*Privy Council Appeal No.* 1 *of* 1952

**Josiah Korkwei Quarmina Aryeh and others** - - - *Appellants*

*v.*

**Naa Quarduah Ankrah and another** - - - - - *Respondents*

AND BETWEEN

**Charles Amoo Ankrah (since deceased)** - - - - - *Appellant*

*v.*

**Robert Adjabeng Ankrah** - - - - - - - - *Respondent*

(*Consolidated Suits and Appeals*)

FROM

**THE WEST AFRICAN COURT OF APPEAL**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 2ND OCTOBER 1957.

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*Present at the Hearing:*

LORD TUCKER
LORD SOMERVELL OF HARROW
MR. L. M. D. DE SILVA

[*Delivered by* MR. L. M. D. DE SILVA]

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This is an appeal from a judgment of the West African Court of Appeal (Coussey, J., and Lewey, J.A., Korsah, J., dissenting) dated the 22nd February, 1951, whereby that court dismissed the defendants' appeal from a judgment of the Supreme Court of the Gold Coast (Land Court) given on the 15th October, 1948, in the consolidated suits No. 32/1947 and No. 112/1947.

These suits concerned the ownership of a tract of land known as Awudome which was the self acquired property of one Manche Ankrah. He was one of the three sons of a woman named Amanua, the other two being Ayi and Okanta. Amanua had no daughter. What has to be determined is the succession to this land after the death of Manche Ankrah who had not disposed of it during his lifetime.

It is common ground that the Ga Customary Law is applicable and that as stated in Sarbah's "Fanti Customary Laws" (2nd Edition page 100), "the right of inheritance is only through the female" the pedigree being traced through the female line and that only while there are persons in that line. Sarbah illustrates this principle (pages 101 and 102) when he says "The owner of self-acquired real property dying intestate, is not succeeded by his sons, they being outside the line of inheritance, but by his mother and her issue according to seniority.

Persons in the line of succession are :—

Mother,
Brothers, according to seniority,
Nephews, by seniority."

By "brothers" is meant brothers by the same mother, by "nephews" children of sisters but not children of brothers. He goes on to indicate the persons situated further in the line of matrilineal succession.

Following what has been said above, on the death of Manche Ankrah the brothers who survived him succeeded him in order of seniority. It is not clearly established that Ayi survived Manche. If Ayi had not survived Manche, Okanta succeeded immediately. But this question of survival is not of importance. The important fact is that on the death of Okanta the inheritance could not follow through a daughter of Amanua as Amanua had no daughter and, on the facts as presented by both parties, there were no persons in the matrilineal line who could succeed. The question arose as to what was to happen to the property when the matrilineal line failed to furnish a successor. This is the main question in the case.

According to the plaintiffs, who are the respondents to this appeal, the descendants male and female (tracing descent through both males and females) of all three brothers Manche, Ayi and Okanta would be entitled to the property and entitled to assert rights of ownership through a duly appointed head. He would also be their representative in litigation. M. D. A. Ankrah, a plaintiff in both suit No. 32/1947 and suit 112/47 claims that he is the duly appointed head of such descendants.

According to the defendants, who are the appellants on this appeal, the descendants of Manche Ankrah alone are entitled to the property. Charles Amoo Ankrah, a defendant in both of the suits, claims he is the duly appointed head and representative of the descendants of Manche Ankrah.

The position of the other parties is subordinate to the position of the parties named above and has no direct bearing upon the main question.

It is necessary to ascertain what the Ga Customary Law is upon the question which has arisen. In the case of *Kobina Angu* v. *Cudjoe Attah* (Judgments of the Judicial Committee, Gold Coast 1874-1928, 43) dealing with an appeal from the Gold Coast the Board observed that customary law " has to be proved in the first instance by calling witnesses acquainted with the native customs until the particular customs have, by frequent proof in the courts, become so notorious that the courts take judicial notice of them." Their Lordships will now examine the decisions cited to them in order to ascertain whether any principles relevant to the determination of the question before them have been proved and recognised so frequently that judicial notice can be taken of them.

There are two decisions which have to be considered. The first is the case of *Sackey* v. *Okantah* (Gold Coast Divisional and Full Court Judgments 1911-1916). In that case Smyly, C.J., observed :—

" I have given a good deal of consideration from time to time to this question of succession among the Gas and am of opinion though there are certainly witnesses to the contrary, that the whole weight of the evidence goes to show that the Ga Law of succession whether the property is self-acquired or not, is that the brothers succeed first to the property, then it descends to the nephew failing which, to the children, the brothers to succeed must be of the same mother with the deceased, and the nephew must be the sister's child."

There is much force in the appellants' argument that the word " children " in the passage means the children of the deceased whose property is being considered. But if the passage means that the children of the deceased are to get the property when the matrilineal line fails, it is clearly *obiter* as the contest in the case was between a child of the deceased and the issue of a sister of the deceased. The latter being in the matrilineal line were held entitled to succeed. The matrilineal line had not failed to furnish a successor and it was not necessary to decide what was to happen if it had.

The second case which needs consideration is *Sarah L. Ribiero and others* v. *Elizabeth Mingle and others.* It is an unreported case and the judgments in the case were not available to their Lordships. It was a decision of the Tribunal of the Paramount Chief of the Ga State given in 1944 and subsequently affirmed on appeal. Of this case the trial

judge said ". . . it appears at first sight directly to decide the point of law at issue." He summarised the case thus:—". . . in that case Charles and Henry Mingle built a house in Horse Road, Accra, and by his will Henry devised to his brother Charles his whole interest in that house. Upon Charles's death intestate in 1933 an elder brother named Joseph succeeded to his estate in Horse Road. Joseph died in 1943. The children of Charles then claimed the estate in the house from the children of Joseph and obtained judgment for recovery of the premises against the children of Joseph."

"It was held that the direct descendants of Charles L. Mingle were entitled by Ga Customary Law to exclusive possession of the land in question, the descendants of Charles L. Mingle's uterine brother, Joseph, having no rights in the land." After some discussion he went on to say:—

"But that case heard in the Ga Native Court cannot, I think be held to go any further than to say that the possessory rights of the children of Henry Mingle in that house were ones which excluded these rights from the children of Joseph Mingle. But would the decision have necessarily been the same if the children of Henry wished to sell, and so dispose of, the property in the estate? Would the children of Joseph Mingle have no say in the sale of property to which they might enjoy an interest in the event of Henry's line becoming extinct?"

The majority of the judges in the Court of Appeal did not think the decision was applicable. One of the judges remarked that it was not of "any real assistance having regard to the facts of that case and to the issues which the Tribunal had to decide." Nothing has been said which persuades their Lordships to take a different view.

The cases cited other than those mentioned in the two preceding paragraphs do not, in their Lordships' opinion, have a sufficient bearing upon the question to be answered as to merit discussion in this judgment. There is not before their Lordships a series of decisions from which any relevant principles have crystalised out in the manner indicated in the case of *Kobina Angu* v. *Cudjoe Attah* and the law which has to be applied has therefore to be ascertained from the evidence of witnesses who speak to what, as a fact known to them from its application in the past, the law is.

The evidence was conflicting but after due consideration the learned trial judge came to the conclusion that:—

"The preponderance of evidence before me given by witnesses who could properly be described as being expert in native customary law was that not only would the consent of all three lines of the family be necessary before a valid grant of sale of land could take effect, but that every member of the three lines had an interest in the land to the extent that if they wished to farm it they could do so or give up all tribute upon seeking and obtaining the consent of the caretaker of the land." By "three lines of family" the learned trial judge meant the three sets of descendants of the three brothers. In arriving at a decision the learned trial judge was assisted by the evidence of an independent witness, a member of the Ga State Council, called by the learned judge himself. His evidence was accepted. Of three brothers A, B and C in the position of Manche Ankrah, Ayi and Okanta he gave the following evidence :—

"Q. It is suggested that because B and C are dead that the children of A inherit the land to the exclusion of B and C. Is that the Ga Custom?

A. The elder child will look after the land for the children of A, B and C."

This was a specific answer to the question which has to be answered in this case.

The conclusions on the evidence of the learned trial judge were accepted by the majority of the judges of the Court of Appeal. These conclusions related to the law which was applicable but they were arrived at on a

consideration of the evidence of expert witnesses on what, as a question of fact, the law was. The rules of the Board with regard to concurrent findings are applicable to these conclusions particularly, as observed by the Board in *Srimati Bibhabati Devi* v. *Kumar Ramendra Narayan Roy* [1946] A.C. 508, as " the Board will always be reluctant to depart from the practice in cases which involve question of manners, customs or sentiments peculiar to the country or locality from which the case comes, whose significance is specially within the knowledge of the Courts of that country." Nothing has been shown by the appellants which places this case outside the general rule regarding concurrent findings and the view of the courts below as to ownership must therefore be upheld.

A question arose as to whether M. D. A. Ankrah the second plaintiff in suit No. 32/47 and sole plaintiff in suit No. 112/47 was the duly appointed head of the " Manche Ankrah Family " by which was meant, in the context in which it was used, not a family connected by matrilineal ties but the descendants of Manche Ankrah and his two brothers Ayi and Okanta. There is a concurrent finding which there is no reason to distrust that he was the duly appointed head.

Their Lordships observe that Exhibit 2 produced by the plaintiffs is a document executed in 1942 appointing M. D. A. Ankrah attorney and representative of the " Manche Ankrah Family ". It is signed by descendants of all three brothers, Manche Ankrah, Ayi and Okanta. In it, among other things, they authorise M. D. A. Ankrah to take charge of Awudome. It is clear from this document that in 1942 some, if not all, of the descendants of Manche Ankrah did not claim to be the exclusive owners of the land, and went so far as to ask M. D. A. Ankrah to look after the land for themselves and others. The material furnished by this document strongly supports the findings of the Courts in Africa.

It is not disputed by the appellants that if the views of the courts below referred to in the preceding paragraphs are upheld the orders made in suit No. 32/47 should stand. As their Lordships do not propose to disturb those views it is not necessary for them to discuss the orders.

Suit No. 112/47 was brought by the plaintiff M. D. A. Ankrah against one Captan (first defendant) and Charles Amoo Ankrah (referred to above, second defendant). The latter alleged that he had been appointed head of the descendants of Manche Ankrah by those descendants. The plaintiff claimed ownership and damages for trespass. The first defendant pleaded that he had bought the land from the second defendant, and the second defendant pleaded that he had sold it, and had had the right to sell it, to the first defendant. Upon the views expressed in the preceding paragraphs the second defendant had no such right whether or not he had been duly appointed head of the descendants of Manche Ankrah. The learned trial judge held that as against the first defendant " the plaintiff is entitled to damages for trespass which, it is agreed, shall be nominal and which I assess at £1." He held further " As against the defendant Charles Amoo Ankrah who unlawfully sold the portion of Awudome land to the said Captan, I find that this act constituted an act of trespass and do assess general damages at £50 . . ." It was argued before their Lordships that the second defendant could not be held liable in damages. The point taken in the petition of appeal to the Court of Appeal was that the conduct of the second defendant, even if wrongful, did not " in Native Customary law constitute an act of trespass ". There is no note in the record of an argument before the Court of Appeal that the second defendant was not liable in damages and there is no reference in the judgments themselves to such an argument. It must be presumed that in dismissing the appeal without variation the Court of Appeal took the view that on the facts established the second defendant was liable in damages under the relevant law. No principle of Native Customary law which supported or had any bearing upon the point raised by the appellant in his petition to the Court of Appeal, was brought to the notice of their Lordships. They can see no reason for varying the judgments of the courts below.

In view of the above opinion which they have formed it is not necessary for their Lordships to consider a plea of estoppel relied on by the plaintiffs in the courts below.

For the reasons which they have given their Lordships will humbly advise Her Majesty that the appeal be dismissed. On this appeal only one respondent (substituted for M. D. A. Ankrah referred to above on his death) appeared. The appellants will pay him the costs of this appeal.

(39005) Wt. 8075—17 100 10/57 D.L.

# In the Privy Council

**JOSIAH KORKWEI QUARMINA ARYEH AND OTHERS**

*v.*

**NAA QUARDUAH ANKRAH AND ANOTHER**

AND BETWEEN

**CHARLES AMOO ANKRAH**
**(since deceased)**

*v.*

**ROBERT ADJABENG ANKRAH**
(*Consolidated Suits and Appeals*)

[DELIVERED BY
Mr. L. M. D. DE SILVA]

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