Court Notes on Motion.

25th May 1939.

Kwame Dwaa

Plaintiff

v.

1. Kwame Amankwatia

2. Kwame Atta

3. J.B. Abaidoo

4. Elizabeth Anima,

Defendants

Motion to set aside the order herein dated

10

20

30

In the Supreme Court.

23/3/1939.

Affidavit in support is read.

No. 6.

Court Notes on Motion.

Mr. Tamakloe withdraws his motion.

25th May 1939 - continued.

By the Court: Motion withdrawn.

(Sgd.) W. BANNERMAN.  
Judge.

No. 7.

No. 7.

Motion to construe Order made 23rd March, 1939.

MOTION TO CONSTRUE ORDER MADE  
23rd MARCH, 1939

(Title as in No.4)

10

16th June 1939.

Motion Ex-Parte of Ben Tamakloe of Counsel for and on behalf of the 4th Defendant herein supported by an Affidavit of Elizabeth Anima praying this Honourable Court to construe the Order made on the 23rd day of March, 1939, or for direction.

Upon such terms and conditions as to this Honourable Court shall seem just.

To be moved on Friday the 30th day of June, 1939, at 8.30 o'clock in the forenoon or so soon thereafter as Counsel can be heard.

20

Dated at Kumasi this 16th day of June, 1939.

(Sgd.) BEN TAMAKLOE,  
Counsel for Elizabeth Anima  
4th Defendant.

The Registrar,  
Divisional Court,  
Kumasi.

No. 8.

In the Supreme Court.

AFFIDAVIT IN SUPPORT OF NO. 7.

IN THE SUPREME COURT OF THE GOLD COAST  
ASHANTI  
DIVISIONAL COURT KUMASI

No. 8.

Affidavit in support of No.7

(Title as in No. 4)

28th June 1939.

AFFIDAVIT OF ELIZABETH ANIMA THE 4th DEFENDANT

I, ELIZABETH ANIMA of Bantama - Kumasi make oath and say as follows :-

10 (Paragraphs 1, 2, 3, 4, 5 and 6 are identical with paragraphs 1, 2, 3, 4, 5 and 6 of Affidavit Item No. 5 pages 6 and 7)

7. That I am prepared to give up possession of the said house, but the first Defendant has failed to pay the £30.2.0. to me as ordered by the Court.

8. That the Plaintiff has escaped, and I could not find his whereabouts to pay me the £7. ground rents as ordered by the Court.

20 9. That the Commissioner of Lands and Kumasi Public Health Board Department are troubling me for the payments of ground rents and water rates respectively in respect of the House in dispute.

30 10. In view of the failure of the first Defendant and the Plaintiff respectively in complying with the said Order of the Court, I make this Affidavit in support of Counsel's application on my behalf praying that the Order of this Honourable Court made on the 23rd day of March, 1939, be construed or for direction of this Honourable Court.

SWORN at Kumasi this 28th) (Sgd.) ELIZABETH ANIMA.  
day of June, 1939.

Before me.

(Sgd.) ? Vardon,  
COMMISSIONER FOR OATHS.

In the Supreme Court.

No. 9.

COURT NOTES ON MOTION

No. 9.  
Court Notes on Motion.

In the Supreme Court of the Gold Coast, Ashanti. At a Divisional Court held at Kumasi on Friday, the 30th day of June, 1939, before His Honour Mr. Justice Bannerman, O.B.E.

(30th June,  
( 1939,  
(3rd July 1939

Kwame Dwaa

v.

- 1. Kwame Amankwatia, Bantamahene,
- 2. Kwame Atta,
- 3. J.B. Abaidoo,
- 4. Elizabeth Anima

10

Motion Ex-Parte for the Court to construe the Order made on 23.3.39.

Mr. Tamakloe for the 4th Defendant-Applicant.

By the Court:

Adjourned till 3.7.39.

(Sgd.) WOOLHOUSE BANNERMAN.

Judge.

3.7.39.

Mr. Tamakloe for the (Elizabeth Anima) 4th De- 20  
fendant.

Mr. Tamakloe applies for leave to withdraw this motion.

By the Court:

Motion withdrawn.

(Sgd.) WOOLHOUSE BANNERMAN.

Judge.



11.

No. 10.

MOTION FOR SPECIAL LEAVE  
TO REVIEW ORDER OF 23rd MARCH, 1939

(Title as No.4)

In the Supreme Court.

No.10.

Motion on Notice of Ben Tamakloe of Counsel for and on behalf of the 4th Defendant herein supported by an Affidavit of Elizabeth Anima praying this Honourable Court to Review its Order made on the 23rd day of March, 1939.

Motion for special leave to review Order of 23rd March, 1939.

10 Upon such terms and conditions as to this Honourable Court shall seem just.

12th July 1939.

To be moved on Friday, the 21st day of July, 1939, at 8.30 o'clock in the forenoon or so soon thereafter as Counsel can be heard.

Dated at Kumasi this 12th day of July, 1939.

(Sgd.) BEN TAMAKLOE  
COUNSEL FOR ELIZABETH ANIMA  
4th DEFENDANT.

20 WITH COPIES FOR SERVICE  
THROUGH THE COURT.

THE REGISTRAR,  
DIVISIONAL COURT, KUMASI.

No. 11.

AFFIDAVIT IN SUPPORT OF No.10.

(Title as in No.4)

AFFIDAVIT OF ELIZABETH ANIMA THE 4th DEFENDANT

No.11.

Affidavit in support of No.10.

17th July 1939.

I, ELIZABETH ANIMA of Bantama - Kumasi make Oath and say as follows :-

30 (Paragraphs 1 to 6, the same as paragraphs 1 to 6 in the Affidavits of 11th May and 28th June, 1939 pages 6, 7 and 9 respectively, and paragraphs 7, 8 and 9 the same as paragraphs 7, 8 and 9 in the latter Affidavit page 9.)



In the Supreme Court.

No.11.

Affidavit in support of No.10.

17th July 1939 continued.

10. That in view of the failure of the first Defendant and the Plaintiff respectively in complying with the said Order of the Court, I make this Affidavit in support of Counsel's application on my behalf praying for special Leave for this Honourable Court to Review its Order made on the 23rd day of March, 1939.

SWORN at Kumasi this )  
17th day of July 1939 ) (Sgd.) ELIZABETH ANIMA.

Before me,  
(Sgd.) Frank Vardon,  
COMMISSIONER FOR OATHS.

10

CERTIFICATE OF SERVICE

Upon the 18th day of July, 1939 copies of this Motion Papers with Affidavit attached were served by me on Kwame Dwaa and Kwame Amankwatia Bantamahene personally at Kumasi.

(Sgd.) I.K.ESEL,  
Bailiff.

No.12.

Court Notes on Motion.

24th July 1939

No.12.

COURT NOTES ON MOTION.

In the Supreme Court of the Gold Coast. Ashanti. At a Divisional Court held at Kumasi on Monday, the 24th day of July, 1939, before His Honour, Mr. Justice Bannerman, O.B.E.

Kwame Dwaa

v.

1. Kwame Amankwatia (Bantamahene)
2. Kwame Atta,
3. J.B. Abaidoo,
4. Elizabeth Anima.

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All parties in it. No affidavit in reply. Mr. Tamakloe for 4th Defendant is heard and other parties also heard. Mr. Brown present.

By the Court:

If the 1st Defendant has failed within the time-limit to pay the £30.2.0. to the 4th Defendant then the 4th Defendant should retain possession of the house.

(Sgd.) WOOLHOUSE BANNERMAN,  
Judge.

40

No. 13.

In the Supreme Court

MOTION BY PLAINTIFF TO RESTRAIN FOURTH DEFENDANT.

(Title as in No.4)

No.13.

MOTION UPON NOTICE OF ERNEST PREMPEH of Kumasi Counsel for and on behalf of Kwame Dwaa the Plaintiff herein supported by Affidavit of the said Kwame Dwaa praying for an Order of this Honourable Court restraining the 4th Defendant herein from alienating the property known as Plot No.23 in the Bantama District in Kumasi and

Motion by Plaintiff to restrain Fourth Defendant.

27th November, 1940.

10

Upon such terms and conditions and/or for any further Order or Orders as to this Honourable Court may seem just in the premises.

TO BE MOVED on Saturday the 30th day of November, 1940, at 8.30 o'clock in the forenoon or so soon thereafter as Counsel can be heard.

Dated at Bosomprah Chambers Kumasi this day of November, 1940.

(Sgd.) Ernest Prempeh  
Solicitor for Kwame Dwaa.

20

The Registrar,  
Divisional Court,  
Kumasi.

Then copy to Elizabeth Anima,  
4th Defendant herein at  
Bantama - Kumasi.

No. 14.

No.14.

AFFIDAVIT OF PLAINTIFF IN SUPPORT OF No. 13.

Affidavit of Plaintiff in support of No.13.

(Title as in No. 4)

November, 1940.

30

AFFIDAVIT OF KWAME DWAA

I, KWAME DWAA of Bantama-Kumasi make Oath and say as follows :-

1. That I am the Bona-Fide owner of a Compound House situate and being at Bantama-Kumasi and known as plot No.23 Bantama District Kumasi.

In the Supreme Court.

No.14.

Affidavit of Plaintiff in support of No.13.

November, 1940 - continued.

2. That vide Judgment of the Divisional Court dated the 23rd day of March, 1939, the Court ordered that:-

The 4th Defendant was to give up possession of the said House a fortnight from the said date.

3. That as a condition precedent to the 4th Defendant giving up possession, I should pay:- (a) the sum of £11.16.0 to the 1st Defendant. (b) the sum of £7.0.0 to the 4th Defendant, upon the production of receipts for ground rents. (c) that the 1st Defendant should pay £30.2.0 to the 4th Defendant. (d) And that the 1st Defendant should pay me the sum of £12.12.0.

10

4. That few days after the Judgment, I tendered through the 1st Defendant the sum of £6.15.0 to be given to the 4th Defendant but she refused to accept it.

20

5. That through my Solicitor Mr. E.Brown, I paid the money £6.15.0 but the 4th Defendant refused acceptance. Eventually I paid this money through the Asantehene's Native Court. With great reluctance the 4th Defendant has now accepted it, yet she refuses to give up possession of the said House.

6. That the 4th Defendant is putting difficulties in the way of my taking up possession of the said House. My part of the Orders of this Honourable Court, I have duly carried out.

30

7. That under the circumstances I am swearing to this Affidavit for this Honourable Court to state what shall be done in the premises.

SWORN at Kumasi this day of November 1940. After the contents of this Affidavit had been read over interpreted and explained to him in the Twi Language by Eben. O.Kwaku Opong of Kumasi and he appeared to understand the same perfectly before making his marks thereto in the presence of :-

his Kwame Dwaa x mark.

40

Before me,

(Sgd.) ? COMMISSIONER FOR OATHS.

(Sgd.) ? INTERPRETER & W/MARK.

CERTIFICATE OF SERVICE.

Upon the 27th day of November 1940, copy of this Motion Paper with Affidavit attached was served by me upon Elizabeth Anima personally at Kumasi.

(Sgd.) R. A. QUAYE,  
Bailiff.

Upon the 28th day of November, 1940, copies of this Motion paper with Affidavits attached were served by me upon Kwame Amankwatia and Kwame Atta. personally at Kumasi.

(Sgd.) R. A. QUAYE,  
Bailiff.

In the Supreme Court.

\_\_\_\_\_  
No.14.

Affidavit of Plaintiff in support of No.13.

November 1940 - continued.

10

No. 15.

COURT NOTES REFUSING MOTION.

In the Supreme Court of the Gold Coast, Ashanti. At a Divisional Court held at Kumasi on Tuesday the 3rd day of December, 1940. before His Honour Mr. Justice Fuad.

Kwame Dwaa

v.

Kwame Amankwatia & Others

Vise order by Court dated 24th July, 1939.

Mr. Tamakloe . . . . .

Order refused.

(Sgd.) J. M. FUAD.  
Judge.

No.15.

Court Notes refusing motion.

3rd December, 1940.

20

In the Supreme Court.

No. 16.

MOTION BY PLAINTIFF FOR LEAVE TO PROCEED TO EXECUTION ETC.

No.16.

Motion by Plaintiff for leave to proceed to execution etc.

16th February, 1950.

IN THE SUPREME COURT OF THE GOLD COAST ASHANTI THE DIVISIONAL COURT - KUMASI.

In the matter of :-

Kwame Dwaa, Plaintiff v.

- 1. Kwame Amankwatia Bantamahene (Deceased) succeeded by Nana Kwaku Gyawu III Bantamahene 10
2. Kwame Atta
3. J. B. Abaidoo
4. Elizabeth Anima Defendants

MOTION ON NOTICE by Kwasi Yeboah for and on behalf of the above-named Plaintiff. praying this Honourable Court to grant him leave to proceed to execution against Elizabeth Anima the 4th Defendant herein and for substitution of the name of Nana Kwaku Gyawu III, Bantamahene for that of Kwame Amankwatia Bantamahene, in respect of a judgment awarded against the said 4th Defendant by this Honourable Court on the 23rd day of March, 1939. 20

COURT TO BE MOVED on the 22nd day of February, 1950 at 8.30 o'clock in the forenoon or so soon thereafter as the Applicant herein can be heard.

Dated at Kumasi this 16th day of February, 1950.

Kwasi Yeboah his PLAINTIFF Applicant. x mark. 30

W/W to mark (Sgd.) E.O.K. Opong House No: Krobo 98 Kumasi Gratis.

THE REGISTRAR THE DIVISIONAL COURT KUMASI.

THEN COPIES TO BE SERVED ON

- 1. Nana Kwaku Gyawu III, Bantamahene, Kumasi.
2. Elizabeth Anima, House No.23 Bantama. 40

No. 17.

In the Supreme  
Court.AFFIDAVIT IN SUPPORT OF NO.16.(Title as in No.16)

No.17.

I, KWASI YEBOAH of Kumasi in the Kumasi District of Ashanti make oath and say as follows :-

Affidavit in  
support of  
No.16.

17th February,  
1950.

1. That I have been authorised by the Plaintiff herein to depose to this Affidavit on his behalf, being sick and feeble.
2. That I am the Plaintiff applicant herein.
- 10 3. That on the 23rd day of March, 1939, I obtained judgment in this Honourable Court against the 4th Defendant for a declaration of title to a Compound House situate on Leasehold Premises No.23 Bantama Kumasi and also £120 damages for trespass.
4. That my claim against the 1st 2nd and 3rd Defendants were withdrawn also my claim for £120 damages was wholly and unconditionally abandoned.
- 20 5. That the judgment against the said 4th Defendant has remain unsatisfied for over 6 (six years) and I now desire to proceed to execution against her.
6. That execution has not been issued since, due to my illness.
7. That since the said judgment a change has taken place in the parties - the 1st Defendant has since died and Nana Kwaku Gyawu III, Bantamahene has succeeded him whom I now seek to be substituted for the said 1st Defendant.
- 30 8. That in the circumstance I make this Affidavit in support of my application for leave of this Honourable Court for the name of Nana Kwaku Gyawu III, Bantamahene to be substituted for that of the 1st Defendant AND for an Order of this Honourable Court for leave to go into execution against the 4th Defendant herein.

In the Supreme Court.

No.17.

Affidavit in support of No.16.

17th February, 1950 - continued.

SWORN BEFORE ME AT KUMASI THIS )  
 17th day of February, 1950 )  
 after the foregoing had been )  
 first read over interpreted )  
 and explained to the Deponent )  
 in the Twi Language by E. O. )  
 Kwaku Opong of Kumasi and he )  
 seemed perfectly to understand )  
 the same before making his mark )  
 hereto in the presence of :- )

Kwasi Yeboah His  
 DEPONENT x  
 Mark 10

(Sgd.) C. E. Brew,  
 COMMISSIONER FOR OATHS.

(Sgd.) E. O. K. Opong,  
 Inter. & Wit. to mark.

Prepared by:

(Sgd.) E.O.K.Opong,  
 House No. Krobo 98 Kumasi,  
 Gratis.

CERTIFICATE OF SERVICE.

Upon the 20th February 1950 copies of this Motion and Affidavit were served by me on Nana Kwaku Gyawu III Bantamahene and Elizabeth Anima personally at Bantama, Kumasi.

20

(Sgd.) J.W. Amuah  
 BAILIFF.

No.18.

Court Notes dismissing Motion.

22nd February, 1950.

No. 18.

COURT NOTES DISMISSING MOTION.

In the Supreme Court of the Gold Coast, Ashanti. At a Divisional Court held at Kumasi on Wednesday the 22nd day of February, 1950, before His Honour Mr. Justice Jackson.

30

Kwame Dwaa

v.

1. Kwame Amankwatia
2. Kwame Atta
3. J. B. Abaidoo
4. Elizabeth Anima.

Motion by Plaintiff for leave to proceed to

execution against Elizabeth Anima (4th Defendant) and for substitution of name of Nana Kwaku Gyawu III, Bantamahene for that of Kwame Amankwatia, Bantamahene (1st Defendant).

In the Supreme Court.

---

No.18.

No affidavit made by applicant. (sic)

Applicant in person.

Court Notes dismissing Motion.

4th Defendant absent.

Nana Kwaku Gyawu III, Bantamahene in person. (on notice).

22nd February, 1950. -

10 Kwame Dwaa: (m) s.s. in Twi:-

continued.

Applicant:

I was Plaintiff in this Court 12 years ago in 1938. I sued the 4 Defendants for declaration of title to leasehold premises and for £120 damages for trespass. Case tried by Bannerman, J. and on 23rd March there was entered a judgment by consent. (admitted and marked No.1).

Court:

20 There is nothing in the judgment upon which the Plaintiff can proceed to execution against either Elizabeth Anima or Kwame Amankwatia and it follows his successor in title. Without calling upon the defendants I dismiss the motion. The defendants waive any question of costs.

(Sgd.) J. Jackson,  
Judge.

---

No. 19.

No.19.

MOTION BY PLAINTIFF FOR REVIEW OF ORDER DATED 22nd FEBRUARY, 1950.

Motion by Plaintiff for review of Order dated 22nd February, 1950.

30 (Title as in No.16)

MOTION EX PARTE by Kwame Dwaa the Plaintiff Applicant herein praying this Honourable Court for a REVIEW of the Order made by this Honourable Court on the 22nd day of February, 1950 as set forth in the attached Affidavit, and for Leave to go into execution against the 4th Defendant herein.

4th March 1950.

COURT TO BE MOVED on the 11th day of March,



In the Supreme Court.

1950 at 8.30 o'clock in the forenoon or so soon thereafter as the Plaintiff Applicant can be heard.

No.19.

Dated at KUMASI this 4th day of March, 1950.

Motion by Plaintiff for review of Order dated 22nd February, 1950.

W/W to mark.  
(Sgd.) E.O.K. Opong  
House No. Krobo 98 Kumasi  
Gratis.

Kwame Dwaa  
PLAINTIFF APPLICANT.

his  
x  
mark.

4th March 1950 continued.

THE REGISTRAR  
THE DIVISIONAL COURT  
KUMASI.

10

No.20.

No. 20.

Affidavit in support of No.19.

AFFIDAVIT IN SUPPORT OF No. 19.

(Title as No. 16)

6th March 1950

I, KWAME DWAA of Kumasi in the Kumasi District of Ashanti make oath and say as follows:-

1. That I am the Plaintiff Applicant herein.
2. That on the 22nd day of February, 1950, this Honourable Court dismissed my Affidavit and Motion for leave to go into execution against the 4th Defendant herein.
3. That by consent settlement of the above named, case of the 23rd day of March, 1939, the first paragraph reads:

20

"The 4th Defendant is to give up  
"possession of the house in dis-  
"pute within a fortnight from to-  
"day's date".

AND the 7th paragraph reads:-

30

"The Plaintiff is to pay the 4th  
"Defendant the sum of £7 upon  
"production of receipts for  
"ground rents".

4. That I approached the 4th Defendant on several occasions in the presence of witnesses for her to produce receipts for ground rents and to accept the said sum of £7 but she refused to do so.

In the Supreme Court.

\_\_\_\_\_  
No.20.

5. That I am prepared to pay same or any sum or sums of money accruing thereafter if ordered by the Court so to do.

Affidavit in support of No.19.

10 6. That despite the order of the Court as contained in paragraph 3 supra the 4th Defendant is still in possession of the premises.

6th March 1950 continued.

7. That the possession of the premises by the 4th Defendant is very much detrimental to my family and me.

20 8. That in the circumstance I humbly and most fervently make this Affidavit in support of my application for the Order made herein on the 22nd day of February, 1950 to be REVIEWED and for me to go into execution against the 4th Defendant.

SWORN BEFORE ME AT KUMASI THIS )  
6th DAY OF MARCH, 1950, after )  
the foregoing had been first )  
read over interpreted and ex- )  
plained to the Deponent in the )  
Twi Language by E.O.K.Opong of )  
Kumasi and he seemed perfectly )  
to understand the same before )  
making his mark hereto in the )  
30 presence of :- )

his  
Kwame Dwaa x  
DEPONENT. mark

(Sgd.) C. E. Brew,  
COMMISSIONER FOR OATHS.

(Sgd.) E.O.K.Opong  
INTER. & WIT. TO MK.

Prepared by:

(Sgd.) E.O.K.Opong  
House No. Krobo 98 Kumasi,  
Gratis.

\_\_\_\_\_

In the Supreme Court.

No. 21.

COURT NOTES ORDERING APPLICATION TO BE MADE ON NOTICE.

No.21.

Court Notes Ordering application to be made on Notice.

In the Supreme Court of the Gold Coast, Ashanti. At a Divisional Court held at Kumasi on Saturday, the 11th day of March, 1950. before His Honour Mr. Justice Jackson.

Kwame Dwaa

v.

11th March, 1950.

- 1. Kwame Amankwatia
- 2. Kwame Atta
- 3. J. B. Abaidoo
- 4. Elizabeth Anima.

10

Application ex parte for review of order made on 22.2.50.

This application must be made on notice.

(Sgd.) J. Jackson, Judge.

No.22.

No. 22.

Motion on Notice by Plaintiff for Review of Order dated 22nd February, 1950.

MOTION ON NOTICE BY PLAINTIFF FOR REVIEW OF ORDER DATED 22nd FEBRUARY, 1950.

20

IN THE SUPREME COURT OF THE GOLD COAST ASHANTI THE DIVISIONAL COURT, KUMASI.

13th March, 1950.

In the matter of:-

Kwame Dwaa

Plaintiff

v.

- 1. Kwame Amankwatia, Bantamahene (Deceased) succeeded by Nana Kwaku Gyawu III. Bantamahene.

30

MOTION ON NOTICE by Kwame Dwaa the Plaintiff Applicant herein praying this Honourable Court for a Review of the Order made by this Honourable Court

on the 22nd day of February, 1950, as set forth in the attached Affidavit, and for LEAVE TO GO INTO EXECUTION against the 4th Defendant herein.

In the Supreme Court.

COURT TO BE MOVED on Saturday the 18th day of March, 1950 at 8.30 o'clock in the forenoon or so soon thereafter as the Plaintiff-Applicant can be heard.

No.22.

Motion on Notice by Plaintiff for Review of Order dated 22nd February, 1950.

DATED AT KUMASI THIS 13th DAY OF MARCH, 1950.

Kwame Dwaa  
PLAINTIFF-APPLICANT

his  
x  
mark.

13th March,  
1950 -  
continued.

10

W/W to mark.

(Sgd.) ? ?  
House No. Krobo 98 Kumasi  
Gratis.

THE REGISTRAR,  
DIVISIONAL COURT, KUMASI.

THEN COPIES TO BE SERVED ON:

NANA KWAKU GYAWU III, BANTAMAHENE  
ELIZABETH ANIMA, HOUSE No.23 BANTAMA  
ALL AT KUMASI.

20

CERTIFICATE OF SERVICE.

Upon the 14th day of March, 1950 a copy of this Motion paper and Affidavit were served by me on Nana Kwaku Gyawu III Bantamahene personally at Bantama Kumasi.

(Sgd.) ? Hanson  
15/3/50.

No. 23.

No.23.

AFFIDAVIT IN SUPPORT OF NO. 22.

(Title as in No. 16)

(This Affidavit is the same as the Affidavit Item No.20 on page 20 except for date of swearing).

Affidavit in support of No.22.

13th March,  
1950.

30

CERTIFICATE OF SERVICE.

Upon the 14th day of March, 1950 a copy of this Affidavit and a Motion Paper were served by me on Elizabeth Animah personally at Bantama Kumasi.

(Sgd.) G.K. Hansen.  
15.3.50

In the Supreme Court.

No. 24.

AFFIDAVIT IN OPPOSITION TO NO. 22.

(Title as in No. 16)

No.24.

Affidavit in Opposition to No.22.

16th March, 1950.

I, AKOSUA MANSAH of Bantama, in Kumasi, Ashanti, make oath and say as follows :-

- 1. That I am the mother and Lawful Attorney for the 4th Defendant herein.
- 2. That I am duly authorised by the 4th Defendant to depose the following on her behalf.
- 3. That the Plaintiff is ousted and/or barred in law to lay claim of the house which by virtue of the Order of this Honourable Court held on Monday the 24th day of July, 1939, granted possession to me (the 4th Defendant) after the former Order of the Court which was made with the consent of both parties on 23rd March, 1939, was ignored. 10
- 4. That the Plaintiff seeing that he was not having any alternative, could not file Motion as this to claim the possession; his right therefore is ceased under the circumstances referred. 20
- 5. I therefore make this Affidavit in support of my cause to refute Plaintiff's allegation contained in his Motion dated the 13th March, 1950.

SWORN AT KUMASI this 16th day )  
of March, 1950, after the fore- )  
going had been read over inter- )  
preted and explained to the De- )  
ponent in Twi Language by C. E. )  
Brew of Kumasi when she seemed ) Akosua Mansah her  
perfectly to understand the same ) DEPONENT. x  
before making her mark hereto ) mark  
in my presence, and before me:-)

(Sgd.) C. E. Brew,  
COMMISSIONER FOR OATHS.

Prepared by:

(Sgd.) ? ?  
Licd. No. 27201/50/Ksi  
Court Road Kumasi.  
Gratis.

CERTIFICATE OF SERVICE.

Upon the 18th day of March, 1950 at 8.20 a.m. a copy of this Notice of Affidavit was served by me on Kwame Dwaa personally at Kumasi.

(Sgd.) V. A. Nunoo

BAILIFF.

18.3.50.

In the Supreme Court.

No.24.

Affidavit in Opposition to No.22.

16th March, 1950 - continued.

No. 25.

COURT NOTES OF ARGUMENT OF MOTION

No.25.

Court Notes of Argument of Motion.

10 In the Supreme Court of the Gold Coast, Ashanti. At a Divisional Court held at Kumasi on Saturday, the 18th day of March, 1950, before His Honour Mr. Justice Jackson.

18th March, 1950.

Kwame Dwaa

v.

- 1. Kwame Amankwatia
- 2. Kwame Atta
- 3. J. B. Abaidoo
- 4. Elizabeth Anima.

20 Motion for review of decision given on the 22.2.50. Plaintiff in person.

4th Defendant appears for her Attorney Akosua Mansah.

Nana Kwamu Gyawu III on notice in person.

Kwame Dwaa:

Applicant:

30 Elizabeth Anima is still in possession - she was ordered to give up possession to me within a fortnight - it was my building. She has not given up possession.

Q. Why have you taken so long to go into execution.

A. I became sick.

In the Supreme  
Court.

Elizabeth Anima:  
4th Defendant:

No.25.

Court Notes of  
Argument of  
Motion.

18th March,  
1950 -  
continued.

The consent judgment was that when the Bantamahene paid me £30.2.0, that I was to give up possession to the 1st Defendant (Bantamahene) and that Bantamahene in turn would give up the building to whoever was entitled to it. The Bantamahene failed to pay me and I moved the Court sometime later for a withdrawal of the consent judgment. I retained Mr. Tamakloe and an order was made that if Bantamahene failed to pay within 2 weeks that I should retain possession.  
(admitted and marked "A")

10

Kwame Dwaas replies:

If I paid the £30.2.0. to Elizabeth Anima, would the Judge make the order.

Elizabeth Anima:

I don't agree - I've spent more than £400 in reconditioning this house.

Court:

20

I will give my decision on 28.3.50.

(Sgd.) J. Jackson.  
Judge.

No.26

No. 26.

Decision on  
Motion for  
Review.

30th March,  
1950.

DECISION ON MOTION FOR REVIEW.

In the Supreme Court of the Gold Coast, Ashanti. At a Divisional Court held at Kumasi on Thursday the 30th day of March, 1950, before His Honour Mr. Justice Jackson.

Kwame Dwaas

30

v.

1. Kwame Amankwatia (Bantamahene)
2. Kwame Atta
3. J. B. Abaidoo
4. Elizabeth Anima.

DECISION:

On the 22nd February last Kwame Dwaas moved

the Court under Order 43 Rules 26 and 27(a) for leave to issue execution against Elizabeth Anima and against Nana Kwaku Gyawu III the Bantamahene in substitution for Kwame Amankwatia, now deceased.

In the Supreme Court.

---

No.26.

The following were the facts before me.

Decision on Motion for Review.

10 On the 10th November, 1938 Kwame Dwaa issued out of this Court a Writ of Summons claiming as against Kwame Amankwatia, Elizabeth Anima and two others a declaration of title to leasehold premises at No.23 Bantama, Kumasi and £120 damages for trespass, wrongful sale, use and occupation.

30th March, 1950 - continued.

20 The particulars of claim which have been reiterated before me and which were not denied are that sometime about 1918 the then Bantamahene gave to Kwame Dwaa a piece of land upon which he built a house and occupied it free of rent. He left Kumasi and whilst away left the house in charge of a John Mensah. During his absence the then Bantamahene sold the house to Elizabeth Anima, whereupon the plaintiff Kwame Dwaa issued his writ.

30 On the 23rd March, 1939, a consent judgment was entered into by the parties before Bannerman, J. The terms of that judgment were that Kwame Amankwatia the then Bantamahene was to pay to Elizabeth Anima the sum of £30.2.0. being the purchase price of the house within a fortnight, and that Elizabeth Anima was to give up possession of the house within that same period, and within that same period Kwame Dwaa was to pay to the Bantamahene a sum of £11.16.0. He was further to pay to Elizabeth Anima a sum of £7 upon production by her of the receipts for the ground rents.

But on the 24th July, 1939, Elizabeth Anima moved Bannerman, J. to construe the order made on the 23rd March, 1939, and to give directions, supporting her motion by an affidavit setting out that Kwame Dwaa had failed to pay the £7 and that the Bantamahene had failed to pay the sum of £30.2.0.

Bannerman, J. then made the following order:-

"If the 1st Defendant (Bantamahene) has failed within the time limit to pay the £30.2.0. to the 4th Defendant (Elizabeth Anima) should retain possession of the house."



In the Supreme  
Court.

\_\_\_\_\_

No.26.

Decision on  
Motion for  
Review.

30th March,  
1950 -  
continued.

All parties were present including Mr.E.Brown, Counsel for the Plaintiff. No directions were given with regard to the position of Kwame Dwaa. This quite clearly was a variation of a consent judgment and it is quite clear upon the record that there was no consent by Kwame Dwaa to the variation of the order, and I think for the reason that its implications and results were not realized at the time, no appeal against this order was made.

But the matter ambiguous as it appeared there, is further complication (sic) by a letter written on the directions of the learned Judge to "Akosua Mansah on behalf of her daughter Elizabeth Anima" and which reads:- 10

"I do not see on what grounds the purchaser has been sued in a Native Court for rent in respect of the house since the order of the Divisional Court stands and is binding on all the parties. Furthermore the sale of the house has not been set aside by this Court as evidenced by the consent Judgment. Any decision therefore against the purchaser by any Native Court would be contrary to the terms of the consent judgment and would assume to set aside or override a judgment of the Supreme Court. 20

W.B. 23/3/40."

Upon these facts it appeared to me that it was the intention of the learned Judge that the sale of the house to Elizabeth Anima had not (sic - been) set aside by the consent judgment and that as certain conditions had not been fulfilled by Kwame Dwaa and the Bantamahene that the possession of the house should remain with Elizabeth Anima. 30

However inexplicable such a result I was of the opinion that it was a judgment by a brother Judge which could not be overruled by me and that in consequence, Kwame Dwaa could not now issue execution for possession of the house against Elizabeth Anima, and I dismissed the motion. 40

On the 18th March upon the application of Kwame Dwaa I consented to review that decision, a decision which was certainly very disturbing to me as I felt that the facts not being in issue there did appear to have resulted a miscarriage of

justice, and what the Courts do try to do is to ascertain the truth and do justice.

In the Supreme Court.

10 That the Bantamahene did sell to Elizabeth Anima property which was not his to sell is clear and in circumstances which have never been denied, it savoured strongly of a fraud having been perpetrated upon Kwame Dwaa by a Chief who stands only second in rank to the Asantehene himself, and this fact must not be lost sight of when viewing the conduct of all the parties and the delay in enforcing their remedies.

\_\_\_\_\_  
No.26.

Decision on Motion for Review.

30th March, 1950 -  
continued.

20 If that consent judgment meant anything at all surely one thing is crystal clear and that is that the parties agreed upon certain terms that the sale should be set aside and that Kwame Dwaa should be placed again in the same position as he was before his house was sold behind his back, and upon second thought I must regard the learned Judge's letter as being extra-judicial and not as words which should be construed as a part of his judgment.

If any one of the parties had failed to carry out his or her part of the consent judgment then they could issue execution for its enforcement and that was the remedy open to them and not by asking the Court to do as it did do in effect and seek to vary a consent judgment.

Now has it varied its judgment so as to prevent Kwame Dwaa applying for and obtaining as against Elizabeth Anima a writ of possession.

30 All that the learned Judge said was that if the Bantamahene failed within the "time limit" to pay the £30.2.0. to Elizabeth Anima that the later (sic) should retain possession of the house.

But in those directions no limit was placed upon the words "time limit". It clearly had no reference to the limits in the consent judgment entered on the 23rd March, 1939 since the time limits mentioned there had passed long before the hearing of this motion on the 24th July, 1939.

40 It was then a limitless "time limit" and provided that Elizabeth Anima recovers the sum of £30.2.0. and that she surrenders to Kwame Dwaa the receipts for ground rents in exchange for £7. She

In the Supreme Court.

will be in precisely the same position as to one to which she consented on the 23rd March, 1939.

---

No.26.

Decision on Motion for Review.

30th March, 1950 - continued.

Elizabeth Anima argues that she has spent £400 in repairs to the house. Against this she has engaged (sic) its use and its profits for more than 10 years.

Kwame Dwaa tells me he did not issue execution for all these years because he was sick. A native of Ashanti is very reluctant to say anything that may reflect upon the character of a Chief and especially one of such importance in Kumasi as is the Bantamahene. The conduct of the late Bantamahene was frankly dishonest. He sold Kwame Dwaa's property when he knew he had no right to do so. He consents to pay Elizabeth Anima what she paid for the house at the sale to enable Kwame Dwaa to recover back his property, and his failure to do so was not only dishonest but savours strongly of collusion between himself and Elizabeth Anima to defeat a judgment to which they had consented and upon which they escaped on very easy terms.

10

20

I should be doing far less than justice if I did not amend my decision given on the 22nd February, and I do amend it in the following terms at the request of the applicant.

Upon payment into Court of a sum of £30.2.0. to be deposited in favour of Elizabeth Anima the applicant may issue execution against the said property at No.23 Bantama, Kumasi.

There is no matter before me however on which the applicant can go into execution as against the Bantamahene.

30

The applicant is entitled to the costs of these proceedings which I assess at 2 guineas as against Elizabeth Anima.

(Sgd.) J. Jackson.

Judge.

---

No. 27.

COURT NOTES GRANTING FINAL LEAVE TO APPEAL

In the Supreme Court of the Gold Coast, Ashanti.  
At a Divisional Court held at Kumasi on Saturday,  
the 15th day of July, 1950, before His Honour  
Mr. Justice Jackson.

Kwame Dwaa

v.

Kwame Amankwatia and 3 Others.

In the Supreme  
Court.

No.27.

Court Notes  
granting Final  
Leave to  
Appeal.

15th July 1950

10 In re Elizabeth Anima - Appellant

Motion for final leave to appeal to W.A.C.A.

Condition perfected;

Asafu Adjaye moves for appellant.

Final leave to appeal is granted.

(Sgd.) J. Jackson,  
Judge.

No. 28

GROUND OF APPEAL

IN THE WEST AFRICAN COURT OF APPEAL

20 Kwame Dwaa of Ofuasi - Plaintiff-Respondent

v.

1. Kwame Amankwatia (Bantamahene) or  
his Successor Nana Kwaku Gyawu II.

2. Kwame Atta

3. J. B. Abaidoo

4. Elizabeth Anima - Defendants

Elizabeth Anima - Defendant-Appellant.

In the West  
African Court  
of Appeal.

No.28.

Grounds of  
Appeal.

18th July 1950.

30 The Appellant, herein before dissatisfied  
with the Judgment by the Divisional Court, Kumasi,  
dated 30th day of March, 1950, and having obtained  
final Leave to appeal therefrom dated the 15th July

In the West  
African Court  
of Appeal.

1950 hereby appeals to the West African Court of  
Appeal upon the grounds hereinafter set forth.

GROUND OF APPEAL

- |  |   |
|--|---|
| <p>No.28.</p> <p>Grounds of<br/>Appeal.</p> <p>18th July 1950<br/>continued.</p> | <ol style="list-style-type: none"> <li>1. The said Order is in effect a review of an Order made by this Honourable Court presided over by the late Mr. Justice Woolhouse Bannerman on the 24th July 1939 in the following terms "If the 1st defendant (Bantamahene) has failed "within the time limit to pay the £30.2.0. to "the 4th defendant (Elizabeth Anima) should "retain possession of the house." 10</li> <li>2. It is not competent for a Judge to review or vary the Order of another Judge of concurrent Jurisdiction.</li> <li>3. The consent judgment of 23rd March 1939 referred to in the decision of His Honour Mr. Justice Jackson on 30th March 1950 having been clarified by the order of the late Mr. Justice Woolhouse Bannerman on the 24th July, 1939, it was not competent for this Court differently constituted to alter the effect of the said Order. 20</li> <li>4. The Decision of 30th March 1950 did not give effect to the failure of the Plaintiff herein to comply with the terms of the Judgment of 23rd March 1939.</li> <li>5. The Learned Judge in his decision of 30th March 1950 misdirected himself in holding that the "<u>time limit</u>" imposed by the late Mr. Justice Woolhouse Bannerman was a limitless "time limit". 30</li> <li>6. There had been no appeal by the Plaintiff herein against the Order of the 24th July 1939.</li> <li>7. Laches and acquiescence on the part of the Plaintiff in sleeping over any rights he may have had since 1939 and permitting the applicant to spend over (£400) Four hundred pounds in improving the property.</li> <li>8. 4th Defendant-Appellant at any rate is entitled to expenses incurred in improving 40</li> </ol> |
|--|---|

the property.

DATED AT ADONTENE CHAMBERS THIS 18th DAY OF JULY, 1950.

(Sgd.) E.O. Asafu-Adjaye  
SOLICITOR FOR 4th DEFENDANT-  
APPELLANT.

THE REGISTRAR,  
DIVISIONAL COURT, KUMASI  
AND

10 TO THE ABOVE-NAMED KWAME DWAA  
PLAINTIFF-RESPONDENT OF OFUASI AND  
TO KWAME AMANKWATIA (BANTAMAHENE) OR  
HIS SUCCESSOR NANA KWAKU GYAWU II,  
BANTAMAHENE KUMASI.

In the West  
African Court  
of Appeal.

\_\_\_\_\_  
No.28.  
Grounds of  
Appeal.  
18th July 1950  
continued.

No. 29.

COURT NOTES OF ARGUMENT

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

20 Coram Foster Sutton, P., Coussey and Manyo Plange,  
JJ.

Kwame Dwaa, Plaintiff-Respondent  
v.  
Elizabeth Anima Defendant-Appellant

No.29.  
Court Notes  
of Argument.  
9th January,  
1952.

Mr. Siriboe for 4th Defendant-Appellant.

No appearance for other Defendants who have not  
appealed.

Mr. Larbi for Plaintiff-Respondent.

Siriboe - Deals with facts.

We draw attention to consent Judgment page 4.

30 There is no condition attached to paragraph 1.

Note.

Cites Mensah v. Cobbina - Volume 5.

Page 108.

In the West African Court of Appeal.

No.29.

Court Notes of Argument.

9th January, 1952 - continued.

Court has no jurisdiction to deal with matter and no Court can take jurisdiction - even by consent.

Mr. Larbi - We indicate that we do not wish to hear him.

Appeal dismissed with costs fixed at £15.8.0.

S.F.S.

P

9. 1. 52.

No.30.

Judgment.

9th January, 1952.

No. 30.

JUDGMENT

10

WEST AFRICAN COURT OF APPEAL

General sitting held at Accra, 9th January, 1952.

Coram Foster-Sutton, P., Coussey and Manyo-Plange, JJ.

Civil Appeal No. 43/50.

Kwame Dwaa, Plaintiff-Respondent

v.

Kwame Amankwatia (Bantamahene) Defendant-Respondent.

Elizabeth Anima 4th Defendant-Appellant.

20

JUDGMENT

Foster-Sutton, P. FOSTER-SUTTON, P.: In this case the Plaintiff claimed for a declaration of title to a compound house situate on leasehold premises in Kumasi, and for £120 damages for trespass.

Shortly put the facts are as follows :-

The land in question was sold to the Plaintiff by the first defendant. The plaintiff then left

the district for a number of years and while he was away, the Bantamahene, that is to say, the first defendant, purported to convey the property to the fourth defendant, without the knowledge or consent of the plaintiff. Those facts were not disputed in the Court below.

In the West African Court of Appeal.

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No.30.

10 The action came before Woolhouse Bannerman, J. on the 23rd March, 1939, and a consent Judgment was entered, all the parties were before the Court. The first condition of the Judgment entered by consent reads as follows :-

Judgment.

9th January, 1952 - continued.

"The 4th defendant is to give up possession of the house in dispute within a fortnight from today's date."

The plaintiff withdrew his case for damages and his claim against the second and third defendants, but it is relevant to note that there was no suggestion that he had withdrawn his claim for a declaration of title to the premises in dispute.

20 As has been pointed out by my brother Sir Henley Coussey, the first paragraph of the consent Judgment makes it abundantly clear that the plaintiff in fact persisted in his claim for the declaration he had sued for. The fourth defendant was ordered to give up possession without any condition being attached, and the order could only have been made on the footing that the plaintiff was the legal owner.

30 The matter came before the Court again on the 24th July, 1939, on a Motion filed by the fourth defendant, under which she claimed a review of the Judgment I have just referred to. The learned trial Judge, upon that Motion, made the order which is set out at page 12 of the record. Having regard to the fact that the previous Judgment was a consent one, in my view, he had no power to review that Judgment unless the consenting parties agreed to such review, and there is no indication that they did so.

40 The plaintiff could have proceeded to execution on the consent Judgment as also could the fourth defendant against the first defendant, and had she, after production of the receipts, failed to recover the £7, referred to in paragraph 7 of



In the West African Court of Appeal.

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No.30.

Judgment.

9th January, 1952 - continued.

the consent Judgment, she could have proceeded to execution against the plaintiff for that sum. The plaintiff let the matter rest for a number of years and the learned trial Judge against whose Judgment this appeal has been brought has suggested a reason as to why that was done. Be that as it may, under the Rules, having taken no further steps for over six years, when he ultimately decided to enforce the Judgment he was compelled to do what he did, that is to say, file a Motion for leave to proceed to execution.

10

In my opinion Jackson, J. had jurisdiction upon that Motion to deal with the matter as he did. As has already been pointed out by a member of this Court, that part of his order which requires payment of the sum of £30.2.0. is doubtful, but he was entitled to give leave to the plaintiff to proceed to execution.

A point has been raised and argued very strongly, as indeed he had the right to do, by Counsel appearing on behalf of the fourth defendant-appellant. He argued that, as under section 17 of Chapter 4 the Divisional Court is required not to exercise its jurisdiction in cases such as this, the original Judgment of Woolhouse Bannerman, J. was of no effect because he ought to have transferred the case to the Native Court. I think in the circumstances of this case, apart from any question of waiver by the parties where the Court has inherent jurisdiction, the fourth defendant-appellant cannot, after the lapse of over 10 years, when she herself has taken steps under the consent Judgment, now be heard to say that the Court had no jurisdiction in the matter. Such an argument is only calculated to defeat justice and indeed create injustice.

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30

For the reasons I have already given I would dismiss this appeal with costs fixed at £15.8.0.

Coussey, J.            COUSSEY, J.:            I concur.

Manyo-Plange, J.    MANYO-PLANGE, J.:    I concur.

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No. 31.

MOTION BY APPELLANT FOR  
FINAL LEAVE TO APPEAL.

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In the West  
African Court  
of Appeal.

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No.31.

Motion  
by Appellant  
for Final  
Leave to  
Appeal.

23rd May 1952.

10 PLEASE TAKE NOTICE that this Honourable Court  
will be moved by Mr. Johnson Boateng Siriboe of  
Counsel on behalf of Elizabeth Anima the 4th  
Defendant-Appellant - Appellant herein for an Order  
granting her Final Leave to Appeal from the Judg-  
ment delivered herein on or about the 9th day of  
January 1952 to Her Majesty's Judicial Committee  
of the Privy Council England, all conditions having  
been complied with and for such further or other  
Order as to this Honourable Court may seem meet in  
the premises.

20 COURT TO BE MOVED on Monday the 30th day of  
June 1952, or other Session of the West African  
Court of Appeal, Accra, at 8.30 a.m. of the clock  
or so soon thereafter as Counsel on behalf of the  
said Elizabeth Anima the 4th Defendant-Appellant-  
Appellant herein may be heard.

Dated at Kumasi this 23rd day of May, 1952.

(Sgd.) J. Boateng Siriboe,  
pp. Asafu Adjaye & Co.,  
SOLICITOR FOR 4th DEFENDANT-  
APPELLANT-APPELLANT.

30 THE REGISTRAR,  
WEST AFRICAN COURT OF APPEAL, VICTORIABORG, ACCRA.  
WITH COPIES FOR SERVICE ON  
KWAME DWAA OF OFUASI & KWAME AMANKWATIA  
(BANTAMAHENE) OR HIS SUCCESSOR NANA KWAKU  
GYAWU II (BANTAMAHENE) KUMASI.

CERTIFICATE OF SERVICE

Upon the 16th day of June 1952 copies of this  
Motion and attached Affidavit were served by me on  
Nana Kwaku Gyawu II personally at Bantama, Kumasi.

(Sgd.) M. A. Nunoo  
BAILIFF. 17.6.52.

CERTIFICATE OF SERVICE

40 Upon the 21st day of June 1952 a copy of this  
Motion attached with Affidavit was served by me on  
Kwame Dwaa personally at Ofuasi.

(Sgd.) F. N. ?

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COURT NOTES GRANTING FINAL LEAVE TO APPEAL

In the West African Court of Appeal.

No.32.

Court Notes granting Final Leave to Appeal.

27th June 1952

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

Coram Foster Sutton, P., Coussey, J.A., and Windsor-Aubrey, J.

Civil Motion:

No.19. Kwame Dwaa v. Kwame Amankwatia & Others  
Elizabeth Anima, Appellant.

Motion on notice for final leave to appeal to Privy Council.

10

Mr. Larbi for appellant.

No appearance on behalf of Respondent.

Larbi: Moves -

Order in terms of motion.

(Intd.) S.F.S.

27.6.52.

P.

In the Privy Council.

No. 33.

Order of Revivor.

No. 33.

ORDER OF REVIVOR

AT THE COURT AT BUCKINGHAM PALACE

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The 24th day of June, 1954.

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

Lord President	Mr. Boyd-Carpenter
Lord Privy Seal	Sir Reginald Manningham Buller
Earl De La Warr	Mr. Deakin

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 17th day of May 1954 in the words following, viz.:-

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of the Appellant in the matter of an Appeal from the West African Court of Appeal (Gold Coast Session) between Elizabeth Anima Appellant and Kwame Dwaa Respondent (Privy Council Appeal No.6 of 1953) setting forth: that the above Appeal is pending before Your Majesty in Council: that the Respondent has died as appears from a Supplemental Record which has arrived at the Privy Council Office from which it also appears that by an Order of the West African Court of Appeal dated the 2nd April 1954 it was declared that Akwasi Ahyeye of Offuasi was the proper person to be substituted on the Record in place of the deceased Respondent: And humbly praying that Akwasi Ahyeye of Offuasi may be substituted in the above Appeal for the deceased Respondent and that the Appeal may be revived accordingly:

In the Privy Council.

\_\_\_\_\_  
No.33.

Order of Revivor.

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and Solicitors for the Respondent having signified in writing their consent to the prayer thereof Their Lordships do this day agree humbly to report to Your Majesty as their opinion that Akwasi Ahyeye of Offuasi ought to be substituted in place of Kwame Dwaa deceased as Respondent and that this Appeal ought to stand revived accordingly."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor or Officer administering the Government of the Gold Coast for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW.

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Exhibits

"B"

Letter from  
Registrar,  
Supreme Court  
to Madam  
Akosua Mensah

27th May 1940.

EXHIBITS

"B"

LETTER FROM REGISTRAR SUPREME COURT  
TO MADAM AKOSUA MENSAH.

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Supreme Court,  
P.O. Box 3,  
Kumasi, Gold Coast.  
27th May, 1940.

No.455/43/1940.

Madam,

Kwame Dwaa v. Kwame Amankwatia &c. & Others.

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With reference to your letter undated, I have the honour by the direction of Mr. Justice Banner-  
man to supply you with a copy of the consent judg-  
ment of the 23rd March, 1939, and to say that His  
Honour does not see on what grounds the Purchaser  
has been sued in a Native Court for rent in respect  
of the house since the order of the Divisional  
Court stands and is binding on all the parties.  
Furthermore, the sale of the house has not been  
set aside by this Court as evidenced by the con-  
sent judgment. Any decision therefore against  
the purchaser by any Native Court would be con-  
trary to the terms of the consent judgment and  
would assume to set aside or override a judgment  
of the Supreme Court.

20

I have the honour to be,

Madam,

Your obedient Servant,

(Sgd.) B. Crosby Davis,  
REGISTRAR DIV. COURT.

30

MADAM OKOSUA MANSAH,  
ON BEHALF OF HER DAUGHTER ELIZABETH ANIMA  
KUMASI.

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IN THE PRIVY COUNCIL

No. 6 of 1953

ON APPEAL

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

BETWEEN

ELIZABETH ANIMA (Defendant)                      Appellant

- and -

AKWASI AHYEYE substituted for  
KWAME DWAA, Plaintiff                      Respondent

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RECORD    OF    PROCEEDINGS

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A.L.BRYDEN & WILLIAMS,  
53, Victoria Street,  
London, S.W.1.

Solicitors for the Appellant

T. L. WILSON & CO.,  
6, Westminster Palace Gardens,  
Artillery Row,  
London, S.W.1.

Solicitors for the Respondent.