

Amuah Gyebu XII, substituted for Ohene Amuah Gyebu - - *Appellant*

v.

Ohene Kwesi Abuagyi III, substituted for Ohene Kwesi Abuagyi II - *Respondent*

FROM

THE SUPREME COURT OF THE GOLD COAST COLONY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 10TH NOVEMBER, 1927.

Present at the Hearing :

LORD BUCKMASTER.

LORD CARSON.

LORD DARLING.

LORD WARRINGTON OF CLYFFE.

SIR LANCELOT SANDERSON.

[*Delivered by* LORD BUCKMASTER.]

In disposing of this case their Lordships have the satisfaction of knowing that everything that could possibly be urged on behalf of the appellant has been heard by them, but, having listened to these arguments, they are of opinion that this appeal must fail.

It has arisen out of a dispute as to the ownership of certain lands and villages that are situated between the Rivers Dadua and Kyirema in the Gold Coast.

This dispute was put to the test of an action which was begun by Ohene Kwesi Abuagyi II, now represented by the respondent, against Ohene Omuah Gyebu, whose successor became defendant.

The claim was a claim for trespass and was heard by the native tribunal on 22nd January, 1919. That tribunal gave a judgment which, in part at least, was in favour of the plaintiff. Nothing whatever was done under that judgment until August, 1919, when the defendant applied to the Commissioner of the Western Province asking for leave to appeal, and that leave was granted. The case accordingly came on for trial before the

Provincial Commissioner, and it was then objected that the appeal was incompetent, upon the ground that, by virtue of section 23A of the Gold Coast Native Jurisdiction Ordinance of 1883, as amended in 1910, it was impossible in the circumstances for any appeal to be maintained after the expiration of six months from the date when the judgment was given. The words of the section are these :—

“ If a judgment of a native tribunal for land has been enforced by the party in whose favour it was given being placed in or allowed to take or retain possession of the land . . . the Court shall not entertain an appeal from or review such judgment except within six months after it was so enforced.”

It is urged on behalf of the appellant that that section has a limited application and applies only to those cases where by the exercise of some executive act on the part of the Court a litigant has actually been put into possession of the property which was the subject of the dispute. The Board agrees with the view that it is difficult to understand exactly how to enforce a judgment by allowing a person to retain possession, but it is unnecessary to consider difficulties of language, because the critical words are plain, and those words provide that if a party has been allowed to retain possession for the period of six months no appeal can be brought after the expiration of that time.

It is further urged on behalf of the appellant, first, that the plaintiff never was really in possession and, consequently, was never allowed to retain it, and, secondly, that the provisions of the Ordinance of 1883 do not apply ; but that there are other rules under the Supreme Court Ordinance Act which enable the Court, if they in their judgment think fit, to vary and extend the times which are limited by the rules for the performance of any act. He recognises that even under those rules the limitation of the time for appeal is six months, but he says, by virtue of Order IV, that period of six months can be extended. Apart from other considerations, their Lordships would not propose to consider the accuracy of that contention for the reason that the point was in fact never before the Court from whom this appeal is brought, and on such a matter of procedure it is of the greatest consequence that no point shall be decided by this Board until they have had the great advantage of hearing what the judges on whom the procedure is binding have themselves decided as to what its proper interpretation should be. Apart from this they do not think that the rules are the applicable rules. They regard that section 23A as the one that applies, and unless the appellant is in a position to establish that the plaintiff, who is the respondent here, has never in fact been in possession or been allowed to retain it, this appeal must fail. The appellant did indeed argue that the conditions had not been satisfied, but the answer to that is to be found in the District Commissioner's own judgment. He on his own finding showed that the plaintiff had in fact been before the action in possession of a considerable portion of this

disputed territory, though it maybe the defendant had also been in possession of the rest, and that finding is enough for the purpose of deciding this case, because if he had been allowed to retain possession of that property which was in dispute for the period of six months from the date of the judgment, he cannot now be dispossessed. On such a question as this it is impossible to split the judgment.

In these circumstances their Lordships think the condition of section 23A has been satisfied ; the plaintiff has in fact been allowed to retain possession for the necessary period of time. After the lapse of that time the appeal was incompetent and it was not within the power of any tribunal acting under the authority of the Gold Coast Native Jurisdiction Ordinance to vary or extend the time.

Their Lordships have made no reference to another matter which arises in this case ; that is, as to whether the appellant would be bound, by virtue of an alleged submission to treat as final the finding of the Native Tribunal. It is unnecessary for this purpose to do so ; but there are two comments they desire to make : first, that the statement by one of the learned judges, whose business it is primarily to consider these matters on the spot, as to the desirability of exact information relating to any such agreement is one which they would have carefully regarded, and the other that it is desirable as far as possible when agreements have been made and have been found to exist with regard to the termination of litigation that those agreements should be enforced.

In their Lordships' opinion, this appeal must fail, and they will humbly advise His Majesty that it should be dismissed with costs.

In the Privy Council.

AMUAH GYEBU XII, SUBSTITUTED FOR
OHENE AMUAH GYEBU,

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OHENE KWESI ABUAGYI III, SUBSTITUTED
FOR OHENE KWESI ABUAGYI II.

DELIVERED BY LORD BUCKMASTER.

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