

Privy Council Appeal No. 165 of 1927.

Abakah Nthah (substituted for Abakah Kangah, deceased) - - *Appellant*

v.

Anguah Bennieh (substituted for Kweku Ackah, deceased)- - *Respondent*

FROM

THE SUPREME COURT OF THE GOLD COAST COLONY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 17TH NOVEMBER, 1930.

Present at the Hearing :

VISCOUNT DUNEDIN.

LORD ATKIN.

LORD RUSSELL OF KILLOWEN.

[*Delivered by* LORD ATKIN.]

This is an appeal from the Full Court of the Gold Coast Colony in an action in which the present respondent, Chief of Bakanta, as plaintiff, sought to establish his right to certain land, described as Kampuni land against the defendant, the present appellant, the Chief of Ampani. The action was tried in the native tribunal, the court of the paramount chief of the district, who sat himself with his counsellors. The native tribunal gave judgment for the defendant: on appeal to the Provincial Commissioner the appeal was allowed and judgment given for the plaintiff, and on further appeal to the Full Court the decision of the Provincial Commissioner was affirmed. The area of the land in dispute was imperfectly defined in the summons, which states that the plaintiff claims "to establish title to Kampuni land which defendant had permission from plaintiff's predecessor Ercheni, and dwelt on the said land for farming purpose." The plaintiff, however, at the hearing defined the land in dispute

by reference to an affidavit sworn by him in a previous suit in which the land was described as "in the neighbourhood of Ayanzil, bounded on one side by Amanzuli river, on another side by the Aibi river, on the other side by lands belonging to Chief Yanwah Amgbonsah of Amihere Blay Bukasu, and on the other side by Fia River." This description specifies ascertained rivers which form the boundaries on the south, east and west. By reference to the map it is seen that the land lies near the coast; the Amanzuli river, which forms the southern boundary, flows easterly parallel with the coast, leaving a strip of land between it and the coast, on which are situate the villages of Bakanta and Ayansini. The river then flows southward into the sea, and on the coast, east of the mouth of the river, is the defendant's village, Ampani. The strip of coast line between the river and the sea is, as to the part immediately west of the river mouth, the property of the plaintiff, and if his property projected northwards beyond the Amanzuli it would include part, at any rate, of the land claimed, including the village of Kampuni. The plaintiff's case was that the land in question was his ancestral land, and that the defendant was only in occupation of part of it, and of that by express permission of the plaintiff's predecessor in title, granted at defendant's request about fifteen years before suit. He called a witness who spoke to the interview. This story was not accepted by the native tribunal or by the Provincial Commissioner or the Full Court.

The defendant's case was that his ancestors originally owned the strip along the coast as well as the land north of it on the north side of the Amanzuli; that he had founded the village Kampuni, and had exercised rights of ownership over it, levying tribute or rent from the natives, who had taken up portions of it for farming. The native tribunal, after a long hearing of witnesses, made an extensive personal survey of the land in dispute accompanied by the litigants, obtaining information from the natives by the way, and putting such further questions to the parties as they thought desirable. No complaint is made of the conduct of the tribunal, who seem to have impartially fined witnesses on either side whom they considered to have given false evidence. Both litigants were fully cross-examined by the Court. An objection was indeed made that the tribunal had improperly rejected the evidence of the plaintiff's witness to the licence as hearsay, whereas he professed to have been present. It is only necessary to say that all the Courts have rejected this part of the plaintiff's case. It was not pressed before their Lordships, and the question as to the admissibility of the evidence has become immaterial.

In the result the Court delivered judgment for the defendant. They found that there was no substantial evidence of the permission under which the plaintiff alleged the defendant held. They attached importance to the fact that the neighbouring chiefs

claimed to be forming boundary with the defendant, that the defendant had for twenty years cultivated cocoa on the land, but the plaintiff had not demanded any tribute from him, that the defendant had collected tribute from the farmers on the land up to the present time. They considered defendant's account of his ancestral title supported by the local terminology, which pointed to an original migration from Aitirainoo as alleged by the defendant, and also by an order from the then paramount chief to the defendant's grandfather to sacrifice his nephew to the Amanzuli river to induce the river, which had overflowed, to return to its proper channel. This order, the tribunal remarks, would not have been given unless the grandfather had been a chief. It is satisfactory to know that the preparations for the sacrifice appeased the river, and that it returned to its bank before the consummation.

By colonial legislation all suits relating to the ownership of land held under native tenure are placed within the exclusive original jurisdiction of native tribunals, unless satisfactory reason to the contrary is shown. It appears to their Lordships that decisions of the native tribunal on such matters which are peculiarly within their knowledge, arrived at after a fair hearing on relevant evidence, should not be disturbed without very clear proof that they are wrong, and their Lordships fail to find such proof in the present case. The Provincial Commissioner determined the case on the evidence before the trial Court and on further evidence taken in his Court. He also had a view of the land in question, but his survey was not as complete as that of the native tribunal. He also was accompanied for part of the journey by the litigants, and he records in his notes of his survey that both parties agreed that Kampuni lands extend down to the sea.

Relying on this agreement the Commissioner in his judgment defined Kampuni lands as extending from the sea coast northwards, and allowing the appeal, gave judgment that the lands as above described, belonged to the plaintiff.

Their Lordships cannot regard this extension of the boundaries in dispute as satisfactory. In view of the admission by the defendant, made definitely both in the native Court and before the Commissioner, that at the present time Bakanta and Ayansini belonged to the plaintiff, it seems probable that there has been some misunderstanding as to the admission; but in any case in view of the legislation referred to, it appears quite irregular to have extended the dispute so as to give the Commissioner on appeal, original jurisdiction over land which had never been in dispute before the native tribunal, and as to which there was no reason for interfering with their jurisdiction if the dispute had been raised before them. The unfortunate effect of this misunderstanding was that the Commissioner who relied for his decision upon his view of the effective occupation of the land in dispute,

took into account the occupation of the littoral as to which the defendant made no claim. Their Lordships are far from saying that the admitted ownership of the littoral was not evidence which the tribunal was entitled to take into account in considering proof of title to the ownership of the bush land north of the river ; but it should not have been treated as admitted ownership and occupation of the land in dispute. The actual oral evidence before the Commissioner does not appear to have added anything of substantial value to what was given before the trial Court.

The Full Court were unable to find any reason for differing from the Commissioner's view as to the weight of effective occupation. They do not appear to have had their attention drawn to the extension of the area in dispute to which their Lordships have already referred. In the result there appears to have been no sufficient reason for disturbing the decision of the native tribunal, which should be restored. As there appear to be other possible claimants to this land it may be advisable to state the obvious proposition that this judgment only determines the rights between the plaintiff and the defendant.

Their Lordships will humbly advise His Majesty to allow the appeal and restore the judgment of the native tribunal, dated the 23rd October, 1923. The respondent must pay the costs of this appeal and of the appeals before the Provincial Commissioner and the Full Court.

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In the Privy Council.

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ABAKAH KANGAH, deceased)

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KWEKU ACKAH, deceased).

DELIVERED BY LORD ATKIN.