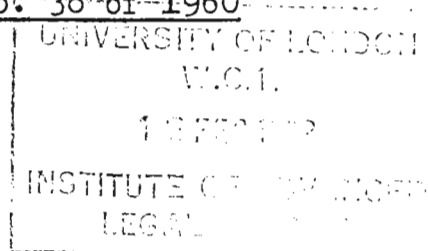


ON APPEAL
FROM COURT OF APPEAL, GHANA



63577

B E T W E E N

NAJA DAVID, C.H. GHASSOUB and
N.H. GHASSOUB trading in
Partnership as Naja David
Sawmill Company (Defendants)

10

NANA OSEI ASSIBEY III,
representing the Stool of
Kokofu (Co-defendant)

Appellants

- and -

EDWARD KOTEY ANNAN SASRAKU
substituted for Emmanuel Kotey
Quao (deceased) as Head and
Representative of a Family -
Company of Teshie people
claiming certain lands near
Chempaw (Plaintiff)

Respondent

20

CASE FOR THE APPELLANTS

Record
p.101

1. This is an appeal against a judgment of the Ghana Court of Appeal dated the 12th January, 1959 whereby the Court of Appeal dismissed an appeal against a judgment of the Supreme Court of the Gold Coast, (Land Court), Ashanti Judicial Division, pronounced by Mr. Justice Sarkodee-Adoo on the 17th December, 1957, granting to the plaintiff against the defendant Company and the co-defendant jointly and severally a declaration of title to the ownership of certain lands claimed by the plaintiff near Chempaw in the State of Kokofu, Ashanti and an injunction to prevent the defendant Company from trespassing on the said lands and dismissing the co-defendant's counterclaims for (a) a declaration of title to the same lands, (b) recovery of possession thereof, and (c) damages for trespass.

p.67

p.95

30

2. The action from which this appeal arises was

Record

- brought by the original plaintiff in his capacity of head and representative of a family syndicate against an alleged and non-existent Naja David Sawmill Company Limited but by consent amendments the present defendants-appellants became substituted. The original plaintiff died in the course of the proceedings and the respondent was substituted in his place. In the action the original plaintiff claimed an injunction to prevent the alleged Limited Company from trespassing on certain lands claimed by the plaintiff. By an amendment of the Statement of Claim, the plaintiffs asked in addition for a declaration of title against the defendants and co-defendant to the lands depicted in a plan attached to the writ. 10
- p.2
- p.15
- p.3, l.1
- p.4, l.42
3. The lands in respect of which this action was brought, are situated near Chempaw in the State of Kokofu and prior to the alleged purchase by the family syndicate, admittedly belonged to the Stool of the State of Kokofu, a member of the Ashanti Confederacy, a group of States under the supervision of the Asantehene, which were in the Colony of Ashanti, prior to the formation of the Dominion of Ghana in 1957. The plaintiff who was the head of a family syndicate of persons of Ga race from Teshie in the then Gold Coast Colony and strangers to Ashanti, claimed that he bought the three adjoining parcels of land which form the subject matter of this action from the Stool of Chempaw, which was and is a Stool subordinate to the Stool of Kokofu. The Chempaw Stool, at the times of the alleged purchases, was occupied by Nana Kwasi Botwe, the Odikro of Chempaw. The plaintiff in his statement of claim alleged that the said sales to him were made with the knowledge and consent of the Paramount Stool of Kokofu, then occupied by Omanhin Nana Kofi Adu as Paramount Chief of Kokofu State. 20
- p.68, l.4
4. The appellants are (a) the defendants (named by the plaintiff) trading in partnership as Naja David Sawmill Company and (b) the present Omanhin of Kokofu State who was added as a co-defendant on his own application. The defendants in their statement of defence dated the 29th March 1956 pleaded that they had been put in possession of the Chempaw land including the lands in question by the co-defendant by a timber felling agreement with the co-defendant dated the 30th October 1953 30
- p.5
- p.8
- 40

pp.5-6

10

for the purpose of felling timber and put the plaintiff to the strict proof that the lands in question were sold to him with the knowledge and approval of the co-defendant. In a separate statement of defence, dated the 27th March 1956, the co-defendant pleaded, inter alia: (a) that the co-defendant's stool had at all times been and still was the paramount owner of all Chempaw land, including the lands in question; (b) that the co-defendant's stool had never sold or empowered or approved the sale of any lands to the plaintiff; (c) that the Chempaw stool was the caretaker of the co-defendant's Chempaw land and had no right or authority to sell any part of the said Chempaw land without the consent of the co-defendant's Stool; (d) that no such authority or consent was ever obtained for the alleged sale of the lands in question to the plaintiff and that any purported sale had been and was invalid.

20

The co-defendant also pleaded that according to existing custom prevailing in Ashanti and Kokofu, stool lands were not sold and that no portion of the Kokofu Stool lands had ever been sold by the Kokofu Stool to any one. In an amendment of his defence, the co-defendant counterclaimed against the plaintiff for (a) declaration of title to the lands in question; (b) recovery of possession; and (c) damages for trespass.

pp.17-18

30

5. The issues considered by the Supreme Court to arise out of the pleadings were set out for the first time by the Supreme Court in its judgment dated the 17th December 1957 as follows:

p.69

40

1. Whether or no according to Ashanti custom land is saleable in Ashanti generally and in particular in different states (or Divisions) and at any rate in the part of Ashanti in which the land the subject of this Action is situated.
2. Whether or no the "Company" has legitimately purchased the land from the Stool of Chempaw.
3. Whether or no the purchase was with the knowledge and consent of the Paramount Stool of Kokofu.
4. Whether or no the native custom of "Guaha" is performed and recognised in Ashanti.

Record

- 5. Whether or no the native custom of "Guaha" was performed at the sale.
- 6. Whether or no there has been an Agreement between the Plaintiff and the Co-Defendant whereby their relations as to the ownership of the land has changed.
- 7. Whether or no in or about 1950, the Otumfuo the Asantehene in Council made a binding order or decision depriving the "Company" and all other purchasers of land in Ashanti of their absolute ownership thereof.
- 8. Whether or no the Otumfuo the Asantehene claimed or now claims the lands in the different states (or Divisions) in Ashanti.
- 9. Whether or no this Action is maintainable.

10

It is submitted that, having regard to the statutory provisions hereinafter referred to, the only relevant issues were Numbers 2, 6 and 9, and that the answers to each of these issues should have been in the negative. However, the answers which, either expressly or by inference, were given by the Supreme Court were as follows:

20

p.94, 11.30-40

1. Yes.

{ 2. Yes.

p.95, 11.9-13

{ 3. Yes.

{ 4. Yes.

{ 5. Yes.

Cf. p.93, 1.30 to p.94, 1.19

6. By inference, No.

p.91, 1.43 to p.92, 1.7

{ 7. No.

{ 8. No.

p.94, 1.29

9. Yes.

30

The Appellants accept the negative answers to 6, 7 and 8, but as to 6 say that the relationship was not that found by the Court but that the co-defendant was and is the owner.

6. At the trial the plaintiff relied upon the ceremony of "Guaha" as the legal basis of his alleged title but marked in evidence three documents (Exhibits G, H and P) as being relevant because of their evidential value in relation to and in support of the transaction by native custom.

These documents were as follows:

- 10 (a) Exhibit G, dated 23rd December 1927, being a document in the English language in form resembling an English conveyance whereby Chief Botwe with his elders and counsellors purported in consideration of £400 as beneficial owners to convey to 7 persons (including the present Appellant) an area 3.61 square miles "to hold unto and to the use of the Purchasers and their heirs for ever". All the parties to this document and the witnesses sign as marksmen except R.A. Sasraku one of the purchasers and D.M. Sasraku, the witness to the marks, who was the Chempaw Stool Clerk. Among the marksmen witnesses is the mark of one Linguist Kwasi Yeboah described as "for Kofi Adu Omanhene-Kokofu". Exhibit G does not mention "Guaha". The Appellant, who was a person named as a purchaser in Exhibit G deposed that he was present at "Guaha" and the execution of the exhibit but gave no evidence of how it came into existence or what, if any, explanation was made of it to the persons present.
- 20
- 30 (b) Exhibit P (Kumesu), dated 4th August 1934, being a document of a similar kind, whereby Chief Owusu Afriyie of Chempaw with the assent of the Elders and Councillors purports in consideration of £357 paid on the 28th February 1927 to Botwe to convey to 6 Gas from Teshie an area of about 4 square miles "to hold unto and to the use of the Purchasers their respective heirs executors administrators and assigns for ever."

40 This document recites that the Vendors were absolute owners and seized in fee simple in possession free from incumbrances and an agreement for the sale in fee simple in possession and treats the property as freehold. It also recites that conveyance according to native custom (not specifying "Guaha") had been made by Botwe and his Councillors and Elders to the purchasers and that they had been in possession since the 28th February

Record

1927. Though there was no reservation of mines and minerals or anything else there is a proviso that the Vendors will join with the Purchasers in granting concessions.

All the parties to this document are shown as Marksmen and the said literate D.M. Sasraku signs as interpreter and witness.

p.37, 1.14

One Ashie Oko who deposed that he was the son of the deceased first named purchaser stated that he had been present at "Guaha" and that later Exhibit P was given as evidence of the sale and he identified the exhibit as having been present at its execution as a small boy carrying his father's travelling bag (he was not an attesting witness) and gave no other evidence about it except that it was read interpreted and explained without stating what the interpretation and explanation were.

10

p.137

(c) Exhibit H (Pampasi) dated 12th April 1935, being a document similar to "G" and "P", whereby Chief Afriyie, representing himself his elders, councillors and people of Chempaw, in consideration of £354 in view of a previous sale for that sum "by the native custom of Tramah or Guaha" and in order to evidence that sale purported to convey to "Joseph Oko Sasraku's Company" of Teshie an area of 1.66 square miles "to hold unto and to the use of the Purchaser for ever". This document recites that the Vendor as Chief of Chempaw was seized in possession in fee simple. All the signatories were marksmen and the said D.M. Sasraku appears as interpreter.

20

p.140, 1.30

7. Plaintiff's Counsel in his opening, expressly stated that the documents (Exhibits G, P and H) were in themselves valueless save and except as evidence of the performance of Guaha, upon which performance he said the Plaintiff relied to establish title, but he gave no reason for his statement of their being otherwise valueless. Evidently he had in mind the Concession laws and, presumably, in particular the requirement of the validation of such documents by the Court.

30

p.14, 11.18-22

At the close of the Case, Counsel for the defendant and co-defendant made the following submission:

40

p.64, 11.1-6

"The Conveyances embrace an area over and above 25 acres and as such are concessions but not having been filed and Certificate of validity obtained in compliance with the Concessions Ordinance Cap. 136 are of no value and therefore of no effect whatever."

Counsel for the plaintiff did not controvert this submission in his final speech.

pp.64-66

10 In regard to these three exhibits, the trial Judge (Supreme Court) at the beginning of his judgment said:

p.68, 11.4-17

20 "Shortly put, the Plaintiff's case is that a group of farmers in Teshie, in the Ga State, joined together to purchase land from the Chempaw Stool which serves the Paramount Stool of Kokofu to which it is subordinate, and that the purchase of the land was by 'Guaha', and that this Native custom was subsequently evidenced by documents which have been tendered and admitted in evidence; that these documents (Exhibits "G", "H" and "P") are by themselves void as Concessions under the Concessions Ordinance (Cap. 136) but are merely relevant in consideration of their evidential value in relation to, and in support of, the transaction by native custom."

In conclusion the trial Judge said:

30 "In the result, I find that the Plaintiff's Company is in possession of the said land as owners thereof by right of purchase under an absolute sale by 'Guaha' from the Stool of Chempaw with the knowledge and consent of the Paramount Stool of the Kokofu State: and there will be the declaration of Title and also an Order for an Injunction for the Plaintiff against the Defendants and the Co-Defendant jointly and severally as claimed."

p.95, 11.9-17

40 8. The Concessions Ordinance (Cap. 136) to which the learned Judge and Counsel for the Defendant and Co-Defendant referred is to be found as Cap. 136 in the Laws of the Gold Coast 1951 Revision. It came into force as Ordinance No. 19 of 1939 on the 15th May 1939. This Ordinance was therefore

Record

not in force in Ashanti (or at all) at the relevant period, namely the year 1925. The relevant Ordinances are Ordinance No. 3 of 1903 of the Colony of Ashanti as amended by the Ordinances of Ashanti No. 5 of 1903, No. 3 of 1904, No. 2 of 1906, No. 1 of 1907, No. 3 of 1908, No. 4 of 1912, No. 5 of 1912, No. 3 of 1915, No. 9 of 1922 and No. 4 of 1923. These Ordinances in a consolidated form together with the subsequent Ordinances of Ashanti No. 3 of 1926 and No. 3 of 1927 (which are immaterial for the present purpose) are to be found as Chapter 5 of the Laws of Ashanti (1928 Revision Vol. 1 pages 49-76). The Supreme Court and the Ghana Court of Appeal assumed that Cap. 136 was the relevant Ordinance, and the Ghana Court of Appeal took precisely the same view as the trial Judge as to the lawfulness of the purported sales to the Company, though not entirely as to the interest acquired. The Supreme Court and the Court of Appeal failed to consider the effect of these relevant statutory provisions on the matters of law arising for decision in the case. It is respectfully submitted that this failure has led both Courts to the erroneous view in regard to the legality of the transactions.

10

20

p.102; 1.31
p.109, 1.14
p.108

It is submitted that under these statutory provisions the alleged sales of land by Guaha were clearly invalid as a matter of law assuming every point of fact alleged by the plaintiff to have been proved.

30

9. The plaintiff's claim was that the Company which he represented had an absolute, unqualified and perpetual title as owners of the areas of land identified by Exhibits G, P and H and acquired by the Company in the year 1925.

The Ordinance is entitled "An Ordinance to regulate the concession of rights with respect to lands in Ashanti by natives" and its obvious purpose is to prevent Ashantis entitled by native custom to rights in land in Ashanti from parting with those rights except with the approval and under the strict supervision of the Administration and of the Court. (See definition of "Native" Section 2).

40

The means adopted to secure this approval and supervision by the Administration were provided by Section 55 requiring compliance with the

regulations laid down in Schedule B to the Ordinance and enacting that any concession obtained without complying with the regulations should be absolutely void and of no effect. These regulations applied to the acquisition of all rights which might be the subject of a concession document. (See definition of "Concession" in Section 1, indicating the subject as any right property or interest in or over land with respect to ... products of the soil).

The regulations therefore required any person minded to acquire any such right to obtain first permission from the Chief Commissioner to obtain a prospecting licence (Regulation 1) which permission would only be granted if the Chief Commissioner considered it should be (Regulation 2). The licensing authority (the Secretary of Mines) then considered whether the application should be granted for the whole or part of the area within which the applicant desired to obtain rights in respect of some product of the soil and thereafter the Chief Commission would notify the local Chief or Chiefs and instruct them to grant the necessary facilities for prospecting (Regulation 3). No person might apply for a concession in any area unless he had a licence to prospect that area and every application an authorised person made had to be notified to the Chief Commissioner who had to summon the Chief or Chiefs concerned to appear before him or a District Commissioner in order to ascertain from them in the presence of the applicant or his agent if they were willing to grant the concession applied for. The Administrative Officer before whom the applicant and chief or chiefs had been summoned was required to arrange with the applicant in the presence of the Chief or Chiefs "the sum which they should be paid annually in consideration of the concession" (Regulations 5 and 6). Then the terms agreed had to be embodied in a written concession agreement to be prepared by the Applicant, containing full particulars of boundaries and a suitable plan. At this time the employment of a barrister or solicitor was not allowed in Ashanti in any cause or matter, civil or criminal (Administration Ordinance, Chapter 1 of Laws, 1928 Revision, Section 9), a provision which was not repealed till 1933, and it is believed that in 1925 there were no legal practitioners practising in the Colony of Ashanti.

Record

The document so prepared had to be executed by the interested parties in the presence either of the Chief Commissioner or of a District Commissioner, who was required to certify the due execution of the document by the party before him (Regulation 7). This would necessarily involve in the case of illiterates a proper interpretation and explanation to them under the impartial eye of the Chief Commissioner or District Commissioner as guardian of their interests. This regulation therefore required every grant of a concession to be in writing, which had the necessary consequence that to remain valid it had subsequently to be brought before the Chief Commissioner's Court for consideration. (See definitions of "Concession" and "Court" in the Ordinance Section 2).

10

For the purpose of consideration by the Court, the Ordinance required Notice of a Concession to be filed in the Court by the claimant within 6 months after its date with the prescribed documents and, if this were not done, the Concession became void, with a proviso that the Court might for good cause extend the time (Section 9). Survey requirements had to be complied with subject to the same penalty for default (Section 10). The Notice of Concession had then to be gazetted by the Court and served on such persons as the Court directed at the expense of the Applicant (Section 11). The Court was prohibited from certifying a concession as valid unless it was in writing and unless the regulations in Schedule B had been complied with and unless satisfied as to numerous other matters for the protection of the African grantor and other Africans which were specified in Section 12. And by section 20 the Court was prohibited from issuing a certificate of validity in respect of any concession which purported to confer any right or interest in or over any land for a longer period than 99 years but with power to reduce the term so as to bring it within this limit.

20

30

40

10. By section 3 of the Ordinance the Governor was enabled to exclude from the operation of the Ordinance any portion of Ashanti or, subject to any conditions, which he might impose, any class of concessions whereby no right, interest or property in or over land with respect to minerals or precious stones, or the option of acquiring any

such right, interest or property, purported to be either directly or indirectly granted.

By Orders made 11th May 1906 and 20th June 1919 (Laws of Ashanti 1928 Revision Vol. 2 p.74) agricultural, arboricultural and timber concessions were excluded from the operation of the Ordinance where (1) the concession did not either directly or indirectly grant or purport to grant any right, interest or property in or over land with respect to minerals or precious stones, or the option of acquiring any such right, interest or property (2) the concession was duly stamped in accordance with the assessment of the Stamp Commissioners (3) if it conferred, or purported to confer, rights over an area exceeding 1 square mile, the consent of the Chief Commissioner of Ashanti must have been indorsed on the concession or a certified copy thereof, which consent the Chief Commissioner might withhold without assigning any reason.

11. It is therefore submitted that it is abundantly clear that the transactions upon which the Plaintiff relied were null and void from the very beginning. Indeed they appear to have been criminal offences, for section 55 of the Ordinance enacted that every person who obtained or attempted to obtain any concession in Ashanti without complying with Schedule B should be guilty of an offence and liable to a fine not exceeding £100, or to imprisonment with or without hard labour for a period not exceeding six months.

None of the Regulations in Schedule B were shown to have been complied with, on the contrary, it is clear that the central Regulations 6 and 7 were not complied with at all. Indeed, if the transactions had been duly carried out in accordance with Regulations 1 to 5 inclusive, the negotiations up to that stage would have been abortive, for the Regulations do not contemplate the acquisition of a concession merely for a lump sum but, as appears from Regulation 6, and the Regulations as to payment of Rents made 24th August 1905 by the Governor under section 4 of the Ordinance (Laws of Ashanti 1928 Revision Vol. II p.93), for the payment of annual rents or royalties.

It is also clear that none of the transactions

Record

are exempted from the operation of the Ordinance by the Governor's Order of the 11th May 1906 and 20th June 1919 before referred to, as they offend against every exempting condition.

12. The admission by the Plaintiff's Counsel and the finding by the Court that the documents Exhibits G, P and H, having regard to the provisions of the Concessions Ordinance appearing as Cap. 136 in the Laws of the Gold Coast 1951 Revision, were void, though erroneously based upon Cap. 136, was correct, for, if and so far as they were writings within the definition of "Concession" in section 2 of the Ordinance, they had not been obtained in accordance with Schedule B of the Ordinance so were null, void and apart from any other objections, were by section 12 of the Ordinance, incapable of validation by the Court. It is submitted that not only the documents but the whole of the transactions were illegal and void and gave no rights to the Company represented by the Plaintiff to support a claim for a declaration of title against either the Defendant or the Co-defendant or for an injunction to prevent the defendants from trespassing on the lands identified by Exhibits G, P and H. 10 20

It is submitted therefore that the action should have been dismissed with costs.

p.17 13. As to the Counterclaim of the Co-Defendant for a declaration of title, it is submitted that this should have been granted. 30

p.72, 1.6 In Ashanti the object which symbolises the unity of each State is the ancestral stool occupied by the Paramount Chief to which all the land in the State is "attached", the subordinate Chiefs under the Paramount Chief being Caretakers for the Paramount Stool of the lands of their respective divisions of the State. The uncontradicted evidence of the Co-defendant as to this was:

p.52, "I am the Omanhene of Kokofu. I was enstooled in the year 1951. Chempaw is a division of my State. All Kokofu lands are attached to my Stool. The Odikro of Chempaw is a caretaker of Chempaw land for the Kokofu Stool". 40

"The Odikro of Chempaw as caretaker of the Chempaw land has to consult the Kokofu Stool occupier (Omanhene) and the elders of the Stool in respect of the land before he collects any monies in respect of the land or in any way deals with it."

10 The Plaintiff's evidence admitted this but set up the case that the sales and purchases in 1925 had been assented to by the then Paramount Chief, as had the confirmations. Having regard to the Ordinance however, it is submitted that the whole of the transactions were a nullity so that, even if the whole of the evidence as to the alleged assent is to be accepted, the title of the Stool of Kokofu remained unaffected.

20 It is not however in accordance with Akan customary law to cause persons, such as the Company, who have actually settled upon land without title and improved it by their farming operations, to have the result of their efforts forfeited without first giving them an opportunity of coming to terms with the true landowner.

30 The Co-defendant has acted in accordance with the customary law, as appears from his evidence, and "entreated" them to come to terms with him so that they might be accorded permission to continue in possession of their farms, but they refused to do so, claiming that they had bought the land outright by Guaha. It is submitted that, under the customary law, this conduct entitled the Co-defendant to eject the members of the Company from their farms and justified the counterclaim for recovery of possession and for damages for trespass.

p.52; 11.15-28
p.55, 11.30-32

40 14. It is submitted that the effect of the statutory provisions renders it irrelevant to consider the first and main issue propounded by the Supreme Court for, even if prior to the Ordinance land was by custom saleable, it could thereafter not be sold but at most leased for a period of 99 years and for a consideration either wholly or in part consisting of annual payments and the transaction had to be effectuated by a written document and, even when so effectuated, the written document had to be validated by the Court. The only exceptions to this were such transactions as were exempted by Orders made under section 3 of

Record

the Ordinance, within which exemptions the transactions in question do not fall.

If, however, it is necessary, the Appellants respectfully submit that, if the effect of the Concessions Ordinance of Ashanti were to be disregarded, there was no evidence sufficient to support the affirmative answers of the Trial Judge to any of the issues (if related to the relevant time or times) save that, at the purported sales in 1925, the custom of Guaha was performed at the instance of the Company, so that the Court of Appeal should not, even in that event, have supported such affirmative findings.

10

p.96

15. The Defendant and Co-defendant appealed from the judgment of the Supreme Court to the Ghana Court of Appeal on grounds which did not refer to any Concessions Ordinance, but before the Court of Appeal both Counsel referred to "the Concessions Ordinance" as invalidating the Exhibits G, P and H.

20

p.100

p.100, 1.15

The Plaintiff's Counsel contended that the Supreme Court had been right in declaring the plaintiff entitled to absolute title but afterwards withdrew this contention and left it to the Court to decide what interest was intended to be passed.

On the question of customary law, Granville Sharp, J.A. (with whom Van Lare the Acting Chief Justice and Ollennu J. agreed) said:

p.109, 11.10-46

"It remains to be considered what estate was transferred by the 'sales' of which the documents are evidence. The plaintiff as I have said earlier, conceded that no title could pass by the documents themselves. They cannot operate as validated concessions because they sin against the Concessions Ordinance in two respects (a) the area involved exceeds 25 acres and (b) no certificate of validity exists; no enquiry having been sought or held. They are however, evidence of the facts stated in them, that the land was sold according to native custom. It therefore follows in my opinion that such estate passed as would usually pass on such a sale, as between natives, of Stool lands. This is not an unqualified ownership or

30

40

right to the land, but a possessory right to occupy the land and enjoy the usufruct thereof; in other words the usual native tenure. The price paid by the plaintiff can be looked upon as payment of tribute partly in advance, and that further tribute was payable was recognised by the parties in a document dated 23rd December 1927 which reads as follows:

10 "THIS AGREEMENT made the 23rd day of December
 "1927 that we the undersigned have agreed
 "that if any Gold Manganese or Ore will be
 "found out in the said land from Hill or
 "Hills by any Miner or Miners the Profit or
 "Profits thereof will be divided into three
 "equal parts.

"That two-thirds of the said profit or
 "profits will go into the hands of the
 "Purchasers aforesaid and one-third thereof
 20 "should go into the hands of the Vendors
 "aforesaid being friends to the said Pur-
 "chasers.

"In witness whereof we have hereunto set
 "out hands this 23rd day of December 1927."

By this document the allodial right of the
 real owner was recognised and so long as
 this is so, and the plaintiff family does not
 become extinct, or desert the land, they are
 30 entitled to remain upon the land and have
 the same protection as if they were in fact
 the owners."

On the issue whether the consent of the
 Omanhene of Kokofu had been obtained for the sale
 by "Guaha" Granville Sharp J.A. said:

"The question then arises, whether the
 transactions evidenced by the documents were
 carried out with the knowledge and/or consent
 of the Omanhene of Kokofu, at that time Kofi
 Adu.

p.107; 1.46 -
 p.108, 1.18

40 There was evidence that the Omanhene had in
 fact assented to other sales of lands in the
 locality and it was proved that certain de-
 stoolment charges against him to which he
 made no answer, included complaints in respect

Record

of such sales. Two important facts emerged in the course of the evidence. In relation to the first and the third sales, the documents are witnessed by the Linguist to the Omanhene of Kokofu which signature is binding on the Omanhene, and it would be unlikely that he could have been in ignorance of the intervening sales, though no signature affecting him appears on the relevant document. The three sales were of contiguous parcels of land comprising in all an area of some eight (8) square miles." 10

e.g. p.31, 1.7

If the Court of Appeal were correct in holding that all that the Company obtained was a possessory right to occupy the land and enjoy the usufruct thereof, that limited right was certainly not what was claimed in the action and in the appeal up to shortly before judgment but, in any case, it was a possessory right the grant of which was prohibited by the Concessions Ordinance unless the conditions laid down in the Ordinance were complied with. 20

It is further submitted that the documents relied upon as evidence in the Supreme Court and in the Court of Appeal were no evidence of the facts stated in them in the absence of proof that the linguist was empowered to bind the Stool of Kokofu and that he and the purporting grantors understood these legal instruments in the English language, for there is no presumption that illiterate natives of Ashanti have appreciated the meaning, effect and implications of an English legal document because they have set their marks to it, whether as grantors or as assenting witnesses. 30

Furthermore no Paramount Chief (or other Chief) has power, acting alone, to grant or otherwise dispose of Stool lands, which are not his to give and it being a cardinal rule of Akan customary law that no Chief shall act alone but always under the customary control of others. 40

16. It is respectfully submitted that this appeal should be allowed, that the Judgments of the Supreme Court and of the Ghana Court of Appeal being erroneous ought to be reversed and that the counterclaim of the co-defendant Appellant ought to be allowed with costs throughout for the

following among other

R E A S O N S

- 10
- (1) BECAUSE the purported sales to the family syndicate represented by the respondent were null and void and illegal under the relevant Concession laws of Ashanti.
- (2) BECAUSE the Courts below erroneously applied to these transactions Cap. 136 of the Laws of the Gold Coast 1951 Revision and did not apply the Concessions Ordinance of The Colony of Ashanti, Ordinance No. 3 of 1903, as amended up to 1923.
- (3) BECAUSE there was no legal proof that the consent of the Omanhene of Kokofu or of the Stool of Kokofu had been obtained for the alleged customary sale by Guaha.
- 20
- (4) THAT the evidence and other material placed before Court in regard to the alleged custom of sale by "Guaha" and the legal consequences of such "sales" have not established with the requisite degree of certainty that the customary law in Ashanti in regard to inalienability of land by way of sale had been superseded and that at the relevant time (i.e. in the year 1925) such sale could be effected by means of the "Guaha" ceremony.
- 30
- (5) BECAUSE, even on the footing of the judgment of the Court of Appeal, the co-defendant appellant should have had a judgment upon the Counterclaim for a declaration of title.

W. JAYAWARDENA.

IN THE PRIVY COUNCIL

ON APPEAL

FROM COURT OF APPEAL, GHANA

B E T W E E N

NAJA DAVID, C.H. GHASSOUB and
N.H. GHASSOUB trading in
Partnership as Naja David
Sawmill Company (Defendants)

NANA OSEI ASSIBEY III,
representing the Stool of
Kokofu (Co-defendant) Appellants

- and -

EDWARD KOTey ANNAN SASRAKU
substituted for Emmanuel Kotey
Quao (deceased) as Head and
Representative of a Family -
Company of Teshie people
claiming certain lands near
Chempaw (Plaintiff) Respondent

CASE FOR THE APPELLANTS

A.L. BRYDEN & WILLIAMS,
London, S.W.1.

Solicitors and Agents for
Appellants.