

Judgment  
25, 1957 gold coast

~~Case G-3~~

No. 19 of 1950.

In the Privy Council.

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ON APPEAL  
FROM THE WEST AFRICAN COURT OF APPEAL.

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BETWEEN

KWAMINA ACQUAH (substituted for Kweku Apawu deceased),  
KODWO EGYIN, KWEKU FENYIN, KOBINA EKUABU,  
KWEKU PEMISAH, YAW BERETUA, KODWO  
ABURABURA, KOFIE ENU, KWESI EDWIN (under  
Asebu Paramount Stool) and NANA AMANFI III - - *Appellants*

AND

NANA BAFFOE, Regent and Caretaker of the Stool of Anomabu  
(substituted for Nana Amonu Ababio deceased) - - *Respondent.*

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RECORD OF PROCEEDINGS

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A. L. BRYDEN & WILLIAMS,  
53 VICTORIA STREET,  
WESTMINSTER,  
LONDON, S.W.1,  
*Solicitors for the Appellants.*

HERBERT OPPENHEIMER, NATHAN & VANDYK,  
20 COPTHALL AVENUE,  
LONDON WALL, E.C.2,  
*Solicitors for the Respondent.*

~~G4-G3.~~

# In the Privy Council.

## ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL.

BETWEEN

KWAMINA ACQUAH (substituted for KWEKU APAWU deceased)  
KODWO EGYIN, KWEKU FENYIN, KOBINA EKUABU,  
KWEKU PEMISAH, YAW BERETUA, KODWO ABURABURA,  
KOFIE ENU, KWESI EDWIN (under Asebu Paramount Stool)  
and NANA AMANFI III

*Appellants*

AND

NANA BAFFOE, Regent and Caretaker of the Stool of Anomabu  
(substituted for NANA AMONU ABABIO deceased)

*Respondent.*

# RECORD OF PROCEEDINGS

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# In the Privy Council.

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## ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL.

---

BETWEEN

10 KWAMINA ACQUAH (substituted for Kweku Apawu deceased), KODWO EGYIN, KWEKU FENYIN, KOBINA EKUABU, KWEKU PEMISAH, YAW BERETUA, KODWO ABURABURA, KOFIE ENU, KWESI EDWIN (under Asebu Paramount Stool) and NANA AMANFI III *Appellants*

AND

NANA BAFFOE, Regent and Caretaker of the Stool of Anomabu (substituted for Nana Amonu Ababio deceased) *Respondent.*

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## RECORD OF PROCEEDINGS

---

No. 1.

WRIT OF SUMMONS—No. 2/1931.

No. 2/1931.

20

THE PROVINCIAL COUNCIL OF CHIEFS,  
CENTRAL PROVINCE.  
(Civil Summons.)

In the Provincial Council of Paramount Chiefs' Tribunal.  
The President of the Provincial Council of Chiefs' Tribunal—Saltpond.

GOLD COAST COLONY.

Between NANA Omanhene of Anamabu or Substitute on behalf of the Stool of Anamabu State - - Plaintiff

and

30

NANA AMANFI III Omanhene of Asebu (at Cape Coast), KWEKU APAWU, KWODWO EGYIN, KWEKU FENYIN, KOBINA NKUATU, KWEKU PEMISEI, YAW BIRITUA, KWODWO ABURABIWA, KOFI ENU and KWESI EDWIN under Asebu Paramount Stool - - - Defendants.

*In the  
Provincial  
Council  
of Chiefs  
(Central  
Province).*

No. 1.  
Writ of  
Summons  
No. 2/1931,  
24th  
August  
1931.

*In the  
Provincial  
Council  
of Chiefs  
(Central  
Province).*

No. 1.  
Writ of  
Summons  
No. 2/1931,  
24th  
August  
1931,  
*continued.*

To Nana Amanfi III, Omanhene of Asebu (at Cape Coast), Kweku Apawu, Kwodwo Egyin, Kweku Fenyin, Kobina Nkuatu, Kweku Pemisei, Yaw Biritua, Kwodwo Aburabiwa, Kofi Enu and Kwesi Edwin, under Asebu Paramount Stool.

You are hereby commanded to attend this Provincial Council of Chiefs' Tribunal at Saltpond on the 18th day of February, 1932, at 9.30 a.m. o'clock to answer a suit by Nana Omanhene of Anomabu or Substitute on behalf of the Stool of Anomabu State against you.

"The Plaintiff claims as against the Defendants jointly and severally so as to bind the said Defendants and such of their 10  
respective female relatives in the female line as support the Defendants, a declaration that the lands called Butuesi or Obuabasa, situate at Abuenu including the village of Abuenu and lands immediately belonging to it are attached to the Stool on which the Plaintiff sits as Omanhene of Anomabu, and (2) an injunction restraining the Defendants, their Servants or Agents, and such of their respective female relatives in the female line as support the Defendants, from dealing in any way with the said land or any portion thereof from carrying on any cultivation or other work thereon. 20

The Plaintiff lives at Anomabu and the Defendants live at Abuenu in the Cape Coast District."

Issued at Saltpond the 24th day of August 1931.

Claim As above.

Tribunal Fee £10. 0. 0.

Adasuam 5.

Mileage & Service £1 6. (to be ascertained).

(Sgd.) ADUKU III

Signature of President.

NOTICE :

30

If you do not attend, the Tribunal may give Judgment in your absence.

(Intd.) S. B. M.

Upon the 10th, 11th and 12th days of September 1931 this Summons was served by me on above Defendants. This I did by serving a copy of the above Summons (and particulars of claim) on the said Defendants personal at Cape Coast and Abuenu.

(Sgd.) J. T. MARCOURT,

Officer of Tribunal.

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No. 2.

WRIT OF SUMMONS—No. J.1/1934.

THE PROVINCIAL COUNCIL OF CHIEFS,  
CENTRAL PROVINCE.

*In the  
Provincial  
Council  
of Chiefs  
(Central  
Province).*

No. J.1/1934.

Schedule 1 (Regulation 18).  
(Civil Summons.)

No. 2.  
Writ of  
Summons  
No. J.1/  
1934,  
9th March  
1934.

In the Provincial Council of Paramount Chiefs' Tribunal.

10 The President of the Judicial Committee of the Provincial Council of  
Paramount Chiefs' Tribunal.

## GOLD COAST COLONY.

Between NANA AMONU ABABIO, Omanhene of  
Anomabu State - Plaintiff

and

20 KWEKU APAWU, KODWO EGYIN, KWEKU  
FENYIN, KOBINA NKUABU, KWEKU  
PEMISEH, YAW BIRETUA, KODWO  
ABURABURA, KOFIE ENU and KWESIE  
EDWIN (under Asebu Paramount Stool) Defendants  
NANA AMANFI III, Omanhene of Asebu Co-Defendant.

To Kweku Apawu &amp; Others.

You are hereby commanded to attend this Provincial Council of  
Paramount Chiefs' Tribunal at Saltpond on the 22nd day of May, 1934,  
at 9.30 a.m. o'clock to answer a suit by Nana Amonu Ababio, Omanhene  
of Anomabu against you.

30 The Plaintiff claims as against the Defendants jointly and  
severally so as to bind the said Defendants and such of their  
respective female relatives in the female line as support the  
Defendants, a declaration that the Lands called Butuesi or  
Obuabasa, situate at Abuenu including the village of Abuenu and  
lands immediately belonging to it are attached to the Stool on  
which the Plaintiff sits as Omanhene of Anomabu, and (2) an  
injunction restraining the Defendants, their servants or agents  
and such of their respective female relatives in the female line as  
support the Defendants, from dealing in any way with the said  
land or any portion thereof and from carrying on any cultivation  
or other work thereon.

Issued at Saltpond the 9th day of March, 1934.

*In the  
Provincial  
Council  
of Chiefs  
(Central  
Province).*

Free by Order  
President on Special  
Application

	£	s.	d.
Claim			
Tribunal Fee	10	—	—
Adasuum			
Mileage and Service			

No. 2.  
Writ of  
Summons  
No. J.1/  
1934,  
9th March  
1934,  
*continued.*

(Intd.) S. B. M.

(Sgd.) AYIREBI ACQUAH  
Signature of President J.C.

Upon the 16th day of March 1934 this summons was served by me on  
Kweku Apawu Defendant. This I did by serving a copy of the above 10  
summons (and the particulars of claim) on the said Defendant personally  
at Abonu.

(Sgd.) ABRAHAM ANSAH  
Officer of Tribunal.

*In the  
Land  
Court,  
Cape  
Coast.*

No. 3.

#### COURT NOTES.

23.7.45.

LAND COURT, CAPE COAST,  
Monday the 23rd day of July, 1945,  
CORAM—MARTINDALE, J.

No. 3.  
Court  
Notes,  
23rd July  
1945.

OMANHENE ANOMABU

20

V.

NANA ASEBU & Ors.

OMANHENE ANOMABU etc.

V.

APAWU etc.

Sekyi for Plaintiff.

Defendants in person.

*Sekyi* : We ask to adjourn.

Adjourned by consent to 17.9.45.

(Sgd.) W. H. MARTINDALE 30  
Judge.

Cape Coast

23.7.45.

## COURT NOTES.

17.9.45. IN THE LAND COURT, CAPE COAST,  
Central Judicial Division.

Monday the 17th day of September 1945.

*CORAM*—COUSSEY, J.

PC. 2/1931.

NANA AMONU VIII Omanhene of Anomabo State Plaintiff

V.

10 NANA AMANFI III & Ors. - - - - Defendants.

Mr. Sekyi for Plaintiff.

Mr. Abadoo for Defendant—No appearance, as he is engaged in a part heard case before Martindale, J.

*Curia.*

Let this case stand adjourned till the 24th September, 1945.

(Sgd.) J. HENLEY COUSSEY  
Judge.

## COURT NOTES.

20 24.9.45. IN THE LAND COURT, CAPE COAST,  
Central Judicial Division.

Monday the 24th day of September 1945.

*CORAM*—COUSSEY, J.

NANA AMONU VIII

V.

KWEKU APAWU & Ors. - - - - Defendants

NANA AMANFI III - - - - Co-Defendant.

By consent—Pleadings ordered.

30 Statement of Claim within 30 days. Defence within  
30 days of Statement of Claim filed. Reply (if any)  
7 days.

Then for hearing on notice to parties after pleadings closed.

(Intd.) J. H. C.



*In the  
Land  
Court,  
Cape  
Coast.*

No. 6.  
Statement  
of Claim,  
24th  
October  
1945.

No. 6.

STATEMENT OF CLAIM.

IN THE SUPREME COURT OF THE GOLD COAST,

Central Judicial Division,

Land Court, Cape Coast.

Between NANA AMONU IX, Omanhene of Anomabu - Plaintiff

and

KWEKU APAWU, KWODWO EGYIN,  
KWEKU FENYIN, KOBINA NKUABU,  
KWEKU PEMISAH, YAW BIRETUA,  
KODWO ABURABURA, KOFI ENU and  
KWESIE EDWIN (under Asebu Stool) - Defendants  
NANA AMANFI III, Omanhene of Asebu Co-Defendant.

10

STATEMENT OF CLAIM

Delivered this 24th day of October, 1945.

1. The Plaintiff is the Omanhene of Anomaboe, and the Defendants are respectively natives of the village of Abonu or Abuenu, and the Omanhene of Asebu.

2. The land called Butuesi or Obuabasa situate at Abonu or Abuenu 20 aforesaid, has since the days of Nana Amonu I, a predecessor of the Plaintiff, been attached to the Stool of the Plaintiff.

3. The Defendant Apawu's ancestors were permitted by the Plaintiff's said predecessor to act as Caretaker of a portion of the said lands, as they came with the ancestors of the present Chief of Abonu or Abuenu, Apotua Dekyem or Apotuo Dekyem, immigrants from Osurasi in Akyem, during the Ashanti Wars, and are of the same (Nsona) tribe as the said Apotua Dekyem.

4. The Defendant aforesaid and his supporters, male and female, having claimed the land as belonging to themselves, and they having 30 claimed to be no longer subjects of the Stool of Anomaboe but rather of the Stool of Asebu, this action was instituted by a predecessor of the Plaintiff, Nana Amonu VIII.

5. The boundaries of the land are as follows, that is to say, on one side by lands belonging to the Omanhene of Denkyire (Jukwa), on another side by lands belonging to the Omanhene of Abura (Abakrampa), on another side by lands belonging to Elizabeth Smith, that is, Asebu Lands, and on another side by lands belonging to the Stool of Dehyina or Dehia.

6. After the action had been instituted, the Omanhene of Asebu, Nana Amanfi II, immediate predecessor of the present Omanhene of 40 Asebu, was joined as a Co-Defendant.

"And the Plaintiff claims as against the Defendants jointly and severally so as to bind the said Defendants and each of their

respective female relatives in the female line as supports the Defendants a declaration that the lands called 'Butuasi' or 'Obuabasa' situate at Abuenu including the village of Abuonu and lands immediately belonging to it are attached to the Stool on which the Plaintiff sits as Omanhene of Anamabu, and (2) an injunction restraining the Defendants, their servants or agents, and each of their respective female relatives in the female line as supports the Defendants from dealing in any way with the said land or any portion thereof from carrying on any cultivation or other work thereon."

*In the  
Land  
Court,  
Cape  
Coast.*  
—  
No. 6.  
Statement  
of Claim,  
24th  
October  
1945,  
*continued.*

10

Dated at Anibok Chambers, Cape Coast, this 24th day of October, 1945.

(Sgd.) W. ESUMAN-GWIRA SEKYI

Solicitor for the Plaintiff.

To the Registrar,  
Central Judicial Division,  
Land Court, Cape Coast.

20

And to the above-named Defendants, Kweku Apawu, Kwodwo Egyin, Yaw Biretua, Kodwo Aburabura, and Kwesie Edwin, all of Abonu, Abonu.

And to the above-named Co-Defendant, Nana Amanfi III, Omanhene of Asebu, Asebu.

Upon the 27th day of October 1945, a copy of this Statement of Claim was served by me on Nana Amanfi III of Asebu personally at Cape Coast.

(Sgd.) C. L. LARNYOH

Bailiff.

Upon the 30th day of October, 1945, copies of this Statement of Claim was served by me on Kweku Apawu, Kodwo Aburabura and Kwesi Edwin, both of them were pointed out to me by Yaw Atchem personally at Patase.

30

(Sgd.) C. L. LARNYOH

Bailiff.

Upon the 30th day of October, 1945, copies of this Statement of Claim were served by me on Kwodwo Egyin and Yaw Biretua, both of them were pointed out to me by Kobina Djan personally at Essaman.

(Sgd.) C. L. LARNYOH

Bailiff.

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*In the  
Land  
Court,  
Cape  
Coast.*

No. 7.  
Court  
Notes,  
4th July  
1946.

No. 7.

COURT NOTES.

4.7.46.

IN THE SUPREME COURT OF THE GOLD COAST.  
Lands Division, Cape Coast.

Thursday the 4th day of July, 1946.

Before Mr. JUSTICE JACKSON.

NANA AMONU ABABIO

V.

KWEKU APAWU & ORS.

10

Mr. Sekyi for Plaintiff.

Mr. de Graft Johnson for Defendants.

In view of a recent decision in the West African Court of Appeal, and in view of the difficulty of deciding whether a question of native customary law is or is not involved in this cause, I am of opinion that it must be heard de novo with assessors.

Trial at Cape Coast on 10.9.46.

(Sgd.) J. JACKSON.

J.4.7.46.

No. 8.  
Court  
Notes,  
1st March  
1947.

No. 8.

COURT NOTES.

20

1.3.47.

IN THE SUPREME COURT OF THE GOLD COAST.  
Lands Division, Cape Coast.

Saturday the 1st day of March 1947.

Before Mr. JUSTICE JACKSON.

AMONU ABABIO

V.

KWEKU APAWU & ORS.

Sekyi for Plaintiff.

Johnson for Defendants.

30

*Court :*

Let Subpoena be issued free upon application of either party in respect of all witnesses who have been previously subpoenaed or called.

Trial at Cape Coast on 30.6.47.

(Sgd.) J. JACKSON.

J.

No. 9.

MOTION to amend Statement of Defence and to strike out suit.

Filed 25.6.47.

(Intd.) L. B.  
for R. D. C.*In the  
Land  
Court,  
Cape  
Coast.*No. 9.  
Motion to  
amend  
Statement  
of Defence  
and to  
strike out  
suit,  
24th June  
1947.IN THE SUPREME COURT OF THE GOLD COAST.  
Central Judicial Division,  
Lands Division, Land Court,  
Cape Coast.10 NANA AMONU IX, OMANHENE OF ANOMABU (Decd.),  
NANA AMONU ABABIO (Substd.) - - - Plaintiff*Versus*KWEKU APAWU, KWODWO EGYIN, KWEKU  
FANYIN, KOBINA NKUABU, KWEKU PEMISAH,  
YAW BERETUA, KODWO ABURABURA, KOFI  
ENU and KWESIE EDWIN, under Asebu Paramount  
Stool - - - Defendants.  
NANA AMANFI III, OMANHENE OF ASEBU Co-Defendant.20 TAKE NOTICE that this Honourable Court will be moved on  
Monday the 30th day of June, 1947 at 9.00 a.m. or so soon thereafter  
as Counsel for the Defendants herein can be heard for leave to amend  
the Defendants' Statement of Defence herein and for an Order striking  
out or dismissing this Suit for want of Jurisdiction and on the Grounds  
set out in the Affidavit herein: AND for such other relief or Order as to  
the Court may seem just.

Dated at Petusie Chambers, Sekondi this 24th day of June, 1947.

(Sgd.) F. AWOONOR WILLIAMS,  
Counsel for Defendants.30 To the Registrar,  
Land Court,  
Cape Coast.

and

To Plaintiff  
Nana Amonu IX, Anomabu  
His Counsel or Solicitor  
W. Esuman Gwira Sekyi,  
Cape Coast.

*In the  
Land  
Court,  
Cape  
Coast.*

No. 10.

**AFFIDAVIT in support of Motion to Amend Statement of Defence and to strike out suit.**

Filed 25.6.47

(Intd.) L. B.

for R. D. C.

No. 10.  
Affidavit  
in support  
of Motion  
to amend  
Statement  
of Defence  
and to  
strike out  
suit,  
25th June  
1947.

**IN THE SUPREME COURT OF THE GOLD COAST,  
Central Judicial Division,  
Lands Division,  
Land Court, Cape Coast.**

**NANA AMONU IX, OMANHENE OF ANOMABU (Dec.),  
NANA AMONU ABABIO (Substd.) - Plaintiff**

10

*Versus*

**KWEKU APAWU, KODWO EGYIN, KWEKU FANYIN,  
KOBINA NKUABU, KWEKU PEMISAH YAW  
BIRETUA, KODWO ABURABURA, KOFI ENU  
and KWESIE EDWIN, Under Asebu Paramount  
Stool - Defendants**

**NANA AMANFI III, OMANHENE OF ASEBU - Co-Defendant.**

I, Chief KWEKU APAWU, Chief of Abuenoo Division, in Asebu State,  
Cape Coast District, make oath and say as follows :— 20

1. That on or about February 1934, an application for a Writ of Summons against me and the other Defendants herein in the Provincial Council of Chiefs Judicial Committee Court of the Central Province was made without a properly constituted Plaintiff to represent the Stool of Anomabu.

2. That according to the Native Administration Ordinance and the Regulations made thereunder no Writ of Summons could be issued out of the Provincial Council of Chief Judicial Committee Court without the applicant first making a deposit of £100 (one hundred pounds) in the Provincial Council of Chiefs Judicial Committee Court as a condition precedent to the issuing of the Writ of Summons. 30

3. That subsequently on the 23rd February 1934 on the application of Omanhene Amonu VIII the Judicial Committee amended the title by substituting the said Amonu VIII as Plaintiff herein. That the then

Omanhene Amonu VIII did not and never was able at any time up to the issuing of the Writ of Summons in this case, to deposit the sum of £100 into the Provincial Council of Chiefs Judicial Committee Court in support of his application for the Writ of Summons herein.

*In the  
Land  
Court,  
Cape  
Coast.*

No. 10.  
Affidavit  
in support  
of Motion  
to amend  
Statement  
of Defence  
and to  
strike out  
suit,  
25th June  
1947,  
*continued.*

4. That by an arrangement between the said Omanhene Amonu VIII and the then Registrar of the Provincial Council of Chiefs Judicial Committee Court without the consent or knowledge of the President of the said Council or Court. The Plaintiff was permitted to issue the Writ of Summons herein contrary to Law against the Defendants herein on  
10 payment from time to time of certain sums of money, amounting in the aggregate to the sum of £67 (sixty-seven pounds) or thereabouts : I crave leave to refer to copies of (1) letter dated 9th March 1943 from M. J. Sampson Secretary to the Provincial Council to the Plaintiff herein ; (2) letter dated 7th September 1934 from J. Kofi Austin, Regent, to S. Mannerman Martin then Secretary to the Provincial Council ; (3) letter dated 29th September 1934 from Zac Acquaaah to S. Bannerman Martin then Secretary to the Provincial Council ; (4) letter from Defendants to the Registrar, Land Court, Cape Coast, dated 18th June 1947 and the reply thereto ; (5) letter from Zac Acquaaah to the Judicial Committee of Chiefs  
20 dated 9th March, 1943.

5. That the conduct of the then Registrar or Secretary of the Provincial Council of Chiefs Judicial Committee Court was the subject of an enquiry into the misappropriation of the funds of the Provincial Council of Chiefs Judicial Committee Court of the Central Province and into the irregularity and conduct of the Registrar or Secretary.

6. That the total sum deposited by the said Omanhene Amonu VIII not amounting to £100 was withdrawn by him before the Native Court Ordinance came into operation on the 1st of April, 1944.

7. That the suit in this case was called in the Provincial Council of  
30 Chiefs Judicial Committee Court on the 3rd day of March 1934 and struck out by the Court with costs to Defendants herein : I crave leave to refer to a certified true copy of the proceedings herein.

8. That on the 1st of April 1944 when the Native Court Colony Ordinance came into operation this suit was not pending in the Provincial Council of Chiefs Judicial Committee Court to justify the Report or transfer thereof to the Land Court at Cape Coast or to any Land Court under Section 17 of the said Ordinance.

9. That I am advised by Counsel that this Court has no jurisdiction to entertain this action.

- 40 10. That I am asking the leave of the Court to amend the Statement of Defence and to raise the question of jurisdiction to be determined by the Court before the merits of the case to avoid unnecessary expenses, and, make this Affidavit in support of Motion in that behalf.

*In the  
Land  
Court,  
Cape  
Coast.*

No. 10.  
Affidavit  
in support  
of Motion  
to amend  
Statement  
of Defence  
and to  
strike out  
suit,  
25th June  
1947,  
*continued.*

Sworn at Cape Coast this 25th day of June 1947 after this Affidavit had first been read over and interpreted in the Fanti Language to the deponent by J. K. Dadson when he seemed perfectly to understand the same before making his mark thereto in the presence of and before me.

(Sgd.) CHIEF  
KWEKU APAWU

His  
×  
Mark.

(Sgd.) J. KWAMINA AWOTWI,  
Commissioner for Oaths.

10

Upon the 27th day of June, 1947, a copy of this Affidavit together with Motion paper &c. was served by me on Nana Amonu IX personally at Cape Coast.

(Sgd.) C. L. LARNYOH,  
Bailiff.

No. 11.  
Exhibit  
" A "  
9th March  
1943,  
referred  
to in  
Affidavit  
in support  
of Motion.

No. 11.

**EXHIBIT " A " referred to in Affidavit in support of Motion.**

Exhibit " A " Letter (1) referred to in paragraph 4 of the Affidavit.

(Sgd.) J. KWAMINA AWOTWI,  
Commissioner for Oaths. 20  
25.6.47.

No. PC/88/CPJ.2/1931.

9th March, 1943.

Saltpond.

Sir,

With reference to your letter dated 9th March, 1943, I have to inform you that the above Case is still pending before the Provincial Council.

Regarding the question of Deposit there appears to have been what may call a private negotiation between the Late Secretary and the Plaintiff which had not official character. In actual fact, therefore, no deposit has been paid by the Plaintiff to the credit of the Provincial Council as shewn by the records of the Council. 30

I have etc.

(Sgd.) MAGNUS J. SAMPSON,  
*Secretary.*

The Plaintiff,  
Anomabu.

No. 12.

EXHIBIT " B " referred to in Affidavit in support of Motion.

Exhibit " B " Letter 2 referred to in paragraph 4 of the Affidavit.

(Sgd.) J. KWAMINA AWOTWI,  
Commissioner for Oaths.

25.6.47.

Anomabu.

7th September, 1934.

S. Bannerman Martin, Esquire,

10 Saltpond.

Dear Sir,

Mr. Zac-Acquaah sent a special runner on 'Cycle to invite me to Anomabu and as far as my respect and regard for him are concerned, I came yesterday to see him. He spoke to me very advisedly on the Asebu-Aboenu case which is before your Council and the kindly interest you take in our behalf and your promise to do the best for us for which I thank you very much. He also told me that as our deposit is not up to date as far as Govt. is concerned and lawfully it is not taken into account unless we pay up to the last farthing and I clearly understood and we hope

20 to make the balance up soon. If you are fined £2 and you pay £1.19.9 $\frac{3}{4}$  then you have not paid, unless you make it up it could not go into account and so it is with ours. I know that as long as our balance is not paid up, we are behind. But owing to our anxiousness for the disposal of the Case we'll do our best to make it up so that it should be booked into a/c as full deposit required and then get our case through. The bigger part of the show rests on you so do your best and communicate with Winneba Omanhene and President and get us through as quick as possible and we will reward you later.

Mr. Acquaah has paid my expenses namely 4/- and one 11d. tobacco,

30 1/6 Goodbye and good wishes. Thank Mr. Acquaah for me greatly. If anything crops up let Mr. Acquaah know and I'll hear and come at once and relieve you.

Yours sincerely

(Sgd.) J. KOFI AUSTIN,

Regent.

P.S.—I also enjoyed the whisky.

In the  
Land  
Court,  
Cape  
Coast.No. 12.  
Exhibit  
" B "  
7th  
September  
1934,  
referred  
to in  
Affidavit  
in support  
of Motion.



*In the  
Land  
Court,  
Cape  
Coast.*

No. 13.

EXHIBIT " C " referred to in Affidavit in support of Motion.

Exhibit " C " Letter " 3 " referred to in paragraph 4 of the Affidavit.

(Sgd.) J. KWAMINA AWOTWI,

Commissioner for Oaths.

25.6.47.

The Hill,

Anomabu.

29th September, 1934.

No. 13.  
Exhibit  
" C "  
29th  
September  
1934,  
referred  
to in  
Affidavit  
in support  
of Motion.

Dear Pa,

10

Your letter came when I was in the hidings. There was a Ca : Sa : for £4. 2s. 6d. after me from Kibi and as I couldn't meet it, I had to make a dive. I have been able to tip the Bailiff off in secret to allow me a few days and I am at a loss where to raise the amount.

(sic) Bearer is my daughter Engelina. She is just been sacked from school in Cape Coast for my failing to pay her two months school fees in areas 6s. She has come to me for it, but the above is my position. *Can you help please ?* I am totally broke.

With reference contained in your last letter concerning the money question of the Abonu's, *I say don't worry as long as I am here to defend and 20 I hope nothing wrong will happen.*

Best wishes,

Yours always,

(Sgd.) ZAC : ACQUAAH

Sent 6s.

(Intd) S.B.M.

29.9.1934.

---

No. 14.

EXHIBIT " D " referred to in Affidavit in support of Motion.

Exhibit " D " Letter " 4 " referred to in paragraph 4 of the Affidavit.

(Sgd.) J. KWAMINA AWOTWI

Commissioner for Oaths.

25.6.47.

Asebu.

18th June, 1947.

Sir,

10

Nana Amonoo Ababio

Plaintiff

*Versus*

Kweku Apawu &amp; Ors.

-

Defendants.

I have the honour to apply for certified copies of the following ;—

(A) Letter dated 9th March, 1943 addressed by the Plaintiff in the above-named case to the Secretary, Provincial Council, Saltpond and

(B) Letter No. PC/88/CPJ.2/1931 of the 9th March, 1943 addressed to the Secretary, Provincial Council Saltpond, to the Plaintiff in the above-named case.

20

2. These communications are in respect of the question as to whether or not the above-named Case was then pending before the Council and also whether any money was deposited by the Plaintiff in respect of this case. I need copies of these letters to enable me to advise my Counsel accordingly and I shall be grateful to you for their early supply. I am prepared to pay for same.

I am,

Sir,

Your obedient Servant,

Defendant herein.

30

The Registrar,  
Land Court,  
Central Division,  
Cape Coast.

*In the  
Land  
Court,  
Cape  
Coast.*

No. 14.  
Exhibit  
" D "  
18th June  
1947,  
referred  
to in  
Affidavit  
in support  
of Motion.

*In the  
Land  
Court,  
Cape  
Coast.*

No. 15.  
Exhibit  
" E "  
9th March  
1943,  
referred  
to in  
Affidavit  
in support  
of Motion .

No. 15.

**EXHIBIT " E " referred to in Affidavit in support of Motion.**

Exhibit " E " Letter " 5 " referred to in paragraph 4 of the Affidavit.

(Sgd.) J. KWAMINA AWOTWI  
Commissioner for Oaths.

25.6.47.

Anomabu.  
9th March, 1943.

Sir,

Nana Amonu VII etc.

Plaintiff

10

*Vs.*

Nana Amanfi III & Ors.

- - Defendants.

On behalf of the Stool Family of Anomabu, I have the honour to request you to be good enough to furnish me with any official information as to the following in connection with the above Suit :—

(A) What was the amount of deposit made by the Plaintiff before the issue of the summons herein ?

(B) Has the deposit been withdrawn ? If so, when and by whom ?

(C) Is the above case still pending for hearing before the 20 Judicial Committee ?

2. I should be grateful for an early reply as the information is required in connection with a Suit now pending in the Asebu Tribunal.

I am,

Yours faithfully,

(Sgd.) ZAC. ACQUAAH.

The Registrar,

The Judicial Committee of the Central Province Provincial Council  
of Chiefs,

Saltpond.

30

## No. 16.

## AMENDED STATEMENT OF DEFENCE.

IN THE SUPREME COURT OF THE GOLD COAST.

Central Judicial Division,

Lands Division, Land Court, Cape Coast.

*In the  
Land  
Court,  
Cape  
Coast.*

## AMENDED STATEMENT OF DEFENCE.

NANA AMONU IX (Decd.), OMANHENE OF ANOMABU,

OMANHENE AMONU ABABIO (Substd.)

Plaintiff

*versus*

10 KWEKU APAWU, K'WODWO EGYIN, KWEKU  
FENYIN, KOBINA NKUABU, KWEKU PEMISAH,  
YAW BIRETUA, KODWO ABURABURA, KOFI  
ENU & KWESI EDWIN (under Asebu Paramount  
Stool) - - - -

Defendants

NANA AMANFI III, OMANHENE OF ASEBU

Co-Defendant.

No. 16.  
Amended  
Statement  
of Defence,  
dated  
24th June  
1947, filed  
27th June  
1947.

## STATEMENT OF DEFENCE.

1. The Defendants and Co-Defendant herein jointly and severally  
plead that this suit is incompetent and that this Court has no jurisdiction  
to entertain the same: The Native Administration (Colony) Ordinance  
20 and the rules and regulations thereunder make it a condition precedent  
to the issuing of any Writ of Summons by the Provincial Council of Chiefs,  
Judicial Committee Court that the applicant or the intended Plaintiff  
should deposit the sum of £100 in the Provincial Council of Chiefs Office  
or Court before writ issued. Omanhene Amonu VIII of Anomabu, the  
original applicant herein was never at any time able to make the said  
deposit of £100. The Writ of Summons herein was after enquiry by the  
Provincial Council, on the 3rd day of March 1934 struck out. No suit  
or action was on the 1st day of April 1944 depending herein in the  
Provincial Council of Chiefs Judicial Committee Court, in the Central  
30 Province, which was transferable or capable of being sent to the Land  
Court, Cape Coast, under the Native Courts (Colony) Ordinance on the  
1st of April 1944 for hearing or determination.

2. The First Defendant is a Sub-Chief of the Omanhene of Asebu,  
the Co-Defendant, and the other Defendants are subjects of his Stool at  
Botosi.

3. The Co-Defendant has not to his knowledge been properly and  
formally joined as such in the proceedings.

4. The Land called Butuesi or Obuabasa as described in paragraph 2  
of the Statement of Claim has from time immemorial prior to the founding  
40 of the State of Anomabu been attached to the paramount Stool of Asebu  
through the Stool of Botoasi the First Defendant.

5. The Defendants and Co-Defendant deny the allegation contained  
in paragraph 3 of the Statement of Claim that the Ancestors of the  
Defendants obtained permission from the predecessors of the Plaintiff  
to settle on the said land since the ancestors of the Defendants were in  
possession and occupation of the land ever before the predecessors of the  
Plaintiff established themselves at Anomabu.

*In the  
Land  
Court,  
Cape  
Coast.*

No. 16.  
Amended  
Statement  
of Defence,  
dated  
24th June  
1947, filed  
27th June  
1947,  
*continued.*

6. The Defendants are not related matrilineally to the so called Chief of Abonu and did not come with him as alleged in paragraph 3 of the Statement of Claim, for the immigrants from Osurasi arrived in the Asebu State only in the nineteenth century after the Akims had migrated to the Colony and obtained permission from the ancestors of the First Defendant to settle on the land.

7. The Paramount Stool of Anomabu became occupied by the Amu-Enus (corrupted to Amonoo) long after the Abonu area as part and parcel of the Asebu State has been established.

8. The Defendants admit paragraph 5 of the Statement of Claim as 10  
to the boundaries of the land in question, as set out in the Plan made by Surveyor Hagan in the said Case dated 16th February, 1929, except the area to the South East of the said Plan is Asebu Land and not Anomabu Land.

9. The Defendants say in reply to paragraph 4 of the Statement of Claim that they were on the Land before the year 1700 and the people thereon owed allegiance to the paramount Stool of Asebu and had never been subjects of the Stool of Anomabu.

10. The town of Abonu was in fact founded by an ancestress of the First Defendant called Ekua Nsaa who called the place Abu-Enu, the place 20  
of Two Stones, now contracted into Abonu.

11. And the Defendants and Co-Defendant join issue with the Plaintiff on the point that their occupation was prior in time to that claimed by the Plaintiff and that whatever occupation the Plaintiff or any of his ancestors had over the said land was temporary during the confusion which ensued after the Ashantis began their predatory expedition into the Colony.

12. The Defendants and Co-Defendant plead :—

(A) Possession.

(B) Ownership.

30

Dated at Petusie Chambers, Sekondi this 24th day of June, 1947

(Sgd.) F. A'WOONOR WILLIAMS,

Counsel for Defendants.

To The Registrar,  
Land Court, Cape Coast

and to Plaintiff,

Omanhene Amonu Ababio,  
His Counsel or Solicitor,  
W. Esuman Gwira Sekyi,  
Cape Coast.

40

Upon the 27th day of June, 1947, a copy of this Affidavit together with Motion Paper &c. was served by me on Nana Amonu IX personally at Cape Coast.

(Sgd.) C. L. LARNYOH,  
Bailiff.

No. 17.  
COURT NOTES.

*In the  
Land  
Court,  
Cape  
Coast.*

30.6.47.

IN THE SUPREME COURT OF THE GOLD COAST.  
Lands Division, Cape Coast.

No. 17.  
Court  
Notes,  
30th June  
1947.

Monday the 30th day of June 1947.

Before Mr. JUSTICE JACKSON.

AMONU IX

V.

10 KWEKU APAWU & Ors. and  
AMANFI III

Co-defendant.

Motion for leave to amend Statement of Defence and strike out Suit for want of jurisdiction.

Williams with Johnson for Defendants moves.

Sekyi on Notice.

Affidavit read.

*Williams* : (Reads affidavit).

Proceedings referred to in paragraph 7 of Affidavit I tender now No. 1. (admitted and marked No. 1). After case struck out on 3.3.1934—on

20 8.7.36 a motion was made by Amonu IX to be substituted for Amonu VIII.

It appears that this order was made without attention of Court being called to the fact that the Suit had been struck out on the 3rd March 1934. Refer to Letter dated 9.3.43 to Plaintiff—Letter dated 7.9.34.

*Court* : This is signed by a person who is not a party to the action.

*Williams* resumes : Volume III of 1936 Laws—Regulations made under Native Administration Ordinance. Regulation 41 and to Provincial Council fee referred to.

*Court* : Do you refer to the writ dated 24.8.1931.

30 *Williams* : According to my instructions that is the only writ before the Court.

Correspondence showing that no such deposit has been made. Letter dated 9.3.34 makes position very clear that no deposit was made in this Court to support the issue of the summons.

Motion asks for 2 things,

- (A) to amend Statement of Defence as to jurisdiction, and
- (B) for an order to strike out for want of jurisdiction.

Application made under Order 26 and Order 32 Rules 1–2 and Rules made under Order 34 at p. 83 (amended by 34/41).

40 Question of jurisdiction is supported by *Crossfield v. Manchester Ship Canal* 74 L.J. Ch. Div. p. 637 and *Norwich Corporation v. Norwich Electric Tramways Company* 75 L.J., K.B. p. 636.

*In the  
Land  
Court,  
Cape  
Coast.*

No. 17.  
Court.  
Notes,  
30th June  
1947,  
*continued.*

Submit that under Regulations and Schedule to Native Administration Ordinance that it is a condition precedent that applicant must lodge with his application a sum of £100 in order to found the suit or writ. No proof or evidence that Council made any concession waiving this payment of £100. For purposes of interlocutory proceedings statements in affidavits or letters may be taken to be correct in absence of any contradiction. Mr. Sampson in his letter states that there was no deposit. That being so the writ was wrongfully issued contrary to law for non-compliance with regulations made under Native Administration Ordinance.

Suit was struck out on the 3rd March 1934. There is no record of 10 its restoration to the Cause List and ex parte order made following striking out of suit was irregular and of no force in law. Therefore it is submitted that on 1.4.45 when Native Courts (Colony) Ordinance came into operation—there was no suit depending in the Provincial Council or the Judicial Committee which could be sent or transferred to this Court. Submit on these grounds Suit was incompetent and this Court has no jurisdiction to entertain it and that it should be struck out or dismissed.

We are not raising this for sake of mere technicality—we are advised that it is one of substance.

*Sekyi* replies :

20

Not possible for my client to give me sufficient instructions to deal with the letters annexed to affidavit, but we have a letter written by Magnus Sampson on the 31.8.44 to the Plaintiff in this suit in which he refers to the suit saying that Judicial Committee would have to strike out case. That shows that from records then available suit was still pending.

Submit that if this Court is satisfied that there was any irregularity in this suit the applicant must bring own substantial facts that he has done. We say that deposit was paid by instalments and Plaintiff has given no instructions for these sums to be withdrawn. 30

Submit that if deposit was not paid I would agree that writ would not have been issued.

*Court* : For whose benefit is this deposit made ?

*Sekyi* : For that of the Council. This is all I am submitting.

*Williams* replies :

No affidavit filed to challenge our affidavit. Regulation 41 is imperative in its terms. It is immaterial for whose benefit that deposit is made. Plaintiff must show that a deposit was made before writ was issued—best proof is receipt or books of Provincial Council. Argument that deposit has been paid has not been proved. 40

Decision upon Motion to strike out action for want of jurisdiction.

---

No. 18.

RULING by Court on Motion ordering re-trial to proceed.

30.6.47.

IN THE SUPREME COURT OF THE GOLD COAST.  
Lands Division, Cape Coast.

Monday the 30th day of June, 1947.

Before Mr. JUSTICE JACKSON.

NANA AMONU IX

Plaintiff

*Versus*

10 KWEKU APAWU and Ors.

Defendants

NANA AMANFI III

Co-Defendant.

Motion for Leave to Amend Statement of Defence and strike out  
Suit for want of jurisdiction.

## RULING.

This is a motion, moved by Counsel for the Defendants, that the  
suit be struck out or dismissed for want of jurisdiction. The grounds  
argued before me are—

20 (A) that a writ of summons issued out of the Provincial Council  
of the Paramount Chiefs' Tribunal at Saltpond on the 24th August  
1931, is invalid on the ground that the deposit of £100, required  
by Regulation 41 of the Native Administration (Colony) Regulations  
and referred to in the Schedule at page 364 of Volume III of the  
Laws of the Gold Coast, has not been paid,

(B) that the suit was struck out by the Provincial Council on  
the 3rd March 1934 and that any orders which were purported to  
have been made by that Council after that date were null and  
void and that

30 (C) for these reasons it is submitted that on the 1st April 1945  
there was no cause pending before a Provincial Council so as to  
give to this Court the jurisdiction otherwise conferred upon it by  
Section 20A (4) (c) (i) of the Courts Ordinance (as amended by  
No. 23 of 1944).

The record of all proceedings said to be pending in the Provincial Council  
immediately prior to the 1st April 1945 are in this Registry. The record  
of these proceedings is before me.

The ordinary maxim of law is that all things are presumed to be done  
correctly until the converse is shewn.

Learned Counsel both for the Defendants and the Plaintiff appear  
to be under a misapprehension as to the writ which found these proceedings.

40 On the 24th August 1931 a writ was issued out of the Provincial  
Council of Paramount Chiefs' Tribunal at Saltpond signed by the President

*In the  
Land  
Court,  
Cape  
Coast.*

No. 18.  
Ruling  
by Court  
on Motion  
ordering  
re-trial to  
proceed,  
30th June  
1947.



*In the  
Land  
Court,  
Cape  
Coast.*

No. 18.  
Ruling  
by Court  
on Motion  
ordering  
re-trial to  
proceed,  
30th June  
1947,  
*continued.*

Aduku III. The action, which is the one founded upon the writ, of which Mr. Williams attacks the validity, was struck out by the Provincial Council on the 3rd March 1934.

On the 9th March 1934 another writ was issued out of that Court at the instance of Amonu VIII claiming the relief set out in the Statement of Claim as pleaded in paragraph 6 thereof. The writ was signed by the President namely Nana Ayirebi Acquah III. This suit was numbered as J.1/1934. The record in this Court shows that on the 30th December, 1936, Amanfi III, one of the Defendants, in this action wrote to the Provincial Council as follows :—

10

“ Sir,

With reference to the writ of summons No. J.1/1934 of the 9th March, 1934, in the above-named case, I should be glad to know what the position is.

I am, Yours faithfully

Amanfi III

Omanhene Asebu State.”

The correspondence that follows shows that on the 9th May 1938 the Registrar of the Provincial Council wrote to Amonu IX, the Plaintiff in the following terms :—

20

“ I am directed to inform you that if the deposit of £100 in the above case be not paid to this Council by the end of this month . . . the Council will be obliged to strike off the case from the List.”

On the 8th July 1938 the Council made an order that the name of Amonu IX be substituted for that of Amonu VIII. Nothing further appears to have been done until the 1st April 1945 when the Lands Division of the Supreme Court was established. This Court now is in precisely the same position as formerly was the Provincial Council.

Regulation 41 reads as follows :—

30

“ The fees and oath fees specified in Schedule 2 shall be due and payable in the several cases to which they apply. Provided that the amounts shewn in schedule 2 are to be regarded as maximum amounts ; and provided further that a Provincial Council . . . may remit the payment of any fee or oath fee, or any part thereof, whenever the circumstances of the case appear so to require.”

Whether the full deposit has or has not been paid I cannot say upon the meagre evidence before me.

That deposit appears to have been designed to afford security to the members of the Council against any costs which might be incurred by them in attending to hear the case or to view the land. 40

It is a matter in which, in my view, neither party has any interest ; the Council may remit the payment of the whole or any part.

Today I am in precisely the same position as was the Council when the writ was issued 13 years ago. At any period that Council had jurisdiction to either remit in whole or in part any deposit made. This Court is now vested with these same powers. There is no necessity now for any such deposit since a Judge can take no fee in respect of his duties, and if any deposit may have been made, I do order that the whole thereof shall be remitted to the payer.

10 However as I have said before the objection argued before me related to the writ issued on the 24th August 1931 and not other writ which founds this action. The writ before me which founds this action is the one dated the 9th March 1934 to which no objection has been raised.

20 This cause came before me for trial without an assessor on the 3rd, 4th, 5th and 6th of June 1946 when judgment was reserved, but, in view of a decision by the West African Court of Appeal given on the 25th day of June 1946 in the case of *Adontenhene Kweku Afilfa VII of Andoe v. Duke Kwesi Kuntu of Anomabu*, and in view of the fact that a claim to title of ownership of stool lands must inherently raise a question of the customary law, with the consent of the parties, it was agreed that the whole evidence would be reheard in the presence and hearing of an Assessor, who was then duly appointed and the trial was fixed for the 10th September 1946. On the 7th September 1946 Amanfi III wrote to the Court asking for an adjournment on the ground that he had been appointed a member of the Commission now referred to as the Martindale Commission. On the 1st March last in open Court the parties were informed that the case would be listed for trial today.

I rule that I have jurisdiction to hear the cause, and I will proceed to the trial.

(Sgd.) J. JACKSON,  
Judge.

*In the  
Land  
Court,  
Cape  
Coast.*

No. 18.  
Ruling  
by Court  
on Motion  
ordering  
re-trial to  
proceed,  
30th June  
1947,  
*continued.*

## No. 19.

## COURT NOTES.

Counsel :

Awoonor Williams with de Graft Johnson for Defendants, Applicants.  
Sekyi on Notice for Plaintiff.

*Williams* : Ask for amendment of Statement of Defence.

*Court* : Provided Mr. Sekyi has no objection I give leave.

*Sekyi* : I have no objection.

Trial proceeds on Statement of Claim filed on 24th October 1945 and the Statement of Defence filed on the 25th June 1947. 10

Assessor : Prah Agyinsaim IV.

*Williams* : Ask that it be put on the record that objection to jurisdiction be applied also to that of the writ of 1934.

*Court* : That jurisdiction I have discussed in my written decision—given earlier this morning.

*Sekyi* opens :

Defendants now are only Kweku Apawu, Kwodwo Egyin, Yaw Biretua, Kodwo Aburabura and Amanfi III. The other defendants named in the writ are all dead.

*Williams* :

I am instructed that Amanfi III has never applied to be joined. 20

*Court* :

Amanfi III was a party cited as a Defendant in the original writ issued on the 9th March 1934. A few days later he is seen to write to the Provincial Council citing his name and making enquiries. Issue has been joined and amended pleadings have been filed. No objection to service has been raised in these pleadings. Amanfi III clearly has perfect knowledge of the case he has to meet. He has had the assistance of Counsel in this Court throughout and I am satisfied that he is properly before me as a party to this action. 30

Sekyi resumes address.

Adjourned to 2 p.m.

(Sgd.) J. JACKSON,  
J.

Resumed at 2 p.m.

*Court* :

With reference to paragraph 3 of the amended Statement of Defence, since the adjournment I have had an opportunity of studying the counter-foil of the original writ dated the 9th March 1934, in which it describes Nana Amanfi III as co-Defendant, and that service was effected on the said 40 Nana Amanfi III on the 15th March 1934. The words co-Defendant should not have been used. It has a misdescription and he was clearly sued as a Defendant and Nana Amanfi III's letter dated the 30.12.36 styles the action as being against "Nana Amanfi III and others." There is no question in my mind that he is properly before this Court and was well aware of that fact.

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## PLAINTIFF'S EVIDENCE—Amonu Ababio.

*In the  
Land  
Court,  
Cape  
Coast,*

*Plaintiff's  
Evidence.*

*No. 20.  
Amonu  
Ababio,  
Plaintiff,  
30th June  
1947.  
Examina-  
tion in  
Chief.*

Plaintiff.

AMONU ABABIO, Omanhene of Anomabu State, sworn states in Fanti :—

(Leave granted for Amonu Ababio to be substituted for Amonu IX (deceased). This Order of substitution was made during the previous proceedings, the validity of which were in doubt, as I sat without an assessor.)

- 10 I became Omanhene of Anomabu about 4 years ago. I had previously been on the stool when my title was Amonu VII. I know Defendants in this case. Some are now dead.

*Q.* Why was this action taken ?

- A. Apawu's ancestor Kwa Ekuma died and Apawu succeeded him (refers to 1st Defendant). When Apawu succeeded him he was introduced to Nana Amonu V through Nana Dechem, the Odikro of Abuonu. Apawu looked after the land for the Anomabu stool. His predecessor also looked after it and attended each Annual Stool Festival at Anomabu. Apawu felled 200 palm trees belonging to Elizabeth Smith a long time ago—about  
20 24 years ago. Elizabeth Smith took action against Apawu and his people at the Asebu Tribunal.

While I was Omanhene before certain report came to me about Apawu and his people—so I took action in the Divisional Court at Cape Coast against Apawu. Eventually I left the Stool and after some years came back to the Stool. There was then pending this action.

*Q.* How did this land come to belong to the Stool of Anomabu ?

- A. We, the Bori Bori Fantis, fought the Asebus. That is our tradition. Bori Bori Fantis consist of States of Mankesim, Ekunfi, Abura, Nkusukum and Anomabu. We fought the Etsis and the Asebus. Bori  
30 Bori Fantis conquered the Asebus and Etsis. When they conquered and land became available for the whole Bori Bori Fantis then Abuonu came from Osurasi to Anomabu and Nana Amonu directed them to go to a man called Bosuma at Ejilfa.

Ejilfa is in the Anomabu State.

When they went there was trouble between them and the people of Ejilfa and Amonu I instructed them to go to Abuonu.

*By Court :*

*Q.* By tradition where is Osurasi ?

A. It is in the Akim State.

*Examina-  
tion by  
Court.*

- 40 *Examined :*

At that time there were no people or village at Abuonu—there were only rocks. Place was founded by Nana Apote Dekyem.

*Examina-  
tion in  
Chief,  
continued.*

*Q.* When he founded this village had he any duty to perform to the Stool ?

*In the  
Land  
Court,  
Cape  
Coast.*

*Plaintiff's  
Evidence.*

*No. 20.  
Amonu  
Ababio,  
Plaintiff,  
30th June  
1947,  
Examina-  
tion in  
Chief.  
continued.*

A. When time comes to celebrate Stool custom he came with his people with yams.

I know the land called Butesi—it is also called Obuabasa.

This land was attached to Amonu's Stool.

Q. Where is village of Abuonu in relation to this land ?

A. It is situate between Abura and Jukwa on Anomabu land called Abu-Enu.

Q. Who looks after the land called Butuesi ?

A. Apawu (1st Defendant) farms on a portion of the land and looks after the land for me through a Chief of Abuonu called Apote Dekyem. 10

Q. Apawu's ancestors and Apote Dekyem's who came first by your tradition ?

A. Apote Dekyem.

Q. Of what family or tribe was Apote Dekyem ?

A. Nsona clan.

Q. Where did Apawu's ancestors come from ?

A. I heard that when people of Apote Dekyem came he came with him and was of the same clan.

Q. Until this trouble arose had you heard of any claim to these lands being made by the Asebu State ? 20

A. I had not.

According to tradition the boundary on the East is with Rebecca Brown and Elizabeth Smith. On the West with Omanhene of Abura, on the South with Omanhene of Abura and on the North with the Omanhene of Denkera State.

Q. Do you know when a survey was made of this land ?

A. Mr. Hagan made a survey.

*Sekyi* : At the last sitting the plan was put in by consent. Counsel for Defendants now desire strict proof. I will call surveyor later.

I did not go with surveyor. 30

*Cross-  
examina-  
tion.*

*Cross-Examined by Williams :*

Q. You hear English ? You can read and write ?

A. Yes—by degrees.

Q. What work were you doing before you came on Stool as Omanhene Amonu V ?

A. Employed by Railway Department at Sekondi in the Accounts Branch as a clerk.

Q. What year were you made Amonu VII ?

A. About 1926.

Q. You came back to the Stool as Amonu Ababio in what year ?

A. 7th November 1943.

Q. You said the first action was taken by you in the Divisional Court ?

A. Yes.

Q. Having been on Stool I presume you have the records of your Stool ?

A. No—when I came to the Stool—the house was empty—there have been frequent destoolments in the State.

Q. You know that before Ashantis held sway in the Gold Coast—the  
10 Denkyeras held sway ?

A. I've heard that before.

Q. Did you hear that when Denkyeras held sway they collected tribute from each of the State they conquered ?

A. I have not heard that.

Q. Have you not heard that a part of the tradition of Anomabu is that you paid tribute to Denkyeras and later to the Asantis ?

A. I have not heard of payment to Denkyeras but my father told me of payment of tribute to the Asantis.

*By Court :*

20 Q. Did your father tell you whether they paid in his lifetime ?

A. I cannot say whether it was in his lifetime or not.

*Cross-Examined :*

Q. You know it is the custom that those who conquer a tribe may collect annual tribute ?

A. Yes, I know—but we Bori Bori did not demand it.

Q. Has Anomabu State ever received any tribute from Asebu State ?

A. It has not.

Q. Can you explain if what you say is true why they did not demand annual tribute ?

30 A. I could not say what was in the minds of my ancestors.

Q. The native system of taking tribute is a token of ownership of land ?

A. Yes.

Q. Have you ever heard of your tradition that Anomabu has ever asked tribute from people of Obuabasa land ?

A. I have not heard that before.

Q. Do you know the State boundary between States of Anomabu and Asebu ?

*In the  
Land  
Court,  
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No. 20.

Amonu  
Ababio,  
Plaintiff,  
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Cross-  
examina-  
tion.

*continued.*

Examina-  
tion by  
Court.

Cross-  
examina-  
tion,  
*continued.*

*In the  
Land  
Court,  
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Evidence.*

No. 20.  
Amonu  
Ababio,  
Plaintiff,  
30th June  
1947,  
Cross-  
examina-  
tion.  
*continued.*

A. I am not able to know—there are many paramount Chiefs between.

Q. How many Paramount Stools between Anomabu and Asebu ?

A. Nkusukum and Abura States are between.

Q. Do you know that long before Bori Bori Fantis came the Efutu State extended from Elmina to Anomabu ?

A. Asebus came and met Etsis. Have not heard that Efutu State stretched from Elmina to Anomabu.

Q. Have you ever heard that Asebu was part of Efutu State ?

A. I have not.

10

Q. Have you heard that Asebu State was in existence 400–500 years before the Fantis came here ?

A. I have heard before that they came before us.

Q. And you know by tradition that Amansim was then where it is now ?

A. That I know.

Q. I put it to you that Asanti war did not reach Gold Coast until 1819–1824 ?

A. Am not able to know. I have not a copy of the history book. Heard of McCarthy but I did not know him.

20

Q. You heard that at that time the combined forces of English, Fantis, Accras and Kwahus fought and defeated the Asantis ?

A. Yes.

Q. After defeat of Asantis between 1824–26—there was no serious invasion of Gold Coast by Asantis until 1873 in time of Sir Garnet Wolsely ?

A. There had been a series of wars.

Q. All this time the Asebu State was there ?

A. Yes—they had been given permission—we fought them—drove them away and then gave them permission to re-settle.

30

Q. Asebus always joined with English and Fantis to fight the Asantis ?

A. Yes—we all joined and fought the Asantis—that was after we had given them permission to settle.

Q. You knew Kwesi Ankuma, an Omanhene of Asebu, was awarded a King's Medal ?

A. All Chiefs who took part with the English got medals.

Q. In what period do you say the Bori Boris gave permission to the Asebus to settle ?

A. I could not know other than by tradition.

Q. I put it to you that Asebus lived at Abuonu hundreds of years before Bori Bori Fantis came here ?

A. Abuonu was a forest. There was not even a village there.

Q. What is distance between Abuonu and Asebu town ?

A. About 4 miles.

Q. And between Abuonu and Anomabu town ?

A. About 14 miles.

Q. From Abuonu you pass Asebu before you reach Anomabu ?

10 A. Yes—you have to pass through Asebu.

Q. Do you know that between 1500 and 1600 a combined force of Asebu and Fantis fought against the Assins ?

A. I do not know.

Q. And you don't know that King of Asebu commanded the combined forces of over 20,000 ?

A. Never heard it before.

Q. Do you know that Akims came from Asanti in about 18th Century ?

A. I heard that Asantis troubled them and that they came down—but I do not know the time.

20 Q. It was about that time that Apote Dekyem came from Osurasi to Anomabu ?

A. It was in the year 1706.

*By Court :*

Q. Where do you get that year from ?

A. It was what my father told me.

*Cross-Examined :*

We had conquered them and they had re-established themselves at Asebu.

Q. Elizabeth Smith is an Asebu woman ?

30 A. I heard she was Sorudofu in Asebu State, but living in Cape Coast. I know that land at Jukwa belonged to Chief Kofi Mina.

Q. There is a difference between allegiance and ownership of land by custom ? You know Kommenda Chief came from Nkusukum ?

A. Yes—when I first came to the Stool the Ohene of Kommenda was under the Omanhene of Nkusukum—he owed allegiance to him.

Q. You know Essiem in the Oguaa State ?

A. I do not.

*In the  
Land  
Court,  
Cape  
Coast.*

*Plaintiff's  
Evidence.*

No. 20.

Amonu  
Ababio,  
Plaintiff,  
30th June  
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Cross-  
examina-  
tion,  
*continued.*

*Examina-  
tion by  
Court.*

*Cross-  
examina-  
tion,  
continued.*



*In the  
Land  
Court,  
Cape  
Coast.*

*Q.* Did you know that your predecessor claimed this village Essiem ?  
*Do you know Berasi ?*

*A.* I know the name. It is when the new law came into force they came to Oguaa State.

*Plaintiff's  
Evidence.*

*In reply to Court :*

No. 20.

*Q.* To which new law do you refer ?

Amonu .  
Ababio,  
Plaintiff,  
30th June  
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Cross-  
examina-  
tion,  
*continued.*

*A.* Native Authority Ordinance.

*Cross-Examined :*

They were before in Anomabu State.

*In reply to Court :*

10

*Q.* Today—do they attend the annual festivals at Anomabu ?

*A.* They do not.

*Cross-Examined :*

*Q.* Have you heard of a River called Wankam ?

*A.* It is at Anomabu.

*Q.* Have you ever heard that it was the ancient boundary between Anomabu and Asebu States ?

*A.* I have not heard that before, and am surprised to hear it here.

*Q.* You know villages Biriwa and Akatekyewa ?

*A.* I know them.

20

*Q.* They are in Nkusukum State ?

*A.* Yes.

*Q.* They are between Anomabu and Asebu ?

*A.* They are villages between me and Nkusukum.

*Q.* Amanasi is on the plan ?

*A.* It is inhabited by Abuonu and Jukwa people on my land.

*Q.* Do you receive tribute from Jukwa people ?

*A.* I do not.

Re-  
examina-  
tion.

*Re-Examined by Sekyi :*

*Q.* This question of tribute from people who have been conquered, 30  
you mentioned other people who have been conquered from whom no  
tribute was taken—whom do you mean ?

*A.* No tribute was collected from Etsi or Asebu people.

When people from Nyankumasi and Apimanim came and settled on  
the land no tribute was taken either.

Q. What was your father in the Anomabu State ?

A. He was the linguist of the Omanhene called Kofi Afori of Anomabu. I was on the Stool before Amonu V.

He could read and write.

I only heard name of Kofi Mina.

Q. In what relation did you mention him in respect of Jukwa ?

A. Greater part of Jukwa was owned by Kofi Mina.

Did not know under which State he was.

Adjourned to 1.7.47.

10

(Sgd.) J. JACKSON  
J.

*In the  
Land  
Court,  
Cape  
Coast.*

*Plaintiff's  
Evidence.*

No. 20.  
Amonu  
Ababio,  
Plaintiff,  
30th June  
1947,  
Re-  
examina-  
tion,  
*continued.*

No. 21.

NANA OTU ABABIO—1st Witness.

1.7.47.

In the Supreme Court of the Gold Coast Lands Division, Cape Coast.

Tuesday the 1st day of July 1947.

Before Mr. Justice Jackson.

AMONU ABABIO

V.

20

KWEKU APAWU & ORS.

Trial resumed on 1.7.47.

1st Witness for Pltff.

OTU ABABIO III sworn states in English : Omanhene of Abura State. Live Abakrampa. Know Plaintiff and Defendant Nana Amanfi III—have seen 1st Defendant Apawu once, do not know the others. Know piece of land called Butuesi (Obuabasa). Stool on which I sit has land bounding with this land. Boundary is on East of Butuesi land. I know the Kakum River. My boundary crosses the Kakum.

Examina-  
tion in  
Chief.

30

Q. Who was deputed to show the boundary to the surveyor ?

A. I don't know.

*In reply to Court :*

Q. Have you ever walked along your boundary ?

A. I am not allowed to do that.

Examina-  
tion by  
Court.

*In the  
Land  
Court,  
Cape  
Coast.*

*Examined :*

Boundary has been there since we defeated Asebu and occupied lands.

*Plaintiff's  
Evidence.*

*Cross-examined by Johnson :*

*Q.* You say you defeated the Asebus ?

*A.* Yes.

*Q.* At that time Asebus occupied land up to the Prah River ?

*A.* No.

*Q.* When Fantis came down—they did not come in one body but they came as small communities ?

*A.* That is so.

10

*Q.* And after several such communities had arrived they got together as a community ?

*A.* Yes.

*Q.* You know that the Etsis founded the Efutu Kingdom before the Fantis came ?

*A.* When Fantis came they met several Etsi groups.

*Q.* Etsis were allies and friends of Asebus ?

*A.* They were not of same kindred. Asebus came from the West and they came by sea. We met them south of the Prah River. The Asebus occupied the coast and the Etsis occupied the interior. We were very human to the Asebus—we prohibited them from making any Dynasty or King after Amanfi I and for 400 years or more there has not been a Chief there. This is the story carried from Linguist to Linguist.

20

*Q.* From 1817 the King of Asebu joined forces with the Fantis to repel Asanti aggression ?

*A.* No—there was no King at Asebu in those days.

*Q.* You acknowledge that there is a King today ?

*A.* Only since 1914 we allowed it.

*Q.* Explain how this came about ?

*A.* The Aborigines Society wanted money and to increase the amount they wanted they accepted an application from the Asebus to make an Omanhene and paid £100. My uncle told me this. I was a young boy then.

30

*Q.* Would it surprise you to learn there was an Omanhene of Asebu in the 1890's ?

*A.* There was not.

*No re-Examination.*

---

No. 22.

APOTE DEKYEM—2nd Witness.

*In the  
Land  
Court,  
Cape  
Coast.*

APOTE DEKYEM (male) sworn states in Fanti : Live at Abuonu. Am Odikro there.

*Plaintiff's  
Evidence.*

*Court* : Abuonu by the plan is outside the area claimed by Plaintiff.

*Sekyi* : At the last sitting we argued that that part is included in the dispute.

No. 22.  
Opote  
Dekyem,  
2nd  
Witness,  
1st July  
1947.

*Johnson* : I do not agree.

*Court* : Paragraph 5 of the Statement of Claim together with the writ  
10 puts in issue the whole land shewn on the plan including the village of Abuonu. Paragraph 7 of the Statement of Defence admits the boundaries of the land in question as set out in the plan made by the surveyor except the area to the S.E. of the said plan is Asebu land and not Anomabu land. The area to the South East is clearly referable to that area upon which the Abuonu is shewn—if the Defendant did in fact intend that his pleading should refer to the area edged in pink alone he should have pleaded that and defend that portion of the area edged in pink which he avers is Asebu land.

*Court* : I find upon the writ and the pleadings the whole area shewn  
20 as being delineated with a pink line and which includes the village of Abuonu has been put in issue.

Apote Dekyem resumes :

Examina-  
tion in  
Chief.

Have been Odikro for about 10 years. My own name before I became a Chief was Kofi Ejeybin. Apote Dekyem is my Stool name.

*Q.* How did that become the Stool name ?

*A.* It was Omanhene of Anomabu who made Apote Dekyem a Safuhene.

The name of my original ancestor who settled at Abuonu and founded the village was Apote Dekyem. According to tradition Apote Dekyem  
30 came from Akim Osurasi in the Akim State.

*Q.* Since they settled at Abuonu has anyone interfered with them in the occupation of the land there ?

*A.* I heard that one Efua Ampima claimed the village from the Omanhene of Anomabu as her own. This was not in my lifetime. It is what I heard.

*Q.* In your lifetime what are the lands which Abuonu people have been occupying ?

*A.* Butuesi or Obuabasa lands which are around Abuonu.

*In reply to Court* :

40 I did not go with the surveyor.

*In the  
Land  
Court,  
Cape  
Coast.*

*Examined :*

*Plaintiff's  
Evidence.*

No. 22.  
Opote  
Dekyem,  
2nd  
Witness,  
1st July  
1947,  
Examina-  
tion in  
Chief,  
*continued.*

Q. Before you became Chief did you work in any part of the land ?

A. Yes—near Abuonu village.

Q. Do you have to cross the Kakum before you reach your farm ?

A. I do not cross it before I reach my farm.

Q. How many Odikros have there been between Apote Dekyem and yourself—can you mention some ?

A. Ekrabia, Okra, Kofi Acquah, Nana Tsibu, Kojo Ojura.

Q. Have any of these served any stool other than Anomabu ?

A. They have served Anomabu up to to-day.

10

I know the Defendant Apawu and Kodwo Aburabura, Kwodwo Egyin, Kwesi Edwin. They all live in Abonu. I know Omanhene of Asebu.

Q. Do any of these Defendants hold any position at Abonu ?

A. Apawu is the Head of Nsona Family there.

I belong to the Nsona Family.

“ Nsona ” is a Fanti Family, not an Asebu one.

Q. Do any of you own any portion of this land ?

A. We live there.

Q. Can you do what you please with the land ?

A. No, not unless the Omanhene of Anomabu allows me.

20

Q. Are Apawu and the other Defendants, apart from Omanhene of Asebu, all of the same Family ?

A. Yes.

Q. Until this present litigation started when you went to Anomabu for the Stool festival where did the Defendants go ?

A. I went with all of them there. They bring presents of food to me which I take to Anomabu for the Stool festival. The foodstuffs are given to Nana Amonu.

Q. At the time this litigation started (1931—16 years ago) were you at Abuonu ?

30

A. I was there.

Q. Do you know how this litigation arose ?

A. I heard from the Elders when they went for consultation. (Not admissible evidence.) I do not know the beginning of this trouble.

Q. When the litigation started did Apawu continue to go with you to the Stool festival at Anomabu ?

A. He stopped going.

*Cross-Examined by Johnson :*

*Q.* You say your ancestors came from Osurasi in Akim ?

*A.* Yes.

*Q.* Have you ever been to Osurasi yourself ?

*A.* No.

*Q.* Did all Apote Dekyem's people leave Osurasi ?

*A.* That I do not know—it is tradition.

*In reply to Court :*

Tradition does not say why they left Osurasi.

**10** *Cross-Examined :*

*Q.* Does your tradition say whether any of Apote Dekyem's people went to any other place than Anomabu ?

*A.* I have not heard or seen that.

*Q.* Do you know that some of Apote Dekyem's people live still at Ejumaku Brofuyedru ?

*A.* I do not know.

I do not know a man called Kofi Ejie.

*Q.* Do you know this man (man answering to name of Kofi Ejie in Court) ?

**20** *A.* I have not seen this man anywhere.

*Q.* Did you know a man called Afunaku who used to visit you at Abuonu ?

*A.* No—no—no—no.

*Q.* Your father was Tinagyei ?

*A.* Yes.

*Q.* And he comes from the domestic side of Apote Dekyem's family ?

*A.* No.

*Q.* Your mother was Ya Donkor ?

*A.* She was not. My mother's name was Ya Turuwa.

**30** *Q.* Where did she come from ?

*A.* Yes, was born at Abuonu.

*Q.* Of what clan was your mother ?

*A.* Nsona.

*Q.* And your father ?

*A.* Nsona.

*Q.* Is it not custom that people are not permitted to marry within the clan ?

*In the  
Land  
Court,  
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No. 22.  
Opote  
Dekyem,  
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Cross-  
examina-  
tion.

*In the  
Land  
Court,  
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Coast.*

A. Members of the same clan can marry.

*Court to Assessor :*

Q. What is your opinion ?

*Plaintiff's  
Evidence.*

A. Members of same clan can marry—there are several examples in this town.

No. 22.  
Opote  
Dekyem,  
2nd  
Witness,  
1st July  
1947,  
Cross-  
examina-  
tion,  
*continued.*

*Cross-Examined :*

Q. Was not your mother bought by Tinagyei and then he married her ?

A. I don't know.

Q. You know Kwesi Oduba at Abuonu ?

10

A. Yes.

Q. He had a case with Apawu (1st Defendant) ?

A. Yes.

Q. In which you were a witness ?

A. Yes—Oduba called me as a witness.

Q. That litigation was in respect of a portion of this land now in dispute ?

A. He did not litigate about land.

I know Apawu.

Q. Where do you say his people came from ?

20

A. I do not know from where they came.

Q. When first Apote Dekyem arrived at Anomabu where did they go to first settle ?

A. I cannot say.

Q. Have you heard of the place Ejilfa ?

A. I know that village.

Q. Have you ever heard Apote Dekyem first settled there ?

A. I did not know ; this would be known by Apote Dekyem I.

*No Re-Examination.*

(Unsatisfactory demeanour.)

30

No. 23.

KWAMI EYA—3rd Witness.

KWAMI EYA (male) sworn states in Fanti: Live Abuonu. Farmer. I know Apawu. I know a man called Kwantin. He trained me as a child. He married my mother after I was born.

Q. Did you know Apawu's mother?

A. Yes—her name was Ekua Esuawa.

Q. What was Kwantin to Ekua Esuawa?

A. Kwantin's niece was Ekua Esuawa.

10 Q. At time Kwantin was alive did he occupy any position in the family?

A. Yes—he was the Head of the Nsona Family.

Q. When Kwantin died who succeeded him as Head of Family?

A. Kwa Kuma.

After Kwa Kuma came Apawu as Head of the Family.

Q. When you were with your stepfather, where did they go each year for the stool festival?

A. We went to the farm; dig up 4 yams and carried them to Anomabu and give them to the Omanhene to use for his Stool festival. [sic]

20 My stepfather's successor continued to go to Anomabu. I went with him.

Q. When Apawu succeeded where did he go?

A. Anomabu.

*In reply to Court:*

Q. How many years ago was it when Apawu succeeded?

A. A long time ago—it was about 10 years.

*Examined:*

I do not know if he has gone to anywhere else.

Q. Did Apawu "succeed" before or after this litigation started?

30 A. At time of the litigation he was already Head of the Family and he was introduced to the Omanhene of Anomabu as the successor.

It was sometime after this that the litigation started.

*Cross-Examined:*

Q. Where do you come from?

A. Abuonu. I was born at Gomoa Appa.

Q. Your mother came from what State?

A. From Eshiro in the Mankesim State.

*In the  
Land  
Court,  
Cape  
Coast.*

*Plaintiff's  
Evidence.*

No. 23.  
Kwami  
Eya, 3rd  
Witness,  
1st July  
1947.  
Examina-  
tion in  
Chief.

Cross-  
examina-  
tion.



In the  
Land  
Court,  
Cape  
Coast.  
[sic]  
Plaintiff's  
Evidence.  
No. 23.  
Kwami  
Eya, 3rd  
Witness,  
1st July  
1947,  
Cross-  
examina-  
tion,  
continued.

Q. Was your own father from Gomoa Appa ?

A. Yes. Gomoa Appa are in Mankesim State.

Q. Do not people of Gomoa Appa serve the Omanhene of Gomoa Assin ?

A. Yes—that is what I say.

Q. At time your mother took you to Abuonu how old were you ?

A. (Describes age of 2 years.)

Q. How long did your mother stay with her husband Kwantin at Abuonu ?

A. A long time ; I could not say how many years.

10

Q. How long ago is it since you left Abuonu ?

A. I am still living there.

Q. Kwantin used to visit some other place in Asebu ?

*Court :* That is double-edged question since witness does not admit Abuonu is in Asebu.

Q. Did Kwantin ever go to Ekroful in Asebu State ?

A. I am not able to know.

Q. Did you ever go there with him ?

A. No—never.

Q. You know a festival called “ Apaayiem ” ?

20

A. I have heard of it.

Q. When celebration is on do not people at Abuonu who are Asebus celebrate it ?

*Court :* Put that in 2 question parts.

Q. (a) Are there any Asebus living in Abuonu ?

A. There are some.

Q. Do not these Asebus go and celebrate “ Apaayeim ” ?

A. I have not seen it like that.

*Court to Assessor :*

Asebus would go and celebrate such feasts.

30

Witness  
replies to  
Court.

*In reply to Court witness says :*

Recently they became Asebus.

Q. When you first went to Abuonu were they going to this festival ?

A. They did not.

Q. Did you not at any time visit the celebration of this festival in Abuonu ?

A. I don't know.

(He is an evasive witness—he has been warned several times to answer directly and does not.)

Q. Do you know "Akuru" ?

A. I know.

Q. It is the Head of the Family's duty to pour the drink in the "Akuru" at the proper time ?

10 A. Yes.

Q. Do you also know that the family "Akuru" is always at the family seat ?

A. Yes.

Q. Did you ever see Kwantin pour those libations ?

A. Yes—as Head of the Family each year he poured the libation into the "Akuru".

Q. Where did he pour the libations ?

A. At his own house in Abuonu.

Q. What is Kwantin's family seat ?

20 A. I am not able to know.

Q. Did you know that Kwantin belonged to Apote Dekyem's people ?

A. I have not heard that.

*Re-examination.*

Q. During the time Kwantin was alive did you know any Stool festival celebrated besides the Anomabu Stool festival ?

A. There is no other Stool festival.

*In the  
Land  
Court,  
Cape  
Coast.*

*Plaintiff's  
Evidence.*

No. 23.  
Kwami  
Eya, 3rd  
Witness,  
1st July  
1947,  
Witness  
replies to  
Court,  
*continued.*  
[sic]

*Re-exam-  
ination.*

No. 24.

KOJO ATTA—4th Witness.

No. 24.  
Kojo Atta,  
4th  
Witness,  
1st July  
1947.  
Examina-  
tion in  
Chief.

30 KOJO ATTA (male) sworn states in Fanti : Live at Edahia village (Dehia on plan). Am Odikro of Dehia. Have land there called Dehia lands. Have boundary with Abuonu land called Butuesi. I pointed out this boundary to Henry Hagan (surveyor) in 1938—that was in my own case.

I did not point out this boundary about 20 years ago. My immediate predecessor was Rebecca Brown. I have walked along this boundary.

*In the  
Land  
Court,  
Cape  
Coast.*

*Cross-Examined :*

*Plaintiff's  
Evidence.*

No. 24.  
Kojo Atta,  
4th  
Witness,  
1st July  
1947,  
*continued.*  
Cross-  
examina-  
tion.

Q. You say your immediate predecessor on the Stool was Rebecca Brown ?

A. Yes.

Q. How long ago did Rebecca Brown die ?

A. She died in 1922.

I ascended the Stool in 1939.

Q. Was no one on the Stool before that time ?

A. All the others were caretakers.

I am referring to the Dehia Stool.

10

Q. According to your family tradition who first acquired Dehia land ?

A. One Tandoh.

Tandoh belonged to Oguaa State.

Q. How did Tandoh acquire it ?

A. He bought it from Ohene of Efutu.

That is tradition.

This Efutu is 9 miles from Cape Coast.

Q. How long ago would you place the time of this purchase ?

A. According to tradition it was in 1832.

This date has been handed down from mouth to mouth.

20

Q. Did you know that Efutus were the allies and kindred of the Asebus ?

A. I do not know.

The Asebus and Efutus fought a long time ago.

*No Re-examination.*

*Sekyi :* Subject to the proof of the plan that is the case for the Plaintiff.

*Court :* I will permit the plan to be proved at a later stage in the proceedings.

*Defendants'  
Evidence.*

No. 25.  
Kweku  
Apawu,  
1st  
Defendant,  
1st July  
1947.  
Examina-  
tion in  
Chief.

No. 25.

30

**DEFENDANTS' EVIDENCE.**

**KWEKU APAWU—1st Defendant.**

*Johnson calls :*

KWEKU APAWU (male) sworn, states in Fanti: Sub-Chief at Asebu. My village is Abuonu. I have a hamlet called "Atasi"—it is also called Botosi. I became Sub-Chief about 20 years ago.

Q. Apart from being a Chief, do you hold any position in your own family ?

A. There is a Stool in the family.

When my uncle died I was given a position in the family.

Q. What position ?

A. I am a Safuhene in the family.

My clan is Nsona.

Q. Who is Head of your Family ?

A. Yaw Biretua. (One of the Defendants.)

10 Yaw Biretua has died since summons taken.

Today Kojo Dekyem is the Head of the Nsona family at Abuonu.

Q. Where were you born ?

A. At Abuonu.

Q. According to your family history where was your original family seat ?

A. Asebu-Amantsindu.

Q. You know Asebu-Ekroful ?

A. Yes.

Q. Has your family anything to do with it ?

20 A. Yes. My grand ancestress Amuesua was married and taken to Ekroful.

Q. And her descendants are still at Ekroful ?

A. Yes.

Q. In the family house at Abuonu have you any " Akuru " ?

A. Yes.

Q. Did Biretua do anything at the " Akuru " ?

A. He poured drink into it—sometimes a sheep is slaughtered too. I have seen him do it.

Q. On what occasion did he do this ?

30 A. When it was time for the Asebu Apaayiem festival and all Asebu villages drink and a libation was poured into the " Akuru."

Q. For how many years was Biretua the Head of the family ?

A. About 11 years.

Q. Before Biretua was Head of the family who was Head ?

A. Kofi Enu.

*In the  
Land  
Court,  
Cape  
Coast.*

*Defendants'  
Evidence.*

No. 25.  
Kweku  
Apawu,  
1st  
Defendant,  
1st July  
1947,  
Examina-  
tion in  
Chief,  
*continued.*

*Counsel for both parties and the Assessor are agreed that the fact that Nsona Family is claimed by both is neither proof that it was Fanti or Asebu.*

*In the  
Land  
Court,  
Cape  
Coast.*

*Defendants'  
Evidence.*

No. 25.  
Kweku  
Apawu,  
1st  
Defendant,  
1st July  
1947,  
Examina-  
tion in  
Chief,  
*continued.*

Q. Which place is your family seat ?

A. Asebu Amantsindu.

Q. Has your family any family house and " Akuru " there ?

A. Yes—but the " Akuru " is at Abuonu.

Q. Are any of your family still living at Asebu, Amantsindu ?

A. The mothers who left for Abuonu—one remained at Asebu Amantsindu and her descendants are still there.

Q. Do you know these descendants present Head ?

A. Yes. Kweku Aduku.

Q. And that ancestress who was married to Ekroful are her descendants 10 living at Ekroful to-day ?

A. Yes.

Q. Who is the present Head of these descendants ?

A. Yes—it is Kweku Obei.

Q. Has there been any occasion when the Heads at Abuonu, Ekroful and Asebu Amantsindu have met ?

A. They meet. They have met in my own time.

Q. When was the last time they met together ?

A. Right up to now.

When a member of our family died at Abuonu a month ago—they all 20 came and met at Abuonu.

Q. You heard Kwamin Eya (3rd witness for Plaintiff) give evidence this morning ?

A. Yes.

*Examined :*

Q. He said his mother was married to your ancestor Kwantin. Is that so ?

A. Yes.

Q. He says further that you used to go to Anomabu for the yearly Stool festival. Is that true ? 30

A. Yes—I went to Anomabu with my father when he was going there.

My father's name was Kojo Amanfi.

Q. Did Kojo Amanfi hold any position in Anomabu ?

A. Yes ; he was holder of Omanhene's Message Stick.

Q. What does that indicate ?

A. He was Anomabu's Linguist.

*Q.* Did your father carry 4 yams to the Omanhene of Anomabu for his Stool celebration ?

*A.* Yes I did. (After evasion.)

Adjourned to 2 p.m.

(Sgd.) J. JACKSON  
J.

*In the  
Land  
Court,  
Cape  
Coast.*

*Defendants'  
Evidence.*

Resumed at 2 p.m.

KWEKU APAWU resumes evidence :

*Examined :*

10 *Q.* Your father came from what State ?

*A.* Abura.

*Q.* When surveyor Hagan went on the land in 1929 did you go with him ?

*A.* I did.

*Q.* Did you point out to him the boundaries you claimed ?

*A.* I did.

I know Apote Dekyem who gave evidence this morning. He is Odikro.

*Q.* Do you know how it became the Odikro's Stool ?

20 *A.* It is said that the Stool was founded at that place by Nana Apote Dekyem.

*Q.* Who was this Nana Apote Dekyem by your family tradition ?

*A.* There is no Apote Dekyem in my family.

*Q.* By your family history who built the village of Abuonu ?

*A.* Apieatsi—my ancestor.

*Q.* How long ago was this ?

*A.* I had not then been born.

*Q.* Have you heard of the war in which Governor McCarthy was killed ?

30 *A.* I have heard of it.

*Q.* At that time had village of Abuonu been founded ?

*A.* It had been.

My mother told me Asantis had come as far as Anomabu.

Abuonu was then established. That was in my grandmother's time.

*Q.* Can you say how Apote Dekyem came to be at Abuonu ?

*A.* Yes. I heard that he came from Akim Okurasin to Anomabu to settle with his people as Anomabu subjects. Because they were farmers they were not used to the food eaten at Anomabu, it is said they moved to Ejilfa in the Anomabu State. From there they came to Abuonu.

No. 25.  
Kweku  
Apawu,  
1st  
Defendant,  
1st July  
1947,  
Examina-  
tion in  
Chief,  
*continued.*

*In the  
Land  
Court,  
Cape  
Coast.*

*Defendants'  
Evidence.*

No. 25.  
Kweku  
Apawu,  
1st  
Defendant,  
1st July  
1947,  
Examina-  
tion in  
Chief,  
*continued.*

Q. When they came to Abuonu did they meet anybody ?

A. Yes.

Q. Were any of your own family there at the time ?

A. Yes. Jesi was then Head of my family at the time.

Q. Did anything happen between Apote Dekyem and Jesi ?

A. Jesi gave Apote Dekyem permission to stay with him. Since that time he has remained there.

Q. Did they still serve Anomabu ?

A. Yes.

Q. Apart from Apote Dekyem's people and your own family are 10 there any other people who live in Abuonu ?

A. Yes.

Q. Are these other people of one family or of different families ?

A. Different families.

Q. Are any of these families serving any Omanhene other than Anomabu ?

A. Yes—the Omanhene at Mansu—in the Assin Apimmeyim State.

Q. Do any of the other families serve anyone else ?

A. Yes—some serve the Omanhene of Essikuma.

Q. Where do these people of these families make their farms ?

20

A. On Abuonu land.

Q. How did they come to farm on Abuonu land ?

A. They obtained permission from my ancestor and when I came on the Stool they sought my permission bringing drink with them.

They also brought money.

I have been about 19 years on the Stool. (This case started in 1931 and plan made in 1929.)

I have heard of Rebecca Smith.

She had a case with me.

Q. During that case which Omanhene were you serving at that time ?

A. I was not then serving any Omanhene.

Q. For that case you swear to a certain affidavit ?

A. Yes.

I know Kofi Eje.

Q. How did you come to know him ?

A. I knew him at Ejumaku Krofucrofudun.

*In reply to Court :*

Q. How long ago is that you first met him ?

A. It is over 5 years—it would be about 6 years—but not more.

*Examined :*

Q. What were you then doing at Krofunfudum ? [sic]

A. A blood relative of mine died at Ejumaku Esadsi and I went there to perform funeral custom.

Q. How did you come to know that he belonged to Apote Dekyem ?

A. He told me.

10 Q. You know a man called Afuna ?

A. Yes.

He comes also from Ejumaku.

Q. Did he ever come to Abuonu ?

A. Yes.

Q. How long ago ?

A. I first saw him at Abuonu about 8 years ago.

He came there with his wife.

His wife was Ekua Yawa.

Q. Asebu people have a festival called “ Apaayiem ” ?

20 A. Yes.

Q. What Omanhene does your family at Abuonu serve ?

A. To-day they are serving the Omanhene of Asebu.

*In reply to Court :*

Q. Has there been any time when either you or your family have not served the Omanhene of Asebu and have served some other Omanhene ?

*Examined :*

A. When Asebu had no Ohene then my family were independent and then they were serving Kwesi Noma of Asebu.

30 Q. Have you or your family at any time served the Omanhene of Anomabu ?

A. My family have not.

Q. Have you ever served him ?

A. I have not.

Q. Apart from your own family are there any other people in Abuonu who served Asebu ?

A. No.

*In the  
Land  
Court,  
Cape  
Coast.*

*Defendants'  
Evidence.*

No. 25.  
Kweku  
Apawu,  
1st  
Defendant,  
1st July  
1947,  
Examina-  
tion in  
Chief,  
*continued.*

Reply to  
Court.

Examina-  
tion in  
Chief,  
*continued.*



*In the  
Land  
Court,  
Cape  
Coast.*

*Defendants'  
Evidence.*

No. 25.  
Kweku  
Apawu,  
1st  
Defendant,  
1st July  
1947,  
Examina-  
tion in  
Chief,  
*continued.*

*Q.* You know the village called Putubiw ?

*A.* I know it.

*Q.* How far is it from Abuonu.

*A.* About a mile.

*Q.* Do you know the Chief of the place ?

*A.* Yes Nana Nsin.

*Q.* Does he hold any position in the State of Asebu ?

*A.* Yes—he is the Adontenhene of the Asebu State.

*Q.* Have you heard of village of Moto ?

*A.* Yes—I have.

10

*Q.* Do you know what Paramount Stool they serve ?

*A.* Yes Omanhene of Asebu.

*Court :* I take it that a witness from Moto is coming to testify to that fact.

Reply to  
Court.

*In reply to Court :*

There is an Odikro at Moto.

*Q.* Does he serve the Omanhene of Asebu ?

*A.* He does. His name is Kwesi Nkruma.

Cross-  
examina-  
tion.

*Cross-Examined by Sekyi :*

*Q.* Do you look after any lands for the Omanhene of Anomabu ?

20

*A.* I don't look after any land for him.

*Q.* You remember a suit in the Divisional Court between *Elizabeth Smith v. Kweku Apawu, Kojo Dekyem, Essiedu and Edjin* in 1923 ?

*A.* I remember. I was a party to that action.

*Q.* What was Elizabeth Smith claiming from you ?

*A.* My land.

*Q.* What land ?

*A.* Abuonu land.

*Q.* The same land now the subject of this case ?

*A.* Yes—it is the same land.

30

Yes I remember the case in the Divisional Court.

*Q.* You remember that you and the others swore an affidavit before Mr. J. B. Aikins, Registrar at Cape Coast ?

*A.* I remember.

Q. And in the course of that affidavit you said as follows :—

“ We were all born on the land the subject matter of the dispute commonly called Buabassa that we have committed no waste and do not intend to commit any waste. That the said land is the stool property of Nana Amonu VI the Omanhene of Anomabu and that we are subjects of the said Omanhene of Anomabu. That the land in dispute is now a portion of property now being claimed in an arbitration between Nana Amanfi II, Omanhene of Asebu and Nana Amonu VI, Omanhene of Anomabu and that the matter is pending before the Provincial Commissioner of the Central Province.

“ 8. That the people of Abonu are subjects of Nana Amonu VI of Anomabu and the village belongs to the Stool of Anomabu.”  
Did you say that ?

A. Yes—I said that.

Q. In 1925 there was another case between Elizabeth Smith, Kodjo Dekyem, Essiedu and Edjin and Chief Kwa Appiah (Regent) in 1925 in which you made an application for the removal of the case to the Divisional Court at Cape Coast ?

20 A. Yes—about this I was arrested and taken to Anomabu.

Q. Did you swear an affidavit that year in which you said :—

“ I know Elizabeth Smith the plaintiff respondent therein and subject of the Stool of Asebu. That the above-named case has been referred back on appeal to the Native Tribunal of Asebu. That prior to the case being referred back to the Native Tribunal of Asebu from the Commissioner's Court for further enquiry to be made Chief Kwa Appia as Regent representing the Stool of Anomabu was joined as co-defendant. That the land being claimed herein is the property of the Stool of Anomabu and that the defendants Kojo Dekyem, Essiedu, Ejin and myself are subjects of the Stool of Anomabu and caretakers living on the land in dispute for the Paramount Chief or Omanhene of Anomabu. That the piece of land in question including other tracts of land is being claimed by Omanhene Amanfi II of Asebu in a suit now pending before the Divisional Court.”

Did you swear that before Mr. Commissioner Tyndale ?

A. I remember I was arrested and taken to Anomabu.

*In reply to Court.*

40 Q. Do you say that at the time you swore that affidavit you were in custody ?

(Repeated 3 times.)

A. I had not been kept in custody.

*Cross-Examined :*

Q. Do you remember the case quite recently between Kojo Atta of Dehia and yourself in the Land Court at Cape Coast ?

*In the  
Land  
Court,  
Cape  
Coast.*

*Defendants'  
Evidence.*

No. 25.  
Kweku  
Apawu,  
1st  
Defendant,  
1st July  
1947,  
Cross-  
examina-  
tion,  
*continued.*

Reply to  
Court.

Cross-  
examina-  
tion,  
*continued.*

*In the  
Land  
Court,  
Cape  
Coast.*

A. I remember. Yes—it was 2 years ago.

Q. In that case an affidavit was sworn by the Omanhene of Asebu (Amanfi III) ?

*Defendants'  
Evidence.*

A. I remember.

Q. Prior to that affidavit having been sworn how long had you been associated with Amanfi III in connection with that litigation ?

No. 25.

*Kweku  
Apawu,  
1st  
Defendant,  
1st July  
1947,  
Cross-  
examina-  
tion,  
continued.*

A. It would be over 8 years.

Q. You know that after Amanfi II died it was a long time before Asebu had another Omanhene ?

A. Yes.

10

Q. And up to the time Amanfi II died you had not become a subject of Asebu ?

A. I had dealings with Amanfi II.

Q. You know that Amanfi II never claimed that you were his subjects in that the land you are litigating about was for the Stool of Anomabu ?

A. It is not so.

Q. You were appellant against Elizabeth Smith ?

A. Yes.

Q. You sued her before the Police Magistrate, Mr. Bannerman in which you claimed £50 damages for assault and false imprisonment on the 20 28th June 1924 and nine subsequent days ?

A. It is so.

Q. Nana Amanfi II gave evidence then in that case ?

A. He gave evidence for Elizabeth Smith.

Q. And the Omanhene kept on referring to processes passed through the Omanhene of Anomabu to get at you ?

A. I remember.

Q. And all this time Amanfi II did not claim you.

A. He was claiming us very much.

Q. Did you hear Amanfi II in that case say :—

30

“ Apawu and others are not my subjects. I do not claim this particular land for the Stool of Asebu ” ?

A. He spoke in English—I did not hear it so.

Q. All this time the Omanhene of Asebu did not claim either you, Abuonu or the land at Abuonu for the Asebu State ?

A. He had been claiming us but we would not go as each time we had been induced by the Omanhene of Anomabu.

*In reply to Court :*

*Q.* What was the nature of the inducement held out to you ?

*A.* He promised us to fight the battle for us with Elizabeth Smith.

Adjourned to 2.7.47.

(Sgd.) J. JACKSON  
J.

2.7.47.

IN THE SUPREME COURT OF THE GOLD COAST.

Lands Division, Cape Coast.

10

Wednesday the 2nd day of July, 1947.

Before Mr. JUSTICE JACKSON.

AMONU ABABIO

*v.*

KWEKU APAWU & OTHERS.

(Part Heard.)

KWEKU APAWU resumes evidence.

*Cross-Examination (Cont.).*

*Q.* Before Elizabeth Smith started her litigation with you had the then Omanhene of Asebu asked you to see him ?

20

*A.* When I was first summoned he had not.

*Q.* Did he ever ask you to see him ?

*A.* He did not.

*In reply to Court :*

*Q.* To which State did Elizabeth Smith belong ?

*A.* Sorudoful—subjects of Asebu.

*Cross-Examined :*

*Q.* If the land belonged to Anomabu and you were caretakers as you swore you would go and see the Omanhene of Anomabu.

*A.* When I was summoned in the Asebu Tribunal the Omanhene of Abuonu said they would assist me—so I went to the Omanhene of Anomabu.

*In the  
Land  
Court,  
Cape  
Coast.*

*Defendants'  
Evidence.*

No. 25.  
Kweku  
Apawu,  
1st  
Defendant,  
1st July  
1947,  
Reply to  
Court.

2nd July  
1947.  
Cross-  
examina-  
tion,  
*continued.*

Reply to  
Court.

Cross-  
examina-  
tion,  
*continued.*

*In the  
Land  
Court,  
Cape  
Coast.*

All the Elders of Abuonu agreed to assist me to say the land was the Stool property of Anomabu.

That was done at a public meeting in Abuonu.

*Defendants' Evidence.* When I considered the matter it occurred to me that what they said was true.

*No. 25.* Q. I refer you to evidence of Kwantin given in the Divisional Court in the case of *Susanah Kinfu v. Eccuah Agyarbin* in the year 1903.

A. Yes I descend through Kwantin.

Q. And they were talking about lands called Botosi ; he said :—

“ I am a Chief at Abuonu ; Achinajai is the principal chief 10 there. He is independent and I am independent. We each have our own land. I have a Stool and my land is attached to the Stool. I am under the King of Anomabu. Achinajai is also under him.”

Q. What was the result of the Elizabeth Smith case ?

A. She summoned me about land here.

Q. I put it to you that the case was made against you because you would not go to Asebu ?

A. That was the first case and we were taken to Elmina.

*Sekyi* : I tender proceedings in that case.

20

*Williams* : I submit that proceedings between the same parties in a prior case cannot be put in evidence except by consent.

(*Kobina Angu v. Cudjoe Attah*. P.C. Judgments 1874–1928.)

*Court* : I overrule that objection, but the proceedings cannot be put in evidence other than by consent, which is not forthcoming, except by proof of the accuracy of the record.

*Sekyi* : At the first trial these were put in by consent.

*Court* : I will grant every indulgence in the circumstances for you to obtain proof as to the authenticity of the copy.

*Cross-Examined* :

30

Q. When Omanhene of Anomabu was in the box you heard him say these lands are attached to his Stool ?

A. I heard him say so.

Q. And that you and the others at Abuonu were caretakers ?

A. That was his evidence.

Q. You said the elders of Abuonu conspired with you to say it was Stool land of Anomabu ?

A. Yes.

I went to Nana Kwesi Numi Amansihene of Asebu about 20 years ago.

Q. Why did you ?

A. Omanhene of Anomabu summoned me in this Court so I went to report.

Q. At that time there was an Omanhene at Asebu ?

A. He had then died.

Q. When Elizabeth Smith took action against you where was this Nana Kwesi Numi ?

A. He was at Asebu.

Q. At that time Amanfi II was at Asebu ?

10 A. Yes.

Q. Was there anything to prevent you informing the Omanhene of Asebu that the people of Abuonu were inducing you to make false statements about the land ?

A. I fully agreed with what the elders of Abuonu said ; I believed what they said was true.

Q. Did you believe them when they said the land belonged to the Stool of Anomabu ?

A. I believed it. I was on a Stool.

Q. When you were made Head of your family to whom were you  
20 introduced ?

A. I was not introduced to any Omanhene. I was made Chief at Abuonu.

Q. Were you not formally introduced to the Odikro of Abuonu as the Head of the Family ? Was the Odikro present when you were installed as the Head of the Family.

A. He was.

Q. And later you were taken to his house to be formally presented to him ?

A. I did not go.

30 Yes—I went there three days later. I went to say good morning to him. I went for no other purpose. I went with a young boy.

When I saluted him—he said good morning and he brought drink and said I should take the chill off myself with the drink.

Q. Was there the formal payment of a fee ?

A. They all met in my ancestral house and I paid it to them.

Q. It was sometime after this that Elizabeth Smith sued you ?

A. I had not then been even 4 months on the Stool when he summoned me.

*In the  
Land  
Court,  
Cape  
Coast.*

*Defendants'  
Evidence.*

No. 25.  
Kweku  
Apawu,  
1st  
Defendant,  
2nd July  
1947,  
Cross-  
examina-  
tion,  
*continued.*

*In the  
Land  
Court,  
Cape  
Coast.*

*Defendants'  
Evidence.*

*No. 25.  
Kweku  
Apawu,  
1st  
Defendant,  
2nd July  
1947,  
Cross-  
examina-  
tion,  
continued.*

*Q.* Were you presented to any Chief or Omanhene at Asebu ?

*A.* Abuonu people had then been deceiving me—so I could not go—  
*yes even before then there was any litigation.*

*Q.* Apart from your family are there any persons living in Abuonu today who own any of the lands now claimed.

*A.* Yes there are some.

*Q.* Who are they ?

*A.* Apote Dekyem, the Odikro of Abuonu.

*Q.* Who owns the land on which Abuonu village stands ?

*A.* My own.

10

*Yes—Odikro of Abuonu is Apote Dekyem.*

*Q.* And first Apote Dekyem and all his successors have been Odikros of Abuonu ?

*A.* They came with their stool and lived with my ancestors and became Odikro.

*Q.* I put it to you that Apote Dekyem was Odikro because he founded it ?

*A.* That is not so.

*Q.* If a person founds a village—he normally becomes the Odikro ?

*A.* When Dekyem came—he came as a chief with a Stool and stayed 20  
with my ancestors.

*Q.* If what you say is true how is it that Apote Dekyem is the Odikro and not you ?

*A.* I say he came with his stool.

*Q.* Then you would be senior and he would be under you ?

*A.* Yes. (After long hesitation and questioning.)

*Q.* At that time you said your ancestors were serving no Omanhene ?

*A.* When there was no Omanhene at Asebu my people served no Omanhene.

*Q.* And when Apote Dekyem became sub-chief of Anomabu at 30  
Abuonu you were still independent ?

*A.* Yes—we were independent.

*Q.* Apote Dekyem all being subjects of Anomabu and you being independent can you tell us how it came about that they could take crops from this land for the Stool festival of Anomabu ?

*A.* He would not be prevented from going.

*Q.* If at that time land was being given to this stranger from Osurasi who had been sent to stay with you by an Omanhene of a foreign State. Would not that transaction take place to the knowledge of the Omanhene ?

When there was last an Omanhene at Asebu—i.e. when Amanfi II was installed did the people go over and acknowledge him as their Omanhene ?

A. Yes—they swore allegiance.

*In reply to Court :*

Q. Did you go yourself ?

A. At that time I had been prohibited from going.

*Cross-Examined :*

10 Q. I put it to you that Amanfi II himself did not claim you to be Asebu people ?

A. He had come to search for us. We had been told not to go. He was angry—so forsake.

Q. Were people of Abuonu made aware of the settlement between yourself and Elizabeth Smith ?

A. They knew.

Q. You informed them or were they present at the ceremony ?

A. I went with my people to Sorudoful and the Omanhene of Asebu, Amanfi II made peace between us. Omanhene of Asebu said I should discontinue the litigation with Elizabeth.

20 *In reply to Court :*

Q. Then why did you and your people at Abuonu not go to the Omanhene of Asebu and get your settlement with Elizabeth Smith ?

A. Because people of Abuonu deceived me.

*Cross-Examined :*

Q. You say Apote Dekyem's successors have no lands of their own at Abuonu ?

A. Yes—only a portion of the land given to him by my ancestors is still with him.

30 Q. You remember when Government acquired land for the Water Works at Brimbrimso ?

A. I remember.

Q. At that time you were at Abuonu ?

A. I was at Potoasi Village.

Potoasi village is not even a mile from Abuonu. I knew Government were acquiring land in that neighbourhood.

That was about 25 years ago.

Q. At that time were you sitting on your family Stool ?

A. Yes.

*In the  
Land  
Court,  
Cape  
Coast,*

*Defendants'  
Evidence.*

No. 25.  
Kweku  
Apawu,  
1st  
Defendant,  
2nd July  
1947,  
Cross-  
examina-  
tion,  
*continued.*

Reply to  
Court.

Cross-  
examina-  
tion,  
*continued.*



*In the  
Land  
Court,  
Cape  
Coast.*

*Defendants'  
Evidence.*

No. 25.  
Kweku  
Apawu,  
1st  
Defendant,  
2nd July  
1947,  
Cross-  
examina-  
tion,  
*continued.*

**Q.** Did you know a man Kweku Annan ?

**A.** He was from Mouri.

Yes Mouri people are Asebu people.

**Q.** Did you know Kwa Kuta of Abuonu ?

**A.** I knew him ; he was from Kwa Kuta Ejumaku.

**Q.** Did you know Kwesi Kor, the Odikro then of Abuonu ?

**A.** Yes—he was a descendant of Apote Dekyem.

**Q.** At that time the Omanhene was Amonu VII of Anomabu ?

**A.** Yes.

**Q.** Did you know that part of Abuonu land was given to the 10 Government ?

**A.** I heard it.

**Q.** Were you ever asked to sign any document in that connection ?

**A.** I was not asked.

I did not sign anything.

**Q.** Can you say how many Stools there are at Abuonu ?

**A.** Five.

**Q.** Was there any litigation about those Stools ?

**A.** I was told there was.

**Q.** Was your Stool in existence at that time ?

20

**A.** It had been made already.

**Q.** Was that Stool of yours under the control of Apote Dekyem ?

**A.** No.

**Q.** In 1891—a judgment was given in this Court saying that the 5 Darkened Stools belonging to the Abuonu people were to be kept by one Kodwo Bura and Amonu who was the King of Anomabu ?

(Refers now to Sarba's Fanti Customary Law 2nd Edition page 214.)

**Q.** To-day you say there are 5 Stools in Abuonu. Are you suggesting that your Stool was one of these five ?

**A.** No—no.

30

Reply to  
Court.

*In reply to Court :*

**Q.** Then there are 6 Stools and not 5 in Abuonu ?

**A.** Six.

Cross-  
examina-  
tion.  
*continued.*

*Cross-Examined :*

**Q.** You know that Plaintiff contends that you and your ancestors came with Apote Dekyem and settled at the place shown to you by the Omanhene of Anomabu. Has any of your predecessors told you that ?

**A.** No ancestor of mine has told me that.

*Q.* And prior to your becoming Head of your Family did any of your ancestors say that Stool of Apote Dekyem had served any other Stool than Anomabu ?

*A.* At first we heard that Abuonu people wanted to serve Cape Coast.

*In the  
Land  
Court,  
Cape  
Coast.*

*Re-examined by Johnson :*

*Defendants'  
Evidence.*

*Q.* Yesterday you were questioned about certain affidavits which you swore ?

No. 25.

*A.* Yes.

Kweku  
Apawu,  
1st

*Q.* Will you please explain how you came to swear these affidavits ?

Defendant  
2nd July

10 *A.* Elizabeth Smith had summoned me about Abuonu land called Obuabasa. I said I had no case with her and that I would settle with her ; I was then told that I should not go to Asebu to make any settlement with Elizabeth and that they would assist me to carry out the litigation.

1947,  
Cross-  
examina-  
tion,  
*continued.*

*Q.* What did they do to make you swear that affidavit ?

Re-  
examina-  
tion.

*A.* I was arrested at Botosi and taken to Anomabu and I was taken to Nana Kwapia's house as the Omanhene of Anomabu had then died. Nana Kwapia's position was the Regent at that time.

*Q.* Did he tell you anything when you were taken to him ?

20 *A.* He said they wished to be of one mind with me to say that the land about which Elizabeth had summoned me was land belonging to the Omanhene of Anomabu.

*Q.* And so you did ?

*A.* I said that none of my ancestors had then done such a thing before and that I would not do it. I was threatened in the Regent's house—what they said made me fear.

*In reply to Court :*

Reply to  
Court.

*Q.* What did you fear ?

*A.* I did not know what would be done to me. So I swore the false affidavit.

30 *Re-examination :*

Re-  
examina-  
tion.  
*continued.*

*Q.* You also said Omanhene of Anomabu summoned you ?

*A.* Yes.

*Q.* Where and what was it about ?

*A.* At first in the Divisional Court that I was one of his subjects—that was about 25 years ago.

(A highly unsatisfactory witness in every way.)

*In the  
Land  
Court,  
Cape  
Coast.*

*Defendants'  
Evidence.*

No. 26.  
Kofi Eji,  
1st Witness,  
2nd July  
1947.  
Examina-  
tion in  
Chief.

No. 26.

KOFI EJI—1st Witness.

KOFI EJI (male) sworn states in Fanti (Examined by Williams) : Live Ejumaku Brofuyedru in Ejumaku State. Am Head of Nsona Family there. My ancestors originally came from Osurasi in Akim State.

*Q.* Have you ever heard the name of Apote Dekyem ?

*A.* Yes.

*Q.* Was he any relation ?

*A.* He is a member of my family.

10

He came from Osurasi.

*Q.* Why did he come to Ejumaku ?

*A.* The result of a fight called Asamankaw War. That war was between Batche people and Osurasi people, who were my ancestors.

*Q.* As consequence did your ancestry go anywhere ?

*A.* Yes, to Anomabu.

*Q.* From Anomabu did they go anywhere else ?

*A.* (Long, long hesitation)—and they could not get food to buy and shifted to Ejilfa. They did not stay there but removed to Motua. Motua is in the Asebu Side.

20

*Q.* Did they settle permanently there at Motua ?

*A.* No ; they moved further and went to Abuonu.

*Q.* Did they meet any people at Abuonu ?

*A.* Yes.

*Q.* Whom did they meet ?

*A.* Some members of Nsona Family. I can mention name of one Ekua Ensa who was there then.

*Q.* When they met Ekua Ensa what happened between herself and your ancestors ?

*A.* Ekua Ensa asked them the object of their arrival. Apote Dekyem 30 said they fought and came to Anomabu and could not get food to buy there and when some people came from Motua to buy food—they said there was food at Motua. At Motua they could not get sufficient food and one Motua Oku told them that there was no scarcity of food at Abuonu.

Reply to  
Court.

*In reply to Court :*

*Q.* Do you mean food or land on which food may be grown ?

*A.* Food.

*Examined :*

That was why he came to Abuonu—so Apote Dekyem said he would stay there with her and she gave him a place and they settled.

Apote Dekyem brought his Stool with him.  
Ekua Ensa was a woman serving Asebu State.

*In the  
Land  
Court,  
Cape  
Coast.*

*Defendants'  
Evidence.*

*In reply to Court :*

*Q.* Is there anything in your tradition to say whether at that time there was an Omanhene of Asebu ?

*A.* It is not stated.

No. 26.  
Kofi Eji,  
1st Witness,  
2nd July  
1947,  
Examina-  
tion in  
Chief,  
*continued.*

10 *Examined :*

*Q.* This Ekua Ensa do you know if her descendants are living today ?

*A.* I know. It is Kweku Apawu (1st Defendant).

*In reply to Court :*

*Q.* How do you know that ?

*A.* That is what I have been told.

Reply to  
Court.

*Examined :*

*Q.* Have you ever visited Abuonu ?

*A.* Yes.

*Q.* How long ago did you first visit Abuonu ?

20 *A.* About 20 years ago.

I remember Asantewa war (1900).

I was not then married nor able to go and work in the farm (indicate about 5 years).

(As I thought witness somewhere between ages of 50 and 55.)

*Q.* Do you know Kobina Agebil ?

*A.* Yes.

*Q.* Is he in any way connected with you ?

*A.* He was a son of my ancestor Kobina Kyineje.

Kyineje came from Osurasi and settled at Abuonu.

30 *Q.* Have you heard of any relation of yours called Kofi Akwa ?

*A.* Yes.

He succeeded Apote Dekyem.

Kofi Akwa lived at Abuonu. When he died Danquah succeeded him and lived at Abuonu.

*Q.* Had he any name other than Danquah ?

*A.* I do not know.

Examina-  
tion in  
Chief,  
*continued.*

*In the  
Land  
Court,  
Cape  
Coast.*

**Q.** How did you come to know that Kweku Apawu was a descendant of Ekua Ensa ?

**A.** If a person dies a successor is appointed.

*Defendants'  
Evidence.*

**Court :** I cannot permit as evidence of tradition what a witness between 50 and 55 years old is told by inhabitants of a village which he visits for the first when he is a man of 30-35 years of age.

No. 26.  
Kofi Eji,  
1st Witness,  
2nd July  
1947,  
Examina-  
tion in  
Chief,  
*continued.*  
Cross-  
examina-  
tion.

I rule that this evidence is inadmissible under any principle of evidential law.

When I went there 20 years I saw Kweku Apawu there.

I spoke with him. People were with him.

I have been there recently. When I went there I saw Kweku Apawu and spoke with him. 10

*Cross-Examined by Sekyi :*

**Q.** Did you receive a subpoena to come and give evidence ?

**A.** I did not.

**Q.** When were you first told you would be required to give evidence in this matter ?

**A.** About 3 months ago.

Kweku Apawu came to my village and asked me to give evidence of the tradition. 20

Yes he came to me 3 months ago.

He spoke to me about Gyabin.

**Q.** What did he say Gyabin had done ?

**A.** He said he had a case with Gyabin at the High Court about land that it was the Omanhene of Anomabu who had issued the summons.

We settled at Ejumaku from Osurasi.

**Q.** Were you in the habit of attending funeral custom at Abuonu of people whom you say are members of your family ?

**A.** Yes.

**Q.** When did you last attend a funeral there ? 30

**A.** About 9 years.

It was funeral of Kwesi Aku. He was successor to Apote Dekyem.

**Q.** How did you come to be at Ejumaku if you were of Apote Dekyem's family ?

**A.** One of the women who came with Apote Dekyem married there. That woman was Ajua Odua. She is my ancestress.

**Q.** Do you know this man Kofi Gyabin (2nd witness for Plaintiff) ?

**A.** Yes.

I know him to be a son of my ancestor, Kobina Tineje. He is a member of the family. 40

*In reply to Court :*

*Q.* Has he as close a connection with the original ancestor as yourself ?

*A.* A little more remote.

Gyabin is the Ohene of Abuonu.

*Q.* Were you present when he was made Ohene ?

*A.* I was not.

*Q.* If it was true that you are a member of her family you would have been invited and would have attended ?

*Q.* Do you remember when present Odikro of Abuonu was installed ?

10 *A.* I do.

*Q.* Were you invited to go to the installation ?

*A.* I was not—Gyabin came himself.

*Re-Examined :*

*Q.* You said Gyabin came there—came where ?

*A.* To Ejumaku Brofuyedru—to my brother Afren.

*Q.* For what purpose ?

*A.* He said he had been elected and had come to us to ask us to go with him to prepare the house at Abuonu. We did not go.

20 We asked him why when he was being made a Chief he did not report to us. He said he had no time.

*In reply to Court :*

*Q.* When was this visit to which you refer ?

*A.* About 7 years ago.

*Re-Examined :*

We came to Abuonu.

*Court :* This is not evidence of acts of person evidencing by conduct or words so as to establish evidence as to acts of ownership—since they are acts years after the issue of the writ in this action, namely in 1934, after another writ issued in 1931 had been struck out.

30 Adjourned to 2.30 p.m.

(Sgd.) J. JACKSON,  
J.

Resumed at 2.30 p.m.

*Williams :* Application made for District Commissioner to appear in Court to-morrow to produce certain documents.

*Court :* I have repeatedly told counsel in this court that I will not sign a subpoena unless reasonable time is given for the witness to make

*In the  
Land  
Court,  
Cape  
Coast.*

*Defendants'  
Evidence.*

No. 26.  
Kofi Eji,  
1st Witness,  
2nd July  
1947,  
*continued.*  
Reply to  
Court.

Re-  
examina-  
tion.

Re-  
examina-  
tion,  
*continued.*

Court  
Notes.

*In the  
Land  
Court,  
Cape  
Coast.*

*Defendants'  
Evidence.*

No. 26.  
Kofi Eji,  
1st Witness,  
2nd July  
1947,  
Court  
Notes,  
*continued.*

necessary arrangements to attend Court. To call upon any person and especially an official who has public duties to perform at 18 hours notice is utterly unreasonable.

On the 4th July 1946 this trial was set down for hearing on the 10.9.46. This was by agreement between the Counsel Messrs. Sekyi and Johnson. A postponement to the 30th instant was later made at the request of the Defendant Nana Amanfi III.

There is no reason why Counsel should not make their own arrangements to obtain witnesses at this late hour—but I will certainly not make orders for their attendances. 10

These matters should have been dealt with last July when the date of the trial was fixed.

No. 27.

James  
Williams  
Kofi  
Brenya,  
2nd  
Witness,  
2nd July  
1947.  
Examina-  
tion in  
Chief.

No. 27.

**JAMES WILLIAMS KOFI BRENYA—2nd Witness.**

2nd Witness  
for Defts.

**JAMES WILLIAMS KOFI BRENYA** (male) sworn states in Fanti : Live Jukwa. Farmer. Belong to Jukwa Etsi Aburadzi Family. My family have land at Jukwa. The land is called "Jukwa" land. There are Denkyeras, people who came and met Jukwa people there. I know Kweku Apawu (1st Defendant). 20

Q. Has your land anything to do with him ?

A. We have a boundary with him.

Q. When surveyor Hagan came to the land in 1929 did you see him ?

A. Yes. He surveyed our land.

Q. With what State has your land a boundary ?

A. I have a boundary with Apawu who is an Asebu man on the South.

Cross-  
examina-  
tion.

*Cross-Examined by Sekyi :*

Q. Who told you Apawu was an Asebu man ?

30

A. Chief Kofi Mina, now dead, who was a Chief of Jukwa.

Q. Who is in Kofi Mina's place now ?

A. Chief Kweku Adai has the custody of the Stool now.

[sic]

At present he is possession of the Stool of Jukwa.

Q. What is your position in his family ?

A. I am a spokesman to Chief Kweku Adai.

Q. You and the people of Jukwa have been looking round for an Omanhene for some time ?

A. Etsi people living there are independent.

Q. Do they owe allegiance to any Omanhene ?

A. They do not.

Q. Chief Kofi Mina was under the Omanhene of Cape Coast.

A. Not so.

*In reply to Court :*

Q. Did the Etsi people ever have an Omanhene ?

10 A. That I do not know. If we had—I would know.

*Cross-Examined :*

Q. Have you not attended with Chief Mina at the Ahinfié at Cape Coast ?

A. I have.

Q. You know the expression “ walking with an Omanhene ” ?

A. (Witness quibbles again.)

*In reply to Court :*

Q. Have you ever heard that expression used in the Fanti Language ?

A. —

20 *Court to Assessor :*

Q. Has that expression any meaning ?

A. Yes—it has. It means that you are under or being guided by that particular Omanhene.

*Cross-Examined :*

Q. Has Kofi Mina ever walked with the Omanhene of Cape Coast ?

A. I say that when the Omanhene of Oguaa called Kofi Mina—he would come to him.

Q. And he kept on coming like that until he died and Akun succeeded him ?

30 A. He came when he was called.

Q. You remember that after Kofi Mina died Akun and other Jukwa Elders came to the late Omanhene Mbra III of Cape Coast ?

A. The Omanhene Mbra III had died.

I did not know Adontenhene Nimfa.

Q. You never attended with Akun before Nimfa at the Ahintie at Cape Coast ?

*In the  
Land  
Court,  
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*Defendants'  
Evidence.*

No. 27.  
James  
Williams  
Kofi  
Brenya,  
2nd  
Witness,  
2nd July  
1947,  
Cross-  
examina-  
tion,  
*continued.*

Reply to  
Court.

Court to  
Assessor.

Cross-  
examina-  
tion,  
*continued.*



*In the  
Land  
Court,  
Cape  
Coast.*

A. I don't know this.

Q. Did Chief Akun and his elders ever apply to the person in charge after Mbra III's death for a Tribunal at Jukwa ?

A. I do not know this.

*Defendants'  
Evidence.*

Q. Up to the time Mbra III was Jukwa under the Omanhene of Denkyera ?

A. Yes—but we are independent—we each beat our gong gong.

Q. Did you ever apply to come under the Omanhene of Denkyera ?

A. No.

No. 27.  
James  
Williams  
Kofi  
Brenya,  
2nd  
Witness,  
2nd July  
1947,  
Cross-  
examina-  
tion,  
*continued.*

Q. Why did you pay your levy under the N.A. Ordinance to the Omanhene of Denkyera ? 10

A. That was the Governor's order—so we paid to the District Commissioner at Cape Coast and he gave us a receipt.

Q. Are you and your people now arranging to come under the Omanhene of Asebu ?

A. It is not so at present.

Q. You are not a member of Kofi Mina's family ?

(This witness is quite incapable of answering directly any question put to him.)

A. (3rd time) Yes—I am in that family.

20

Q. Are you not a member of the Nsona family ?

A. I am in the Nsona Family.

Aburadzi family is a part of the Nsona Family.

Court to  
Assessor.

*Court to Assessor :*

Q. Is that correct ?

A. It is not. We have Eduarna and Aburadzi Family as one clan. Nsona is different—it is quite distinct from Aburadzi.

Cross-  
examina-  
tion,  
*continued.*

*Cross-Examined :*

Q. You have a boundary with Abuonu people ?

A. I have boundary with Apawu of Asebu.

30

Q. That boundary—does it on one side meet a boundary with Abura ?

A. After the boundary with Apawu—it goes to a boundary with the land of the Omanhene of Abura.

Reply to  
Court.

*In reply to Court :*

Q. Do you say that that particular land is owned by Abura ?

A. It is owned by Abura.

Q. By your tradition are you told how Abura came to own that land ?

A. Nobody has told me.

*Cross-Examined :*

I know Amansi.

Q. With whom do you form a boundary there ?

A. With Apawu (1st Defendant).

Q. Do you know the people of Dehia ?

A. Yes.

10 Q. Have your lands any boundary with Dehia people ?

A. Yes.

*No Re-Examination.*

*In the  
Land  
Court,  
Cape  
Coast.*

*Defendants'  
Evidence.*

No. 27.

James  
Williams  
Kofi  
Brenya,  
2nd  
Witness,  
2nd July  
1947,  
Cross-  
examina-  
tion,  
*continued.*

No. 28.

KWESI BENYIN—3rd Witness.

KWESI BENYIN (male) sworn states in Fanti : Live in Ekurofuom in the Asebu State. Belong to Nsona clan.

Q. Who is Head of Nsona clan at Ekurofuom ?

A. I am.

Q. Besides being Head there have you any Asafo company ?

20 A. Yes.

Q. What is your position in the " Asafo " ?

A. I hold no position in the company.

I am Safuhene to Amanfi III—the Omanhene of Asebu. Had an ancestor Anzi Bombofu who was a hunter. He was a native of Asebu.

Q. Traditionally do you know the name of his wife ?

A. I was told her name was Ekua Ensa.

Q. Where did she live ?

A. With her husband at Ekurofuru.

Q. Where did she originally come from before she married ?

30 A. She was at Asebu before she married.

Q. At what village in Asebu did she live ?

A. At Asebu Amantsindu.

My ancestor then married her and they both came to Ekurofuru.

No. 28.

Kwesi  
Benyin,  
3rd  
Witness,  
2nd July  
1947.  
Examina-  
tion in  
Chief.

*In the  
Land  
Court,  
Cape  
Coast.*

*Q.* Do you know the descendants of Ekua Ensa ?

*A.* One was Apietsi, another Jesi.

*Q.* Where did these brothers live ?

*A.* At Abuonu.

*Defendants'  
Evidence.*

*Q.* Whilst these brothers were at Abuonu did any stranger come there ?

*A.* Yes I was told so.

He was said to be called Apote Dekyem who came from Akim Osurasi.

He came there because he was pleased with the place and came to work. 10

No. 28.  
Kwesi  
Benyin,  
3rd  
Witness,  
2nd July  
1947,  
Examina-  
tion in  
Chief,  
*continued.*

*Q.* Who gave him permission to work on the land ?

*A.* The three men Apietsi, Mensa and Jesi.

They were the brothers-in-law of Anzi the hunter.

Reply to  
Court.

*In reply to Court :*

*Q.* Who was the mother of these brothers ?

*A.* Name was not mentioned to me.

*Q.* From where was she said to have come ?

*A.* She was an Asebu woman.

Examina-  
tion in  
Chief,  
*continued.*

*Examined :*

Kweku Apawu is Chief of Abuonu. 20

*Q.* By tradition what is relation of Apawu to Ekua Ensa ?

*A.* He was a descendant of hers.

Asebu Amantsindu is the name generally known as Asebu town.

Cross-  
examina-  
tion.

*Cross-Examined :*

*Q.* Did you know an Omanhene of Asebu called Esi Ankuma ?

*A.* I saw him.

*Q.* At the time what was his headquarters ?

*A.* Putubiw.

*Q.* Did you hear of an Omanhene of Asebu called Kweku Arhin ?

*A.* No. 30

*Q.* Do you know the village of Brehyia in Asebu ?

*A.* I know it.

*Q.* Was that not the headquarters of Nsi Amkuma when he was alive ?

*A.* I knew him to be at Putubiw. I remember the time he died.

*Q.* How long after he died was it that Amanfi II was installed ?

*A.* A long time.

*Q.* At that time what had happened to Asebu Amantsindu ?

*A.* I did not see that anything happened there.

*Q.* Do you remember when it again became the headquarters of the Asebu State ?

*A.* The origin of Asebu is at Amantsindu.

*Q.* In time of Anzi Bombofu was there an Omanhene whom these brothers of Ekua Ensa served ?

10 *Court :* At this stage I noticed Mr. Johnson, Counsel, shaking his head in the direction of the witness as if to indicate that the answer required was in the negative and I have condoned him.

(I repeat question.)

*A.* I did not see the Omanhene. The Omanhene's name was mentioned to me.

*No Re-examination.*

*In the  
Land  
Court,  
Cape  
Coast.*

*Defendants'  
Evidence.*

No. 28.

Kwesi  
Benyin,  
3rd  
Witness,  
2nd July  
1947,  
Cross-  
examina-  
tion,  
*continued.*

No. 29.

KOJO EGYIN—4th Witness.

No. 29.

Kojo  
Egyin,  
4th  
Witness,  
2nd July  
1947.

20 KOJO EGYIN (male) sworn states in Fanti: Safuhene of Ekrofu—Asebu State. Safuhene of the Tuafu Asafu company. He carries a whip as his emblem of office made of hide.

*Q.* From which ancestry did this company descend ?

*A.* Sofo Tewia—my ancestor.

*Q.* Was he the priest ?

*A.* Yes—he was the one.

*Q.* Is the whip connected with any stool ?

*A.* Yes—with two people—one lives at Ekurofuom and the other lives at Abuonu.

30 *Q.* Can you tell the Court traditionally who was the founder of Abuonu ?

*A.* Nana Jesi.

He had 2 brothers—one was called Mensa, another was Apietsi and the sister was called Ekua Ahinekuna—same as Ensa.

They were Asebu people.

I know Kweku Apawu. He is the surviving descendant of these people.

Examina-  
tion in  
Chief.

*In the  
Land  
Court,  
Cape  
Coast.*

*In reply to Court :*

Ekua Ensa was Apawu's mother. She was carried to Asebu and was buried there.

*Defendants'  
Evidence.*

*Examined :*

Q. Do you know any strangers who are not Asebus and who farm on Abuonu lands ?

A. Yes.

Q. Can you give one or two names ?

A. One is Kweku For. He made cocoa farms.

He obtained permission from Apawu.

(Note.—Apawu was not asked this question.)

I was present when he was given permission.

10

No. 29.  
Kojo  
Egyin,  
4th  
Witness,  
2nd July  
1947,  
Examina-  
tion in  
Chief,  
*continued.*  
Cross-  
examina-  
tion.

*Cross-Examined :*

Q. You said Apawu's mother was buried at Amantsindu Asebu ?

A. Yes.

Q. You went with them ?

A. Yes.

Q. How many years ago ?

A. About 5 years ago.

Q. Where did she live before she died ?

20

A. At Abuonu—but she left there and went to a village when she became very old and ill. The village was Potasi village—it is Apawu's hamlet. The mother went to visit the son there before she fell sick.

Reply to  
Court.

*In reply to Court :*

There is a grove at Asebu called Abonkum where she was buried.

Cross-  
examina-  
tion,  
*continued.*

*Cross-Examined :*

Q. Before this litigation started where were the people who lived at Abuonu buried ?

A. Abuonu.

Q. Apote Dekyem and Apawu's people were they buried in a common burial ground before this litigation started ?

A. No—in different burial groves—far apart.

One is on the outskirts of Abuonu village i.e. for Ekua Ensa's people ; the other one is at the back of Apote Dekyem's house in the village.

Q. The village originally extended to the old cemetery before a new one was made ?

A. No new burial grove has been made. There is only the old one.

Q. I put it to you that Apote Dekyem's grove is the oldest one ?

A. It is not so.

Q. How many of Apawu's people have been buried at Abuonu Asebu Amantsindu ?

A. One Nana Mensa was buried there a long time ago.

*In reply to Court :*

Yes a person likes to be buried in his own home.

Q. Why was Apawu's mother buried in Asebu ?

10 A. Because there was litigation there and if we buried her there (Abuonu) there would have been trouble.

*Cross-Examined :*

Yaw Bentan died recently.

Q. And he was buried at Abuonu ?

A. Yes.

Q. Was there any trouble ?

A. There was no trouble—the litigation had then cooled down.

Yes I am one of the Defendants.

I am Kojo Edgin.

My own home is Abuonu.

20 Q. Where were you born ?

A. Ejumaku Bisadzi. I am at present living in Abuonu.

Q. When did you first start to live in Abuonu ?

A. I was then a child.

Q. You are only a member of Nsona Clan but not of the same family as Apawu. Is that not so ?

A. I am a blood relative of the man who founded Abuonu.

His name was Nana Jesi.

Yes he founded Abuonu.

Q. And was it to Nana Jesi that Apote Dekyem came ?

30 A. He did not meet Nana Jesi. He met Ekua Ensa.

Q. But she lived at Ekurofur with her husband ?

A. Yes.

Q. Who then was in charge of Abuonu ?

A. When her brothers all died Ekua Ensa came and lived at Abuonu.

Q. Until this litigation started where did your people go for the annual Stool festival ?

*In the  
Land  
Court,  
Cape  
Coast.*

*Defendants'  
Evidence.*

No. 29.  
Kojo  
Egyin,  
4th  
Witness,  
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1947,  
Cross-  
examina-  
tion,  
*continued.*

*In the  
Land  
Court,  
Cape  
Coast.*

A. When Omanhene of Anomabu was observing his festival then Asebu people whose fathers are of Anomabu accompany their fathers to Anomabu to play Asafu.

Apawu's father was a man of Anomabu.

*Defendants'  
Evidence.*

Q. You never saw the predecessor Kwantin of Apawu go to the Stool festival at Anomabu ?

No. 29.

*Kojo  
Egyin,  
4th  
Witness,  
2nd July  
1947,  
Cross-  
examina-  
tion,  
continued.*

A. Perhaps that was when I was young.

I remember Kwantin. I was still a young boy when he died.

Q. What about Wokuma who succeeded him ?

A. I knew him.

10

When there is a Stool festival everyone goes to have a look !

Q. It is not anywhere for companies to attend Stool festivals ?

A. It is done to celebrate the occasion and make it more enjoyable.

*Reply to  
Court.*

*In reply to Court :*

Q. Do people of Anomabu come to Asebu festivals ?

A. Some come to look.

*Cross-  
examina-  
tion,  
continued.*

*Cross-Examined :*

Q. At time this litigation started who was Odikro at Abuonu ?

A. Chief Kwesi Kum.

Q. He was the Odikro ?

20

A. Yes.

Q. It was his duty to attend at Anomabu at every Stool festival ?

A. Yes.

Q. When he died were you at Abuonu ?

A. I was there.

Q. At that time when his funeral custom was being performed did Apawu attend ?

A. He did.

Q. And you all share debts together as you have done from the beginning ?

30

A. Yes.

Q. Has that practice been changed ?

A. Now it is changed.

Q. Since when ?

A. Since the death of Kwesi Kum.

It was during that time we started the litigation.

Q. By that time Apawu had become Head of the Family ?

A. Yes.

Q. Up to that time had Apawu ever collected tolls from any people farming on the land ?

A. He collects Ebusa on cocoa farms.

*In the  
Land  
Court,  
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Coast.*

*Defendants'  
Evidence.*

*In reply to Court :*

Q. Were there any cocoa farms on the land before the litigation ?

A. Yes and they pay to Apawu.

Q. Can you name one or two who paid ?

10 A. I can mention one—named Kweku For.

Kweku For was from Abuonu Esaman—who are the subjects of Kwesi Kum under Anomabu.

No. 29.  
Kojo  
Egyin,  
4th  
Witness,  
2nd July  
1947,  
Cross-  
examina-  
tion,  
*continued.*

*Cross-Examined :*

Kobina Aful is another. He was born at Abuonu Esaman.

*In reply to Court :*

Q. In which State is the land at Abuonu-Esaman ?

A. Asebu State.

Yes he paid to Apawu.

Reply to  
Court.

*Cross-Examined :*

20 Q. Have you and Apawu ever been caretakers of this land for anybody ?

A. At the beginning we did not look after the land for anyone. Later we did.

Amanfi I said he had now ascended the Stool and that he wanted back everything—I refer to Nana Amanfi who died recently (Amanfi II)—he wanted to recover everything that had gone astray.

An ancestor called Aduku said that Nana Amanfi had told him that he wanted to recover all his things. Apawu went to Anomabu and Asebhene informed Aduku and he came to Abuonu. When he came he said that Amanfi said he wanted " His everything ".

Cross-  
examina-  
tion,  
*continued.*

30 *In reply to Court :*

Yes—he meant all the lands which had been owned centuries ago.

They were in the hands of Apawu.

Q. How can you recover what you have not lost ?

A. Apawu had stopped going to Asebu.

Asebhene informed Nana Aduku of Ekrofuom that his subject Apawu wished to give away his land as a gift. Apawu called the Oman of Abuonu—I was there and they met in Kwesi Kum's house at Abuonu. It was there that we decided that Apawu should not take the land to Asebu.

Reply to  
Court.



*In the  
Land  
Court,  
Cape  
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Kojo  
Egyin,  
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1947,  
Reply to  
Court,  
*continued.*  
[sic]

*Q.* Why did you not want him to take the land to Asebu ?

*A.* Because if they did, they would not have a portion to farm ; we thought that if it got under the control of Amanfi II—we would not have a place to farm. Amanfi II had only just come on the Stool after a long interval.

We feared we would not have a place to farm.

Yes—that is why we swore a false affidavit—I was arrested also.

*Q.* Did you ever come to look after the land for somebody ?

*A.* Yes—if anything happened on the land we would report to the Omanhene of Anomabu.

Before Amanfi II came on the Stool everything on the land was collected and used by Apawu himself. 10

*Q.* Was anything accounted for by Apawu to the Omanhene of Anomabu before this litigation ?

*A.* No.

He was never caretaker for the Omanhene of Anomabu. Yes the land originally belonged to Apawu and his family.

*Q.* It did not at any time belong to the Omanhene of Asebu ?

*A.* All the lands in his State are for him.

*Q.* Then whoever was Omanhene could not take it from him ? 20

*A.* We farm for ourselves.

*Q.* Do your Kings take your lands from you in Asebu ?

*A.* They do not.

*Q.* So that if originally it was Apawu's own land it would not make any difference which Omanhene he was under ?

*A.* All his ancestors were at Asebu.

The land belonged to Amanfi II and Apawu farmed on it.

Yes—it belongs to Nana Amanfi II.

Omanhene could not sell the land.

*Q.* You could not sell the land as well ? 30

*A.* We could not sell it.

*Q.* If you wished to sell whose permission would you have to get ?

*A.* We would have to inform Nana Amanfi and he must agree.

Adjourned to 3.7.47.

(Sgd.) J. JACKSON,  
J.

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3.7.47.

## IN THE SUPREME COURT OF THE GOLD COAST.

Lands Division, Cape Coast.

Thursday the 3rd day of July 1947.

Before Mr. JUSTICE JACKSON.

AMONU ABABIO

V.

KWEKU APAWU &amp; Ors.

KOJO EDJIN resumes evidence :

10 *Cross-Examined by Sekyi :*

I know this man in Court Kweku For.

Q. Is he the man whom you say paid tolls to Apawu ?

A. Yes.

Yes I am one of the Defendants.

Q. Are you calling this man Kweku For to prove what you allege ?

A. No—because he is on the side of Abuonu people.

*In reply to Court :*

Q. Do you suggest that if Kweku For is called, he will not speak the truth ?

20 A. He will not.

He will not because he has even stopped joining us to celebrate Apayaam festival.

Q. I put it to you that this man was given permission to make his farm by Danquah the predecessor of the present Odikro ?

A. It is not so.

Yes I knew Danquah. I knew him to be Odikro of Abuonu and the Omanhene of Anomabu's chief.

Yes he was of Apote Dekyem's line.

30 Q. You said yesterday that the land did not belong to Apawu but belonged to the Asebhene ?

A. I did not say so. I said the land belonged to Apawu.

Q. You remember the case of *Elizabeth Smith v. Apawu & Ors.* ?

A. I remember.

We were summoned at Asebu in the house of Amanfi. We did not go.

Q. What did Elizabeth Smith say you had done ?

A. She said we had farmed on her land.

*In the  
Land  
Court,  
Cape  
Coast.**Defendants'  
Evidence.**No. 29.  
Kojo  
Egyin,  
4th  
Witness,  
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1947,  
Cross-  
examina-  
tion,  
continued.**Reply to  
Court.**Cross-  
examina-  
tion,  
continued.*

*In the  
Land  
Court,  
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Evidence.*

No. 29.  
Kojo  
Egyin,  
4th  
Witness,  
3rd July  
1947,  
Cross-  
examina-  
tion,  
*continued.*

Q. That land, according to you, is also Asebu land ?

A. It was Asebu land.

Q. In the same position as this land now claimed ?

A. Yes.

Q. In that case would the Omanhene of Asebu have any interest in the land i.e. Elizabeth Smith's land ?

A. She could not sell without the Asebhene's consent.

Q. Would not the Asebhene be the proper person to summon you ?

A. No.

Q. In this case you said you did not go when Elizabeth Smith 10 summoned you before the Asebhene ?

A. We did not.

Q. Why ?

A. At that time we were being induced by the people of Anomabu to say we should not say it was Asebu land.

Q. At that time you were aware of your tradition ?

A. We knew.

Q. And you were in the habit of going to see Kwesi Nimu of Asebu Amantsindu ?

A. Before Elizabeth Smith summoned us we used to visit him, but 20 we did not after she summoned us.

Q. Was there anything to prevent you telling him, your relative, from saying Abuonu people were forcing you to say something that was untrue ?

A. Yes ; we should have done it, but we were not permitted.

Yes there was an Ohene at Asebu and a District Commissioner at Cape Coast.

Reply to  
Court.

*In reply to Court :*

I know that Apawu swore an Affidavit.

Q. Did you know what he was going to swear ?

30

A. Yes.

Q. Did you accompany him to the District Commissioner's office where you swore ?

A. I accompanied him there.

Q. Why did you not inform the District Commissioner that people were suborning you to commit perjury ?

A. Anomabu followers were there.  
We feared.

Q. Feared what ?

A. That we would be maltreated.

*In the  
Land  
Court,  
Cape  
Coast.*

*Cross-Examined :*

Q. You forgot that the affidavit was prepared in Cape Coast by a lawyer, Mr. Ward Brew ?

*Defendants'  
Evidence.*

A. Affidavit was written by a scholar at Anomabu and we touched pen there before bringing the affidavit to Mr. Ward Brew where it was typewritten.

No. 29.

Kojo  
Egyin,  
4th

Witness,  
3rd July

1947,  
Cross-  
examina-  
tion,

*continued.*

10 Q. There were two affidavits and an interval of about 18 months between them.

Do you remember the Registrar here then, Mr. Aikins ?

A. I remember him.

Q. And you, Echem and Apawu came before him here and swore a joint affidavit ?

A. It was so.

Yes—it was in the office above this Court.

Q. And this time what you were seeking for was to prevent an injunction being granted against you ? With what object did you swear ?

20 A. It was said by Anomabu that we should not go to Asebu to hear any case.

*In reply to Court :*

Reply to  
Court.

Q. And you could not tell Mr. Aikins you were being suborned to commit perjury ?

A. We had been told at Anomabu what to do.

*Cross-Examined :*

Cross-  
examina-  
tion,  
*continued.*

Q. Was not the affidavit to prevent an injunction being made against you ?

A. (Witness does not answer—I wish this to be examined upon.)

30 Q. The first action by Elizabeth Smith was taken in this Court—not Asebu Tribunal ?

A. (Witness evades question which has been repeated to him 3 times, after having been cautioned by me as to prevarication.)

Q. While this action was in the Divisional Court—it was you and Apawu who swore an affidavit ? And that Affidavit referred to a case in which you were summoned by Elizabeth Smith to appear before the Divisional Court ?

A. It is so.

Q. You swore that “ copies of the affidavit of Elizabeth Smith sworn on the 29.11.23 and filed on 30.11.23 in support of a motion for an

*In the  
Land  
Court,  
Cape  
Coast.*

interim injunction herein have been served on us excepting Essiedu, the other defendant herein and the contents thereof read over and interpreted to us ”.

A. I remember.

*Defendants’  
Evidence.*

No. 29.  
Kojo  
Egyin,  
4th  
Witness,  
3rd July  
1947,  
Cross-  
examina-  
tion,  
*continued.*

Q. Then you there swore :—

“ the statements contained in paragraphs 2 and 3 of plaintiff’s affidavit are not true and that we have been in possession of the land as caretakers for the Omanhene of Anomabo together with the other defendant, Essiedu, and have been farming on the said land for many years and that our predecessors also farmed on the 10 land ”.

You also swore that :—

“ the said land is the stool property of Nana Amonu VI the Omanhene of Anomabu and that we are subjects of the said Omanhene of Anomabu.”

Did you swear that ?

A. We did.

Q. It was after this that Apawu took action against Elizabeth Smith in the Magistrate’s Court ?

A. Yes I know.

20

Q. And after that action the case of Elizabeth Smith started at Asebu ?

A. Yes.

Q. And Apawu there swore the 2nd affidavit ?

A. Yes—it was so.

Q. It was for a transfer of the suit to the Divisional Court ?

A. Yes.

*Reply to  
Court.*

*In reply to Court :*

Q. So that all this time you were perjured and asked for a case to come before a Judge of the Divisional Court that you could testify that the 30 land was Stool land of Anomabu ?

A. My mind had already been biased at home.

*Cross-  
examina-  
tion,  
continued.*

Q. And all this time Apawu used to stay for days at Potasi and not Abuonu ?

A. Elizabeth Smith had then sent her people to farm on the land. Yes—the land now in dispute.

Q. And was the village of Potasi already in existence ?

A. It was.

Q. And you could go there and return to Abuonu ?

A. Yes—I did.

40

Q. So could Apawu and the other Defendants ?

A. Yes. That was why we decided that many villages should be founded on the land.

*In the  
Land  
Court,  
Cape  
Coast.*

*In reply to Court :*

*Defendants'  
Evidence.*

Q. Why did you decide that ?

A. Because Elizabeth Smith had started to farm on the land and if we lived at Abuonu we would not know when people farmed behind us.

No. 29.

Q. And this was all done by you in opposition to the claim made by an Asebu woman ?

Kojo  
Egyin,  
4th  
Witness,  
3rd July  
1947,  
*continued.*  
Reply to  
Court.

10 A. Yes.

*Cross-Examined :*

Cross-  
examina-  
tion,  
*continued.*

Q. And all that time it was open to you all to travel where you would ?

A. Yes.

Q. You did not have to get permission from Anomabu to come and buy things at Cape Coast, or the permission of the Odikro of Abuonu ?

A. No.

Q. And you could at any time have gone to Asebu and returned without anyone being the wiser ?

A. If even I had a case there—because I had been induced I would  
20 not go.

Q. Do you remember of a case concerning cocoa on the land which gave rise to a prosecution ?

A. Yes. There was a dispute between Abuonu people who had become Anomabu subjects and we who are Apawu's people.

Q. Where was that case heard ?

A. Magistrate's Court at Cape Coast.

Q. Who were the people prosecuted and in the dock ?

A. Apawu was among them.

I was sitting in Court listening to the case. I listened to it from  
30 beginning to end.

Sometimes I was sent somewhere.

Q. What brought about this case ?

A. People who had made farm did not give a portion of the cocoa to Apawu. Apawu picked cocoa.

Q. Where is Essiedu now ?

A. He is somewhere in the Tarkwa direction. He left home at the beginning of this case sixteen years ago.

Kojo Dekyem is here.

*In the Land Court, Cape Coast.* *Re-examined by Williams :*

*Q.* Can you remember all that you said and did 20 years ago ?

*A.* I could not remember all.

*Defendants' Evidence.*

*Q.* You were asked about certain actions which you took in consequence of certain influences. But for those advices and influences would you have sworn to those affidavits ?

No. 29.

*A.* I would not.

Kojo Egyin, 4th Witness, 3rd July 1947, continued. Re-examination.

*Sekyi :* The Omanhene of Anomabu just now left the Court and found this man standing here (Kofi Busumafi) who has been going backwards and forwards with the witnesses and he has just come to tell me. 10

*Court :* I will deal with that matter after the trial.

*Re-examined :*

*Q.* Since you swore those affidavits have you ever paid any tribute to Anomabu ?

*A.* I have not paid anything.

*Q.* Have you paid any allegiance fee to the Anomabu Stool ?

*A.* I have not.

*Q.* Elizabeth Smith's land—is it situate in Asebu State or in an Anomabu State ?

*A.* It is land in Asebu State.

20

No. 30.

Kwesi Kruma, 5th Witness, 3rd July 1947. Examination in Chief.

No. 30.

**KWESI KRUMA—5th Witness.**

**KWESI KRUMA** (male) sworn states in Fanti: I have come here to-day from Anomabu. My village is Amotu. It is in the Asebu State.

*Q.* Who founded Amotu ?

*A.* My ancestress named Ekua Motu.

*Q.* Has she any other name ?

*A.* No—her name was Ekua and the name of the land Motu was added to her name.

Motu—Eku is the same person.

30

*Q.* Who is the Odikro of Amotu village now ?

*A.* I am.

*Q.* According to your tradition did any stranger come to your ancestress Ekua Motu ?

*A.* Yes—his name was Apote Dekyem.

Q. What did he come to her for according to your tradition ?

A. He came there to buy something.

Q. Did he stay there or did he remove to some place ?

A. He did not stay there—it was night—he made a torch of palm leaves and went round the bush collecting snails—sometimes he went away and returned. He came again and after three days he told my ancestress that he had seen smoke rising from a place in the distance and he told my ancestress that he would go to the place to look. He went.

10 Q. Did he come back again to report where he had gone to ?

A. When he was going my ancestress told him that the people who were there were her relatives—he went but he did not return.

He returned and reported that he had seen the place that he liked the place and would go to the place where he had seen the smoke.

That is all I know.

He did not return again.

*Cross-Examined :*

Q. Did your ancestress ever tell you that Apote Dekyem ever went to a King of Anomabu ?

20 A. I was not told that.

Q. Did this man come from Osurasi according to your tradition ?

A. Yes.

*In reply to Court :*

Q. In what way was your ancestress related to the people then at Abuonu ?

A. They were of the same family of the Nsona clan.

Q. And he came all alone ?

A. No he came with some people.

Q. Did some of these people remain in your village ?

30 A. No.

*Cross-Examined :*

Q. Was that person in the place where the smoke arose related by blood to your ancestress ?

A. (Question asked twice and twice evaded—question repeated a third time)—“ Yes by blood ”.

Q. Can you describe that relationship ?

A. The person at the place where the smoke arose had a different father and mother from my ancestress.

Q. Where were you about 16 years ago ?

*In the  
Land  
Court,  
Cape  
Coast.*

*Defendants'  
Evidence.*

—  
No. 30.

Kwesi  
Kruma,  
5th  
Witness,  
3rd July  
1947,  
Examina-  
tion in  
Chief,  
*continued.*

Cross-  
examina-  
tion.

Reply to  
Court.

Cross-  
examina-  
tion,  
*continued.*



*In the  
Land  
Court,  
Cape  
Coast.*

*Defendants'  
Evidence.*

No. 30.  
Kwesi  
Kruma,  
5th  
Witness,  
3rd July  
1947,  
Cross-  
examina-  
tion,  
*continued.*

A. At Amosima in Asebu State.

Q. Is any one living now at Motu ?

A. Yes.

Q. How many miles is it from Abuonu ?

A. Two miles.

Q. I put it to you that there is no one living there now ?

A. There is : one is called Kwesi Japi and others.

Kwesi Japi was at Asebu but recently I directed him to live at Motu.

Q. Before you directed him to live at Motu was anyone living there ?

A. Yes—one Yaw. He has lived there all his life.

10

I put him there.

I cannot remember when I put him there.

I put him there about 30 years.

Q. Before you put him there was the place empty ?

A. I sent him there because all the rest had died.

*No Re-examination.*

(This witness may return home if he wishes—he is said to be suffering from a rupture.)

No. 31.  
Kofi  
Insin,  
6th  
Witness,  
3rd July  
1947.  
Examina-  
tion in  
Chief.

No. 31.

KOFI INSIN—6th Witness.

20

KOFI INSIN (male) sworn states in Fanti : Adontenhene of the Asebu State. Am Chief of Putubiw. Putubiw village is in Asebu State.

Q. Who was your immediate predecessor on the Stool of Putubiw ?

A. Kwesi Egyir.

Chief Kweku Apawu is the Chief of Abuonu. Abuonu is in Asebu State.

Q. Land on which you live has it a boundary with any Chief ?

A. Yes—it bounds with Apawu (1st Defendant).

Q. If you beat drum in your village, can it be heard at Abuonu ?

A. Yes—when they play their drum, we hear it.

30

Q. Can you tell the Court the name of your boundary with Apawu ?

A. There is a grove between us.

Q. Have you heard by tradition of one Apote Dekyem ?

A. Yes.

Q. What nationality had he ?

A. My predecessor Egyir told me he came from Akim Osurasi.

Q. When he came to Abuonu was anyone living there ?

A. Yes—there were people.

Q. Can you tell the names of any people from your village who had farmed on any portion of Abuonu land ?

A. Yes. Kweku Anobi farms on Abuonu land—he has made a cocoa farm.

*In reply to Court :*

He is there to-day—but is not well. I am not a relative of his.

10 *Examined :*

Besides him there is Kobina Darkwa farming on Abuonu land—he has a cocoa and a corn farm.

This is Kobina Darkwa. (Points to man brought into Court.)

*Cross-Examined by Sekyi :*

Q. Do you know Kwesi Ankuma of Brebia in Asebu State ?

A. We had an Ohene called Kwesi Ankuma who lived at Putubiw.

Q. You had an Omanhene at one time called Kwesi Ankuma ?

A. Yes and I knew him.

Q. When he was Omanhene he lived at Brebia and not at Putubiw ?

20 A. Kwesi Ankuma was Ohene of Asebu State—when I met him as Ohene he lived at Putubiw.

He was succeeded by his nephew called Ejumaku. Ejumaku then became Ohene of the whole Asebu State. Ejumaku abdicated and after that one Mr. Arthur became Omanhene.

Q. Was he given another name after he was made Omanhene ?

A. Yes—Amanfi II.

Q. Did you know of an Omanhene of Asebu called Kweku Arhin ? Who lived at Putubiw ?

A. No. I have never heard of him.

30 I am in the place of the Chief of Putubiw who was called Kofi Arhin. Kofi Arhin was never an Omanhene.

Q. When Kwesi Ankuma was alive what was the physical condition of Asebu Amantsindu ?

A. There were huts.

Q. Did the Omanhene ever stay there ?

A. I met the Omanhene living at Putubiw but recently we have made a new Omanhene and he lives at Asebu Amantsindu.

*In the  
Land  
Court,  
Cape  
Coast.*

*Defendants'  
Evidence.*

No. 31.  
Kofi  
Insin,  
6th  
Witness,  
3rd July  
1947,  
Examina-  
tion in  
Chief,  
*continued.*

Cross-  
examina-  
tion.

*In the  
Land  
Court,  
Cape  
Coast.*

*Defendants'  
Evidence.*

*No. 31.  
Kofi  
Insin,  
6th  
Witness,  
3rd July  
1947,  
continued.*

*In reply to Court :*

*Q.* Which is the historic seat of the Omanhene of Asebu ?

*A.* My ancestors told me that the first Omanhene stayed at Asebu but went away up towards heaven.

*Cross-Examined by Sekyi :*

*Q.* Where did Ejumaku live when he was Omanhene ?

*A.* At Brebia.

When I grew up I found him living at Brebia.  
The Ahinfie was at Putubiw.

*Q.* Was Mr. Arthur related to Kwesi Ankuma or Ejumaku ?

10

*A.* That I am not able to know.

*Reply to  
Court.  
Cross-  
examina-  
tion,  
continued.*

*In reply to Court :*

Yes I am Chief of the town where an Omanhene lived. I do not know all the history. I know what my uncle told me.

*Cross-Examined :*

*Q.* Has the Omanhene of Asebu got a Stool ?

*A.* He has.

*Q.* Where is it ?

*A.* It is in my custody at Putubiw.

*Q.* And that Stool lies in a family ?

20

*A.* Yes.

*Q.* In what family ?

*A.* Anona family.

Ejumaku was not of Anona family. He was of the Kwonna family.  
Kwesi Ankuma was of the Kwonna family.

*Q.* What family was Arthur, Amanfi II ?

*A.* Abadzi family.

*Q.* And his relatives (nephews) are still here in Cape Coast.

*A.* I do not know.

*Q.* Mr. Arthur lived in Cape Coast before he was taken to Putubiw to be made Omanhene ?

*A.* He was then living in Cape Coast.

*Q.* And he lived here with his relatives ?

*A.* I cannot say.

*Q.* The Stool then went from the Kwonna Family to a man of the Abadzi family ?

A. Yes.

Q. What was the present Omanhene before he became Omanhene ?

A. He was a clerk.

Yes—I've heard he was the District Commissioner's clerk.

Q. In fact he had nothing to do with the Stool at the time ?

A. At that time he was not attached to the Stool.

*In reply to Court :*

Q. At the time you heard he was the District Commissioner's clerk did you anticipate that one day he would occupy the Royal Stool ?

10 A. When the Elders took him to be an Omanhene I had not been put on my Stool.

Q. Since the present Omanhene has been there have you heard that he does not rule by the Stool but by the sword ?

A. No—he has a Stool.

Q. Is that stool a new one ?

A. I met it when I was put on the Stool.

I was put on the Stool 6 years ago.

It had the appearance of an old Stool then.

20 Q. You know that when Amanfi II died there was a dispute as to who was to succeed him ?

A. I did not see any dispute or hear of any.

Q. None of Mr. Arthur's nephews were taken as Omanhene ?

A. No.

Q. None of Kwesi Ankuma's grand nephews were taken ?

A. No.

Q. And then they took a political office clerk called Ashun and made him Omanhene ?

A. Yes.

Q. What is Ashun's family ?

30 A. Anona.

Our doctrine is that if you are a young man and led a good life you can be taken to be an Omanhene irrespective of family.

Any free born person in the Asebu State is eligible to be made an Omanhene.

Q. When did the first Omanhene of Asebu say " where are my lands, I want them back " ?

A. I have not heard that before.

Q. Did your ancestors tell you what you did with your lands when you had no Omanhene ?

*In the  
Land  
Court,  
Cape  
Coast.*

*Defendants'  
Evidence.*

No. 31.  
Kofi  
Insin,  
6th  
Witness,  
3rd July  
1947,  
Cross-  
examina-  
tion,  
*continued.*  
Reply to  
Court.

Cross-  
examina-  
tion,  
*continued.*

*In the  
Land  
Court,  
Cape  
Coast.*

A. No.

Q. Have you ever heard that when there was no Omanhene each of the small Asebu villages attached themselves to different Omanhene ?

A. I have not heard that.

*Defendants'  
Evidence.*

*In reply to Court :*

Q. If two of those villages had a dispute (when there was no Omanhene) to whom would they resort to settle that dispute ?

A. It would be taken to the Safuhene.

Yes there is an Omanhene Safuhene and an Asafo company Safuhene.

No. 31.  
Kofi  
Insin,  
6th  
Witness,  
3rd July  
1947,  
*continued.*  
Reply to  
Court.

*In reply to Court :*

10

Q. How many Ohenes were there in the Asebu State apart from the Omanhene ?

A. There are about 12.

Q. Are those 12 of equal rank ?

A. They are of different ranks.

Cross-  
examina-  
tion,  
*continued.*

*Cross-Examined :*

Q. You have your lands at Putubiw ?

A. Yes.

Q. The whole land of Putubiw is yours ?

A. Not all.

20

Apart from mine—families own land there.

My family is one of them owning land.

Q. That is the same in all the Division of Asebu ?

A. Yes.

Q. Is that so at Mouri ?

A. Yes.

Q. Do you know that for a long time before Kwesi Ankuma there was no Omanhene at Asebu ?

A. Yes.

I was not told that from the time the first Amanfi “ went up ” no one had been made Omanhene until Kwesi Ankuma.

Q. When Kwesi Ankuma came did he claim any land not then in his control to be Asebu land ? As Omanhene is doing now ?

A. I have not heard that by tradition.

Q. When Ejumaku succeeded did he make any such claim ?

A. I did not hear that he had any land case.

Q. What about Amanfi II ?

A. I did not hear that he litigated about land.

Q. Since you became an Adontenhene has there been any meeting in respect of getting back lands owned in the old days ?

A. No meeting has been held.

Yes my ancestor told me my land bounds with that of Abuonu.

Q. Your tradition has not told you that when there was no Omanhene at Asebu that they went to the Omanhene at Anomabu ?

10 A. My ancestor said that they made some mark at Anomabu. It was said that Apawu had made the mark.

*In reply to Court :*

Q. When did your ancestor tell you that ?

A. That was when I returned home from Sekondi at Influenza time (i.e. 1918).

*Cross-Examined :*

Q. I put it to you that before Amanfi II came on the Stool the Asebus did not claim these Abuonu lands ?

A. I have not heard that they were hearing any land case.

*Re-examined :*

20 Q. Can you remember how many years since you were put on the Stool ?

A. Six years.

My predecessor was an Adontenhene—so when I succeeded him I became an Adontenhene.

Q. How many of your ancestors have been Chiefs of Putubiw ?

Have you heard of any time when one of your ancestors was not a Chief of Putubiw ?

A. I have not.

30 Q. By tradition which town was the “ Ahenkoro ” (principal seat) of the Asebu State ?

A. Asebu Amantsindu.

*In reply to Court :*

Q. Does tradition tell you why that historic seat was removed to Putubiw ?

A. When they came from the sea and were many each Asafo company went out to found a village.

Q. Does history tell you what made that more necessary ?

A. That I would not know.

Adjourned to 2.30 p.m.

*In the  
Land  
Court,  
Cape  
Coast.*

*Defendants’  
Evidence.*

No. 31.  
Kofi  
Insin,  
6th  
Witness,  
3rd July  
1947,  
Cross-  
examina-  
tion,  
*continued.*  
Reply to  
Court.

Cross-  
examina-  
tion.

Re-  
examina-  
tion.

Reply to  
Court.

*In the  
Land  
Court,  
Cape  
Coast.*

Resumed at 2.30 p.m.

No. 32.

KOBINA EDUAKU—7th Witness.

*Defendants'  
Evidence.*

No. 32.  
Kobina  
Eduaku,  
7th  
Witness,  
3rd July  
1947.

KOBINA EDUAKU (male) sworn states in Fanti : Come from Putubiw in Asebu State. Nana Insin (last witness) is the Chief there. I am in my father's place now as Tufuhene. Am a farmer. My farm is on Apawu's land. The land is called Botosi.

*In reply to Court :*

I did not see the surveyor.

*Examina-  
tion-in-  
Chief.*

*Examined :*

10

Grow cocoa and corn.

*Q.* Who gave you the land to farm ?

*A.* Apawu (Defendant).

*Q.* Is your cocoa bearing now ?

*A.* Yes.

I am cropping and selling.

*Q.* How many years is it since you first picked the cocoa and sold it ?

*A.* Fifteen years this year.

*Q.* Did you pay anything to Apawu for giving you permission ?

*A.* Yes when I picked my cocoa I paid " Ebusa " to Apawu. Have 20 done this since I started to pick.

*Q.* Do you pay " Ebusa " to any other person ?

*A.* To no one.

*Q.* Has Apote Dekyem ever come to you to ask for any payment of " Ebusa " ?

*A.* No.

*Q.* Besides yourself do you know other natives of Putubiw land who farm on Abuonu land ?

*A.* There are others. There are many.

Yes there are over ten.

Kweku Anobi is one of them also Kweku Nuama.

30

*Cross-  
examina-  
tion.*

*Cross-Examined by Sekyi :*

*Q.* I put it to you that you or any of the people you have mentioned have any cocoa on the land ?

*A.* I have cocoa.

*Q.* Do you know anything about the dispute between Elizabeth Smith and Apawu ?

*A.* I do not know anything about that dispute.

*Q.* While you were farming did any dispute arise as to the land on which you were farming ?

*A.* Not until this one.

*Q.* How long had you been farming when this dispute arose ?

*A.* I could not say.

*Q.* Have you cocoa farms in any other place ?

10 *A.* No.

*Q.* How many years passed from the time to (*sic*) first planted the small trees until you first picked the fruit ?

*A.* 4 years.

I know Sorudofu.

*Q.* Did you hear of a dispute between a woman of Sorudofu and Apawu and 3 others about this land ?

*A.* (Question repeated 3 times)—I have said that the only dispute that I heard of was this one.

20 *Q.* You were permitted to plant corn in this land and you have never planted cocoa ?

*A.* I have cocoa there.

*Q.* How many cocoa trees have you planted there ?

*A.* I have not counted the trees.

*Q.* From whom did you buy the seeds ?

*A.* From Jukwa.

*Q.* At the time you were working on the farm did you know that Apawu was going to Anomabu ?

*A.* That I did not know. All I know was that he went to Asebu.

30 *Q.* How long had you been farming there before you saw Apawu going to Asebu ?

*A.* When I received permission from Apawu he was an Asebu man.

I knew him to be an Asebu man before.

*In reply to Court :*

*Q.* For how many years had you known him before you started farming on Abuonu land ?

*A.* (Repeated 3 times)—I am at Putubiw and he is at Abuonu. (Evades question.)

*In the  
Land  
Court,  
Cape  
Coast.*

*Defendants'  
Evidence.*

No. 32.  
Kobina  
Eduaku,  
7th  
Witness,  
3rd July  
1947,  
Cross-  
examina-  
tion,  
*continued.*

*Reply to  
Court.*



*In the  
Land  
Court,  
Cape  
Coast.*

*No Re-examination.*

(A highly unsatisfactory witness.)

*Court to Assessor :*

*Defendants'  
Evidence.*

No. 32.

Kobina  
Eduaku,  
7th  
Witness,  
3rd July  
1947,  
*continued.*  
Court to  
Assessor.

*Q.* If a person farm on the Ebusa system in circumstances as had been described in this case—would the tenant pay to the Head of the Family, to the Odikro or to both ?

*A.* He should pay to the Odikro and not to the Head of the Family. If the Odikro were a stranger—he would not receive it—but otherwise he would. He used “Ebusa” for makings of libation etc.

No. 33.

10

ASANTI KWEKU—8th Witness.

No. 33.  
Asanti  
Kweku,  
8th  
Witness,  
3rd July  
1947.  
Examina-  
tion in  
Chief.

ASANTI KWEKU (male) sworn states in Fanti: Native of Asanti Bekwai. Watch repairer. Live at present at Abakrampa. I know Chief Apawu (Defendant). Know him at Potasi. My uncle came from Asanti to Potasi. My uncle's name was Osei Etu. I was then young. I was at Bekwai and decided to find where my uncle was and to go to him. I met him at Potasi. That was about 6 years ago. My uncle is dead. My uncle had a cocoa farm there. He died about 2½ years ago—I succeeded him. I pick the cocoa. I gave Apawu “Ebusa”—I give him one third of the produce.

20

*Q.* Who is in charge of that farm now ?

*A.* I have given it to my young friend Karuma to look after it. Karuma is in this Court now.

*Cross-  
examina-  
tion.*

*Cross-Examined by Sekyi :*

*Q.* You have no cocoa in this place ?

*A.* I have cocoa there.

*Q.* You, yourself, have not worked on this farm at all ?

*A.* I have not made any new farm.

*Applica-  
tion for  
Adjourn-  
ment.*

*Johnson :* I ask for an adjournment until Amanfi III can give evidence.

30

*Court :* But why is he not in Court ?

*Johnson :* He has gone to Accra—I do not know why he has gone there—Mr. Williams will know.

*Court :* I will await Mr. Williams' return to the Court for a few minutes.

*Court to Williams :*

The last witness, Mr. Johnson tells me that your last witness is Chief Amanfi III and that he has gone to Accra.

*Williams* : I understand he is there on public affairs (1) I understand on a Government affairs and the other to consult the doctor and that he will be here tomorrow.

*In the  
Land  
Court,  
Cape  
Coast.*

*Court* : Why was I not told about this ?

*Williams* : We thought our witnesses would occupy the Court until up to today.

*Defendants'  
Evidence.*

*Court* : I will grant an adjournment until 9 a.m. tomorrow morning.

No. 33.

*Williams* : I wish to call Mr. Magnus Sampson to bring books of account to prove whether a deposit has or has not been made.

Asanti  
Kweku,  
8th  
Witness,  
3rd July  
1947,  
Applica-  
tion for  
Adjourn-  
ment,  
*continued.*

10 *Court* : These matters were concluded before me some days when I gave my ruling in this matter—but as you appear so anxious—I will grant you the very greatest indulgence and permit Mr. Magnus Sampson to be called.

*Williams* : Mr. Sampson is not here. He is on subpoena. He is in his house—ask for 10 minutes to get him.

Adjourned to 3.45.

Resumed at 4.5.

No. 34.

MAGNUS JOHN SAMPSON—9th Witness.

No. 34.  
Magnus  
John  
Sampson,  
9th  
Witness,  
3rd July  
1947.  
Examina-  
tion in  
Chief.

20 MAGNUS JOHN SAMPSON (male) sworn states in English : Secretary to Joint Provincial Council of Chiefs. I was Secretary of the Central Province Provincial Council. The archives of that Council were transferred in September 1945 to the Joint Provincial Council.

I was first appointed Secretary in 1937 to the Provincial Council. We have a Cash Book. I only have the deposit ledger here. I was subpoenaed to produce that.

The Summons in this action was issued in 1934—before my time.

*Court* : It is the Cash Book which is the evidence of cash received.

*In reply to Court* :

Reply to  
Court.

30 When we received Court fees or deposits they are all entered in the cash book. If a payment is a deposit it is entered in the Cash Book and sent to the Bank to the credit of the Council. We keep a deposit ledger.

*Q.* Those deposits made before Summons were issued. On the conclusion of a case what happened to the deposit ?

*A.* The expenses of the Chiefs are paid from it, i.e., the Judicial Council.

*Q.* Does any part of this deposit go to either of the parties ?

*A.* No—it is used exclusively for the expenses of the Chiefs.

Any balance goes back to the Plaintiff.

*In the  
Land  
Court,  
Cape  
Coast.*

*Examined by Williams :*

*Q.* If Plaintiff deposits £100 and succeeds and Council uses £50 for expenses ?

*A.* The £50 is returned to the Plaintiff.

*Defendants'  
Evidence.*

*In reply to Court :*

No. 34.

Magnus  
John  
Sampson,  
9th  
Witness,  
3rd July  
1947,  
*continued.*  
Reply to  
Court.

*Q.* If the Plaintiff loses the case and there is a balance of £50 what happens to the balance of £50 ?

*A.* It is returned to the Plaintiff. Yes it is returned to the Plaintiff in any case. The Plaintiff has to pay the Defendant's costs.

*Q.* Have you ever known any balance being returned to any party ? 10

*A.* Never. I remember that my predecessor Bannerman Martin got involved in defalcation of Council Accounts. He died in 1937.

Council appointed a Committee of Enquiry in 1937 after his death.

(Sgd.) J. JACKSON,  
J.

No. 35.

AMANFI III—10th Witness.

No. 35.  
Amanfi III,  
10th  
Witness,  
4th July  
1947.  
Examina-  
tion in  
Chief.

AMANFI III. Male. Sworn states in English : Omanhene of Asebu and one of the Defendants. I know Apawu. He is a Sub-Chief in the State. He is Sub-Chief at Abuonu and Potasi. I became 20  
Omanhene of Asebu in April 1930. Amanfi II was my immediate predecessor. I cannot say exactly when he became Omanhene. I know Nana Amonu Ababio. He brought this action in respect of Abuonu land. As far as I know Abuonu lands form part and parcel of the Asebu State over which I am the ruler. All the lands in the State were originally apportioned amongst the various families and tribes and each Head of the tribe serves the Stool with the land apportioned to him. It is Stool land of the State, and Abuonu land is one of the portions so treated and as far as I know it is the property of the ancestors of Apawu's ancestors and is situate 30  
right in the middle of the State. One of the villages in the State called Putubiw and which is the seat of the Adontehene is situate about 1½ miles from Abuonu. At Putubiw lies the Paramount Stool of the State and there I visit annually to make the annual sacrifice. To move the old seat would not be approved in the olden days but it is recognised in this modern time, I instance the Denkyera Ohene moving from Jukwa to Dunkwa, the Omanhene of Gomoa Assin moving from Ogwan to Appam and the Omanhene of Nkusukum from Yamoransa to Saltpond. Also Omanhene of Abura from Obohin to Abakrampa. No objection provided annual 40  
festival is observed at the historic seat.

Q. As far as Stool history goes did you have any trouble with Anomabu ?

A. Yes during the time of Amanfi II—sometime about 1921 or so and the Omanhene of Asebu sent a petition to Mr. C. W. Welman, then Secretary for Native Affairs.

*In the  
Land  
Court,  
Cape  
Coast.*

*Defendants'  
Evidence.*

Q. As a result of that petition, was any action taken ?

A. Government ordered a survey of lands in dispute between the States of Asebu, Abura, Anomabu and Nkusukum. Lands were surveyed and Paramount Chiefs agreed to submit the matters in dispute to an arbitrator to be appointed by the Secretary for Native Affairs. (This is inadmissible until the original petition has been produced and proved in proof of these facts.)

No. 35.  
Amanfi III,  
10th  
Witness,  
4th July  
1947,  
Examina-  
tion in  
Chief.  
*continued.*

Q. Before Amanfi II came on the Stool had there been an Omanhene ?

A. Yes Amanfi Bentsi and before Amanfi Bentsi was Amanfi I.

Q. Did you have any Omanhene called Kwesi Ankuma ?

A. Yes he succeeded Mbill. Mbill succeeded Amanfi Bentsi.

Q. It has been suggested that for the last 100 years Asebu State disintegrated and was without Omanhene ?

A. That is not correct. During the Karikari war (1873) the Omanhene was Kwesi Ankuma. He took part in that war (Sir Garnet Wolsely). He was awarded Queen's Medal for his services. This is it. It is handed down from Omanhene to Omanhene and is regarded as one of the Stool property.

*Court :* The Medal now put in evidence is in respect of the Ashanti War 1896. (Admitted and marked "A".)

*Examined :*

Q. It is suggested that Asebu only became a State in 1914 ?

A. That is not correct.

In the Native sense an "Oman" comprises various villages put together but not separated—the lands adjoin one another.

Q. You have heard of the Effutus ?

A. Yes.

Q. According to your tradition who came first Effutus or Asebus ?

A. According to our tradition the Asebus met Etsis (Effutus). Traditionally we were at one time living by the side of a river called Silu in Egypt. Immediately it is said we came from Benin—but it is said they came by sea.

Q. Who was the leader of the people who came from Benin ?

A. Amanfi I. There were two leaders Amanfi I and his brother Kwaja and his sister Amanfiwa. They first landed at a place called

*In the  
Land  
Court,  
Cape  
Coast.*

Asekyirebadzi or Fumfumpo between Mouri and Biriwa. Amanfi I settled at Asebu—Amantsindu with his sister. His brother Kwaja settled at Mouri.

*Defendants'  
Evidence.*

Q. How far beyond Asebu Amantsindu—going in a northerly direction did the family go ?

No. 35.  
Amanfi III,  
10th  
Witness,  
4th July  
1947,  
Examina-  
tion in  
Chief,  
*continued.*

A. Up to a stream called Krado on which now stands village Kwadeoja—which was the boundary between Asebu people and Etsi people. Etsi people were in the interior and some were on the coast. I know Anomabu. Etsi people originally occupied Anomabu and are known as Nsuanu-Etsi (Etsi on the coast) and Anomabu are to this day addressed as “ Nsuanu Etsi ”. 10

If I were saluting the Omanhene of Anomabu and his people that is the expression of courtesy and custom. We (Asebu) are addressed as “ Munumkum Asebu ” (the cloud that cannot be seen through—meaning “ very many ”).

*Cross-  
examina-  
tion.*

*Cross-Examined by Sekyi :*

Q. And what are these people of Benin supposed to have done to have acquired the land you own now ?

A. It was unoccupied.

Q. There is no fight recorded between Fanti and Asebu ?

20

A. Not in respect of land. There was a fight which resulted from Fantis being maltreated by Asebus.

Q. Were not the Asebus scattered and defeated by the Fantis ?

A. No. Cannot say how long ago this was.

Q. It was long before the Ashanti wars commenced ?

A. May be.

Q. Have you any tradition that Asebus ever approached Fantis for leave to re-occupy any places ?

A. No.

Q. Were you talking about the family Stool ?

30

A. No—the Oman Stool belonging to the Oman of Asebu.

Q. Was it a thing they brought from Benin ?

A. Yes—according to tradition.

Q. Had he formed an Oman from the place he left ?

A. I cannot say. The Fantis came under three generals without Stools and it was only when they settled by the coast at Mankessim that a Stool was created and the first man who sat on it was Edua Nu-Egyin at Mankessim.

Q. When Asebus came they had a Stool ?

A. Yes.

40

Q. When Amanfi came there what was his tribe or family ?

A. He had no tribe, his sister had no issue—he had no children and that is why the Stool been Oman. The brother Kwaja had children. Kwaja's descendants are now at Mouri.

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Q. Does your tradition say what Asebu did between the time of Amanfi I and Amanfi Bentsi ?

*Defendants'  
Evidence.*

A. The State was administered by a Priest who was in charge of the Gods of the State.

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Amanfi III,

Yes the Fantis were ruled by Fantis.

10th  
Witness,  
4th July  
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10 Q. Right up to the time of Amanfi II what happened to the principal Chiefs in the State. Did any take their allegiance to any one else ?

Cross-  
examina-  
tion,  
*continued.*

A. No. There was a Regent before Amanfi II came to the throne.

*In reply to Court :*

Reply to  
Court.

Q. What does tradition say was the reason for this long interregnum after Amanfi I died ?

A. They were looking for a suitable candidate.

*Cross-Examined :*

Cross-  
examina-  
tion,  
*continued.*

Q. You say Omanhene of Asebu went to the Karikari War—which ? What was Mbill's family or tribe ?

20 A. He was of Nkona tribe.

Q. And Amanfi Bentsi ?

A. He was of Nsona tribe.

Kwesi Ankuma was of Nkona tribe—but quite separate from Mbill's family. Kwesi Ankuma was succeeded by Ejumaku. Ejumaku was Ankuma's nephew in the female line.

Q. I suggest that it is only recently that tradition has been created ?

A. It is old tradition.

Q. How did Amanfi II become an Omanhene ?

30 A. He belonged to Abadzi Family—when Ejumaku abdicated Nkona family surrendered the State Stool and said they did not want it in the house any longer as they were tired of responsibilities—so Amanfi II was selected in accordance with custom by the Divisional Chiefs.

When Amanfi II died he had nephews.

Q. Do you know why his nephews not selected ?

A. I was not there.

Q. After Amanfi II died what happened to the Stool ?

A. Kwesi Mu was made Regent and the Stool always remains in the custody of the Adontenhene. At that time I was a clerk in the Government Service. I was not in any way connected with the Stool. I was just

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a member of the Oman and a native of Asebu. My family have a Stool there. My family Stool lies at Kwaja. Yes Kwaja was Chief of Mourri. My Stool is not connected with Kwaja's Stool.

*Defendants'  
Evidence.*

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Amanfi III,  
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tion,  
*continued.*  
Reply to  
Court.  
Cross-  
examina-  
tion,  
*continued.*

*Q.* The decision to get back lands which by tradition belonged to Asebu originated in the mind of Amanfi II ?

*A.* No—it was long before he came on the Stool. I cannot tell if the Chiefs served any other Stool in the interim. The Chiefs of Asebu might have saluted the neighbouring Fanti Omanhene and brought them presents when there was no Omanhene at Asebu.

*In reply to Court :*

10

*Q.* But by custom was it not a very serious offence to transfer allegiance ?

*A.* That was so.

*Cross-Examined :*

*Q.* Can you mention any such case during interregnum at Asebu ?

*A.* No.

*Q.* Take the case of Apawu and his predecessors did you know that his predecessors were subjects of Anomabu ?

*A.* What I know is that the Omanhene of Anomabu for many years has tried to obtain supremacy of the States in the country. I can instance 20  
Essiam in the Oguaa State and Ankasi, Berasi, Agona and Saman.

*Q.* In case of Apawu's ancestors do you know whether they were at any time subjects of Anomabu ?

*A.* I cannot tell.

*Q.* Do you know whether Apawu's ancestors were Osurasi ?

*A.* No.

*Q.* How do you know that ?

*A.* By Asebu tradition.

We know Apawu's ancestors were among those who originally established the Oman of Asebu. 30

*Q.* Do you know that Apawu swore affidavits as to their own positions and as to the ownership of the land ?

*A.* It came to my notice for the first time when I heard that evidence in this Court.

*Q.* Up to the first time you heard that evidence—how long have you been in touch with Apawu ?

*A.* Since my accession to the Stool in April 1930.

*Q.* Up to the time you heard this evidence here had you heard of any plot of Anomabu and Abuonu to claim Asebu Stool lands as Anomabu Stool lands ? 40

A. Yes.

Q. From where did you hear that ?

A. It was common knowledge in the State.

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*In reply to Court :*

Q. Had this common knowledge come to your notice while you were still a Civil Servant ?

A. No—it had not.

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Evidence.*

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examina-  
tion,  
*continued.*

*Cross-Examined :*

10 Q. When you came to the Stool was an official report made to you of this plot ?

A. After my installation I was informed of the disputes in regard to land in the Asebu State.

Q. Is it not true that you were elected to the Stool because you promised to get the lands which Amanfi II tried to get ?

A. It is not so.

Q. Was it not stated that Asebuhene had no Stool but only a sword ?

A. No. I was enstooled on the black stool in the Stool room and with the Sword of State I took the oath of office.

The sword is the emblem of authority to lead in war and peace.

20 The Stool represents the soul of the State.

*Reply to  
Court.*

*In reply to Court :*

Yes—the spirit of the departed ancestors.

*Cross-Examined :*

Q. Who first reported this Anomabu plot to you ?

A. The Regent, Kwesi Imu.

Q. And when he told you, what steps did you take ?

A. That was a matter for the State.

I left it to the State.

30 I can do nothing by myself unless the Divisional Chiefs authorise me to do it.

*Cross-  
examina-  
tion,  
continued.*

*Re-examined :*

Yes—I came to know of the false affidavit during the time this case was heard last year.

*Re-  
examina-  
tion.*

Case closed for the Defendants.



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*Plaintiff's  
Evidence.*

No. 36.

Henry  
Hagan  
(called by  
leave of  
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No. 36.

HENRY HAGAN (Called by leave of the Court).

HENRY HAGAN (male) sworn states in English : Licensed Surveyor, Cape Coast. In 1929 I made a survey and this plan on the instructions of both parties to this action in accordance with an Order of Court made in 1928. I was given particulars by both sides.

I did not indicate in any particular way the particulars given by each party.

I made the plan from what was pointed out to me on the land. 10 Counsel for the Plaintiff (Mr. Sekyi) gave me the particulars.

*Court :* I would point out to you Mr. Sekyi that no one who has competent knowledge of what are the boundaries of the land in dispute have evidenced that they ever showed those boundaries to Mr. Hagan. In the absence of that evidence there is nothing which I can say that the lines shewn on the plan are places shewn to the surveyor by such person—or even by person who had any knowledge whatsoever.

*Sekyi :* I am only putting it in as the plan the Surveyor made.

(Admitted and marked No. 2.)

*Johnson :* Object it was not a plan made for this case.

20

Court to  
Witness.

*Court to Hagan :*

*Q.* The scale is shewn as 1 : 1250. I am told that Botosi ruins are 2 miles from Abuonu—by your plan they are less than 400 yards.

*A.* The Plan should show 1 : 12500.

*Sekyi :* That closes my case.

*Court :* I will inspect the land tomorrow and will be accompanied by an Agricultural officer from whom I will take evidence as to the age of certain cocoa farms situate near Botosi. I will arrive at Abuonu at 9 a.m.

(Sgd.) J. JACKSON

J.

30

## COURT NOTES of Land Inspection.

7.7.47.

## IN THE SUPREME COURT OF THE GOLD COAST.

Lands Division, Cape Coast.

Monday the 7th day of July, 1947.

Before Mr. JUSTICE JACKSON.

AMONU ABABIO

V

10

APAWU &amp; ORS.

Resumed on 7.7.47 at 9 a.m.

*Inspection Notes.* (Read out in Court.)

I visited the land on Saturday (5th instant). Approaching Abuonu via Ebu I walked along the path to the Kakum River accompanied by the Assessor and Mr. Jones, an Agricultural officer. Neither the Plaintiff nor his Counsel appeared. The Defendants, but not either of their Counsel, were there. In a westerly direction I walked along a path to the Kakum River passing some cocoa farms. The ages of those trees were estimated to be of the age of fifteen years or below i.e. they had been  
 20 planted about 1932. None were older according to Mr. Jones' estimate. That is, the oldest had been planted a few months after the issue of the writ in this action.

Crossing the Kakum River I inspected two cocoa farms belonging to Asante Kweku (8th Witness for Defendants). Many trees on the farm near the river were about 25 years old and several of them were between 20 and 30 years.

Following the path in a northerly direction I passed through the hamlet of Patasi and following the right bank of the Kakum River and passing through the hamlet of Wuryeyie I continued northwards until I  
 30 had practically reached the northern top of the land near Asuboi. (Farm of Kobina Eduaku (7th Witness for Defendants)).

I then retraced my steps to Abuonu, took the evidence of Mr. Jones and returned to Cape Coast via Adisimadsi.

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No. 38.

ARTHUR JONES—Witness called by Court.

No. 38.  
Arthur  
Jones,  
Witness  
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ARTHUR JONES sworn states in English: Agricultural officer at Assuansi. During the walk over the land I formed the opinion that the average age of the cocoa trees seen on the farms was about 15 years.

The oldest tree I saw was over 25 years old—I do not think they would be as much as 30 years.

At the cocoa farm at the extreme northern end of the land—I estimate that the oldest tree we saw was between 10 and 12 years. 10

*No Cross-Examination.*

Court  
Notes.

*By Court:* I require copies of all Court proceedings referred to in evidence, or cross-examination (including affidavits) and if not put in by consent they are to be proved by the officer in charge of the original records—if they can be traced. If they cannot—I will admit secondary evidence of their contents—if the parties do not put them in—I will call for the proceedings myself and put them in as evidence called by the Court.

These proceedings were put in evidence by consent when I heard the evidence without an assessor and it is essential that they be put in. 20

*Williams:* I am prepared to address the Court finally subject to my objection to the admission of those proceedings on the following grounds:—

Apawu has admitted the questions put to him in cross-examination and therefore the records are unnecessary. If he had denied them—they are admissible for purpose of contradicting him—if he admits them they *are not admissible*.

The proceedings in the case of *Elizabeth Smith v. Apawu* and *Apawu v. Smith* in the Divisional Court and Asebu Tribunal were *res inter alios acta altere nocere non debet* between parties—not parties to this suit and therefore not admissible in evidence. 30

With regard to the affidavits Apawu admitted the question put to him in cross-examination and therefore they are not admissible in evidence.

*Court:* Objections overruled—I direct the Registrar to obtain the necessary evidence and copies of the proceedings for proof in this Court on notice to both parties.

Both Counsel are prepared to address the Court.

(Addresses taken in Shorthand by Mr. Blankson, 2nd Division Clerk.)

Williams addresses Court.

Sekyi replies. 40

Judgment reserved.

Parties will be notified of the date Judgment will be delivered.

(Sgd.) J. JACKSON  
J.

TRANSCRIPT OF SHORTHAND NOTES OF ADDRESSES BY  
COUNSEL.

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NANA AMONU ABABIO

*Versus*

KWEKU APAWU & ORS.

No. 39.

ADDRESS by Counsel for Defendants.

Mr. AWOONOR WILLIAMS addresses Court :

May it Please your Honour,

10 This case is interesting because it touches the department of legal ethnology or to quote Mr. Justice Holmes of the Supreme Court of the United States of America, a branch of legal anthropology or anthropology of the Law.

In dealing with the facts relative to the ancient history of this case, I propose to deal first with the law in the Gold Coast applicable thereto when matters of ancient history are the subject of investigation by the Court, to establish the foundation for citing such history.

20 I will in the first place direct Your Honour's attention to Schedule 2 Order 6 Cap. 4 Section 12 page 72 of the Gold Coast Laws : " On matters of public history, literature, science, or art, the Court may refer if it shall think fit, for the purposes of evidence, to such published books, maps, or charts as the Court shall consider to be of authority on the subject to which they relate."

30 Halsbury : The Laws of England 1st Edition—Volume 13 pages 478–479 paragraph 657 : " Accredited public histories are receivable in evidence as being in the nature of public documents, or, at all events, of general reputation, to prove ancient facts of a public, but not of a private or local, nature. Thus ' Speed's Chronicle ' has been admitted to prove the date of decease of an English Queen and ' Collier's Ecclesiastical History ' ' Hooker's Polity ' and other authoritative historical and theological works, to prove matters of Church doctrine and usage, while the Chronicles of Stowe and Dugdale have been rejected in proof of the creation of a peerage (j) and ' Camden's Britannia ' in proof of a local custom to sink salt pits (k) ".

40 Then page 563 paragraph 769 of the same Volume of Halsbury : " Historical works may be referred to wherever it is important to ascertain ancient facts of a public nature (u) ; and in general standard authors may be referred to as showing the opinions of eminent men upon particular subjects, but not to prove facts (a). But a history is not admissible to prove a particular custom (b) or the boundary of a country (c). An Engineer's reports as to a past state of facts not within living memory, accepted by engineers as accurate, have been admitted on the same principle as historical works (d) ".

It is admitted in Law, Your Honour, that the relation of the claim in this case between the Anomabu State and the Asebu State with regard to the land of Abonu Division is a public matter of Ancient import, therefore, histories of the Gold Coast can be referred to, for the purposes of

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showing the state of the country in relation to the evidence which both the Plaintiff and Defendants have given in this Court.

The Plaintiff stated that as far back as the 17th or 18th century they subjugated the Asebus—that is, they fought and conquered the Asebus and upon that principle they (Anomabus) were regarded as the owners of Abonu village and that in fact the village of Abonu form part of the Anomabu State. If their statement can be substantiated, or proved to be correct, it will thus be seen, Your Honour, that this village of Abonu would be part of Anomabu State.

I should here refer to

*Read v. Lincoln (Bishop)* [1892] A.C. (P.C.) p. 644 ; 62 L.J. (P.C.) 1, 8

*Kobina Angu v. Atta*, Privy Council Judgments 1874–1928 p. 47

and to the Judgment of Lord Halsbury page 8 :

“ But Their Lordships are of opinion that the objection is founded upon an erroneous view of the law. Where it is important to ascertain ancient facts of a public nature, the law does permit historical works to be referred to.”

Having, therefore, established these propositions of law, I must proceed to refer to Bossman's Description of the Coast of Guinea published about 1697–1700. The first letter from Bossman is dated 1st September 1700. This letter contains references to Asaboe and Anomabu kingdoms—in other words States. A State, Your Honour, in jurisprudence and International Law implies the existence of established Government with either a King or the President of a Republic.

I will go further to submit that the quest which led Europeans first to seek West Africa was for gold and that implies or connotes that the people who first settled on the Gold Coast had passed the paleolithic, the neolithic stages and had reached the age of metallurgy and the smelting of iron, and gold was one of those precious metals.

Bossman at page 45 refers to Fetu State a description of Saboe (Asebu) : then the full reference to Saboe (Asebu) begins at pages 53–55 which says “ But to leave the English to shift for themselves and to come to our description of Saboe, which begins at the bottom of this Hill, and ends about half a mile below Mouree, being in its whole extent along the shore hardly 2 miles long and about twice as broad.” This was the information at Bossman's disposal at the time regarding the size or extent of Asebu or Saboe State which cannot be pressed.

Then at page 55 he says before I leave Saboe, I must inform you that these natives have been longest known to our company, whose directors have seen two of their Ambassadors, at Amsterdam, though for long ago, that I know nothing of their reception or their errand to Holland ; of both which the present King is as ignorant as myself.

This is the independent writing or history about the peoples of the Gold Coast.

Claridge's book is prefaced by the then Governor of the Gold Coast, the late Sir Hugh Clifford.

10

20

30

40

I direct Your Honour's attention to the introduction of Sir Hugh Clifford, who was himself a great scholar at page VII " Since the manuscript of Dr. Claridge's monumental History of the Gold Coast and Ashanti first came into my hands in the summer of 1915, its publication in suitable form has been to me a matter of keen personal interest. It is not often that one of our Crown Colonies has the good fortune to number among the officials serving in it a man who possesses so many of the qualities that go to the making of a really good historian—diligence in research, meticulous accuracy, a capacity for marshalling facts, the nice sense of proportion

10 which allots to each question or incident its full, but no more than its due place in the general picture, a strongly critical habit of mind, and a thorough command of appropriate language. The exercise of all these, together with years of patient but enthusiastic labour, have been devoted to the production of the present work, and Dr. Claridge has thereby rendered to the Colony, with which he has long been connected, a service of conspicuous value."

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To show the way in which Sir Hugh Clifford esteems this work I will refer to page XV : " There is one subject upon which I feel constrained to break a lance with Dr. Claridge. His book will tend, I fear, to confirm

20 the popular belief that the ' Climate ' of the Gold Coast is one of the deadliest in the tropics. I regard this opinion as at once unsound and unscientific. Speaking as a man who has spent more than thirty years in tropical lands."

I only refer to these to show that Sir Hugh Clifford regarded the work with great satisfaction. At page XIX he says : " For the rest, I have none but the warmest admiration to express for Dr. Claridge's handling of his subject, for the long and patient labour which he has devoted to it, and for the success which that labour has achieved."

I come now to the substance of the matter. I direct Your Honour's

30 attention to page 56 where there is a map of the various kingdoms ; Fetu State and Saboe State and Fantyn State, etc.

*I refer to page 84.* This occurred in the year 1598 : " In spite, however, of the continued hostility of the Portuguese, the Dutch succeeded in doing what neither the English nor French had ever attempted and founded Settlements of their own on the Gold Coast. In 1598 they formed an alliance with the King of Saboe and established a lodge at Mori."

*At page 144 Claridge says :* Sometime before this, the Dutch had instigated the King of Fetu to refuse the Assins permission to pass through his territory. These people used to bring a great deal of gold to Cape

40 Coast Castle, and the Dutch hoped in this way to divert the trade to their own settlement. The king having complied, and plundered some of the traders on their way down, the Assins declared war against him and were assisted by the English with arms and ammunition. The King of Saboe was also paid to help them, and allied army inflicted a crushing defeat on the Fetus, whose King was forced to fly to Elmina for protection. *The victorious army, consisting of about 20,000 men under the King of Saboe and Nimfa, the Tufuhin of Assin, returned to Cape Coast while Phillips was there and was followed soon afterwards by the brother of the fugitive King of Fetu, who had been enstooled in his stead and had now come down to swear allegiance to the English.*

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*Then at page 200 he says : " Finally the King of Saboe, at the request of the Anomaboos, undertook to act as mediator, and a truce was agreed to by which the Anomaboos guaranteed to make good the damage they had done to the fort, and gave hostages for its due performances."*

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*continued.*

Your Honour will notice the King of Saboe doing service to the predecessor of the Omanhene of Anomabu, the present Plaintiff.

There was a serious trouble between the English and the Anomabus and when the Anomabus were having the worse of it, they approached the King of Saboe to settle the dispute. These facts are submitted to prove the indisputable circumstances and positions of the Kings of Asebu State 10 during the 15 century as independent entities in charge of their respective native States and according to the evidence before the Court the Ahinkro of the Asebus was known as the " Asebu Amantsindu "—according to the evidence that place has been the headquarters since.

I believe that in cross-examination the Plaintiff stated the ancient seat or headquarters of Asebu, according to tradition, was where it is now. He stated further that when you leave Abuonu you come to Asebu, the headquarters of the State, and from there you go to Anomabu. Abuonu is 4 miles from Asebu headquarters or capital and 14 miles from Anomabu. The question, therefore, is from the propinquity of the place, 20 is it likely that a division four miles from the Asebu capital would become a sub-division of the Anomabu State 14 miles away? The facts are against it, and the Plaintiff, Amonu Ababio, said in cross-examination he did not know the boundary between the Anomabu State and Asebu State. If that is the case on what principle does he come here to claim that Abuonu is a division under the Anomabu State? He stated that there were no people on Abuonu land—it was virgin forest with two rocks—when the Anomabus first settle there; but it was shewn and admitted by the Plaintiff that the Asebus who are Etsis were at Asebu long before the Fantis arrived on the coast; Anomabus are Fantis; therefore the 30 Asebus were on the land long before the Anomabus. The Plaintiff has failed to establish his case. His allegation that he claims Abuonu on the principle of conquest has no foundation or proof. If there was such a war and Asebu had been reduced to a vassal state of Anomabu, according to Native Customary Law the Asebus will pay tribute. The Plaintiff admitted that the Asebus have never paid tribute to the Anomabus. The question was put to Plaintiff and admitted by him that the Denkyiras when they held the sway on the Gold Coast exacted tribute. And that when the Denkyiras were overcome by the Ashantis, the Ashantis did likewise. He anticipated the question: If what you say is true why 40 did not the Anomabus exact tribute? Referring to Concession Enquiries Numbers 164–169 (Cape Coast), F.L. Reports 148; see also *Omanhene Kweku Duah v. Omanhene Kwamin Tandoh* Privy Council Judgments 1874–1928 page 109 the right to tribute is based on ownership. The Plaintiff has not produced a truthful evidence in support of his claim that Asebu was ever conquered by the Anomabus. He must substantiate that from any of the histories I have referred to. He admitted that his claim to the ownership of Abonu is based on the fact that one Aportuo Dakyem came from Osorase in Akim and settled at Abonu; but he admitted that the incursion or invasion of the people from Akim Osorase into the 50 Gold Coast took place in 1706, in the 18th century after the Etsis.

I deal now with the next point: Illiterates giving evidence before these Courts. As to the value to be attached to their evidence the judgment of Chief Justice Griffith in *Ackwei* versus *Totimeh*, Renner's Reports Vol. I, page 152: He says—"But one has to recollect that the evidence there was given through an interpreter, and also how inaccurate witnesses are in making statements which they would correct the next minute if cross-examined on them."

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*Addai v. Daku*, Redwar's Comments on the Gold Coast Ordinances, pages 231-233. The Judgment delivered by Smith, J. :—

10 "On the second point (i.e. whether the Gift was revocable or not) it does appear from part of evidence of the Respondent that it was an absolute gift. The evidence to which I refer is as follows, and occurs in the examination by the Court. The land I gave to Defendant I gave to him as his property.

Q. So that he can do what he likes with it ?

A. Yes.

Q. If he likes he can sell it ?

A. Yes.

20 Later on he explains what he means by saying: The land which I gave to Defendant I now claim to recover as he wants to claim the whole. This clearly indicates to me he never intended by his answers to the questions to convey to the Court that he had made an absolute and irrevocable gift of the land to the Appellant. And here again the Judge of the Court below was in a better position to judge whether the witness was answering the questions fully understanding their import, or as so frequently happens was answering without thinking."

30 I refer lastly to *Toku v. Armah* Fanti Law Reports pages 58-62. This was a case, Your Honour, which the Chief Justice Hutchinson tried in 1890 and was of the opinion that the witnesses have committed perjury and that they should all have been sent to prison, but the Chief Justice refrained from doing so. Mr. Sarbah's observations on the Chief Justice's caution are pregnant or noteworthy. "The power so to do is a dangerous one, and in a country where the evidence is given in faulty or imperfect English, or through the medium of an indifferent interpreter, one should hesitate a long while before inflicting such a punishment."

As to conflicting evidence of tradition, I draw Your Honour's attention to the judgment of Lord Buckmaster in the Privy Council cases of *Kweku Duah v. Kwamin Tandoh* previously mentioned.

40 I will deal with an admission by Apawu in the previous case *Elizabeth Smith v. Apawu* and *Apawu v. Elizabeth Smith* in the Affidavits sworn in those cases. In Law the admissions by litigants in a previous case, although for the purpose of that case are binding and conclusive, yet they are at large in subsequent cases between the parties and are not binding or conclusive. The admissions whatever that may have been in the previous case by Apawu are not binding and not conclusive against him in this case. The parties in *Elizabeth Smith* vs. *Apawu* and *Apawu v. Elizabeth Smith* are not the same in this case. I refer to passages in



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Williams,  
*continued.*

Halsbury Vol. 13 First Edition page 357 paragraph 497 : " The rules as to how far parties are concluded by their allegations and admissions in pleadings are as follows : The facts actually decided by an issue cannot again be litigated between the same parties, and are evidence between them, and conclusive for the purposes of terminating litigation. So are the material facts alleged by one party which are directly admitted by the opposite party, or indirectly admitted by making a traverse on some other facts, but only if the traverse is found against the party making it. But the statement of a party in a declaration or plea, though for the purpose of the case he is bound by them, ought not to be treated as confessions 10 of the truth of the facts stated."

I would further refer to the same Book of Halsbury Vol. 13 page 456 paragraphs 633 and 636 at page 458. The particular form in which an admission was made is, as far as its admissibility goes, generally immaterial. Thus, not only are solemn admissions on oath, such as those contained in affidavits and answers to interrogatories in the same or former proceedings receivable against a party, but also declarations in Wills, recitals or description in deeds etc.

The admission by a subject or sub-chief is not admissible against and is not binding on the Paramount Chief ; therefore the admission, if any, by Apawu and his Elders is not binding on the Defendant Amanfi III. 20 If the admissions were believed to be true, what was the conduct of Apawu and his elders and councillors of Abonu ? Did they go and pay tribute or allegiance fee to Anomabu ? Had they done so that would have been strong evidence against them. When they swore to the affidavits there being differences between them and the then Omanhene of Asebu they were trying to shift to Anomabu.

From the nature of the case historically, is it possible for the inhabitants 4 miles away from Asebu to be subjects, together with the land on which they settle, of Anomabu which is 14 miles away ? Their conduct after 30 the affidavits shows that in the first place they did not believe in what they swore.

Your Honour, possession is nine points of law. The Defendants are in a possession of Abonu in close proximity to the State of Asebu and that Abonu is a part of Asebu, and that is supported by the admission of the Plaintiff that he does not know the State boundary between Anomabu State and Asebu State.

He admits that there are States having villages and divisions between Asebu and Anomabu—that is, Nkusukum and Abura States have villages between the southern portion of Anomabu. This is this bugbear. Your 40 Honour, how could Anomabu jump over Asebu town to claim land four miles beyond Asebu ?

The Plaintiff is seeking a declaration of title to Abonu land. The evidence prove that the Defendants are in possession. Apart from the tradition the Plaintiff does not know the boundaries. His evidence must be clear and conclusive before the Court can accept it : *Baruwa v. Ogunshola*, 4 W.A.C.A. page 159.

So far as the evidence is concerned, your Honour has been to the *locus in quo*.

Kofi Adjin stated that Apotuo Dechem was of the same Nsona clan as himself and that his mother was left at Brofuyedru and so does not know Apoto Dechem who originally came from Osorase in Akim, that the Apotuo Dechem when installed as Odikro did not report the fact to witness and his brother; that they came to Abonu to make peace with Apotuo Dechem. Kofi Adjin called his native name to show that his evidence was not fabricated. According to native custom Apotuo Dekyem would owe a double allegiance: that arising from his residence at Abonu to Asebu State and the other where he came, i.e., Anomabu and Akim Osorase. When he came from Assin, he went to Anomabu first and went to another village and finally to Abonu and therefore considers himself to owe allegiance to Anomabu but the land Abonu was in fact an Asebu land. I refer to Komenda or Akitekya State—they are living on land belonging to the King of Aguagu but came from Nkusukum State. Denkeras living on land belonging to Chief Mina at Jukwa.

There is also the evidence of Chief Kwesi Beyin of Ekroful in Asebu State.

20 Then we refer to the evidence of Safuhene Kofi Adjin who gave full account of all the circumstances in which Apawu and himself swore to that affidavit. He said they did not pay any fees or tribute. Then this witness also mentioned that there were other persons farming on Abonu land from Ashanti, and other people.

I refer to the evidence of Chief Kofi Ntsin who lives at Putubiw, who said you can hear people speaking at Abonu and that by tradition Apotuo Dechem came to Abonu and settled there.

30 Kwesi Nkruma, the sick man, who gave evidence for the defence, supported the case for the Defendants. He stated that Apotuo Dechem from Anomabu first were directed to his ancestors and he was related to Kweku Apawu's ancestors.

The alleged admissions by Adjin and Apawu and elders of Abonu division and the case of *Bura and Amonu v. Ampima*. They are not conclusive and both historically and as questions of fact circumstances are against the allegations being true: *British Thomson-Houston Company, Ltd. v. British Insulated and Helsby Cables, Ltd.* 93 L.J. (C.D.) pages 467-479 :—

40 “A litigant is not prevented from asserting a contention by the fact that, in a previous suit against other parties, witnesses called on his behalf have given oral testimony to maintain the opposite contention, nor are the statements made by those witnesses statements for which he is responsible, so as to be admissible as evidence against him in subsequent proceedings. Further, the fact that the case lodged upon appeal to the House of Lords in the earlier action contained those statements does not make them admissible as evidence in the subsequent action, *for the case lodged was in the nature of a plea*, and the facts and statements it contained were not absolute admissions so as to bind the appellant in any subsequent independent proceedings.”

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Mr. A. Williams, [sic]  
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Williams,  
*continued.*

At page 479 Atkin, L.J., says as follows :—

“ I have now reviewed the whole of the authorities on the subject. They show the law as to the admissibility of affidavit evidence to be in an uncertain and unsatisfactory condition. Up to 1837 such evidence was rejected ; in that year there begins in the King’s Bench a line of authority based upon a misapprehension of Chancery procedure by the Court, and a mistaken explanation of the former authorities based upon that misapprehension. The authorities, however, are confined to the admissibility of written evidence, treating such evidence as documents the truth of which is declared by the party using them. They, in terms, rejected 10  
parol evidence as coming within the rule they lay down. In my opinion, to admit parol evidence of witnesses given in the circumstances of the present case would be contrary to established principles of evidence, and would reverse the full current of authority. I desire to say nothing as to the facts of the present case. But that a party should assert in one action what he has denied in another, and should call witnesses in one action in support of a fact which he called witnesses to deny in another, is not uncommon. It can be done with perfect honesty. In the case of a chain of contracts 20  
for the purchase of goods, where the question of quality is raised, it is quite usual for an intermediate purchaser to be compelled to face both ways, putting forward information supplied to him from either end of the chain ; and at times he has to support the different views in two actions, relying in the first action on the evidence of witnesses produced by the sellers, and in the second, on witnesses produced by the buyer, or vice versa. If the one case is disproved, I see no reason at all why he should be assumed, by calling the evidence, to have admitted its truth. In my opinion, there is no reason in public policy why the rule as stated above should not 30  
be followed.”

So far as Apawu and others are concerned *Bura and Amonu v. Ampima* dealt with facts of five stools. It had nothing to do with land. The suit before this Court is for declaration of title and is therefore not affected by *Bura and Amonu v. Ampima*. The Defendants and the Stool or Omanhene of Asebu were not parties to *Bura and Amonu v. Ampima* and are therefore not bound by that judgment. It is admitted by the Plaintiff that the people who came from Osorase in Akim came with a stool and settled there. It did not belong to Abonu people.

It is submitted that the Plaintiff has wholly failed to establish his case. 40  
The action should be dismissed or the Plaintiff non-suited with costs.

**ADDRESS by Counsel for Plaintiff.**

Mr. Sekyi. Mr. SEKYI addresses Court :—

May it Please Your Honour,

My learned friend has been citing a number of books starting with Bossman. My submission is that it is agreed that what he has referred to in Bossman and in Claridge does not do away with the fact that until this case arose Apawu, the Defendant, and the people of Abonu were not under Asebu. That has to be explained.

Your Honour, we say there was conquest, that we have been in possession since that time, that Apotuo Dechem came from Osorase in Akim. From Akim he first settled at Agirfa, but later the Omanhene Amonu I sent him to Abonu to settle at Abonu. It was in that village that he finally settled.

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We have given evidence that Apotuo Dechem's successors are still the persons in charge of the village of Abonu. It would be strange for the owner of the land to permit a stranger, a person from a totally different tribe to settle on land and keep the principal position there and also to  
10 carry allegiance to some other chief in no way connected with the chief who is supposed to be his natural ruler.

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I will refer to something of greater weight than that. My friend has referred to a Nigerian case. I refer to the case of *Bura and Amonu v. Ampima* which shows that as far back as 1891 it was not disputed that the village of Abonu was under Anomabu; and there the Omanhene Amonu applied to be joined in the case on its trial and he was joined and that was established. This is of greater weight than these histories of about 1760 quoted by my learned friend.

Mr. Sekyi,  
*continued.*

It does not do away with the fact that this place we claim was under  
20 Anomabu until this case arose and it is admitted by Apawu and Egyin and others who sided with him; they have admitted this in affidavits, but they say that they were cajoled or otherwise influenced. If this allegation is correct, the propinquity of the place to Asebu compels them to try to show that they had then no chief; but because the medal of "1873" which shows that somebody in 1896 they had a king of Asebu and that somebody must have been there to whom a report could have been made they cannot succeed. (Otherwise it would have been easy to say "we had no King so we did not know where we were.")

Mr. AWOONOR WILLIAMS :—

30 Your Honour, I must say that there has been some officials of the State to whom those matters could be reported and there was always the annual stool custom or festival.

Mr. A.  
Williams,  
*continued.*

Mr. SEKYI :—

It would never have been possible for the people of Abonu to do their services without anybody being aware of it, because if you shouted about at Putubiw people at Abonu could hear. That reduces the weight of the historical notes quoted by my friend.

Mr. Sekyi,  
*continued.*

As for the authorities quoted by him I do not think any of them have a bearing on this matter. If they are to be relied on they show the  
40 extent of the land and Bossman does not show that the State of Asebu was a crowded State when "the cloud" came to Moree. I do not know whether they indeed came, but, if they did, they must have dissipated as rain and flowed back into the sea.

I am submitting, sir, that in the case of *Bura and Another v. Ampima* that came on about the 28th September 1891 it was established in this Court that Amonu the King of Anomabu was the Suzerain over the Odikros of Abonu and is final and absolute.

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Mr. Sekyi,  
*continued.*

Now I did ask Apawu a question about the number of Stools at Abonu and he said there were five, but when I put to him the facts in this case he said there were six.

In the Statement of Claim we stated that Apotuo Dechem and Apawu's predecessor both came from Osorase and belonged to the same Clan Nsona and stayed at Abonu. That of course is denied and we have brought these proceedings in support of our case.

To come to the witnesses, and we have the evidence of the stepson of Apawu's predecessor, Kwa Twi, that he, Kwa Twi, and his successor went to serve at Anomabu.

10

As far as the village of Abonu is concerned the Odikros there have, from the time of Apotuo Dechem, been Anomabu subjects. That is established by the case of *Bura and Amonu v. Ampima*. We have never heard at any time from any Asebu man that Abonu was their property before Apotuo Dechem came for them to be able to give evidence that at that time they had an Odikro who was from Apawu's house. Somebody must have been head of it if there was a village there before the strangers came. If a man came from somewhere else and became an Odikro of the State of Asebu that would have been a different matter.

The strangers went to Anomabu and the Omanhene sent them first 20 to Agirfa before they were sent to Abonu—if any of these strangers came and settled there with position of Odikro of the same village but paid tributes to Asebu. Your Honour, at any rate, he would have to attend the annual festival of Asebu. Therefore, as I say, they would have to show, if Abonu was in existence before Apotuo Dechem became Odikro of Abonu, how this came about. Even that must be explained how a refugee came to be Odikro of that place.

I understood that the identity of the land was not in dispute.

Starting with the fact that Abonu was under Anomabu State, I come now to deal with the affidavits. If they had sworn to false statements 30 the Defendants would have had to explain how Apotuo Dechem and his descendants came to be Odikros not only once or for one occasion but throughout the whole history of the village of Abonu. If the refugees settled when the village was in existence, the Defendants would have to explain how it was possible for one who was a refugee to come and become the Odikro and keep the stool for his descendants right up to now. If the Defendants cannot explain that could it matter much whether it was by conquest that the land came into our possession or not? It is not necessary to explain why the Defendants should come here to suggest that they had abandoned their land and afterwards came to find it. 40

There was the case of Amanfi II who said "I have come to seek all my lands that have gone astray." That claim was never made by the previous Amanhene of Asebu before Amanfi II came. Amanfi III mentioned two others before Amanfi II. The man Amanfi I was said to be so huge and tall that he used to carry his sister in a barn of corn to fry the corn for him as he moved about, and that his legs were so long that he had to carry several cannon about as ballast. These stories are ridiculous and show that there is a good deal about Amanfi I which one should

hesitate to believe. They had one or two others before Amanfi II but none of them claimed this land until the time of Amanfi II who said " all my lands that went astray I want them back " and Apawu said they were nervous because when they were taken to Anomabu they were persecuted. It was open to them to go to the Commissioner at Cape Coast to ask him to get into touch with their Asebu chiefs ; they could even pretend to visit their alleged relative who had always lived in Asebu Amantsindu, and ask him to confer with any Asebu notable to bring these facts to the notice of the Police or District Commissioner that the Omanhene of

10 Anomabu was forcing them to swear to these affidavits in order to seize their lands. I submit that it was too late for them to come here and swear that they were coerced into making false statements on oath.

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—  
Mr. Sekyi,  
*continued.*

Now if it was not for the delay that was caused by the Provincial Council we are entitled to assume that they would have given evidence that they swore in the affidavits if the case had been heard in the Divisional Court. There was the first case which was in the Divisional Court where the parties were referred to a Court of competent jurisdiction. The new case was heard at Asebu in the absence of the parties. It was in connection with that case that they made an application for the case to be transferred

20 to the Divisional Court. When the Provincial Council came the Omanhene of Anomabu sued Apawu after Amanfi III had been made Omanhene.

There is no evidence but the Omanhene of Asebu stated that the case started when Apawu began to go to Asebu. There were proceedings before the Provincial Council. The evidence is that by conquest this land fell to the lot of Anomabu State. This was a statement on oath, which there was an opportunity for the other side to cross-examine upon.

We say that the land and village of Abonu have been under Anomabu all the time. We have brought the evidence of Kwamin Eyia stepson of Kwa Twi, one of the predecessors of Apawu which showed that they used

30 to go to Anomabu for the annual custom. Living on Stool land, and being Anomabu subjects, there was no necessity for them to pay tribute. They would have paid something if they were strangers. They are Anomabu people. There is a well known Fanti custom that a man cannot take tolls from the servants who serve him. Otherwise the subject is encouraged to take his Ruler's things from his own land to pay him.

The question of tolls or tribute does not arise. We are talking of Stool lands occupied by people not strangers. If any person in Abonu had land allotted to him and he chose to give to anybody else like those from Putubiw it would be something from his own part so long as he was

40 not selling the land. The Omanhene would not object so long as they were there to serve him by carrying his palanquin and beat his drum.

The position would have been different if he were a person from another State. For instance if he was a caretaker he would not be paying tolls if he worked as caretaker to check trespassers and interferences by other people. We do not consider tolls or tributes as between the Omanhene and his subjects on the land.

I am submitting therefore, that, unless these admissions by Apawu are explained away, the judgment in the case of *Bura and Amonu* versus *Ampima* and the evidence that we have led will be sufficient to entitle

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*continued.*

us to the declaration we are seeking, if not for the whole, for the part that has been proved—if not the whole. The only claim made before this case was that of Elizabeth Smith. Elizabeth Smith was an Asebu woman and it requires a lot of convincing for one to show or say that the earlier Kings who were presumed to know their traditions better would not claim what Amanfi II claimed.

I submit therefore, Your Honour, that upon the evidence and admissions, we have sufficient before this Court to entitle us to the declaration we seek.

No. 40.

10

**COURT NOTES of Evidence of Samuel Andzi Bentum, Registrar Asebu Native Court.**

26.7.47.

No. 40.  
Court  
Notes of  
Evidence of  
Samuel  
Andzi  
Bentum,  
Registrar  
Asebu  
Native  
Court,  
26th July  
1947.  
Witness  
called by  
Court.

**IN THE SUPREME COURT OF THE GOLD COAST.**

Lands Division, Cape Coast.

Saturday the 26th day of July 1947.

Before Mr. JUSTICE JACKSON.

AMONU ABABIO

V.

KWEKU APAWU.

Sekyi for Plaintiff.

Johnson for Defendant.

20

**SAMUEL ANDZI BENTUM** (male) sworn states in English :

Registrar of Asebu Native Court. These proceedings were typed by me. I have compared them with the original record and they are correct.

(Admitted and marked " 3 ".)

No. 41.

**COURT NOTES of Evidence of John Tete Odamatey, Registrar Supreme Court.**

No. 41.  
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Notes of  
Evidence of  
John Tete  
Odamatey,  
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Supreme  
Court,  
26th July  
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Witness  
called by  
Court.

**JOHN TETE ODAMATEY** (male) sworn states in English :

Registrar of Supreme Court at Cape Court. I received instructions from the Court to copy certain Court records. I have done so. I have compared the copies with the originals and they are correct. 30

(Admitted and marked " 4," " 5 " and " 6 ".)

Judgment reserved.

(Sgd.) J. JACKSON  
J.

No. 42.  
JUDGMENT.

9.8.47.

IN THE SUPREME COURT OF THE GOLD COAST.

Lands Division, Cape Coast.

Saturday the 9th day of August 1947.

Before Mr. JUSTICE JACKSON.

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No. 42.  
Judgment,  
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NANA AMONU ABABIO, OMANHENE OF ANOMABU Plaintiff

*Versus*

10 KWEKU APAWU & ORS. - Defendants  
NANA AMANFI III, OMANHENE OF ASEBU, and  
Others - Co-Defendants.

JUDGMENT.

The record shows that the proceedings which initiated the present ones were commenced in the Divisional Court at Cape Coast and that on the 22nd February 1930 Gardiner Smith, J. holding that the cause was one relating to the ownership, possession or occupation of lands held that by the provisions of Section 92 (2) (b) of the Native Administration Ordinance the Provincial Council had jurisdiction and referred the parties  
20 to that Tribunal.

On the 24th August 1931 a writ of summons was issued out of the Provincial Council of Chiefs' Tribunal at Saltpond in which Nana Omanhene of Anomabu claimed as against the present Defendants as follows :—

30 “ The Plaintiff claims as against the defendants jointly and severally so as to bind the said defendants and such of their respective female relatives in the female line as support the defendants, a declaration that the lands called Butuesi and Obuabasa, situate at Abuenu and lands immediately belonging to it are attached to the Stool on which the plaintiff sits as Omanhene of Anomabu, and (2) an injunction restraining the defendants, their servants or agents, and such of their respective female relatives in the female line as support the defendants, from dealing in any way with the said land or any portion thereof from carrying on any cultivation or other work thereon.”

The record before me contained in the docket of the Provincial Council, which has been extremely badly kept, shows that this action was struck out on the 3rd March 1934. On the 9th March 1934 Nana Amonu VIII, then the Omanhene of the Anomabu State issued out of the Provincial Council a writ of summons against this same defendants and formulating  
40 the same claim.

Counterfoil No. 11 in the Provincial Council book of writs shows that a copy of that writ was served upon Amanfi III on the 15th March, 1934.



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On the 30th December 1936 Nana Amanfi III wrote to the Secretary of the Provincial Council at Saltpond in the following terms :—

“ Sir,

Nana Amonoo VIII—Plaintiff

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Nana Amanfi III & Ors.—Defendants.

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*continued.*

With reference to the writ No. J/1934 of the 9th March 1934, in the abovenamed case, I should be glad to know what the position is.

I am

10

Yours faithfully

(Sgd.) Amanfi III

Omanhene of Asebu State.”

That I think disposes of the allegation set up in paragraph 3 of the Statement of Defence that the defendant Amanfi III, had not been made a party to those proceedings.

For several years this case was not brought on for hearing as the prescribed fees had not been paid. And on the 1st April 1945 by the provisions of the Courts Ordinance it became a cause within the jurisdiction of the land Court.

20

[sic]

On the 31st June 1946 and subsequent days this case came before me for trial without an assessor. In view, however, of the decision of the West African Court of Appeal in another case I deemed it advisable to re-hear the whole evidence with an assessor. This was done with the concurrence of counsel for both parties and for the purposes of the trial I have disregarded, wholly, that evidence as if the proceedings then were a nullity.

An amended Statement of Defence was filed by the leave of the Court on the 25th June last.

The Statement of Claim is set out in the one filed on the 24th October 1945. 30

The trial opened on the 30th June last when Mr. Williams set up the preliminary objection in law pleaded in paragraph one of the defence.

This objection I overruled in a written ruling delivered that same day.

In amplification of those reasons I would add the following remarks :—

It is quite clear that the Provincial Council took the view that they would not list the cause for hearing until the deposit prescribed in the Schedule to the Regulations made under the new repealed Ordinance had been paid. It is quite clear that Provincial Council waived the deposit when the writ was issued and in my judgment that was a matter entirely within its discretion. It clearly was no oversight. The primary meaning of the word “ remit ” as used in Regulation 41 is clearly the one set out in the Concise Oxford Dictionary and which means “ refrain from exacting or inflicting.” 40

The use of the word in that sense is again found in the Supreme Court Fees Order 1930 Part II Division II 3 where the Lord Chancellor may reduce or "remit" in cases involving undue hardship.

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Mr. Magnus Sampson's evidence shows that the deposit was collected to defray the expenses of the Judges of the Provincial Council and was used for that purpose alone. That purpose exists no longer with the cause before a Judge of the Land Court and vested as I am now with the same powers as were possessed by the Provincial Council I did waive the deposit.

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*continued.*

10 The plan dated the 16th February 1929 was made for the purpose of the case taken in the Supreme Court and referred to by me at the beginning of this judgment.

It was agreed, when the case came before me for trial without an assessor, that the whole area outlined by a red line and including the village of Abonu was in issue and not only that area shaded in pink, and was pleaded to in paragraph 8 of the Statement of Defence.

The issue before me was :—

20 " Is that area of land shown on the plan exhibited and marked as Exhibit No. 2 attached to the Stool of the Plaintiff (paragraph 2 of the Statement of Claim) or is it attached to the paramount Stool of Asebu through the Stool of Botoasi, the first Defendant ? "

After hearing the evidence I visited the land accompanied by the parties, but without counsel who appear to have been more engrossed that day in political meetings, as they told me.

I will deal first with the historical background, and, in this connection Mr. Williams referred me both to Bossman and to Claridge. The former treatise has on frequent occasions been accepted by the Courts as the work of a man now recognized as a historian. The authority of Claridge is of less weight, but, in any event, does not advance the position of the Asebu  
30 people very much.

Apart from that history, I have permitted evidence to be given on the subject by Paramount Chiefs, Linguist and Heads of Family, statements made at Stool festivals as being evidence of tradition with reference to so-called "family tradition" which more properly to be admissible, at all, in evidence, and which I would prefer to call evidence as to pedigree.

I have restricted that evidence to that as given by any Head or Senior member of a family who are by direct blood descent, the descendants of the person whom they profess was their original ancestor. To widen the scope of that evidence, in my opinion, is to fall into all the traps and  
40 inaccuracies of hearsay and inadmissible evidence.

It is agreed that many centuries ago the Asebus occupied an area along the coastline and that behind them and inland were found the Etsi tribe. It is also agreed that, originally, the Fantis migrated from a place in the North known as Techyman. And, it is evidenced before me, that they did not arrive in this part of the world in a large body, but came as small communities which amalgamated afterwards.

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As the crow flies the present town of Asebu is situate about 5 to 6 miles north of the town of Mouree on the Coast a town which Bossman describes in his "Description of the Coast of Guinea" a book published in the year 1705. Extracts from that book, to which Mr. Williams has referred me, are of great interest, in respect of the organization of the Asebu and Fanti as Bossman found them in those days.

At page 53 Bossman writes :—

" But to leave the English to shift for themselves and to come to our description of Saboe (Asebu), which begins at the bottom of this hill, and ends about half a mile below Mouree, being in its whole extent along the shore hardly two miles long and about twice as broad." 10

That is the kingdom of Asebu as it was then a State containing rather less than an area of 8 square miles, stretching inland to a depth of about 4 miles.

No mention is made of any town at the place described now as Asebu.

Then follow other commentaries on the people of Saboe and their King. It is quite clear that, at that time (1705) there was a fairly powerful and independent State known as Saboe (Asebu) having their own King. 20

At page 55 Bossman says :—

" I designed to have ended this letter with the Saboean country, but having time enough in my hands to describe the Fantynean (Fanti) land, I shall take this opportunity to do it. This country borders on the west of Saboe."

Possibly here the writer is referring to the distance within which the town of Yamoransa is now situate—a town to the West of a straight line drawn from Asebu to Mouree, originally the headquarters of the Nkusukum State and now at Saltpond, some 13 miles to the East.

Bossman at page 55 says :—

" From the foot of this hill Fantyn extends itself about nine or ten miles along the sea side, being also some miles broad." 30

He then describes Anomabu which is some 14 miles to the East of the present town of Asebu and later describes the disorganized condition of the Fanti people in the following words :—

" If the Fantyneans were not in perpetual civil divisions the circumjacent countries would soon find their power by the irruptions into their territories . . .

Here is no King, the government being in the hands of a Chief Commander, whom they call their Braffo, a word imputing leader . . . but is somewhat closely restrained by the old men, who are a sort of National Councillors, not unlike some European Parliament acting perfectly according to their inclinations, without consulting the Braffo; besides these every part of Fantyn hath also its particular chief, who will sometime scarce own himself subject to the Braffo, who hath the ineffectual name only of Supreme Power." 40

These “particular chiefs” referred to by Bossman I imagine are those now recognised as Paramount Chiefs, and of which the present Plaintiff is one.

A study of Bossman shows I think quite clearly that at that time the Asebus had an integral kingdom and that the Fantis were a loosely organised and little disciplined bodies of aggressive people, plundering their neighbours, as well as one another.

10 From 1700 to 1800 my attention has not been directed to any written history and the evidence as to what did happen in that century rests upon the traditional stories of community disputes and fights, the descendants of each tribe quite naturally placing the highest possible value upon the prowess of his own tribe.

I am inclined to the view that at this period the land, now the subject of this dispute, and land in its environs was at one time occupied or partially occupied by the Etsi Tribe, and not by either the Asebus or by the Fantis. I am fortified in this opinion by a study of the writings of Bossman—since this area is more than four miles north of the coastline and by the evidence of a witness called by the Defendants, namely, James Williams Kofi Brenya of Jukwa whose land is situate to the west of the land now  
20 in dispute who is an Etsi.

From 1800–1900 the evidence of the history of these parts as written by Claridge shows that the Fantis had by then amalgamated, and it would seem amalgamated to defend themselves against the repeated invasions by the Ashantis. History shows that they allied themselves both with the Asebus and with the British to repel those attacks and that by this time the Fantis appeared to have established themselves upon the greater part of the land formerly occupied by the Etsis. The evidence shows that these several States of the Fantis were by no means confined within one geographical area. Small communities paying allegiance to one Chief  
30 (Omanhene) occupying tracts of land separated from one another and in the area the picture of occupation of land appears to have been kaleidoscope both as to movement and subject matter. Several cases were evidenced as to this feature, coupled with the incident of allegiance upon which sovereignty was originally founded that makes these land problems difficult to unravel.

Sarba in his Fanti National Constitution at page 15 describes the position of an Omanhene and says—

40 “In ancient times the Omanhene held the whole unoccupied land in his territory as trustee for the people and as they increased so this public land was brought under cultivation.

The Chiefs of the different towns were actually placed in charge of the unoccupied land in the districts, or were considered as care-takers for the Omanhene. When a tribe was conquered it became subject of the conquerors’ Stool; these people continued to hold and enjoy the lands under cultivation; but used forests and unoccupied land as public property attached to the Stool of the Omanhene.”

*In the  
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Court,  
Cape  
Coast.*

No. 42.  
Judgment,  
9th August  
1947,  
*continued.*

*In the  
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Court,  
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No. 42.  
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1947,  
*continued.*

The case for the Plaintiff is that the village of Abonu was founded very many years ago by a man named Apoto Dekyem. This man is said to have been driven by tribal wars from his home at Akim Osorasi, and, with his followers sought the protection of the then Omanhene of Anomabu who is said to have granted him the land, now the subject of this dispute and where Apoto Dekyem then founded the village known as Abonu, and that a stool was then created under the protection of the Omanhene of Anomabu.

The case for the Defendants is that this land from time immemorial, and prior to the founding of the State of Anomabu, has been attached to 10 the Paramount Stool of Asebu through the Stool of Botuasi, Kweku Apawu, the first Defendant.

The evidence shows that both the followers of Apoto Dekyem and those of the Defendants have farmed this land for many generations and that each have their allocated portions.

Sarbah at page 15 of his "Fanti National Constitution," says :—

"In ancient times the Omanhene held the whole unoccupied land in his territory as trustee for the people, and as they increased so this public land was brought under cultivation. The chiefs of the different towns were actually placed in charge of the unoccupied 20 land in the districts, or were considered as caretakers for the Omanhene."

The latter proposition is the one set up by the Plaintiff.

It is admitted that Apoto Dekyem's ancestor was the Odikro of Abonu and that generations of the immediate descendants of the first Apoto Dekyem have been enstooled as Odikros in Abonu and that Kofi Egyebu (2nd witness) for Plaintiff is the Odikro to-day.

At page 6 of Sarba's Fanti National Constitution the position of the Odikro is defined :—

"The penin of the subsequent settlers exercises similar rights 30 over his own people and as the household grows so is that Penin assisted by a person 'sitting behind him.' *The founder of the village or his successor is now called Odikro (founder of the village)* who, in looking after the village affairs is assisted by the Penin of the new settlers, and thus arises the village Council."

The evidence of the present Odikro is that he and his predecessor in title at all times have rendered allegiance to the Omanhene of Anomabu. This fact has not been disputed by the Defendants.

In relation to the control of the land Sarbah says at page 7 of the volume already referred to :—

"The Odikro, with the village Council, has the control of such land but each person has a right to cultivate any portion of it . . . 40

"In the small settlement which has so grown into a village community, there will be subordinate Stools belonging to the junior families, which are offshoots of the present family."

I am satisfied that recognition of the suzerainty of a Paramount or Omanhene's Stool by the Odikros of such settlements is afforded by their attendances each year at the celebration of the annual festival, which the Odikros and the more prominent men on the village council attend, bringing with them presents of yams.

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It is almost axiomatic that people's conduct often speaks louder than their words.

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*continued.*

Now what has been the conduct of the parties within the limits of living memory.

- 10 I admitted in evidence copies of certain Court proceedings in which Kweku Apawu had been a party. They were cases concerning land in the environment of the land now the subject of this dispute but the present identity of those lands is indefinable. I have also admitted in evidence two affidavits sworn by Kweku Apawu (Exhibits 4 and 5), as well as the judgment delivered by Hayes Redwar, J., in the case of *Bura and Amonoo v. Ampima* reported at page 214 of Sarba's Fanti Customary Laws (2nd Edition). Mr. Williams Counsel for the Defendants objected to the admissibility in evidence of certain of these proceedings on the ground that they were not cases between the same parties. Overruling the objection I told Mr. Williams that I admitted them solely as evidence of the conduct of Kweku Apawu during the period covered by these proceedings and that is the sole weight which I attach to them.
- 20

Now I am satisfied that in 1891 when the case of Bura and Amonoo and Ampima was heard, the matter must have been notorious in the village of Abonu, a village only 3 miles distant from Asebu, which the Defendants claim is the Paramount Stool for this land, and was notorious in Asebu as well.

- It is clear from that judgment that it was the suzerainty of the Omanhene of Anomabu over the Stools of Abonu that was in dispute.
- 30 Suzerainty over Stools imputes, for the reasons already given, suzerainty over the lands attached to those Stools.

Mr. Sekyi, Counsel for the Plaintiff, has explained that the plan now exhibited in Court and marked as No. 2 was the one prepared for the action in the Divisional Court at Cape Coast and that the claim did not then include the village of Abonu, but that when the writ upon which this action is founded was issued, i.e., on the 5th March 1934, the town of Abonu and the land surrounding it was included in the claim and that is the claim before me, and the trial before me has proceeded on that understanding, despite the rather misleading description on the plan.

- 40 Although admittedly for some long period no Omanhene of Asebu appears to have been enstooled, Amanfi III the present Omanhene testifies that from 1873 until today there has been a linked succession of persons enstooled as Omanhene of Asebu.

This evidence is important, as, if in 1891 when the case referred to was heard and this land was the Stool property of Asebu, it is indeed astonishing that not a soul contested the claim of the Omanhene of Anomabu to these Stools, and Stools include Stool land. On the contrary the defence put

*In the  
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forward then by Ampima was that her ancestor settled at Abonu independently of the Omanhene of Anomabu, and the town being subsequently a sort of dependency, or at the least, in alliance with the Stool of Cape Coast. This conduct on the part of the predecessors in title of the present Defendants tends to support the evidence of the Plaintiff and to discredit that of the Defendants.

No further incidents in relation to this land appear to have occurred until about 1923 when one Elizabeth Smith, a woman of Asebu, claimed damages for trespass against Kweku Apawu and another, and, in connection with which litigation Kweku Apawu swore two affidavits, one in 1923 and the other in 1925 (Exhibits 4 and 5). This matter had been before the Tribunal at Asebu presided over by the then Omanhene, Amanfi II, and the immediate predecessor of the present Omanhene, now one of the Defendants, and who, at that time was a clerk employed in the office of the District Commissioner at Cape Coast, in which office the latter affidavit was sworn. Those proceedings again must have been matters of notoriety if any attempt was being made by any Asebu man to disown his allegiance to his Omanhene, and to betray his Stool to that of a neighbouring Omanhene. 10

Amanfi III was enstooled as Omanhene of Asebu in 1930, and I find it very difficult to believe his evidence that he had never heard of such affidavits until he heard that evidence in this Court during the trial of this action. 20

But sometime in 1929 proceedings were initiated by the Omanhene of Anomabu against Kweku Apawu and others when rumours got abroad that Apawu was seeking to annex Anomabu Stool lands to the Stool of Asebu. A writ in the Provincial Council was applied for on the 18th March 1930 and after more than 15 years was still, and then by a new writ, an action pending in that Court.

That is the Plaintiff's case and in my judgment in an action founding a claim for a declaration of title that lands belong to a Paramount Stool a *prima facie* case is established if the Plaintiff can show that the persons in possession of the land, have through the Odikro, in charge of that land, discharged their duties by attendance at the annual Stool Festival. That has been done. 30

If, as the Defendants claim, the land was the Stool property of the Asebu State similar evidence would necessarily be available in support of that fact.

The case for the Defendants is that certain brother Jesi and 2 others, men of Asebu, occupied the village of Abuenu and permitted Apoto Dekyem to occupy a certain part of this land and that at the time of their arrival they came with their stools from Akim Osurasi. 40

Many witnesses were called to give evidence as to Kweku Apawu's pedigree and the traditional story regarding the first arrival of Apoto Dekyem. I have taken great pains to try and trace link by link through Ekua Esuwa, his mother, the pedigree back to Asebu-Amantsindu which Apawu tells me was his family seat. The links simply are not there. Mr. Williams in his closing address, I think, wisely made no attempt to set up the genealogical table.

Kweku Apawu explains his reason in varying manner and degree for making false affidavits in 1923 and 1925. In answer to me he said his reason was that the Omanhene of Anomabu had promised to assist him in his case against Elizabeth Smith, but in cross-examination by Mr. Sekyi he ascribed other reasons. It was as follows :—

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“ Q. At that time Amanfi II was at Asebu ?

“ A. Yes.

10

“ Q. Was there anything to prevent you informing the Omanhene of Asebu that the people of Abonu were inducing you to make false statements about the land ?

“ A. I fully agreed with what the Elders of Abonu said, I believed what they said was true.

“ Q. Did you believe them when they said the land belonged to the Stool of Anomabu ?

“ A. I believed it.

I was on a stool.

“ Q. When you were made Head of your family to whom were you introduced ?

20

“ A. I was not introduced to any Omanhene. I was made Chief at Abonu.”

If at that time i.e. in 1925 Apawu believed the land was the stool property of Anomabu, what fact has caused him to change his mind in 1929, one year before the present Omanhene (Amanfi III) was enstooled ? From where did he obtain his information as to his pedigree and the traditional story of his family ? It cannot have been acquired in any of the manner approved by these Courts as being exception to the hearsay rule.

30 But when re-examined by Mr. Johnson he suggests it was out of physical fear of threats made by the Omanhene of Anomabu he swore to those false affidavits, one in the chambers of the then Registrar of the Divisional Court at Cape Coast and the other before the District Commissioner at Cape Coast. His evidence can obtain no credit whatsoever.

The traditional evidence of the Asebus seems to be equally shaky as evidence by Nana Amanfi III i.e. if his evidence is to be believed, as to the traditional story of the succession of Omanhene he says were told to him. The following evidence which I now quote is illuminating. It was not evidence under cross-examination, but was evidence when led by his Counsel. It reads as follows :—

“ Q. It has been suggested that for the last 100 years Asebu State was disintegrated and was without an Omanhene ?

40

“ A. That is not correct. During the Kari-Kari War (1873) the Omanhene was Kwesi Ankuma. He took part in that war (Sir Garnet Wolsley). He was awarded Queen's Medal for his services. This is it. It is handed down from Omanhene to Omanhene and is regarded as one of the Stool property.”

The medal was handed up to me. On its edge is inscribed “ King of Asebu—Ashanti War 1896.”



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*continued.*

Now how possibly could Kwesi Ankuma have been awarded this medal for services in a war in 1873 when the medal tendered in evidence (Exhibit "A") could not possibly have been struck until 1896 at the earliest?

This palpable untruth, whether of the witness or by his informant, and the which cannot be said, is too ridiculous to be commented upon any further other than as a very tangible revelation of distortion of Asebu traditional history.

The only other evidence which deserves comment is that in respect of rents paid by strangers in respect of the occupation of this land and the witnesses testified to farming on this land with the permission of Kweku Apawu. 10

I visited the land on the 5th July accompanied by the parties. I was accompanied by Mr. Jones, Agricultural Officer, and we walked the whole length of the land and back from the village of Abonu, across the Kakum River up to the most northerly point of the land near the hamlet of Asuboi.

It will be remembered that this litigation commenced in 1929 i.e. some 18 years ago.

There were many cocoa farms on the land, but only one which had been planted more than 15 years ago; and that farm was situate immediately west of, and near to, the Kakum River where the path running west from Abonu runs down to it, and then continue on the other side to the ruins of Botosi village, and there it is clear that permission to plant that cocoa was obtained from Kweku Apawu. There the trees are about 25 years old. In every other part of the land the trees do not exceed 15 years of age in most instances very much less. Quite clearly they have all been planted since this litigation started some 18 years ago. That is the sole piece of evidence. Now the evidence shows that each member of the community farms on his own allotted space. The evidence shows that Apotoi Dekyem's allotted farm land is situated between Abonu village and Kakum River. There is no evidence of any tenancy from Apawu in this area. Apawu evidenced and pleaded that his Stool was at Botosi. There is no evidence of any such possession, but it does seem quite likely that his allotted share of land was somewhere around the old hamlet of Botosi now non-existent and close to the old cocoa farm referred to and that he might well have accepted rents without protest from the Odikro i.e. in respect of one farm alone within his allotted portion of land and that is all there was before the litigation commenced in 1929. 20 30

I find that the case set up by the Defendants cannot be supported by the evidence and I am satisfied that the Plaintiffs have discharged the onus placed upon them and do grant to them the declaration and injunction as prayed for in the writ of summons. 40

The costs are to be taxed.

Assessor agrees with the judgment.

(Sgd.) J. JACKSON  
Judge.

Counsel :

Sekyi for Plaintiff.

Awoonor Williams, with him de Graft Johnson, for Defendants.

## No. 43.

## COURT NOTES recording decision of Court.

9.8.47.

## IN THE SUPREME COURT OF THE GOLD COAST.

Lands Division, Cape Coast.

Saturday the 9th day of August, 1947.

Before Mr. JUSTICE JACKSON.

AMONU ABABIO

V.

10

KWEKU APAWU &amp; Ors.

Sekyi for Plaintiff.

Johnson for Defendants.

Written Judgment delivered today (vide Judgment Book).

"I do grant the declaration and injunction as prayed for in the writ of summons.

The costs are to be taxed.

Assessor agrees with the Judgment."

(Sgd.) J. JACKSON  
Judge.

*In the  
Land  
Court,  
Cape  
Coast.*

No. 43.  
Court  
Notes  
recording  
decision of  
Court,  
9th August  
1947.

20

## No. 44.

## MOTION on Notice for Final Leave to Appeal.

Filed 27.10.47.

(Intd.) J.E.T.  
for R.D.C.

## IN THE SUPREME COURT OF THE GOLD COAST.

Central Judicial Division.

Lands Division, Land Court,

Cape Coast.

NANA AMONU ABABIO, OMANHENE OF ANOMABU Plaintiff

30

Respondent

*Versus*

KWEKU APAWU & Ors.	-	-	Defendants	} Appellants.
NANA AMANFI III, OMANHENE OF	-	-		
ASEBU	-	-	Co-Defendant	

TAKE NOTICE that this Honourable Court will be moved on Saturday the 15th day of November 1947 at 9.00 a.m. or so soon thereafter as Counsel for the Defendants and Co-Defendant herein can be heard

No. 44.  
Motion on  
Notice for  
Final Leave  
to Appeal,  
23rd  
October  
1947.

*In the  
Land  
Court,  
Cape  
Coast.*

for Final Leave to Appeal from the Judgment delivered herein on or about the 9th day of August, 1947 and for stay of execution pending the hearing and the determination of the said appeal.

Dated at Sekondi this 23rd day of October, 1947.

(Sgd.) F. AWOONOR WILLIAMS  
Counsel for Defendants and  
Co-Defendant—Appellants.

Upon the 1st day of November, 1947 copies of this Affidavit and Motion was served by me on Nana Amonu Ababio personally at Anomabu.

(Sgd.) C. L. LARNYOH 10  
Bailiff.

No. 44.  
Motion on  
Notice for  
Final Leave  
to Appeal,  
23rd  
October  
1947,  
*continued.*

No. 44 (a).  
Affidavit,  
dated 27th  
October  
1947, in  
support of  
Motion and  
Exhibit  
" A "

referred to  
therein.

No. 44(a).

AFFIDAVIT in support of Motion and Exhibit " A " referred to therein.

Filed 27.10.47.

(Intd.) J.E.T.  
for R.D.C.

IN THE SUPREME COURT OF THE GOLD COAST,  
Central Judicial Division,  
Lands Division, Land Court,  
Cape Coast.

20

NANA AMONU ABABIO, OMANHENE OF ANOMABU Plaintiff-  
Respondent

*Versus*

KWEKU APAWU & Ors.	Defendants	} Appellants.
NANA AMANFI III, OMANHENE OF ASEBU	Co-Defendant	

I, KWEKU APAWU, of Abonu in Asebu State, make Oath and say as follows :—

1. That Judgment was delivered herein on or about the 9th day of August, 1947 in favour of the Plaintiff herein with costs. 30

2. That the Defendants and Co-Defendant herein obtained Conditional Leave to Appeal from the said Judgment and have deposited in Court the sum of £12 for the preparation of the Appeal Record, given notice of appeal through the Court to the Plaintiff Nana Amonu Ababio and entered into bond with two sureties duly justified in the sum of £75 for the performance of such orders as may be made by the Appeal Court.

3. That these conditions were fulfilled within the period of one month granted by the Court.

4. That since the said Judgment the Plaintiff Nana Amonu Ababio has been harassing me and the other Defendants herein by a series of 40 summonses to appear and attend the Fanti Confederacy Court for offences alleged to have been committed at Abonu : I attach herewith copy of one of the summonses and marked " A ".

5. That the Bill of Costs herein has been taxed and allowed at £268.5.3d. and the Plaintiff is seeking to enforce the Judgment and costs herein pending the appeal.

6. That in view of the issues raised in this case and the serious consequences which may arise by the action of the Plaintiff in seeking to enforce the Judgment of this Court and issuing summonses against the Defendants we the Defendants and Co-Defendant herein are asking this Court to exercise its discretion in granting stay of execution pending the said appeal.

10 7. That no Omanhene of Anomabu has ever taken the steps, as far as I am aware, which the Plaintiff is now seeking to enforce.

I make this Affidavit on behalf of myself, the other Defendants and Co-Defendant herein in support of Motion for Final Leave to Appeal and for stay of execution pending the hearing and the determination of the said Appeal.

"A"

Sworn.

COPY.

This is the Instrument marked "A" referred to in the Affidavit of Kweku Apawu sworn before me this 27th day of October, 1947.

20

(Sgd.) J. T. ODAMETHEY,  
Regr. Divisional Court,  
Cape Coast.

# CRIMINAL SUMMONS.

No. 101/47.

IN THE NATIVE COURT OF ANOMABU STATE.

House No. 59.

To Kweku Apawu Abonu, Anomabu State.

30 You are hereby commanded to appear before the Native Court at Anomabu o'clock on Tuesday the 21st October 1947 to answer a complaint of:

That you did. For that you on or about the 2nd day of October, 1947 at Abono in the Anomabu State within the jurisdiction of this Court, did fail to repair your dangerous building contrary to Rule 4 of the Fante Confederacy Native Authority Sanitation Rules of 1946.

Dated at Anomabu this 6th day of October, 1947.

(Sgd.) NANA KWAMIN AWIR III  
President of Native Court.

40 Sworn at Cape Coast this 27th day of October, 1947 after this affidavit had first been read over and interpreted in the Fanti Language to the deponent by J. E. Tandoh when he seemed perfectly to understand the same before making his mark thereto in the presence of and before me.

His  
KWEKU APAWU. X  
Mark.

(Sgd.) J. T. ODAMETHEY,  
Commissioner for Oaths.

*In the  
Land  
Court,  
Cape  
Coast.*

No. 44 (a).  
Affidavit,  
dated 27th  
October  
1947, in  
support of  
Motion and  
Exhibit  
"A"  
referred to  
therein,  
*continued.*

*In the  
Land  
Court,  
Cape  
Coast.*

No. 44(b).

**AFFIDAVIT in support of Motion on Notice.**

Filed 11.11.47  
(Intd.) J.E.T.  
for R.D.C.

No. 44(b).  
Affidavit of  
Kweku  
Apawa in  
support of  
Motion on  
Notice,  
11th  
November  
1947.

**IN THE SUPREME COURT OF THE GOLD COAST.**

Central Judicial Division.

Lands Division, Land Court.

NANA AMONU IX, Omanhene of Anomabu (decd.)

NANA AMONU ABABIO (substd.)

Plaintiff

10

*Versus*

KWEKU APAWU, KWODWO EGYIN, KWEKU  
FANYIN, KOBINA NKUABU, KWEKU  
PEMISAH, YAW BIRETUA. KODWO  
ABURABURA, KOFI EMU and KWESIE  
EDWIN

Defendants

NANA AMANFI III, Omanhene of Asebu - Co-Defendant.

I Chief KWEKU APAWU, Chief of Abueno Division, Asebu State, Cape Coast District, further make oath and say as follows:—

1. That since filing my Affidavit in support of Motion for Final Leave 20  
to Appeal herein and for Stay of Execution Chief Obentsil Enu, Chief of  
Ebu, in Asebu State, now deceased, one of the supporters of the Defendants  
herein, had informed me that the Plaintiff and his Elders had been twice  
at midnight to Ebu in Asebu State in search of him the said Obentsil Enu.

2. That the said Enu committed suicide by hanging himself at Ebu  
village in Asebu State, and a Coroner's Inquest has been fixed to enquire  
into the cause of his death.

3. That I verily believe from the information given to me by the said  
Chief Obentsil Enu, that the cause of his committing suicide was due to  
the act of Omanhene Amonu Ababio, the Plaintiff herein, and his Elders 30  
in going to Ebu with handcuffs and in attempting to arrest the said  
Chief Obentsil Enu.

4. That the suicide of the said Chief Obentsil Enu has caused a  
sensation in the whole of Asebu State and has aroused the feelings of the  
inhabitants against Omanhene Ababio, the Plaintiff herein.

I make this Affidavit in support of the Defendants' application for  
stay of Execution herein pending the hearing and the determination of the  
Appeal herein.

Sworn at Sekondi this 11th day of  
November, 1947, after the contents  
of this Affidavit had first been read  
over and interpreted to the deponent  
in the Fanti Language by E. Jeury  
Blankson when he seemed perfectly to  
understand the same before making  
his mark thereto in the presence of and  
before me.

40

His  
X  
Mark.

(Sgd.) J. T. ODAMETAY,  
Commissioner for Oaths.

## No. 45.

## COURT NOTES Granting Final Leave to Appeal to West African Court of Appeal.

15.11.47.

## IN THE SUPREME COURT OF THE GOLD COAST.

Lands Division, Cape Coast.

Saturday the 15th day of November 1947.

Before Mr. JUSTICE JACKSON.

AMONU ABABIO

V.

10 KWEKU APAWU &amp; ORS. Defendants Appellants.

Williams moves. Affidavit Read.

Williams : We are prepared to deposit the costs in Court.

Sackeyfio : Do not oppose stay on these terms.

Conditions perfected.

Final Leave to Appeal to West African Court of Appeal granted.  
 Stay of Execution granted pending determination of appeal, subject to  
 the deposit in Court of the Costs already awarded.

(Sgd.) J. JACKSON  
 J.

*In the  
 Land  
 Court,  
 Cape  
 Coast.*

No. 45.  
 Court Notes  
 granting  
 Final Leave  
 to Appeal  
 to  
 W.A.C.A.,  
 15th  
 November  
 1947.

20

## No. 46.

## GROUNDS OF APPEAL.

Filed 21.11.47.

(Intd.) J.E.T.

for R.D.C.

## IN THE WEST AFRICAN COURT OF APPEAL.

Gold Coast Session.

Accra.

NANA AMONU IX (dcd.) Omanhene of Anomabu,  
 Omanhene AMONU ABABIO (substd.) *Plaintiff Respondent.*

30

*Versus*

KWEKU APAWU, KWODWO EGYIN, KWEKU  
 FENYIN, KOBINA NKUABU, KWEKU  
 PEMISAH, YAW BIRETUA, KODWO  
 ABURABURA, KOFI ENU and KWESI  
 EDWIN (under Asebu Paramount Stool) *Defendant-Appellant.*

NANA AMANFI III, Omanhene of Asebu, - *Co-Defendant-Appellant*

40 The Appellants being dissatisfied with the Judgment of the Land Court,  
 Cape Coast, delivered on the 9th day of August, 1947 and having obtained  
 Final Leave to Appeal therefrom dated the 15th day of November 1947,  
 hereby appeal to the West African Court of Appeal upon the grounds set  
 forth :—

## GROUNDS OF APPEAL.

1. Because the Court below had no jurisdiction to entertain this  
 action.

*In the  
 West  
 African  
 Court of  
 Appeal.*

No. 46.  
 Grounds of  
 Appeal,  
 19th  
 November  
 1947.

*In the  
West  
African  
Court of  
Appeal.*

No. 46.  
Grounds of  
Appeal,  
19th  
November  
1947,  
*continued.*

2. Because on the 1st April, 1945 when the Native Court (Colony) Ordinance came into force or operation there was in law no suit or action legally pending in the Provincial Council of Chiefs Court, Central Province, or Judicial Division or in the Judicial Committee of Chiefs Court, Central Judicial Division which by force of the said Ordinance became vested in the Land Court, Cape Coast, to warrant the Land Court to hear this action and to exercise any discretion therein.

3. Because the Court below misconceived and misconstrued the term Odikro as necessarily according to Native Customary Law co-extensive with the owner or ownership of land which an Odikro occupies, and founded its Judgment on such misconception. 10

4. Because the Court below misconceived and wrongfully applied the Native Customary Law cited by it from Sarbah's Fanti National Constitution as to the status of an Odikro in Native Institutions and in a village or township and based its Judgment thereon.

5. Because according to Native Custom allegiance is personal and is not necessarily dependent on the ownership, possession or occupation of land and the Court below was wrong in holding that because the descendants of Apoto Dekyem now living at Abueno owe allegiance to the Anomabu Stool or the Plaintiff-Respondent therefore the Respondent was owner of the Abueno Lands. 20

6. Because the Court below was wrong in Law in admitting in evidence and basing its Judgment thereon :—

(a) The proceedings in *Elizabeth Smith vs. Kweku Appawu* and *Appawu vs. Elizabeth Smith*.

(b) Exhibits 4 & 5 two affidavits of Kweku Appawu, the 1st Defendant-Appellant herein.

(c) The Judgment in *Bura & Amonoo vs. Ampima*; the issue in those cases being different from this case.

(B) The Parties being different. 30

(c) The admission, if any, by the Defendant Kweku Appawu not being admissible against and not binding on the co-Defendant-Appellant, Omanhene Amanfi III or the Paramount Stool of Asebu State.

7. Because on the admissions by the Plaintiff-Respondent that :—

(a) The ancient Seat or Headquarters of Asebu State was and has always been where it is now situate.

(b) Abunoo Village was between 3 and 4 miles from the ancient Seat of Asebu and was North of the said Seat.

(c) Asebus or Asebu State had never paid allegiance or tribute to Anomabu State. 40

(d) There were Native States, Nkusukum and Abura, between Anomabu State and Asebu State going Southwards from Asebu to Anomabu.

(e) The Plaintiff-Respondent did not know the State boundary between Anomabu and Asebu States.

The Court below was wrong in holding that Abunoo Lands or Division was in Anomabu State.

8. Because there was no evidence adduced by the Plaintiff-Respondent as to what was the common State boundary between Anomabu and Asebu States to warrant the Court finding or holding that Abunoo Lands or Division was in Anomabu State.

9. Because the Judgment of the Court below was wholly and entirely against the weight of evidence.

10. Because the Order granting an Injunction against the Defendants and Co-Defendant was harsh, oppressive and unconscionable.  
Dated at Sekondi this 19th day of November, 1947.

(Sdg.) F. AWOONOR WILLIAMS

Counsel for Defendants-Appellants

To the Registrar, and Co-Defendant-Appellant.

West African Court of Appeal,  
Accra.

And to Omanhene Amonu Ababio,  
Anomabu.

20 Upon the 24th day of November, 1947, a copy of this Grounds of Appeal was served by me on Nana Amonu Ababio personally at Cape Coast.

(Sgd.) C. L. LARNYOH

*Bailiff.*

No. 47.

#### COURT NOTES OF ARGUMENTS.

1st June 1948.

IN THE WEST AFRICAN COURT OF APPEAL, Gold Coast Session, held at Victoriaborg, Accra on Tuesday the 1st day of June 1948, before THEIR HONOURS JOHN ALFRED LUCIE-SMITH, O.B.E., C.J. Sierra Leone (Presiding J.), ALLAN CHALMERS SMITH, Ag. C.J. Gold Coast and LESLIE ERNEST VIVIAN M'CARTHY J. Gold Coast.

30

NANA AMONU ABABIO

-

Respondent

V.

K'WEKU APAWU & Ors.

- Appellants.

F. A. Williams for Appellants.

Sekyi for Respondent.

*Williams* : Pleadings pp. 6-7. pp. 17-18

By consent Exhibit 2 to be used in conjunction with Ordnance Map Sheets No. 25 & 26 of Gold Coast.

40

Sheet 26 shows the town of Anomabu & Asebu. Abonu.

We claim boundary with Jukwas to N.W.

Elizabeth Smith an Asebu woman.

Rebecca Brown was from Cape Coast.

If Plaintiff cannot prove title by conquest then his claim must fail.

Ground I. Hearing *de novo* not in order.

*In the  
West  
African  
Court of  
Appeal.*

No. 46.  
Grounds of  
Appeal,  
19th  
November  
1947,  
*continued.*

No. 47.  
Court Notes  
of  
Arguments,  
1st June  
1948.



*In the  
West  
African  
Court of  
Appeal.*

No. 47.  
Court Notes  
of  
Arguments,  
1st June  
1948,  
*continued.*

Ground II. No Jurisdiction, fee of £100 had not been paid. Condition precedent. Cap. 76 Rules at p. 345 Rule 41. Schedule 2 p. 364.

Rules made under Section 135 Cap. 76.

If no proper writ of summons in being then there was no writ pending in Council which could be transferred to Land Court.

pp. 109–110.

*Reg. v. Essex Justices* [1896] A.C. 443.

*British Wagon Co. v. Bray* [1896] 1 Q.B. 35.

Writ a nullity as no fees paid.

Grounds III & IV. Allegiance cannot confer title.

10

Hayford G.C. Native Institutions (1903) pp. 52, 56, 57 see pp. 114–116.  
pp. 29–30.

Asebus are not Fantis—Anomabus are—Asebu State established before arrival of Fantis.

pp. 26–27, pp. 29–30.

pp. 26–27.

2 Renner 405 at p. 410.

Asebu Lands p. 60.

Asebu never paid tribute to Anomabu.

p. 27.

20

p. 27, p. 28.

pp. 113–114, p. 86, p. 87, pp. 65–66.

Ground V. Sarbah Fanti L.R. p. 134 at p. 136.

Judgments of P.C. 1874–1928 p. 109.

Plaintiff lived on our land, but never claimed adverse title.

Bossman 45, 53, 55.

1 Claridges 144 (154).

p. 113.

Plaintiff only person who gives evidence of conquest.

p. 114.

30

Evidence of P.W.2 discredited by note at p. 36.

Evidence „ P.W.3 „ „ „ at p. 39.

Inspection pp. 95–96 cf. p. 84.

Ground VI. P.C. Judgments 1874–1928, p. 43.

p. 115—Admission of Affidavits.

Admissibility of proceedings—affidavits pp. 145–146, pp. 146–147 and Judgment pp. 115–116.

13 Halsbury 327 para. 497.

*Wartini v. Amarso*, F.C. 1926–29 p. 254.

NOTE.—Affidavits used solely for discrediting 1st Defendant, 40  
pp. 117–118.

F.C.L. p. 214, p. 115.

Adjourned to 2.6.48.

(Sgd.) LUCIE-SMITH  
1.6.48.

## FURTHER COURT NOTES OF ARGUMENTS.

*In the  
West  
African  
Court of  
Appeal.*

2nd June, 1948.

IN THE WEST AFRICAN COURT OF APPEAL, Gold Coast Session,  
held at Victoriaborg, Accra on Wednesday, the 2nd day of June  
1948, before THEIR HONOURS JOHN ALFRED LUCIE-SMITH  
O.B.E. C.J. Sierra, ALLAN CHALMERS SMITH, Ag. C.J. Gold  
Coast and LESLIE ERNEST VIVIAN M'CARTHY, J. Gold  
Coast.

No. 48.  
Further  
Court Notes  
of  
Arguments,  
2nd June  
1948.

10 NANA AMONU ABABIO

- Respt.

V.

KWEKU APAWU & ors. - - - - - Appls.

C.A. No. 32. From p. 286. Part heard.

Appearances as before.

*Williams* continuing : Admissibility of Exhibits pp. 114-116.

Asebu had nothing to do with the case of Bura and Amonoo.

(Sarbah (F.C.L.) p. 214.)

Sarbah (F.N.C.) 24-25.

" Stool " does not necessarily include " stool land "—

20 Evidence of attendance at stool festival p. 41.

pp. 41-43, 44, 45, 54-55.

pp. 62-69, 78-79, 88-89 (cf. 113-114).

Affidavits pp. 75-76.

93 L.J. (C.D.) p. 467.

pp. 103-104.

F.C. 1926-1929 p. 409.

pp. 112-113.

Ground VII. Admissions made by Plaintiff in cross-examination.

pp. 26-27.

30 Ground VIII dealt with in Ground VII.

Ground IX " " " previous grounds.

*Guill v. Guill* [1945] P. p. 15.

Ground X. Injunction harsh as land in question is an " island " in a foreign State.

Judge did not consider possessory rights.

No order drawn up.

*Sekyi* : Not called on as to Grounds 1 and 2.

Grounds III and IV : refers to pleading ; Statement of Claim p. 6, paragraph 3.

40 The caretakers put in by Anomabu act also as Odikro. Cases cited from Sarbah not applicable.

pp. 29-30.  
Before 1706 land in dispute was vacant land under control of Anomabu,  
pp. 27-30.  
(Williams admits that Amisakrom is Anomabu land.)  
*Kuma v. Kuma* (P.C.). (W.A.C.A.)  
Present Odikro is descendant of original caretaker.  
Ground V. Allegiance and ownership—not always interdependent.  
Here Defendants live on stool lands of Anomabu and gave allegiance  
to the Stool.  
Sarbah—214 “*Bura v. Ampima*”— 10  
Ground VI. Statement of Defence p. 17 paragraphs 4-5, pp. 35-36,  
pp. 41-43.  
(Junior linguist by appointment.)  
pp. 66-68, pp. 145-147.  
Affidavits and Judgment in Bura only used for purpose of discrediting  
two Defendants.  
Ground VII. No admissions.  
pp. 27-29, pp. 31-32, pp. 32-33.  
Ground VIII. Plan shows boundaries Exhibit “A.”  
Ground IX. Generally—pp. 92-93. 20  
Ground X. Entitled to injunction against all persons who challenge  
our title.  
Finally—No evidence that Odikro in Apawu paid homage to or  
attended Asebu festivals.  
*Williams* in reply : 5 W.A.C.A. 4.  
Evidence of other chiefs—25, 26 Vict. Cap. 67 ss. 5-7.  
pp. 31-33, pp. 77-80, pp. 88-89.  
Injunction : W.A.C.A. February, 1947 pp. 52-54.  
Plaintiff did not discharge the onus on him.

(Sgd.) J. LUCIE-SMITH 30  
2.6.48.

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No. 49.  
COURT NOTES.

*In the  
West  
African  
Court of  
Appeal.*

7th June 1948.

IN THE WEST AFRICAN COURT OF APPEAL, Gold Coast Session,  
held at Victoriaborg, Accra on Monday, the 7th day of June 1948,  
before THEIR HONOURS JOHN ALFRED LUCIE-SMITH, O.B.E.  
C.J. Sierra Leone (Presiding J.), ALLAN CHALMERS SMITH,  
Ag. C.J. Gold Coast and LESLIE ERNEST VIVIAN M'CARTHY,  
J. Gold Coast.

No. 49.  
Court  
Notes,  
7th June  
1948.

10 C.A. No. 32.

AMONU

V.

APAWU etc.

Appearances as before.

By Consent : Ordnance map with replica of Exhibit " 2 " reduced to  
scale, superimposed put in and marked W.A.C.A.1.

(Sgd.) LUCIE-SMITH  
J.

No. 50.

JUDGMENT.

20

12th July, 1948.

No. 50.  
Judgment,  
12th July  
1948.

IN THE WEST AFRICAN COURT OF APPEAL, Gold Coast Session,  
held at Victoriaborg, Accra, on Monday the 12th day of July 1948.  
Before THEIR HONOURS JOHN ALFRED LUCIE-SMITH, O.B.E.,  
C.J., Sierra Leone (presiding J.), ALLAN CHALMERS SMITH,  
AG, C.J., Gold Coast, and LESLIE ERNEST VIVIAN  
M'CARTHY, J., Gold Coast.

Civil Appeal  
No. 107/1947.

30

NANA AMONU ABABIO, Omanhene of Anomabu State  
*Plaintiff-Respondent.*

V.

KWEKU APAWU, KODWO EGYIN, KWEKU  
FENYIN, KOBINA NKUABU, KWEKU  
PEMISEH, YAW BIRETUA, KODWO  
ABURABURA, KOFI ENU and KWESIE  
EDWIN (under Asebu Paramount Stool)

*Defendants-Appellants.*

40

NANA AMANFI III, Omanhene of Asebu  
*Co-Defendant-Appellant.*

Judgment. Read by Smith Ag., C.J., Gold Coast.

The main contest in this Appeal is between the Omanhene of Anomabu  
and the Omanhene of Asebu as to the overlordship of the two arrears of

*In the  
West  
African  
Court of  
Appeal.*

No. 50.  
Judgment,  
12th July  
1948,  
*continued.*

land delineated in the plans W.A.C.A. 1 which have been put in evidence, the other appellants being occupiers of part of the lands in dispute who claim to owe allegiance to Asebu and to occupy Asebu lands.

At the trial much evidence was led on both sides as to the historical background of the Asebus and the Anomabus (Fanti) and as to more recent events in which the parties to the suit participated.

All this evidence and the points of law arising therefrom were very fully debated by Counsel and were analysed and considered with very great care in the judgment of the learned trial Judge who came to the conclusion that the Plaintiff had succeeded in proving his title and that the 10 Defendants failed.

Against this decision the Defendants now appeal to this court on a number of grounds and we have had the benefit of arguments by the same Counsel who appeared for the parties at the trial.

Grounds 1 and 2 question the jurisdiction of the trial Court and we say at once that they have no merit.

Grounds 3-5 complain that the learned trial Judge misapplied native law and custom.

Ground 6 that evidence was wrongfully admitted and applied.

Grounds 7, 8 and 9 complain of wrong findings of fact and finally 20 ground 10 questions the propriety of granting the Respondent an injunction.

As to ground 6 we are of the opinion that this evidence was properly admitted to show that Apawu the 1st Appellant had previously taken the opposite side and had made statements in direct conflict with some of his evidence in the present case. There is nothing in the judgment to indicate that improper use was made of this evidence or wrong inferences drawn from it and we find no substance in this ground.

Grounds 3, 4, 5, 7, 8 and 9 which concern findings of fact can most 30 conveniently be dealt with together.

At the trial the learned Judge was referred to the writings of Bossman and Claridge, two accepted authorities on the history of the Gold Coast and a similar reference has been made to us.

These authorities indicate that what was called the kingdom of Sabee or Asebu was originally a small but compact block of land lying between the Fantis and the Effutus with its sea frontage extending from approximately the Wokon Lagoon nearly to Cape Coast and to judge from the map at page 57 in Claridge may well have included the lands in this present dispute.

In early days the Omanhene of Asebu was evidently a man of 40 considerable importance as in one of the wars he commanded an allied army of 20,000 men to which the Fantis supplied a contingent.

The Asebus and their neighbours on the west the Effutus were some of the Aboriginal inhabitants who had been settled in the country for a long time before the Fantis who only reached the coastal areas in comparatively recent times.

For several centuries the situation was confused. From the coast the Europeans were coming in trading in goods and slaves and allying themselves first with one tribe and then another, while inland the power of Ashanti was being formed and the Ashantis were sending their armies down towards the coast.

10 All these gave rise to numerous small wars and a few big ones and large scale decimation of some tribes and movements of others and by the early part of the nineteenth century if not before the Effutus had practically vanished, the Fantis had spread further westwards and the Asebus had become broken and disorganised and for many years Asebu had no Ohene.

The story as told in the history books is substantially supported by the evidence of tradition given by the witnesses in the case. The respondent says that Apote Dekyem a Fanti settled in the area in 1706 and founded the village of Abuonu on what was then vacant land and it was not denied that his successor is the present Odikro and owes allegiance to the respondent. They also say that Apawu's ancestors were also Fantis and settled at Abuonu soon after Apote Dekyem founded the village and until quite recently they also have acknowledged the respondents suzerainty. The appellants while admitting that Apote Dekyem settled there and that the present Apote Dekyem is the Odikro serving the respondent, saying that 20 Apawu is the descendant of the Aboriginal inhabitants under Asebu and while not exactly denying that Apawu at one time recognised the authority of respondent say that he did so because of Respondent's threats and that this phase was only a temporary betrayal of his proper allegiance.

It is clear that the five stools of Abuonu are all Fanti stools and while the land in the case is detached from the main lands under Anomabu to the north of it lies the Fanti State of Abura which is also a good many miles west of the limits shown in Claridge of the Fanti territory in the early seventeen hundreds.

30 Appellant's Counsel commented on many other features in the evidence and the proper inferences which should be drawn from them and while we can sympathise with the Omanhene of Asebu and his predecessors for the last fifty years who have been attempting to restore Asebu to the position and size which it had before it was eclipsed, we find ourselves in agreement with the final conclusions at which the trial Judge arrived and consider that the Anomabu domination of the land in dispute has been established for too long a period for their tenure now to be disturbed.

As to the injunction it must stand and it will be for Apawu and his followers to make their peace with the overlord whose suzerainty they 40 once recognised.

The appeal will be dismissed with cost assessed at £52 7s. 0d.

(Sgd.) J. LUCIE-SMITH,  
Presiding Judge,  
(Chief Justice, Sierra Leone).

A. C. SMITH,  
Ag. Chief Justice, Gold Coast.

L. M'CARTHY,  
Judge, Gold Coast.

Counsel :

Mr. F. A. WILLIAMS for Appellants.

50 Mr. W. E. G. SEKYI for Respondent.

*In the  
West  
African  
Court of  
Appeal.*

No. 50.  
Judgment,  
12th July  
1948,  
*continued.*

*In the  
West  
African  
Court of  
Appeal.*

## No. 51.

## COURT NOTES granting Substitution of Nana Baffoe.

28th May, 1949.

No. 51.  
Court Notes  
granting  
substitu-  
tion of  
Nana  
Baffoe,  
28th May  
1949.

IN THE WEST AFRICAN COURT OF APPEAL, Gold Coast Session,  
held at Accra, on Saturday the 28th day of May, 1949, before  
HIS HONOUR SAMUEL OKAI QUASHIE-IDUN, J., sitting as  
a single Judge of Appeal.

Civil Motion.

NANA AMONU ABABIO - - Respondent

V.

10

KWEKU APAWU & ORS. - - Appellants.

Motion on Notice for substitution of Nana Baffoe, Regent, and  
Caretaker of Anomabu Stool in place of Nana Amonu Ababio, Omanhene  
of Anomabu, deceased.

Mr. Lokko for Mr. Williams for Applicants—moves in terms of  
Motion Paper and affidavit in support.

*By Court :* Application for Order for substitution granted that  
Nana Baffoe, Regent and Caretaker of the Stool of Anomabu be substituted  
in place of the deceased respondent. Application for Final Leave to be  
made in due course.

20

(Sgd.) S. O. QUASHIE-IDUN,  
Judge.

No. 52.  
Court Notes  
granting  
Final  
Leave to  
Appeal to  
Privy  
Council,  
10th June  
1949.

## No. 52.

## COURT NOTES granting Final Leave to Appeal to Privy Council.

10th June, 1949.

IN THE WEST AFRICAN COURT OF APPEAL, Gold Coast Session,  
held at Accra on Friday the 10th day of June 1949 before  
HIS HONOUR SAMUEL OKAI QUASHIE-IDUN, J., sitting as a  
single Judge of Appeal.

Civil Motion. 30

NANA BAFFOE, Regent and Caretaker of the  
Stool of Anomabu - - Respondent.

V.

KWEKU APAWU & ORS. - Appellants.

Motion on Notice for Final Leave to appeal to His Majesty's Judicial  
Committee of the Privy Council.

*By Court :* Final leave to appeal granted.

(Sgd.) S. O. QUASHIE-IDUN,  
Judge.

No. 53.

## COURT NOTES granting Substitution of Kwamina Acquah.

*In the  
West  
African  
Court of  
Appeal.*

8th September, 1949.

IN THE WEST AFRICAN COURT OF APPEAL, Gold Coast Session,  
held at Accra, on Thursday the 8th day of September, 1949, before  
HIS HONOUR SAMUEL OKAI QUASHIE-IDUN, J., sitting as a  
single Judge of Appeal.

No. 53.  
Court Notes  
granting  
substitution  
of  
Kwamina  
Acquah,  
8th  
September  
1949.

Civil Motion.

10 NANA BAFFOE, Regent and Caretaker of the  
Stool of Anomabu

Respondent

V.

KWEKU APAWU, KODWO EGYIN, KWEKU  
FENYIN, KOBINA EKUABU, KWEKU  
PEMISAH, YAW BERETUA, KODWO  
ABURABURA, KOFIE ENU and KWESI  
EDWIN (under Asebu Paramount Stool)

Appellants.

NANA AMENFI III, Omanhene of Asebu

Co-Appellant.

Motion on Notice for an Order to substitute Kwamina Acquah for  
Kweku Apawu, one of the Defendants-Appellants since deceased.

20 Mr. Lokko for the Defendants-Appellants, and Co-Defendant-  
Appellant (Applicants).

No appearance by the Respondent.

Mr. Lokko moves in terms of Motion Paper and Affidavit.

*By Court :* Order for substitution granted as prayed.

(Sgd.) S. O. QUASHIE-IDUN,  
Judge.





be done they have certain objections to submit for the consideration of the Judicial Committee, which are,

*Exhibits.*

No. 1.  
Copy  
Proceedings  
re Nana  
Omanhene  
of  
Anomabu  
v. Nana  
Amanfi III,  
*continued.*

(i) That according to the Writ of Summons issued against them they do not know with whom they are contending as the mere expression, "*Nana Omanhene of Anomabu or Substitute*," is in their opinion vague and insufficient, and that although they notice before the Tribunal, Nana Amonoo VIII, as intended for the Plaintiff against them, this the first occasion they find this out as compared to the Writ of Summons in their possession ; and

10 (ii) that therefore they submit that the Writ of Summons be struck out of the list and a fresh Writ of Summons be issued properly and sufficiently defining the particular Plaintiff against them as Defendants, and his approved or confirmed position.

The Plaintiff on being called upon states, in reply per his linguist, that he is at present occupying the position on the paramount Stool of Anomabu State and is therefore the Plaintiff as against the Defendants in the Suit, but that as at the time of the Writ of Summons being issued, which it was highly necessary to do in the interest of the State, and the election and installation of a suitable candidate for the Stool of Anomabu  
20 had not been definitely settled, the Writ of Summons was issued at the time, as it is before the Judicial Committee for the mere title of Suit to be amended later ; and therefore submits in contra that as the particulars of the Claim remain the same without the alteration of a word, this Judicial Committee will be in order to permit him to slightly amend the title of the Suit on payment of the usual fee according to the Rules.

*The Judicial Committee :*

After due consideration of the circumstances, the Judicial Committee are unanimously of the opinion that the Revised Amendment of the mere title of the Suit does not in any material way prejudice the interest of the  
30 Defendants, and accordingly order, as it is hereby ordered, that the Plaintiff is allowed to amend the title of the Suit to

Nana Amonoo VIII, as Omanhene of Anomabu State as the Plaintiff in the above Suit on payment of the usual fee.

(Sgd.) AKINI III,

Omanhene of Ekumfi State  
(President of Council).

„ ABUTAKYI II,

Omanhene—Eguafo.

„ EGYIR ABABIO,

40 Omanhene—Ayan Denkera.

„ TSIBU DARKU IX,

Omanhene of Asin Attandaso.

„ AYERIBI ACQUAH III,

Omanhene—Effutu (W'ba),

President,

Judicial Committee.

Certified true copy.

(Sgd.) MAGNUS J. SAMPSON

Registrar, Judicial Committee

50 Provincial Council—Central Province.

*Exhibits.* 26th February, 1934.

No. 1. The Judicial Committee resume pursuant to adjournment all members  
Copy being present—  
Proceedings In Re  
re Nana NANA AMONOO VIII, Omanhene of Anomabu in  
Omanhene person - *Plaintiff*  
of  
Anomabu  
v. Nana  
Amanfi III, *Versus*  
continued. NANA AMANFI III of Asebu and 9 others (his  
subjects).

Parties—

10

The Plaintiff in person.

The Defendants represented by Nana Amanfi III as Co-Defendant.

26th  
February  
1934.

*Notes :*

The Defendants ask leave and point out that they oppose the Judicial Committee's order of the 23rd February, 1934, to the issue of which they raised preliminary objection at the time, and that subject to Nana Amonoo VIII, personally becoming the Plaintiff in the Suit as the confirmed Omanhene of Anomabu there were legal formalities to be complied with, which had not been carried out, and therefore at present there was no proper Plaintiff in the Suit before the Judicial Committee.

20

That accordingly they asked for time to enable them to prepare the necessary papers to move the Judicial Committee to set aside the Order.

*The Judicial Committee :*

After due consideration the Judicial Committee decide to grant the application and adjourn the hearing to the 3rd March, 1934.

(Sgd.) BANNERMAN-MARTIN  
Regr. J.C.

Certified true copy.

(Sgd.) MAGNUS J. SAMPSON  
Registrar Judicial Committee,  
Provincial Council, Central Province.

30

3rd March  
1934.

3rd March, 1934.

The Judicial Committee resume pursuant to adjournment, all members being present.

In Re  
NANA AMONOO VIII, Omanhene of Anomabu

*Versus*  
NANA AMANFI III, Omanhene of Asebu and 9 Others.

*Parties present :*

NANA AMONOO VIII, Omanhene of Anomabu in person.

40

NANA AMANFI III, Omanhene of Asebu in person with seven others—two of the nine being reported to have died.

Motion on Notice by Kweku Apawu one of the Defendants herein for himself and on behalf of the other Defendants asking the Judicial Committee of the Provincial Council of Chiefs of the Central Province to

discharge the order made herein by the above Judicial Committee on the 23rd day of February, 1934, and to disallow the Amendment of the title of the above case made in connection therewith on the grounds of irregularity in the grant of the application made by the Plaintiff herein and for such further or other order as to the said Judicial Committee of the said Provincial Council of Chiefs of the Central Province may seem fit. Dated at Saltpond the 27th day of February, 1934.

*Exhibits.*  
No. 1.  
Copy  
Proceedings  
re Nana  
Omanhene  
of  
Anomabu  
v. Nana  
Amanfi III,  
*continued.*

10 Affidavit of the said Kweku Apawu one of the Defendants herein as for himself and on behalf of the Co-Defendants dated the 27th February, 1934 in support of the Motion read and filed.

Affidavit of Nana Amonoo VIII, Omanhene of Anomabu, and Plaintiff herein dated the 2nd of March 1934, in reply read and filed.

Argument in support of Motion by Mover :

That in confirmation of our Affidavit I refer the Judicial Committee to Section 97 of the N.A.O. which provides that as far as possible the Provincial Council of Chiefs in its Judicial capacity shall be guided by the Rules of the Supreme Court.

20 That prior to our being asked our Plea in the Claim something ought to have been done in the nature of the Plaintiff declaring and proving by some undoubted means as to his being the real and actual Plaintiff in the Suit above as compared to the way and manner in which the original writ of Summons as we have it in our possession was issued and served on us.

That it was one Unison a Linguist of Anomabu who first swore to an Affidavit in this case, and that the same being vague as to the person on whose behalf it was sworn, some one in authority at Anomabu ought to have been brought before the Judicial Committee to prove the position of Nana Amonoo VIII, as confirmed and to declare his identity.

30 That on appearing before the Judicial Committee on the 23rd February, 1934, his titled name appears to have been written down in the Record without the Plaintiff being asked as to his position or concern in the Suit herein.

That under Supreme Court Rules, Schedule 2, Order 2, Rule 2 to which we refer the Judicial Committee, we are submitting that the Plaintiff's name ought not to have been substituted without substantial proof by some authority in the State of Anomabu, although this Judicial Committee could have ordered an Amendment in the body of the Writ of Summons but not as to the name of a Suitor (Plaintiff) without certain necessary legal formalities having complied with.

40 That we further refer the Judicial Committee to the Supreme Court Rules, Schedule 2, Order 3, Rule 1 ; and beg to point out that at the time of the Writ being issued there was no Omanhene of the Stool of Anomabu.

That under the circumstances we finally submit that the Order of this Judicial Committee of the 23rd February, 1934, be discharged and the Suit herein struck out, and then if Nana Amonoo VIII, of Anomabu has a claim against us and we are called upon in a proper manner we shall be prepared to contend with him according to the nature of his claim.

*Exhibits. Argument contra :*

No. 1.  
Copy  
Proceedings  
re Nana  
Omanhene  
of  
Anomabu  
v. Nana  
Amanfi III,  
*continued.*

On having called upon by the Judicial Committee, Nana Amonoo VIII states that he has nothing to say apart from the statements in his Affidavit before the Judicial Committee.

*The Judicial Committee :*

After due consideration of the point submitted by the Mover herein, it is decided that under Section 61 of the Native Administration Ordinance, 1927, the Judicial Committee are empowered to order alteration of names of Suitors, so that the Writ of Summons in this Suit as it appears before the Judicial Committee should be amended as to title under Supreme 10 Court Rules, Schedule 2, Order 2, Rule 2, the Judicial Committee are of the opinion that the submissions by the Mover-Defendants should be upheld and accordingly hereby order the discharge of their Order of the 23rd February, 1934, and further Order that the Writ of Summons in this Suit herein, as it appears before the Judicial Committee be struck out the list with Costs for Mover-Defendants to be taxed.

(Sgd.) AKINI III,

Omanhene of Ekunfi State,  
President, P.C.

„ AYERIBI ACQUAH III, 20  
Omanhene—Effutu (Winneba),  
President—Judicial Committee.

„ TSIBU DARKU IX,  
Omanhene of Asin Attandaso.

„ ABUTAKYI II,  
Omanhene of Eguafu.

„ EGYIR ABABIO,  
Omanhene, Ayan Denkeru.

8th July  
1938.

8th July, 1938.

IN THE PROVINCIAL COUNCIL OF PARAMOUNT CHIEFS' 30  
TRIBUNAL held at Saltpond this 8th day of July, 1938.

By a Judicial Committee of the Council consisting of

NANA TSIBU DARKU IX (Asin Attandaso), NANA AKONU VIII  
(Ayan Abassa), J. F. BAIDEN (Obatan, Nkusukum).

In the Matter of Native Administration Ordinance as amended.

In the Matter of

NANA AMONU VIII, Omanhene of Anomabu State  
(Destooled)

Plaintiff

*Versus*

NANA AMANFI III and Others of Asebu

Defendants. 40

Motion Ex-Parte by Nana Amonu IX, Omanhene of Anomabu State, the applicant herein for an Order of the Judicial Committee for Substitution of his name for that of Nana Amonu VIII the Plaintiff herein destooled.

The Judicial Committee to be moved on this 8th day of July, 1938 at 9 of the clock in the forenoon or so soon thereafter as applicant may be heard.

*Exhibits.*

No. 1.

Copy  
Proceedings  
re Nana  
Omanhene  
of  
Anomabu  
v. Nana  
Amanfi III,  
*continued.*

Affidavit of Nana Amonu IX, Omanhene of Anomabu the applicant herein filed on the 30th day of May, 1938 read in support of motion.

Application for substitution of the name of Nana Amonu IX, the applicant herein for that of Nana Amonu VIII the Plaintiff herein destooled is granted as prayed. Copy of this Order to be served on the Defendants.

10

(Sgd.) TSIBU DARKU IX,  
Omanhene, Asin Attandaso.  
AKONU VIII, His  
Omanhene of X  
Ayan Abassa. Mark.

(Sgd.) Chief J. F. BAIDEN,  
Representing Omanhene of  
Nkusukum.

Certified true copy.

20

(Sgd.) MAGNUS J. SAMPSON,  
Registrar, Judicial Committee,  
Provincial Council, Central Province.

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*Exhibits.***EXHIBIT No. 3.****COPY Proceedings re : Elizabeth Smith v. Kweku Appaw and Ors.**

No. 3.

Copy  
Proceedings  
re Elizabeth  
Smith v.  
Kweku  
Appaw &  
Others.Put in by Court in *re Amonu Ababio vs. Kweku Apawu & Ors* and  
marked Exhibit " 3 ".

(Sgd.) J. A. HUTTON

26.7.47.

IN THE NATIVE TRIBUNAL OF ASEBU held at Apewosika on Tuesday  
the 12th day of February, 1924.

Present—

12th  
February  
1924.Omanhene AMANFI II, KOJO DOOM, KWESI ANDZI, KWESI 10  
ANAMUAH, KWAMIN ATTA, KWEKU MANSU, KOJO KORSAH,  
A. S. EDUSAR, KWAMIN KAYE Chief.

ELIZABETH SMITH

-

Plaintiff

Vs.

KWEKU APPAW, KOJO DEOCHEM, ESSIEDU  
and EDGIN

-

Defendants.

The Plaintiff claims £25 damages from the Defendants for trespassing and cutting palm trees on the Plaintiff's land called Buabassa situate at Sodorfoo in Assebu district and bounded on the north by land belonging to Abonu people and Karkum or sweet river on the south by land belonging 20  
to Ebram and Chief Kwesi Ankuma of Putubiw on the east by land  
belonging to Adjuah Drawah and on the west by land belonging to  
Ahonton's Agilgin and Armin.

Plaintiff present.

Defendant absent.

Messenger JAMES ALI sworn states: I am messenger of the Native Tribunal of Asebu, on the 6th day of February 1924, I served the Defendants with summons Elizabeth Smith vs. the Defendants at Abonu issued from the Native Tribunal of Asebu to appear at Apiosika on the 12th day of February, 1924 at 8 a.m. 30

Kwamin Arfu surety for Plaintiff.

Case adjourned to Wednesday the 13th February 1924 at 8 a.m.

13th  
February  
1924.IN THE NATIVE TRIBUNAL OF ASEBU held at Apiosika on  
Wednesday 13th February, 1924.

ELIZABETH SMITH

- Plaintiff

Vs.

KWEKU APPAW, KOJO DEOCHEM, ESSIEDU  
EDGIN

-

-

Defendants.

The Plaintiff claims £25 damages from the Defendants for trespassing and cutting palm trees on the Plaintiff's land called Buabassa situate at 40  
Sodorfoo in Asebu District and bounded on the north by land belonging to  
Abonuo people and Karkum or sweet river on the south by land belonging to

Ebram and Chief Kwesie Ankuma of Putubiw on the east by land belonging to Adjua Drawah and on the west by land belonging to Ahonton's Agilgin and Armin.

Case resumed at 10.40 a.m.

*Exhibits.*

No. 3.

Copy  
Proceedings  
re Elizabeth  
Smith v.  
Kweku  
Appaw &  
Others,  
*continued.*

ELIZABETH SMITH sworn on Bible states : I live at Cape Coast and a native of Sodorfoo the village of my ancestors. I visit Sodorfoo occasionally. My cousin Kuow Edbua is in charge of the village of Sodorfoo and all my lands in Sodorfoo. Kuow Edubua is the Odikro of Sodorfoo. Any person wishing to do work on any of my lands at Sodorfoo applies to Kuow Edubua who grants permission and informs me of same. In the month of October, 1923 Kuow Edubua sent one Kwesi Oyihia to report to me that the Defendants had entered upon my land named Buabassa in Sodorfoo and cut down palm trees. The land is the property of my ancestors, it was once put in pawn to Omanhene of Anamabu and when he wanted to take advantage of the same by reason of the pawn the case was brought before the Mayor of Cape Coast and it was decided after finding the money due, my grandmother Adjua Abakuma paid the money due with interest. The amount paid for redemption of the land in pawn was sixteen ounces. About six years later there arose another litigation about the same property when a dispute came on as to the payment of the redemption money. Judgment was entered for my grandmother Adjua Abakuma in the Judicial Assessor's Court by Judge Chalmers, against Kofi Amonoo Omanhene of Anamabu.

*By the Tribunal :* Documents in connection with Sodorfoo lands the property of Plaintiff's tendered in evidence and accepted and marked as Exhibits A, B, C, D, E, F and G.

*By the Plaintiff :* I have brought this action against the Defendants individually for trespassing and cutting palm trees on my land called Buabassa situate in Sodorfoo lands because Defendants did not ask permission from me or my representative Odzikro Kuow Edubua.

*X.Xd. by Tribunal :*

*Q.* Has Kofi Amonoo or his successors and descendants ever ploughed and worked on the land since the redemption ?

*A.* No.

*Q.* Has any of the Defendants any boundary line with you ?

*A.* No.

*Q.* Ever since the redemption has Kofi Amonoo or his successors shown boundary marks with you or your late grandmother ?

*A.* No.

*Q.* With whom have you boundary marks over your Sodorfoo lands ?

*A.* On the north with Kuow Chief of Abonoo and Karkum or sweet river, on the south with Ebram and Chief Kwesie Ankuma of Putubiw on the east with Adjua Drawah and on the west with Ahonton's Agilgin and Armin.



*Exhibits.*

No. 3.  
Copy  
Proceedings  
re Elizabeth  
Smith v.  
Kweku  
Appaw &  
Others,  
*continued.*

*Q.* How do you give out your land for cultivation ?

*A.* Upon any person applying for permission to cultivate and work on the land when arrangements are made to pay tribute in foodstuffs the permission is granted.

*Q.* What is the general tribute ?

*A.* 500 cobs of corn and 12 yams.

*Q.* What does this tribute mean ?

*A.* To show the ownership of the land.

KWAMINA BOADZIE, farmer, sworn, states : I know the land in question. I have been working there since my youth and no body raised objection to my ploughing there before. The land is the property of Plaintiff's. I know where the trespass has been committed to be the property of the Plaintiff's. I have not known the Defendants to work on these particular places before. I have been to the spot where the palm tree were cut down by the Defendants. 10

[sic]

*X.Xd. by Tribunal :*

*Q.* Do you know the Defendants ?

*A.* I know all the Defendants.

*Q.* Have you seen the Defendants to cultivate on the Buabassa land ?

*A.* I have worked on the land for about fifty years and I have not seen any of the Defendants to cultivate or work on the land. 20

KWEKU NUAMAH, sworn, states : I live at Apiosika, sawyer, about four months ago I went to Buabassa where I saw palm trees there. I approached Odzikro Edubua of Sodorfoo and I asked his permission to work the palm on the property which is the land of the Plaintiff's. He granted me permission to work the palm trees. When I was going to cut the palm trees after the permission granted, I met Kojo Deochem on the Buabassa land having cut down palm trees and working at them. I asked him who gave him permission to cut down the trees. He replied, his elder named Kweku Appaw gave him the permission. I told him I had obtained permission from Chief Kuow Edubua to work the palm trees there. Deochem did not allow me to work the palm trees for which I had obtained permission from Chief Kuow Edubua to work. I returned therefore to report the matter to the chief. The chief then proceeded to report the case to Plaintiff. 30

*X.Xd. by Tribunal :*

*Q.* What question did you ask when you met Deochem on the land working at Palm trees which he had cut down ?

*A.* He said, Kweku Appaw his elder gave him permission to cut the palm trees. 40

Q. Did you see anybody else beside Deochem doing work on the land ? *Exhibits.*

A. No.

Q. Have you seen Deochem ever to work on the land Buabassa in question ? *No. 3.  
Copy  
Proceedings  
re Elizabeth  
Smith v.  
Kweku  
Appaw &  
Others,  
continued.*

A. I have not seen Deochem to work on the land before.

Q. Will the Tribunal find if it goes to view or inspect the land, the cut down trees ?

A. Yes.

10 Case adjourned to Thursday the 14th February 1924, at 9 a.m.

Present—

Omanhene AMANFI II, KOJO DOOM, ATA KAKRA, KWESI ANAMUAH, KWAMIN ATA, KWEKU MANSU, KOJO KORSAB, KWAMIN KAYI KOFI WILSON.

(Sgd.) J. S. THOMPSON

Recorder.

IN THE NATIVE TRIBUNAL OF ASEBU held on Thursday the 14th  
14th day of February, 1924. *14th  
February  
1924.*

Present—

20 Omanhene AMANFI II, KOJO DOOM, KWAMIN KAYI, KOJO KORSAB, KWESI ANAMUAH, KWESI ANZIE, ATA KAKRA, KWEKU MANSU, KWAMINA ATA, KWESI YIMMO.

ELIZABETH SMITH

Plaintiff

*Vs.*

KWEKU APPAW, KOJO DEOCHEM, ESSIEDU,  
EDGIN

Defendants.

Case resumed at 10.15 a.m.

30 KWAMIN ABADOO, sworn on Bible, states : I live at Putubiw, farmer, in last August I applied for permission from the Plaintiff to work on her land situate at Sodorfoo and known as Buabassa. I went to the land Buabassa to remove my palm wine one morning as usual and I met Essiedu, Edgin and Kojo Deochem there. They told me that "our elder has sent us to remove the palm wine for him." I asked who is your elder ? They said Appaw. I returned to report the matter to the owner of the land on which the palm trees situate. The owner of the land is Plaintiff.

*X.Xd. by Tribunal :*

Q. Who is the owner of the land on which you felled the palm trees.

A. The Plaintiff.

40 Q. Have you seen the Defendants ever to work on the land in question ?

A. No.

*Exhibits.*

No. 3.

Copy  
Proceedings  
re Elizabeth  
Smith v.  
Kweku  
Appaw &  
Others,  
*continued.*

Q. Did the Defendants remove the palm wine pots ?

A. Yes, including my knife.

Q. Did you report the case to the Plaintiff ?

A. Yes I did so directly I returned home.

Q. Did you ask the Defendants who authorised them to act in that manner ?

A. Yes they told me Appaw instructed them to remove the palm wine and my belongings from the land.

Q. Did they say the Omanhene of Anamabu so instructed them to act.

A. No. They said Appaw gave them such instructions.

10

Chief KOFI MINNAH, sworn, states : I live at Jukwa, Chief, I know I have boundary with the Plaintiff's land by Okrobonkuwah a tributary stream to the sweet river or Karkum. The sweet river or Karkum divides the lands of me and the Plaintiff's from Abonoo's land. Karkum is the natural boundary between the Plaintiff's lands known as Sodorfoo lands in Asebu District and the Abonoo's land.

*By Tribunal :* The Tribunal will view the land on which the trespass is said to have been committed at 2 p.m. this day.

#### JUDGMENT.

The case before us is for trespassing and cutting palm trees on the Plaintiff's land called Buabassa situate at Sodorfoo. Plaintiff's evidence as to ownership of the Buabassa land is proven by the documents tendered in evidence in connection with the case between her grandmother Adjuah Abakumah and Kofi Amonoo Omanhene of Anamabu before His Honour Judge Chalmers in the Ass'ors' Court at Cape Coast in 1871 the result of judgment given the Mayor's Court at Cape Coast. 20

At viewing the spots where the alleged trespass is alleged to have been committed by the Defendants we found natural features marking out the boundaries between Plaintiff's land and the lands of both Chief Kofi Minnah and Abonoo people. The natural boundary between Plaintiff's land and that of the people of Abonoo is the sweet river or Karkum. As to the question of trespass, our observations at the viewing of the Buabassa land in Sodorfoo the subject of the case before us there were fourteen trees found felled down. The evidences of Abadoo and Nuamah confirm the action of the Defendants on the Plaintiff's land Buabassa. Our further observation is that the Defendants stopped and ceased from working the palm trees which they fell, in the event Nuama and Abadoo proceeded to report the trespass to Chief Kuow Edubua the Plaintiff's representative whose name was mentioned to Defendants as the person who gave them permission to work the palm trees on the Buabassa land. According to custom in the bush any person who wishes to have occupancy of a land for cultivation he applies to the owner of the land for an allotment of it ; but in this case the Defendants did not act in the usual and customary manner by applying to the Plaintiff. 30 40

We therefore find the Defendants guilty for trespassing and cutting palm trees on Plaintiff's land called Buabassa. *Exhibits.*

We award Plaintiff £25 damages severally and jointly with costs £16. 19s. 6d.

(Sgd.) AMANFIE II  
Omanhene of Asebu.

Certified true copy.

(Sgd.) S. A. BENTILL  
Registrar,  
N.C. Asebu,  
9.7.47.

No. 3.  
Copy  
Proceedings  
re Elizabeth  
Smith v.  
Appaw &  
Others,  
*continued.*

10

**EXHIBIT No. 4.**

**COPY Affidavit of Kweku Appaw and Ors.**

Put in by Court in *Re Amonu Ababio vs. Kweku Appaw & Ors.* and marked Exhibit "4".

(Sgd.) J. A. HUTTON  
26.7.47.

No. 4.  
Copy  
Affidavit  
of Kweku  
Appaw &  
Others,  
22nd  
December  
1923.

IN THE SUPREME COURT OF THE GOLD COAST COLONY.

Central Province,  
Divisional Court,  
Cape Coast.

20

*Suit No. 68/1923.*

ELIZABETH SMITH

Plaintiff

V.

KWEKU APPAW, KOJO DECHEM, ESSIEDU  
and EDGIN

Defendants.

We KWEKU APPAW, KOJO DECHEM AND KOJO EDGIN all farmers of Abono in the Cape Coast district make oath and say as follows :—

1. That we are Defendants in the above-named suit.

30 2. That copies of the affidavit of Elizabeth Smith sworn on the 29th day of November, 1923, and filed the 30th day of November, 1923, in support of a Motion for an Interim Injunction herein, have been served on us excepting Essiedu the other Defendant herein, and the contents thereof read over and interpreted to us.

3. That statements contained in paragraphs 2 and 3 of the Plaintiff's affidavit are not true and that we have been in possession of the land as caretakers for the Omanhin of Anamaboe together with the other Defendant Essiedu and have been farming on the said land for many years and that our predecessors also farmed on the land.

40 4. That we were all born on the land the subject matter of the dispute commonly known as Buabassa.

5. That we have committed no waste and do not intend to commit any waste.

*Exhibits.*

No. 4.

Copy  
Affidavit  
of Kweku  
Appaw &  
Others,  
22nd  
December  
1923,  
*continued.*

6. That the said land is the Stool property of Nana Amonu VI, the Omanhene of Anamabu and that we are subjects of the said Omanhene of Anamabu.

7. That the land in dispute is portion of property now being claimed, the subject matter of an arbitration between Nana Amanfi II, Omanhene of Assebu and Nana Amonu VI Omanhene of Anamabu and the matter is pending before the Provincial Commissioner of the Central Province.

8. That the people of Abono are subjects of Nana Amonu VI of Anamabu and the village belongs to the Stool of Anamabu.

Sworn by Kweku Appaw, Kojo Dechem  
and Kojo Edgin at Cape Coast this  
22nd day of December 1923, this affi-  
davit having been first read over and  
explained by Joseph Herbert Ghansah  
of Cape Coast to the Deponents who  
seemed perfectly to understand the  
same and set their marks thereto in  
my presence

KWEKU APPAW  
KOJO DECHEM  
KOJO EDGIN

Their  
X  
X  
X  
Marks

10

Before me

(Sgd.) J. E. ATKINS,  
Commissioner for Oaths.

20

Certified True Copy.

(Sgd.) J. T. ODAMETHEY  
Registrar, Divisional Court,  
Cape Coast.

#### EXHIBIT No. 5.

#### COPY Affidavit of Kweku Appaw.

No. 5.

Copy  
Affidavit  
of Kweku  
Appaw,  
18th June  
1925.

Put in by Court in *re Amonu Ababio v. Kweku Appawu & Ors.* and  
marked Exhibit "5."

(Sgd.) J. A. HUTTON 30  
26.7.47.

In the Matter of The Native Jurisdiction Ordinance of 1883 as  
amended and in the Matter of

ELIZABETH SMITH - - - Plaintiff-Respondent  
V.

KWEKU APPAW, KOJO DECHEM, ESSIEDU &  
EDGIN - Defendants

CHIEF KWA APPIAH (Regent) - Appellants.

I, KWEKU APPAW, farmer of Aboenu in the Anamabu Division of the  
Gold Coast Colony, one of the Defendant Appellants herein make  
oath and say as follows:— 40

1. That I know Elizabeth Smith the Plaintiff Respondent herein and  
subject of the Stool of Assebu.



*Exhibits.***EXHIBIT No. 6.****COPY Proceedings re : Elizabeth Smith v. Kweku Appaw.**

No. 6.

Copy  
 Proceedings  
 re Elizabeth  
 Smith v.  
 Kweku  
 Appaw.  
 31st  
 January  
 1924.

Put in by Court in *re Amonu Ababio v. Kweku Appawu & Ors.* and  
 marked Exhibit "6."

(Sgd.) J. A. HUTTON

26.7.47.

31.1.24.

AT A DIVISIONAL COURT AT CAPE COAST on Thursday the 31st day  
 of January 1924 before HIS HONOUR Mr. JUSTICE R. E. HALL.

ELIZABETH SMITH

10

*Vs.*

KWEKU APPAW &amp; Ors.

Plaintiff claims £200 damages from Defendants for wrongfully entering upon and cutting palm trees from the Plaintiff's land commonly known as and called Buabassa situate at Sodorfoo in Assebu District and bounded on the North by land belonging to Abono people and Kakum or Sweet River on the South by land belonging to Ebram and Chief Kwesie Ankuma of Putubiw on the East by land belonging to Adjua Drawa and on the West by land belonging to Ahonton's, Agilgin and Armin, and also for an injunction to restrain the Defendants, their agents servants and workmen 20  
 from further trespassing on the said land and also for £50 Mesne Profits.

Bannerman Hyde for Plaintiff.

Brew for all Defendants.

Brew preliminary objection. Sections 11 and 17 Native Jurisdiction Ordinance. This Court no jurisdiction. Land held under Native Tenure. Both parties natives of Gold Coast. Where the land is situate there is a Native Tribunal and should be referred to Native Tribunal. We all say we are the owner of the land. We are in occupation of the land. Land practically in Assebu district for political purposes—called Anamabu.

*Bannerman-Hyde* : Proper case to be retained in this Court. This is 30  
 proper Tribunal to adjudicate.

*Grounds :*

1. Draws Court's attention to affidavit on file sworn by 3 Defendants—Affidavit 22.12.23 paragraphs 3 and 6. We are his subjects.

2. Paragraph 3 of Affidavit coupled with statement as to ownership—"Only Caretakers"—Practically Omanhin of Anamaboe is Defendant and Defendants have no vested right in property—tenants at will.

3. If case went on plea would be they are Caretakers. If after this they are not owners then Omanhin of Anamaboe is in shoes of Defendants and therefore necessary in interest of justice that Omanhin be brought 40  
 before Court as joinder.

Land is situated in Assebu.

One Defendant was sued before Omanhin of Assebu. Omanhin of Assebu did his best but he would not appear. Series of case with respect to this land since 1865 by Chalmers, J., and last case was brought by Kofi Amonoo Omanhin of Anamaboe in 1871 against present Plaintiff's ancestor called Abbakumah. The Court gave judgment and as a result of judgment agreement was drawn up by the Court binding Omanhin of Anamaboe and his ancestor for ever with respect to the land.

*Exhibits.*  
No. 6.  
Copy  
Proceedings  
re Elizabeth  
Smith v.  
Kweku  
Appaw,  
31st  
January  
1924,  
*continued.*

Counsel admits present Defendants not bound.

10 If land attached to stool of Anamaboe and same land with respect to which agreement made in 1871 then that agreement being in force Native Tribunal is not competent to interpret the agreement. Suit was between Amonoo and Plaintiff's ancestors.

If this case remitted to Native Tribunal—in order that Plaintiff may establish her title necessary to put in this agreement in 1870 and agreement so made that Native Tribunal incompetent to interpret and great injustice might be done.

Brew objects to Court seeing agreement at this stage—Even if same land not same parties.

20 Court asks Counsel if land is, or is not within particular jurisdiction of Omanhin of Anamaboe.

Bannerman-Hyde says as far as his instructions go, it is not.

Brew says land as far as political division is concerned is within jurisdiction of Assebu but inhabitants are under Omanhin of Anamaboe. Any civil action on the land was taken here not District Commissioner of Saltpond. Land being in Cape Coast District and Anamaboe being in Saltpond District. Says land is situate within particular jurisdiction of Omanhin of Asebu.

30 Bannerman Hyde says land is situated within jurisdiction of Assebu. Bannerman-Hyde says we could not serve, but he served through Omanhin of Anamaboe—Must be served through particular Tribunal where people live.

Defendants' Counsel advises his clients.

Document on which Plaintiff's case hinges.

Brew—Interpretation of Document—already decided.

Native Tribunal can interpret—Right of Appeal—Provincial Commissioner to Full Court.

If Plaintiff institutes action in one division and resides in another division other side might have offence and move Provincial Commissioner.

Ruling reserved till Monday February 4th 1924.

(Sgd.) R. E. HALL.



*Exhibits.* 4.2.1924.

No. 6.  
Copy  
Proceedings  
re Elizabeth  
Smith v.  
Kweku  
Appaw,  
*continued.*  
4th  
February  
1924.

AT A DIVISIONAL COURT HELD CAPE COAST, on Monday the  
4th day of February, 1924; Before His Honour Mr. JUSTICE  
R. E. HALL.

ELIZABETH SMITH -

*Vs.*

KWEKU APPAW & ORS.

Bannerman-Hyde for Plaintiff.

Brew for Defendants.

} From page 454.

Judgment delivered. Parties referred to Native Tribunal with costs 10  
to Defendants up to date of reference.

Costs assessed at £6. 12. 0.

Court directs copy of Judgment to P.C.

Vide pp. 430-434 of Judgment Book, Vol. II.

(Sgd.) R. E. HALL  
Judge.

4.2.24.

AT A DIVISIONAL COURT HELD AT CAPE COAST on Monday the  
4th day of February, 1924 Before His Honour Mr. JUSTICE 20  
R. E. HALL.

ELIZABETH SMITH -

Plaintiff

*Versus*

KWEKU APPAW, KOJO DECHEM, ESSIEDU  
and EDGIN -

Defendants.

#### JUDGMENT.

In this case the Plaintiff claims £200 damages from the Defendants for wrongfully entering upon and cutting palm trees from the Plaintiff's land commonly known as and called Buabassa situate at Sodorfoo in Asebu district and bounded as described in the writ of summons and also for an 30  
injunction to restrain the Defendants their agents servants and workmen from further trespassing on the said land and also £50 for mesne profits.

Mr. Ward Brew of Counsel for the Defendants has raised a preliminary objection that this is a suit properly cognizable by a Native Tribunal being a suit relating to the ownership or possession of land held under native tenure and has referred the Court to sections 11 and 17 of chapter 82. He further stated that all the parties are natives of the Gold Coast Colony. He added "we say we are the owners of the land. We are in occupation of the land."

Mr. Bannerman Hyde for Plaintiff contended that this case was a 40  
proper one to be retained by this Court and referred to the affidavit of three of the Defendants herein sworn on 22nd December 1923 in reply to an affidavit of Plaintiff sworn on 30th November 1923 in support of a motion for an Interim Injunction in connection with this case.

In paragraph 3 of that affidavit the three Defendants swore that they had been in possession of the land as caretakers for the Omanhin of Anamaboe together with the other Defendant Essiedu and had been farming on the said land for many years etc. Whilst in paragraph 6 thereof they said that the said land was the stool property of Nana Amonu VI the Omanhin of Anamaboe and that they were the subjects of the said Omanhin.

Counsel argued that these statements in the affidavit conflicted with those of Mr. Brew in taking his objection and that possibly the Omanhin should be joined as Co-defendant in the interests of justice.

On a direct question from the Court as to whether or no the land in question was within the particular jurisdiction of the Omanhin of Anamaboe Mr. Bannerman Hyde said that as far as his instructions went it was not, but was within the jurisdiction of the Omanhin of Assebu whilst Mr. Brew said that as far as political conditions were concerned the land was within the jurisdiction of Abura but that the inhabitants of the said land were under the Omanhin of Anamaboe.

It is clear that whether the land is within the jurisdiction of the Omanhin of Assebu or the Omanhin of Abura it is not within the jurisdiction of the Omanhin of Anamaboe and that there is therefore a Tribunal not presided over by the Omanhin of Anamaboe to which the parties could properly go, even if I felt inclined to consider the latter fact a sufficient reason for retaining the case, the Omanhin of Anamaboe not being a party to the suit now before me. I am strongly of opinion that the mere suggestion of possible bias on the part of the native Tribunal or that injustice might be done are not grounds, for *this Court* to retain a case properly cognizable by a Native Tribunal and I consider that the Legislature allowed for cases of such a nature in sections 21 and 22 of the Native Jurisdiction Ordinance. Under section 21 the Provincial Commissioner subject to an appeal to the Governor may stop the hearing or further hearing of any civil or criminal case commenced or brought before any Native Tribunal and direct the case to be enquired of and tried by the Superior Native Tribunal or by the Court as he shall deem expedient and under section 22 the Provincial Commissioner may remove proceedings on motion by Defendant to the Court.

If the Plaintiff felt that it would be inequitable for this case to be tried by any given Native Tribunal it appears to me that her proper course would have been to have issued her summons in the Native Tribunal and then applied to the Provincial Commissioner for transfer. It is I think obvious that a Provincial Commissioner is in a far better position to deal with questions of suggested bias and so forth than a Divisional Court.

Counsel for Plaintiff has not suggested that the parties are not natives within the scope of the Native Jurisdiction Ordinance nor that the land is not held under native tenure nor that the case in the ordinary way could not be properly cognizable by a Native Tribunal as a suit relating to the ownership or possession of land held under native tenure.

It seems to me that the question whether Mr. Brew's statement in this Court varies with the statements in the affidavit referred to above is

*Exhibits.*

No. 6.

Copy  
Proceedings  
re Elizabeth  
Smith v.  
Kweku  
Appaw,  
4th  
February  
1924,  
*continued.*

*Exhibits.*

No. 6.

Copy  
 Proceedings  
 re Elizabeth  
 Smith v.  
 Kweku  
 Appaw,  
 4th  
 February  
 1924,  
*continued.*

immaterial as far as the point in issue at the moment is concerned and I am of opinion that so far no satisfactory reason for retaining the suit has been shown.

It has been further argued that inasmuch as an agreement was entered into between the Omanhin of Anamaboe and Plaintiff's ancestors with reference to this land as a result of a case in this Court in the year 1871, it would not be right or equitable to refer the parties to the Native Tribunal as the Native Tribunal would be incompetent to deal with the written document. I am not aware nor am I concerned whether this agreement (which I have not seen) is binding on the parties to this action or not and in this connection I would refer to the case of *C. A. Azzu v. J. C. Cooper* (Renner's Reports p. 681) heard before the Full Court in February 1913. In that case, in the course of the judgment the following appears :—

“ The case for the Defence is (1) that the Konor's Tribunal had no jurisdiction to try the case, documents being involved. This question was decided by the last Full Court against the Defendant's contention and we are of the same opinion, namely, that the mere existence of documents in a case does not of itself do away with the jurisdiction of the Native Tribunal.”

I am of opinion that this ruling sufficiently disposes of the contention as regards the point at the moment under review and I would further add that in practice Native Tribunals are dealing with documents every day as can be seen from Full Court records of appeal.

I see no necessity in view of the points raised by Counsel for Plaintiff for hearing any evidence before I come to any conclusion as to the retaining or non-retaining of this case.

Before I close I would like to refer to the difficulties alluded to by Counsel for Plaintiff in serving writs etc. in certain cases on subjects of one Omanhin issued from the Native Tribunal of another Omanhin. I do not think it can be nor in fact was it seriously contended that this difficulty is any ground for the retention of a suit by this Court but it is I consider a matter which should engage the serious consideration of the political officers of the Colony so that some definite procedure may be laid down in order that the administration of justice may be duly carried out.

I have come therefore to the conclusion that this is a suit relating to the ownership or possession of land held under native tenure properly cognizable by a Native Tribunal and that no satisfactory reason for the retention of the suit by this Court has been shown and I therefore stop the further progress of this case before this Court and refer the parties to the Native Tribunal with costs up to date of reference assessed at £6. 12s.

(Sgd.) R. E. HALL  
 Judge.

Mr. J. Bannerman Hyde for Plaintiff.

Mr. W. Ward Brew for Defendants.

# In the Privy Council.

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## ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL.

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### BETWEEN

**KWAMINA ACQUAH** (substituted for Kweku Apawu deceased),  
**KODWO EGYIN, KWEKU FENYIN, KOBINA EKUABU,**  
**KWEKU PEMISAH, YAW BERETUA, KODWO**  
**ABURABURA, KOFIE ENU, KWESI EDWIN** (under  
Asebu Paramount Stool) and **NANA AMANFI III** - - *Appellants*

### AND

**NANA BAFFOE**, Regent and Caretaker of the Stool of Anomabu  
(substituted for Nana Amonu Ababio deceased) - - *Respondent.*

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## RECORD OF PROCEEDINGS

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