

3, 1953

# In the Privy Council.

Appeal No. 5 of 1951.

## ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL (GOLD COAST SESSION.)

33472

UNIVERSITY OF LONDON  
W.C.1.  
9 - NOV 1956  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

BETWEEN  
THE STOOL OF ABINABINA ... .. (Plaintiff) *Appellant*  
AND  
CHIEF KOJO ENYIMADU on behalf of the Stool of Nkasawura ... .. (Defendant) *Respondent.*

### RECORD OF PROCEEDINGS

#### INDEX OF REFERENCE.

No.	Description of Document.	Date.	Page.
IN THE NATIVE TRIBUNAL, AKROPONG.			
1	Civil Summons ... ..	21st November, 1941...	1
2	Tribunal Notes on Amendment of Summons ...	9th March, 1942 ...	1
3	Amended Summons ... ..	9th March, 1942 ...	3
IN THE PROVINCIAL COMMISSIONER'S COURT, WESTERN PROVINCE.			
4	Court Notes for Transfer of Suit ... ..	27th April, 1942 ...	4
5	Order of Transfer ... ..	27th April 1942 ...	5
IN THE SUPREME COURT (DIVISIONAL COURT, CAPE COAST).			
6	Court Notes ordering Pleadings ... ..	26th May 1942 ...	6
7	Statement of Claim ... ..	9th July, 1942 ...	6
8	Statement of Defence ... ..	28th July 1942 ...	8

RECORD OF PROCEEDINGS

No.	Description of Document.	Date.	Page.
9	Plaintiff's Particulars for Survey ... ..	19th August 1943 ...	9
10	Defendant's Particulars for Survey ... ..	20th August 1943 ...	10
11	Defendant's Application for Order for payment out ... ..	2nd March 1944 ...	11
12	Affidavit in support of Application ... ..	3rd March 1944 ...	11
12 (a)	Exhibit "A" referred to in No. 12 ... ..	31st October 1942 ...	13
12 (b)	Exhibit "B" referred to in No. 12 ... ..	19th August 1939 ...	14
13	Affidavit of Plaintiff in Opposition to Applica- tion for payment out ... ..	25th March 1944 ...	17
14	Court Notes on Application for payment out ...	28th March 1944 ...	18
15	Court Notes of decision to re-hear ... ..	5th September 1946...	19
<i>Plaintiff's Evidence :—</i>			
16	Chief Kwesi Kuma II, Plaintiff ... ..	5th September 1946...	20
17	Kobina Teng, 1st Witness ... ..	5th September 1946...	23
18	Kojo Yamoah, 2nd Witness ... ..	5th September 1946...	24
19	Ntiakun, 3rd Witness ... ..	6th September 1946...	26
20	J. T. Samson, 4th Witness ... ..	6th September 1946...	27
21	Kobina Amakun, 5th Witness ... ..	6th September 1946...	28
<i>Defendant's Evidence :—</i>			
22	Chief Kojo Enyimadu, Defendant ... ..	6th September 1946...	29
23	Kofi Asamua, 1st Witness ... ..	6th September 1946...	31
24	Kojo Gyabin, 2nd Witness ... ..	6th September 1946...	32
25	Ababio Ampia, 3rd Witness ... ..	6th September 1946...	33
26	Kwamin Kwanie, 4th Witness ... ..	6th September 1946...	34
27	Counsel's Addresses (Court Notes) ... ..	7th September 1946...	36
28	Assessor's Opinion ... ..	7th September 1946...	37
29	Judgment ... ..	16th October 1946 ...	38
30	Grounds of Appeal ... ..	24th January 1947 ...	45
IN THE WEST AFRICAN COURT OF APPEAL (GOLD COAST SESSION)			
31	Court Notes of Arguments ... ..	4th June 1947 ...	46
32	Judgment ... ..	4th June 1947 ...	46
IN THE PRIVY COUNCIL.			
33	Order in Council granting Special Leave to Appeal to His Majesty in Council ... ..	25th April 1950 ...	47

## EXHIBITS.

Exhibit Mark.	Description of Document.	Date.	Page.
	<i>Plaintiff's Exhibits :—</i>		
" 1 "	Letter from Denkerahene to District Commissioner, Dunkwa ... ..	25th April 1944 ...	72
" 2 "	Ruling as to Costs ... ..	31st July 1939 ...	63
" 2A "	Evidence and Ruling as to Costs ... ..	14th July 1939 ...	61
" 3 "	Proceedings : Arkin Doman v. Chief A. Esseamin	3rd December 1879 ...	50
" 4 "	Lease by Stool of Abinabina to Gold Coast Selection Trust Limited ... ..	22nd April 1936 ...	54
	<i>Defendant's Exhibits :—</i>		
" A "	Certificate of Validity No. 615 in Concession Enquiry No. 2293 ... ..	27th December 1939 ...	67
" B "	Writ and Proceedings in Chief Kwesi Kuma III v. Amuaku and Others ... ..	15th January 1938 to 19th May 1938 ...	57
" C "	Concession Enquiry No. 2293 ... ..	27th August 1938 to 21st November 1938...	60
" D "	Judgment in Concession Enquiry No. 2293 ...	19th August 1939 ...	64
	Plan No. 1 of Disputed Area ( <i>Separate Document</i> )		

LIST OF DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL  
BUT NOT PRINTED.

Description of Document.	Date.
Application for extension of the time to file Statement of Claim ...	29th June 1942
Court Notes granting Application for extension of time ... ..	7th July 1942
Application for Injunction ... ..	10th October 1942
Court Notes ... ..	24th October 1942
Court Notes rejecting Application for Injunction ... ..	31st October 1942
Application for Substitution ... ..	21st July 1943
Court Notes <i>re</i> Plan and Substitution ... ..	22nd July 1943
Court Notes <i>re</i> Plan and Substitution ... ..	14th August 1943
Affidavit of Service of Order for Substitution together with Exhibits	5th October 1943
Court Notes <i>re</i> further money to be deposited for plan ... ..	24th February 1944
Court Notes on application for payment out ... ..	14th March 1944
Court Notes on application for payment out ... ..	5th April 1944
Application for Order to commit for contempt ... ..	2nd June 1944
Court Notes of Adjournments ... ..	17th June 1944
Affidavit in reply to application for contempt ... ..	29th June 1944
Court Notes ... ..	30th June 1944
Affidavit of Chief Kofi Kuma ... ..	28th July 1944

Description of Document.	Date.
Court Notes and Evidence on Contempt of Court Case ... ..	29th July 1944
Court Notes ... ..	8th September 1944
Application for Order to appoint Receiver ... ..	22nd October 1945
Affidavit opposing application for Receiver ... ..	5th November 1945
Court Notes of adjournment ... ..	24th November 1945
Court Notes <i>re</i> Appointment of Receiver ... ..	23rd February 1946
Court Notes ... ..	16th October 1946
Application for Conditional Leave to Appeal and Affidavit in support	21st October 1946
Court Notes imposing conditions ... ..	30th October 1946
Bond for Costs on Appeal ... ..	11th November 1946
Justification of Sureties ... ..	11th November 1946
Notice of Appeal ... ..	11th November 1946
Application for Final Leave ... ..	4th December 1946
Court Notes granting Final Leave ... ..	17th January 1947
IN THE WEST AFRICAN COURT OF APPEAL.	
Notice of Intention to Appeal ... ..	— June 1947
Notice of Motion for Conditional Leave to Appeal ... ..	19th June 1947
Affidavit in support of Notice for Conditional Leave to Appeal ...	19th June 1947
Court Notes granting Conditional Leave to Appeal ... ..	8th December 1947
Application for Order for approving Sureties and Affidavit in support	18th February 1948
Notice of Appeal ... ..	19th February 1948
Affidavit opposing approval of Sureties ... ..	6th March 1948
Court Notes on Sureties ... ..	11th March 1948
Court Notes ... ..	20th March 1948
Court Notes ... ..	3rd April 1948
Notice of Application for Final Leave to Appeal and Affidavit in support	15th April 1948
Court Notes striking out application as to Sureties ... ..	20th April 1948
Court Notes dismissing Application for Final Leave to Appeal ...	29th June 1948

# In the Privy Council.

Appeal No. 5 of 1951.

## ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL (GOLD COAST SESSION.)

BETWEEN

THE STOOL OF ABINABINA ... .. (*Plaintiff*) *Appellant*

AND

CHIEF KOJO ENYIMADU on behalf of the Stool of  
Nkasawura ... .. (*Defendant*) *Respondent.*

## RECORD OF PROCEEDINGS.

No. 1.

Civil Summons.

No. PN/6K/41.

In the  
Native  
Tribunal,  
Akropong.

IN THE TRIBUNAL OF AKROPONG. THE PARAMOUNT CHIEF OF THE WASAW  
AMENFI STATE. GOLD COAST COLONY.

No. 1.  
Civil  
Summons,  
21st  
November,  
1941.

Between

Substituted by Order  
of Court dated 14.8.43  
(P. 327 Vol. 89).

CHIEF KWESI KUMAH II ... .. *Plaintiff*  
and

10 (Sgd.) S. K. BANSON,  
*for Registrar,*  
*Divisional Court.*

CHIEF KOJO ENYIMADU, KOFI AMOAH  
of Nkasawura ... .. *Defendant.*

TO KOFI AMOAH of Nkasawura—

You are hereby commanded to attend this Tribunal at Akropong on  
the 27th day of November, 1941, at 8.30 o'clock a.m. to answer a suit by  
Chief Kwesi Kumah II of Abinabina against you.

In the  
Native  
Tribunal,  
Akropong.

No. 1.  
Civil  
Summons,  
21st  
November,  
1941.  
*continued.*

The Plaintiff claims :

The Plaintiff claims £100 (Hundred Pounds) Damages from Defendant for Defendant unlawfully granted to Mr. R. T. Briscoe Mahogany Trees and other Timber-like Trees without the knowledge and consent of the Plaintiff.

Issued at Akropong the 21st day of November, 1941.

Claim	£100	-s.	-d.	Damages
Tribunal Fee	1	-	-	
Mileage and Service	15	-		

GYASIHENE KWEKU AKUMANIN His 10  
For X  
Mark of Paramount Chief. Mark.

Witness to Mark :

?

*Assistant Tribunal Registrar.*

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

No. 2.  
Tribunal  
Notes on  
Amend-  
ment of  
Summons,  
9th March,  
1942.

No. 2

Tribunal Notes on Amendment of Summons.

IN THE NATIVE TRIBUNAL OF THE OMANHENE OF WASAW-AMENFI STATE, 20  
held at Akropong on Monday, the 9th day of March, 1942, before  
NANA PRAMANG NTOW II, sitting with his Councillors, Elders and  
Linguists.

CHIEF KWESI KUMA II, as Chief of Abinabina ... .. Plaintiff  
*vs.*

KOFI AMOAH of Nkasawura, as Caretaker of Nkasawura ... Defendant.

Motion by Plaintiff herein for leave to amend the Writ of Civil Summons pending, upon the Order from the Provincial Commissioner's Court, in the Native Paramount Chief's Tribunal of Wasaw-Amenfi State.

Application for Amendment of Writ filed on 9/3/42.

30

Leave to amend the Writ of Civil Summons granted subject to the following :—

1. Defendant should be served with a copy of the Amended Writ at the expense of the Plaintiff.
2. The Order of ' Stay of Proceedings ' from the Provincial Commissioner's Court should affect the Amended Writ.

(Marked) NANA PRAMANG NTOW II.

W/W/to Mark :

(Sgd.) F. MENDES-BUAH,  
*Tribunal Registrar.*

*Omanhene, Wasaw-Amenfi.*

40

No. 3.  
Amended Summons.

In the  
Native  
Tribunal,  
Akropong.

IN THE PARAMOUNT NATIVE TRIBUNAL OF AKROPONG, WASAW-AMENFI  
STATE, WESTERN PROVINCE.

No. 3.  
Amended  
Summons,  
9th March,  
1942.

CHIEF KWESI KUMA II, as Chief of Abinabina ... .. *Plaintiff*  
*versus*

KOFI AMOAH OF NKASAWURA as Caretaker of Nkasawura ... .. *Defendant*.  
Chief Kojo Enyimadu, P. 327 Vol. 89.

Substituted by Order of Court dated 14/8/43.

10 (Intd.) S. K. B.

AMENDED WRIT FOR SUMMONS.

The Plaintiff's Claim against the Defendant is to establish the title of the Stool of Abenabena Division to all that piece or parcel of land known as Nkasawura Lands the property of the Plaintiff situate at Abenabena in the Wasaw Amenfi State and bounded on the East by Offin River, on the North by Denkyira Obuasie and by River Ahunfra, on the North-East by Offin River and on the South by Ayanfuri Lands.

20 2. The Defendant and his ancestors as tenants of the Abenabena Stool have been paying tribute and tolls to Plaintiff's Stool until the Defendant about (5) five years ago set up an adverse title to the said Nkasawura Lands against the Abenagena Stool.

3. The Plaintiff also claims £100 (One Hundred Pounds) Damages from the Defendant and his agents for wrongfully cutting timber trees on the said land without Plaintiff's permission.

Issued at Akropong this 9th day of March, 1942.

(Marked) NANA PRAMANG NTOW II  
*Omanhene, Wasaw-Amenfi State*

His  
X  
Mark.

W/W/to Mark :

30 (Sgd.) F. MENDES-BUAH,  
*Tribunal Registrar.*



In the  
Provincial  
Commissioner's  
Court,  
Western  
Province.

No. 4.

Court Notes for Transfer of Suit.

27.4.42.

No. 4.  
Court Notes  
for Transfer  
of Suit,  
27th April,  
1942.

IN THE PROVINCIAL COMMISSIONER'S COURT, WESTERN PROVINCE, before  
HIS WORSHIP L. W. JUDD, ESQUIRE, Provincial Commissioner, on  
Monday, the 27th day of April, 1942.

CHIEF KWESI KUMA II, of Abinabina ... .. Plaintiff

*versus*

CHIEF KOFI AMOAH, of Denkera-Nkasawura ... .. Defendant.

From Page 58.

10

BY COURT—

Defendants produce Government Survey Sheets embracing the Area in dispute and on which the boundary between the Central and Western Provinces is demarcated. From descriptions given by both parties it is apparent that the bulk of the Area in dispute and probably the whole Area, lies within the Central Province.

It is obvious that neither the Akropong Tribunal or the Ayanfuri Tribunal would give an unbiassed Judgment as the Chiefs of those two towns are intimately connected with the dispute, and the same may be said of the Tribunal of the Paramount Chief Denkera.

20

I therefore order the Tribunal of Akropong to stop the further hearing of this case which is hereby transferred to the Divisional Court, Cape Coast, for hearing and determination.

Costs of this Motion to be costs in the cause.

(Sgd.) L. W. JUDD,  
*Provincial Commissioner.*









2.—Attached to the Plaintiff's said Stool are the lands in dispute herein.

In the  
Supreme  
Court  
(Divisional  
Court,  
Cape  
Coast).

3.—The Predecessors of the Defendant settled on the lands in dispute herein by the leave and licence of the Plaintiff's Predecessors who arranged with the Defendant's said Predecessors that tribute should be paid to the Plaintiff's Stool.

4.—The Defendant's Predecessors faithfully and loyally observed the said arrangement by the payment of tribute to the Plaintiff's Stool from time to time until Defendant's Predecessor, Chief Kofi Bissa of Nkasawura, repudiated the arrangement by refusing to pay tribute and claimed ownership of the land in dispute herein.

No. 7.  
Statement  
of Claim,  
9th July,  
1942—  
*continued.*

5.—The Predecessor of the present Defendant, that is, Chief Kofi Bissa, without the consent, authority and/or permission of the Plaintiff, sold timber and timber-like trees on the area in dispute to a Mr. R. T. Briscoe of Dunkwa who felled from the said lands Mahogany and other trees.

6.—By the acts of the said R. T. Briscoe and the Defendant, the Plaintiff and the Stool he occupies have been considerably damnified.

7.—The Plaintiff in due course instituted an action before the Native Tribunal of Akropong in the Wassaw Amenfi State and the claim was expressed as follows in the Writ of Summons issued by the said Native Tribunal :—

“ The Plaintiff's claim against the Defendant is to establish the title of the Stool of Abinabina Division to all that piece or parcel of land known as Nkasawura Lands the property of the Plaintiff situate at Abinabina in Wassaw Amenfi State and bounded on the East by Offin River, on the North by Denkyira Obuasi and by River Ahumfra, on the North-East by River Offin and on the South by Ayanfure lands.

30 “ The Defendant and his ancestors as tenants of the Abinabina Stool have been paying tribute and tolls to the Plaintiff's Stool until the Defendant about five (5) years ago set up an adverse title to the said Nkasawura Lands against the Abinabina Stool. The Plaintiff also claims £100 Damages from the Defendant and his agents for wrongfully cutting timber trees on the said land without Plaintiff's permission.”

8.—The said action has been transferred to this Court.

9.—The Plaintiff claims, therefore, on behalf of his said Stool (1) a declaration of the title of the Stool of Abinabina to all that piece or parcel of land known as Nkasawura Lands situate at Abinabina in Wassaw

In the  
Supreme  
Court  
(Divisional  
Court,  
Cape  
Coast).

Amenfi State and bounded on the East by Offin River, on the North by Denkera Obuasi and by River Ahumfra, on the North-East by River Offin and on the South Ayanfure lands. (2) £100 Damages from the Defendant and his agents for wrongfully cutting timber trees on the said land without Plaintiff's permission.

Dated at Anibok Chambers, Cape Coast, this 9th day of July, 1942.

No. 7.  
Statement  
of Claim,  
9th July,  
1942—  
*continued.*

(Sgd.) W. ESUMAN GWIRA SEKYL,  
*Solicitor for the Plaintiff.*

To The Registrar, Divisional Court, Cape  
Coast. And To The Above-named Defendant,  
Kofi Amoah of Nkasawura, now at Cape Coast.

10

No. 8.  
Statement  
of Defence,  
28th July,  
1942.

No. 8.  
Statement of Defence.

*(Title as No. 7.)*

STATEMENT OF DEFENCE. Delivered this 28th day of July, 1942.

1.—The Defendant denies that the Plaintiff is the owner of the piece or parcel of land described in his Writ of Summons.

2.—The Defendant has from time immemorial been allodial owner of the land attached to the Stool of Nkasawura in the Denkera State. Defendant has ever been and still is in possession of the said land by his subjects 20  
and tenants.

3.—The Defendant denies that his Predecessors settled on the Nkasawura Stool land by the leave and licence of the Plaintiff's Predecessors or that his Predecessors had ever made arrangement with the Plaintiff's Predecessors that they Defendant's Predecessors would pay tribute to the Plaintiff's Stool.

4.—The Defendant denies that his Predecessors or any of them at any time in the history of his Stool had paid tribute or any sum of money by way of tribute to the Plaintiff's Stool.

5.—The Defendant denies each and every allegation contained in 30 paragraphs 3 and 4 of the Statement of Claim.

6.—The Defendant admits that his Predecessor as owner of the said piece or parcel of land had permitted one R. T. Briscoe of Dunkwa to fell on the said land Mahogany or other timber trees.

7.—The Defendant joins issue with the Plaintiff on his Statement of Claim.

Dated at Ampah Chambers, Cape Coast, this 28th day of July, 1942.

(Sgd.) K. A. KORSAH,  
*Solicitor for Defendant.*

10 To The Registrar, Divisional Court, Cape Coast, and to the Above named Plaintiff, Chief Kwesi Kuma II of Abinabina, Wassaw Amenfi State, now at Cape Coast, or His Solicitor, W. E. G. Sekyi, Esquire, Anibok Chambers, Cape Coast.

In the Supreme Court (Divisional Court, Cape Coast).

No. 8.  
Statement of Defence, 28th July, 1942—  
*continued.*

### No. 9.

#### Plaintiff's Particulars for Survey.

IN THE SUPREME COURT OF THE GOLD COAST, CENTRAL PROVINCE,  
DIVISIONAL COURT, CAPE COAST.

CHIEF KWESI KUMA II, of Abinabina

20

*versus*

KOFI AMOAH OF NKASAWURA (Chief Kojo Enyimadu, Substituted).

#### PLAINTIFF'S PARTICULARS FOR SURVEY.

1.—Plaintiff as the occupant of the Stool of Abinabina for and on behalf of that Stool claims the land in dispute as the ancestral property of the said Stool which is in the Upper Wasaw State.

2.—The said land is bounded as follows : On the North side by the River Ahumfra (flowing into the River Offin) separating Abinabina from Sundro-Asi and Denkeru Obuasi. On the Eastern side by the River Offin forming boundary with the State of Bekwai in Ashanti. On the Southern side by the Streams Akasua and Kortin flowing into the River Offin and forming boundary between Abinabina and land occupied by the Ayanfuri people. On the Western side by lands of Abinabina on which are situated Perwuako, Abinabina and Oda.

3.—The following Streams among others flow through the land, namely, Fubin, Esuwironfu, Esuasu, Awimira.

4.—The following towns and villages : Abinabina, Wioso (ruins) Kyinso Kyiaboso, Nkasawura (ruins) Fubinsu, Oda, Perwuako, Breman Nkortinso, Nkasawura (new), Edjumamu, Brofuyedu, Dominasi, Old Besiase, Abura, Anwayem, Nkokoraabom or Obuyaa-Krom.

No. 9.  
Plaintiff's Particulars for Survey, 19th August, 1943.

In the  
Supreme  
Court  
(Divisional  
Court,  
Cape  
Coast).

No. 9.  
Plaintiff's  
Particulars  
for Survey,  
19th  
August,  
1943—  
*continued.*

5.—The following Gold Workings: Poti-Nbua-bua, Nbuabua Kesi, Mfutuma, Wioso Mine, Korkai Mbuabua, Payi-Payi, Tubuo, Mani-asi, Nkasawura, Inuasi Krom Ohinba.

6.—The following Sacred Groves and Assamanpome: Abohensu, Kobreyso, Awimina, Anwayem, Fobenso-Kitua, Kyinso (2).

7.—The area of the Trespass as shall be pointed out by Plaintiff (Timber cutting by Briscoe in Adum near Dominasi).

8.—The following Concessions: Abinabina and Attase Gold Concessions and Abinabina Timber Concession (George Grant).

9.—Such other features as may be pointed by Plaintiff or his representative. 10

Dated at Cape Coast the 19th August, 1943.

(Sgd.) J. W. DEGRAFT JOHNSTON,  
*Solicitor for Plaintiff.*

The Registrar, Divisional Court, Cape Coast.

No. 10.  
Defendant's  
Particulars  
for Survey,  
20th  
August,  
1943.

No. 10.  
**Defendant's Particulars for Survey.**

*(Title as No. 9.)*

**DEFENDANT'S PARTICULARS OF SURVEY AS ORDERED  
HEREIN.**

20

1.—The land, the property attached to the Stool of Nkasawura which Stool is represented by the Defendant, whereof the area in dispute herein is a portion situate between Ayanfuri and Oboasi lands and is bounded as follows that is to say on one side by Fobene Stream, on another by Nsufufu, on another by Akesua, on another by Supong, on another by Oda Village, which is a boundary between Nkasawura and Abinabina, on another by Anwiawia or Awniafutu Village which is a boundary between Nkasawura and Oboasi Town.

2.—All natural and physical features on the land or area in dispute and villages which may be pointed out by the Defendant or his representative 30 to be inserted on the Plan to be prepared by the Surveyor.

3.—All other details pointed out by parties to be indicated on the Plan.

Dated at Twidan Chambers, Cape Coast, the 20th day of August, 1943.

(Sgd.) JOSEPH T. SACKKEYFIO,  
*Solicitor for Defendant.*

The Registrar, Divisional Court, Cape Coast,  
and J. W. deGraft Johnston, Esquire, Solicitor  
for Chief Kwesi Kuma, Aiboom Chambers,  
Cape Coast.

No. 11.

**Defendant's Application for Order for Payment out.**

In the  
Supreme  
Court  
(Divisional  
Court,  
Cape  
Coast).

IN THE SUPREME COURT OF THE GOLD COAST, CENTRAL PROVINCE,  
DIVISIONAL COURT, CAPE COAST.

CHIEF KWESI KUMA II, as Chief of Abinabina... .. *Plaintiff*

*vs.*

CHIEF KOJO ENYIMADU ... .. *Defendant.*

No. 11.  
Defendant's  
Application  
for Order  
for  
Payment  
out, 2nd  
March, 1944.

**MOTION ON NOTICE.**

10 Please Take Notice that this Honourable Court will be moved by  
Joseph Traugott Sackeyfio of Counsel for and on behalf of the above-named  
Defendant humbly praying this Court to make an Order for the payment  
of the sum of £519 5s. by the District Commissioner Dunkwa, deposited in  
Treasury upon the instructions of the Honourable Commissioner, Cape  
Coast, Central Province, in respect of Nkasawura land, and/or for such  
further Order or Relief as to the Court may deem meet to grant in the  
premises.

Court to be moved on Tuesday, the 14th day of March, 1944, at 9 of the  
clock in the forenoon or so soon thereafter as Counsel on his behalf can be  
heard.

20 Dated at Twidan Chambers, Cape Coast, the 2nd day of March, 1944.

(Sgd.) JOSEPH T. SACKEYFIO,  
*Solicitor for Defendant.*

The Registrar, Divisional Court, Cape Coast,  
and to the Above-named Plaintiff Chief Kwesi  
Kuma of Abinabina, His Solicitor or Agent,  
Abinabina.

No. 12.

**Affidavit in support of Application.**

No. 12.  
Affidavit in  
support of  
Applica-  
tion,  
3rd March,  
1944.

30 IN THE SUPREME COURT OF THE GOLD COAST, CENTRAL PROVINCE,  
DIVISIONAL COURT, CAPE COAST.

CHIEF KWESI KUMA II as Chief of Abinabina ... .. *Plaintiff*

*vs.*

CHIEF KOJO ENYIMADU ... .. *Defendant.*

I, CHIEF KOJO ENYIMADU of Nkasawura, in the Denkeria State,  
Central Province of the Gold Coast, make oath and say as follows:—

1.—That I am the Defendant in the above named suit which is pending  
before this Honourable Court.

In the  
Supreme  
Court  
(Divisional  
Court,  
Cape  
Coast).

No. 12.  
Affidavit in  
support of  
Applica-  
tion,  
3rd March,  
1944—  
*continued.*

2.—That the subject matter of the action is in respect of Nkasawura land which is my ancestral property attached to my Stool.

3.—That about three years ago the Plaintiff herein instituted an action against me in the Native Tribunal of Akropong in the Wassaw Amenfi State for having unlawfully granted to Mr. R. T. Briscoe, Mahogany trees and other timber-like trees, without the knowledge and consent of the Plaintiff which Writ was subsequently altered to that of a declaration of title to all that piece or parcel of land known as Nkasawura which Plaintiff alleges to be the property of the Stool of Abinabina.

4.—That the said action was by an Order of the Commissioner, Western 10 Province, Sekondi, transferred to this Honourable Court.

5.—That sometime in March, 1938, the Stool of Denkera and Nkasawura granted a Concession to a certain Company in Sekondi in respect of a portion of Nkasawura land near the Offin River, which Concession was opposed by the Chief of Abinabina the Plaintiff herein, which was the subject of the Concession Enquiry No. 2293 (Cape Coast) held before this Court and which Ruling was delivered in my favour on the 19th of August, 1939. I attach herewith a copy of the said Ruling dated 19th day of August, 1939.

6.—That in October, 1942, the Plaintiff herein filed a Motion supported by an Affidavit for Interim Injunction restraining me, my agents, servants 20 and privies from entering on the land in dispute which application was rejected by this Court. I attach herewith a copy of the said Ruling dated 31st October, 1942.

7.—That after the Motion for Interim Injunction was rejected by this Court, the Government under Regulation 43 of the Defence Regulations 1939, in April, 1943, has taken a strip of land which is a portion of the said Nkasawura land measuring 200 feet wide which is approximately 15 miles long, for the construction of a Railway line and offered me £200 Compensation for the gravel at mile 11½ and £319. 5/- for 884 timber trees felled and used for the laying upon of the Railway lines on which the train 30 runs.

8.—That the Government recognizing me as the owner of the land communicated with me about the removal of gravels and the 884 timber trees felled and used for the construction of the Railway lines.

9.—That on the 10th of February, 1944, I received a letter from the District Commissioner Dunkwa informing me of the amounts having been deposited in Treasury upon instructions received from the Honourable Commissioner, Central Province, to be paid over by an Order of this Court the respective amounts totalling £519. 5/-.

10.—That the amounts so deposited in Treasury are due to me as the 40 owner of that portion of Nkasawura land taken by the Government for the construction of Railway line and gravels removed and used for the levelling of the road.

11.—That I have applied to the District Commissioner Dunkwa for payment to me of the amounts deposited in Treasury but he has refused to do so unless he is ordered by this Court.



12.—That in view of the circumstances I make this Affiavit in support of my application humbly praying this Court to make order for the District Commissioner, Dunkwa, for the payment to me of the amounts deposited in Treasury and for such further — or Relief as to the Court may deem meet to grant in the premises.

In the Supreme Court (Divisional Court, Cape Coast).

Sworn at Cape Coast this 3rd day of March, 1944, by the Chief Kojo Enyimadu after the contents hereof had been first read over and interpreted to him in the Fanti Language by F. A. K. Sam of Cape Coast first sworn duly to interpret the same to him and he seemed perfectly to understand the same before making his mark thereto in my presence

CHIEF KOJO  
ENYIMADU

His  
X  
Mark.

Interpreter & W/Mark :  
(Sgd.) F. A. K. SAM,  
Divisional Court,  
Cape Coast.

No. 12.  
Affidavit in support of Application, 3rd March, 1944—  
*continued.*

Before me,  
(Sgd.) E. J. STEELE DADZIE,  
*Commissioner for Oaths.*

No. 12 (a).  
Exhibit " A " referred to in No. 12.

No. 12 (a).  
Exhibit " A " referred to in No. 12.

31.10.42.

" A "

DIVISIONAL COURT, CAPE COAST, Saturday, 31st October, 1942.  
Coram : MARTINDALE, Judge.

CHIEF KWESI KUMA II

*vs*

KOFI AMOAH

Motion on Notice for an Order for Interim Injunction herein.  
KORSAH for Defendant.

Mover in person—

30 Defendant has been using the property. There has been no waste. He is selling the Rubber. I want the Court to appoint Trustees.

KORSAH states—

We oppose the application. As to the Rubber we will keep accounts. He is a man of substance.

By COURT—

Motion rejected.

(Sgd.) M. H. MARTINDALE,  
*Judge.*

This is the copy of the Ruling referred to in the oath of Chief Kojo Enyimadu marked " A " sworn before me this 3rd day of March, 1944.

40

(Sgd.) E. J. STEELE DADZIE,  
*Commissioner for Oaths.*

No. 12 (b).  
Exhibit  
" B "  
referred to  
in No. 12.

Copy.

IN THE SUPREME COURT OF THE GOLD COAST, CENTRAL PROVINCE.  
DIVISIONAL COURT, CAPE COAST, CONCESSIONS DIVISIONAL, (sic)  
Saturday the 19th day of August, 1939, Coram : BRUCE, Judge.

IN THE CONCESSION ENQUIRY NO. 2293 (CAPE COAST)  
NKASAWURA CONCESSION.

This is an application, under Rule 11 of Rules of the Court made by 10  
the Chief Justice under Section 6 of the Concessions Ordinance (Chapter 27  
of the Old Revised Edition) by Chief Kwesi Kuma II for leave to oppose  
the grant of a Certificate of Validity in the Nkasawura Concession. Rule 11  
of the above-mentioned Rules provide (*inter alia*) that where, as here, notice  
of intention to oppose the grant of a Certificate of Validity has not been  
given in time, the person who has not given due notice may at any time  
by leave and on such terms as the Court think just be made a party to the  
Enquiry for the purposes of opposition. The facts of the case which are  
admitted on both sides are as follows :—

The Nkasawura Concession was granted to the Claimants on the 20  
23rd March, 1938, by the Stool of Denkera and Nkasawura. On  
the 27th August, 1938, the Divisional Court, Cape Coast, enquired  
into the grant of the Concession and made an Order for the survey  
of the area therein comprised. The survey has been carried out  
and the requisite Plans deposited with the Survey Department  
for checking and approved. By Deed made the 26th March,  
1938, between the Stool of Abinabina (of which Kwesi Kumah II  
is the Stool holder) of the one part and the Claimants of the other  
part, the Stool of Abinabina in consideration of the sum of £100

(a) Covenanted with the Claimants not to oppose the grant of 30  
a Certificate of Validity for the Concession, nor in any other  
way oppose the Concession.

(b) Agreed to ratify and affirm the Concession.

By the said Deed dated the 26th March, 1938, the Claimants agreed :—

(a) In the event of the said Stool of Abinabina being successful 10  
in establishing its title to the land and premises comprised  
in the Concession or any part thereof in a Competent Native  
Tribunal or Court of Law to have the name of the Stool of  
Abinabina endorsed on the Certificate of Validity in accordance  
with the provisions of Section 29 of the Concessions Ordinance 40  
(Chapter 27 of the Laws of the Gold Coast Colony, 1928  
Edition).

- (b) To apply to the Court in the Enquiry to make an endorsement on the Certificate of Validity to the effect that it is granted without prejudice to the Claimant of the Stool of Abinabina to the land comprised in the Concession.

In the  
Supreme  
Court  
(Divisional  
Court,  
Cape  
Coast).

Now, in spite of this agreement, made by Deed, the applicant comes to the Court at this stage of the proceedings and asks for leave to oppose the grant of the Certificate of Validity. The Claimants oppose the application and say it should not be granted, that the Deed cannot be abrogated in this way by the applicant and that they the Claimants have spent a lot of money on Plans, etc., and that it would be manifestly unjust to allow the applicant to oppose at this stage.

No. 12 (b).  
Exhibit  
" B "  
referred to  
in No. 12.—  
*continued.*

Now the applicant relies on the Privy Council case of *James Jackson* versus *J. M. Coke*, which he says shews that the jurisdiction of this Court is not ousted by this Deed having been entered into, but it is not denied that this Court has jurisdiction to entertain this application, and it has entertained it. What I have to consider is, is this Deed of Agreement not to oppose binding on the applicant ?

Now it is a well-established rule of law that no one can be permitted (except on grounds of fraud or deceit) to aver or to prove anything in contradiction to what he has avowed by Deed. No fraud or deceit is alleged here, and that rule, on the face of it, would resolve this application adversely to the applicant, but, since this Deed deprives the applicant of certain rights of opposition which he possesses under the Concessions Ordinance, I have felt that I must ask myself, is a Deed which deprives a person of rights under an Ordinance valid as against that person ? The answer in my opinion is in the affirmative, on the authority of the case of *Griffiths* versus *the Earl of Dudley*, reported at Page 357 *et seq* of Law Reports 9 Q.B.D. (1882). In this case, which was a case under the Employers' Liability Act 1880, where an employee had contracted out of the Act by Agreement, and had agreed with his employer that he would not claim any compensation under the Act for personal injury and then sought to have the contract aside, the Divisional Court, upsetting the County Court Judge, held that a person could contract out of an Act of Parliament unless it was expressly stated in the Act that he could not do so. Field, J., in his Judgment, said " In all cases referred to in argument, in " which the legislature has intended to enact that a person shall not be " allowed to contract himself out of an Act of Parliament, very express " words have been used. As a general rule, entire freedom of contract " has been preserved ; it has only been interfered with in order to obviate " great public injustice. It is legitimate to see what would be the " consequence if the construction contended for by the Plaintiff's Counsel " prevailed, because, if injustice would result, it is unlikely the legislature " intended that construction. I think great injustice would result, because " the workman might obtain the benefit of the contract for years in the " form of higher wages to cover the risk of injury, and then claim full

(sic)

In the  
Supreme  
Court  
(sic) (Divisional  
Court,  
Cape  
Coast).

No. 12 (b).  
Exhibit  
" B "  
referred to  
in No.12.  
—continued.

" additional compensation when he was injured." Now, this case is on all forms with that case in principle. The applicant got £100 for abandoning his right to oppose and he got terms which presumably satisfied him. There is no provision in the old Concession Ordinance forbidden contracting out. In my opinion he cannot come and say " I have changed my mind and " I would like to oppose " I think great injustice might result if this application were granted, because the applicant would have got his £100 for abandoning his opposition and might then oppose the grant of a Certificate of Validity root and branch. Further, although this is not an application for an Injunction, I think the following passage taken from Addison on Torts, Eighth Edition at Page 114, is applicable in principle to this case. 10

" A man who lies by while he sees another person expend his capital and bestow his labour upon any work which he claims to have a right to prevent, without giving the person any notice or attempting to interrupt him, and who acquiesces in proceedings inconsistent with his own claims, will in vain ask for Injunction, the effect of which would be rather to render all the expense useless which he voluntarily suffered to be incurred."

The applicant has stood by for a year and seen the Claimants, acting on the faith of this Deed incurring large expenses in connection with the issue of Certificate of Validity, and has done nothing and now, on the eve of the grant of a Certificate of Validity, he comes and says, " I have reconsidered the matter and I want to oppose." In my view, he cannot be allowed to come and oppose now. For the above reasons I refuse this application with costs. 20

Costs assessed at £5. 5. 0.

(Sgd.) T. D. H. BRUCE,  
*Judge.*

30

Mr. R. S. BLAY for Applicant.

Certified True Copy,

(Sgd.) CHARLES BANNERMAN,  
*Registrar,*  
Divisional Court, Cape Coast.

This is the Ruling marked " B " referred to in oath of Chief Kojo Enyimadu sworn before me this 3rd day of March, 1944.

(Sgd.) E. J. STEELE DADZIE,  
*Commissioner for Oaths.*

## No. 13.

## Affidavit of Plaintiff in Opposition to Application for Payment out.

*(Title similar to No. 11.)*

In the  
Supreme  
Court  
(Divisional  
Court,  
Cape  
Coast).

I, KWEKU SUNN of Abinabina make oath and say :—

1.—That I am a son to the Stool of Abinabina and authorised by Chief Kwesi Kuma the Plaintiff herein on behalf of the Stool of Abinabina to swear to this Affidavit.

No. 13.  
Affidavit of  
Plaintiff in  
Opposition  
to Applica-  
tion for  
Payment  
out,  
25th March,  
1944.

2.—That the Plaintiff has been served with a copy of the application of the Defendant Chief Kojo Enyimadu asking for an Order of Court for the payment to him of the sum of £519. 5/- deposited in the Treasury  
10 dated the 2nd March, 1944.

3.—That the said sum of £519. 5/- was deposited by Government in respect of the Land known as Nkasawura which is the subject matter of the action now pending before this Honourable Court and in which an Order for Survey has been made and is being carried out and nearing completion.

4.—That in reply to paragraph 5 of the Defendant's Affidavit in support of his application the Plaintiff avers that the refusal of the Court to grant leave to oppose referred to was based on a contract between the Plaintiff and the Claimants of the Concession and not on any evidence  
20 of right in the Defendant and that the Court reserved to the Plaintiff the right to proceed therein at any stage thereafter on establishing his claim thereto.

5.—That in reply to paragraph 6 of the Defendant's Affidavit, it is clear that the Motion for Interim Injunction was refused by the Court on the ground that Defendant was causing no waste to warrant the Court to grant the Injunction.

6.—That in reply to paragraphs 7 and 8 of the said Affidavit, the notices referred to were also served on the Plaintiff by the Competent Authority dated 3rd April, 1943 and 31st August, 1943 under which notices  
30 the land was acquired by the Government for Railway Construction and that the Government gave notice to both Parties herein because of their alleged interest in the said land.

7.—That in the circumstances, it will be unjust and unfair to both Parties to pay out this money in the Treasury during the pendency of the

In the Supreme Court (Divisional Court, Cape Coast).

No. 13. Affidavit of Plaintiff in Opposition to Application for Payment out, 25th March, 1944—  
*continued.*

litigation until the same has been determined, and that for these reasons I swear to this Affidavit opposing the Defendant's application on behalf of the Plaintiff.

Sworn at Cape Coast the 25th March, 1944, by the Deponent herein after the same had been read over and interpreted to him in the Fanti Language by F. A. K. Sam of Cape Coast first duly sworn to interpret the same when he seemed perfectly to understand and approve of same before making his mark thereto and before me  
(Sgd.) E. J. STEELE DADZIE,  
*Commissioner for Oaths.*

KWEKU SUNN

His  
X  
Mark

10

(Sgd.) F. A. K. SAM,  
*Interpreter and Witness to Mark.*

No. 14. Court Notes on Application for Payment out, 28th March, 1944.

No. 14.

Court Notes on Application for Payment out.

DIVISIONAL COURT, CAPE COAST, Tuesday the 28th March, 1944. 20  
Coram : GOODMAN, Acting Judge.

KWESI KUMA

*v.*

KOJO ENYIMADU

SACKEYFIO Applicant.

DEGRAFT JOHNSON for Respondent.

SACKEYFIO—

Previous application by Respondent. First on 19 August 1939 and 31 October 1942.

1. Opposition to Concession being granted—dismissed application. 30
2. Motion for Interim Injunction and asked for Rescission and this was dismissed.

This money in hands of Treasury Dunka. Order on Treasurer to release money. In reply Affidavit filed by a representative of Plaintiff.

During pendency of this case, they made application. I asked Order be made.

DEGRAFT JOHNSON—

From Exhibit " B " the opposition not granted that we had contracted out of (sic). We agreed with European Company to pay us £100. We were allowed to oppose Claimant. Court gave us leave to oppose.

2. *Re Interim Injunction.* No waste. He is selling rubber. O. 14.

BY COURT—

Not sufficient grounds to grant Motion. Motion rejected. No Order as to costs.

10

(Intd.) T. F. G.,  
*Acting Judge.*  
28.3.44.

In the  
Supreme  
Court  
(Divisional  
Court,  
Cape  
Coast).

No. 14.  
Court Notes  
on Applica-  
tion for  
Payment  
out, 28th  
March,  
1944—  
*continued.*

No. 15.

Court Notes of Decision to re-hear.

IN THE SUPREME COURT OF THE GOLD COAST, LANDS DIVISION, CAPE COAST, Thursday the 5th day of September, 1946, before Mr. Justice JACKSON.

No. 15.  
Court Notes  
of decision  
to re-hear,  
5th  
September,  
1946.

KWESI KUMA II

*v.*

KOJO ENYIMADU.

20

COURT—

In view of a recent decision of the West African Court of Appeal, I feel there is some doubt as to whether questions involving native customary law may arise in determining this action and I had heard the whole evidence at Dunkwa without an Assessor—but am of the opinion that it would have been safer to have sat with me. Accordingly with consent of both parties, I shall re-hear the whole evidence to enable the Assessor, now appointed, to hear it.

BLAY for Plaintiffs.

30 SACEKEYFIO for Defendants.

Pleadings as filed.

Assessor : Chief I. O. DANSU.

## PLAINTIFF'S EVIDENCE

No. 16.

Chief Kwesi Kuma II.

In the  
Supreme  
Court  
(Divisional  
Court,  
Cape  
Coast).

BLAY opens and calls—

Plaintiff's  
Evidence. KWESI KUMA II (Male) Plaintiff :

Sworn states in Fanti—

No. 16.  
Chief Kwesi  
Kuma II.  
5th  
September,  
1946.  
Examina-  
tion.

Ohene of Abinabina—in Wassa-Amenfi State. Know Defendant—he is a Chief under Denkyira. Surveyor made Plan of area in dispute. Pointed out my land to him. Plan has been explained to me by him. (Plan admitted by consent—and is already marked as No. 1). I am the owner of the land in dispute. Belongs to my Stool. Have been on Stool about 20 years. Whole land is Abinabina Stool Land—but if a portion of it is settled on—that part is given a name. 10

Kojo Tsibu came from Ashanti—my ancestor Kodwo Kodu at a village named Adaboi (Northern end of Plan). Kojo Tsibu asked for a place to settle. Kojo Tsibu asked my ancestor to send a messenger to tell his master who lived at Ekruopong (in the Wassa Amenfi State). Omanhin was informed and Kodwo was told to give him a place to settle.

Adaboi given to him at which to settle. Ashantis were also following. Kojo Tsibu said it was too close to Ashanti and that he should have another place to settle. He was then settled at Awiem (near Bremang). 20

Kodia a Sub-Chief of Denkyira asked for a place to settle and was given a place at Dehia now called Bokitsi. All Asafuhenfu (Sub-Chiefs) of Denkyira “ applied ” for sites on which to settle.

Defendant's ancestors also asked for a place to settle and was given one at Nkasawura near Offin River. Place was swampy. He said he liked it. Pointed out place to Surveyor.

Fobenso Ohene was also a Sub-Chief of Denkyira. He applied for and was given a place to settle at Fobenso.

Land was not given to them as their own property. All this happened a long time ago when Denkyiras came from Ashanti. This Fobenso is still in existence. I showed it to Surveyor. 30

If animal was killed a leg was sent to the owner of the land ; if gold was dug up—one-third had to be given to the landowner.

In reply to  
Court. IN REPLY TO COURT—

Q. Was any given to Ohene of Wassa Amenfi ?—A. Yes—he takes his portion.

Examina-  
tion—  
continued.

EXAMINED—

Recently timber came into question in same way. One Yamuo bought trees at Nkasawura. My ancestor was informed. If a person bought trees on the land—the money was divided into 3 parts. Owner took 2/3rd and 1/3rd went to the person looking after the land. 40



Yamuo brought the money to my uncle Kwesi Kuma I—this was in my lifetime. Yamuo was of the Denkyira State. That land was at Bremang.

Ahindoma of Ayanfuri disputed our rights. Kwesi Esiedu was then on my Stool. Ahindoma said whole land belonged to him. He was claiming the whole land including Wioso.

Wioso is now deserted. No houses there. The signs of the old habitation including coconut trees are still there.

Action was heard in Cape Coast. My ancestor won (Certified Copy of Proceedings admitted and marked "3").

10 Wioso is part of the land in dispute.

Briscoe bought tree from Defendant to fell for timber in Wioso bush—near Wioso—pointed out places to Surveyor. Brought an action against Briscoe in which Defendant joined. Present Defendant's predecessor was Chief Bisa. When on the Stool he sold Nkasawura Concession. Bisa and present Defendant came before Kwesi Kuma I, with a paper asking him to sign it. I was there. It was in Abinabina. It was about 16 years ago.

Kwesi Kuma said that consideration money must be brought before he would sign the paper. He asked for 3 days in which to bring the money. He did not bring it. Later learning that Bisa had sold the land—  
20 when published in the Gazette—I was sent to Mr. Blay to oppose the Concession.

Later we entered into this Agreement with the Claimants (Admitted and marked 4). Kwesi Kuma III was destooled and I again was put on the Stool. Claimants paid us the money.

When Bisa was on Stool he litigated with Kru Apia and this land was attached to pay the Judgment Costs. When I heard it—I opposed it and inter-pleaded. (Proceedings tendered and marked 2A.)

Before this none of Bisa's predecessors had attempted such things: Bisa brought all the dispute.

30 I claim all land from Offin River up to Akunfura River. Defendant is claiming all that. Surveyor told me to show him all the land claimed by the Denkyira people.

I was not present when Defendant showed Surveyor what he claimed. It includes Dominasi, Bremang and Fobenso.

Had litigation with Ayanfuri people about Bokitsi. Kwesi Kuma I was then on the Stool. Ayanfuri people are Denkyira.

No boundary has been fixed between Denkyira and Wassas. Court ordered a boundary to be cut but it was not cut up to this day.

Defendant now claims Fobenso. Amakun is present Chief of Fobenso.  
40 He has been on Stool for about 20 years.

This Fobenso Chief is a Denkyira man—he is one of the Gyasi.

There are cocoa farms at Fobenso. I collect tolls from the people farming there. In case of any trouble there concerning the land I have to look into it.

In the  
Supreme  
Court  
(Divisional  
Court,  
Cape  
Coast).

Plaintiff's  
Evidence.

No. 16.  
Chief Kwest  
Kuma II,  
5th  
September,  
1946.  
Examina-  
tion—  
*continued.*

KWESI KUMA resumes evidence.

CROSS-EXAMINED

Plaintiff's  
Evidence.

No. 16.  
(Chief Kwesi  
Kuma II,  
5th  
September,  
1946.  
Cross-  
examina-  
tion.

Yes I succeeded my uncle Kwesi Kuma. He died about 25 years ago. This case arose 16 years last Christmas. He died just as the case started. My ancestors told me that the Wassas came from Aowin. They did not come from Kamowu in Ashanti. Aowin was in the Northern Territories. Denkyiras were Ashantis. They fought and were driven down to the Offin River.

Q. Area now occupied by Denkyiras and Wassas was first occupied by the Aowins?—A. It is not true. 10

Q. Denkyiras fought Aowins and drove them to where they are now at Enchi?—A. It is not true—when they came from Ashanti they met Wassas people.

Q. You settled at Wassas Fiasi near Tarkwa when you first came?—A. No.

Q. When Wassas Fiasi became truculent did you not appeal to the Denkyiras who settled the matter for you?—A. It is not true.

Q. What is the meaning of Wassas Amenfi?—A. It is tradition. My ancestors did not tell me. Wassas assisted Kojo Tsibu against Ashanti.

Q. After that fight Denkyiras left other side of Offin and have been 20 where they are now ever since?—A. No. They did pay tribute to me.

In reply to  
Court.

IN REPLY TO COURT—

Q. How many years ago did this payment of money as tribute start?—A. About 12 years ago.

Cross-  
examina-  
tion—  
continued.

CROSS-EXAMINED—

They were paying tolls for past 15 years—recently they stopped paying.

Q. Who paid the tolls at Fobenso; who brought the money to you?—A. Gyabin, a witness of Defendant's.

CROSS-EXAMINED—

Kobina Amekun is a Denkyira man. 30

In reply to  
Court.

IN REPLY TO COURT—

His father was a Wassas man and his mother Denkyira.

Cross-  
examina-  
tion—  
continued.

CROSS-EXAMINED—

He is not a Wassas man. Amuakun brought Gyabin to Fobenso. He follows Amuakun everywhere.

Q. You know there is no Ohene of Fobenso up to this day?—A. There is. His name is Amankun Ababio.

Re-exam-  
ination.

RE-EXAMINED—

There was a disturbance at Fobenso and I paid the lorry fare for Amankun to go to Jukwa. He ran to my village to see me about it. 40  
This case had started then.

No. 17.  
Kobina Teng.

In the  
Supreme  
Court  
(Divisional  
Court,  
Cape  
Coast).

KOBINA TENG (Male). 1st Witness for Plaintiff.

Sworn states in Fanti—

Plaintiff's  
Evidence.

Live Fobenso. Denkyira man. Denkyiras occupy Fobenso. Born at Fobenso (Witness aged about 65-70). My father was born at Fobenso. Fobenso belongs to Kwesi Kuma of Abinabina. Oduro Asafo was the Chief of Fobenso. He died a long time ago. Stool is still vacant. One who occupied it after Oduro was destooled. His name was Amakun Ababio. He was destooled—that you would not reach 10 years yet. The Elders destooled him. Fobenso became divided. Kwesi Mensa was then the Omanhin at Jukwa and some said they did not like him—part went to the side of the Queen Mother who was against the Omanhin and so they raided us and we ran to Abinabina. Since then Amankun has never returned to Fobenso.

No. 17.  
Kobina  
Teng, 5th  
September,  
1946.  
Examina-  
tion.

Q. How did Denkyiras come to settle at Fobenso?—A. Oduro Asafo and Kodwo Tibu crossed the Offin River and met Kwesi Kuma's ancestors. They came from Ashanti and had nowhere to settle. They were settled at Fobenso and dug up gold. If we do anything, we do it for Kwesi Kuma. In ancient days no tolls were paid but if an animal was killed a leg was given to him. 1/3rd of gold goes to landowner and the one who finds it takes 2/3rd.

I grow cocoa. Have grown it for a long time. Cannot say how long. Others have cocoa farms. Those who have cocoa farms pay to the Plaintiff. No fixed amount is given—sometimes £6 or £8—as much as you can raise. Whole village pays tolls to him. When Chief Amankun was there these tolls were paid.

I know Dompouse Village—Denkyiras occupy it. It is on Kwesi Kuma's land. We go there to serve a fetish.

CROSS-EXAMINED—

Cross-  
examina-  
tion.

30 Gold pits are still at Fobenso. There are 2 Fobensos I know. Where I have my cocoa farm is where the deserted Fobenso, the old one is; gold pits are in the new Fobenso, the one now inhabited. I was there when Surveyor came. I did not show him any gold pits—I had then gone somewhere.

Yes Chief of Abinabina has treated us well.

Q. I put it to you—you Denkyiras never paid tolls?—A. We did. Gyabin was the linguist, but he has been deposed.

In the  
Supreme  
Court  
(Divisional  
Court,  
Cape  
Coast).

*Q.* Gyabin holds the Stool until a holder is appointed?—*A.* The Stool is not is not with him now ; they say it is at Ayanfuri. Yes Gyabin himself has been paying tolls.

IN REPLY TO COURT—

*Q.* When did you start paying tolls?—*A.* When cocoa was started.

Plaintiff's  
Evidence.

CROSS-EXAMINED

No. 17.  
Kobina  
Teng, 5th  
September,  
1946.  
In reply to  
Court.  
Cross-  
examina-  
tion—  
*continued.*

My people and I were living at Abinabina but we are now living at Fobenso. This is 2 years since I came back to Fobenso. I was 4 years at Abinabina.

NO RE-EXAMINATION.

10

No. 18.  
Kojo  
Yamoa, 5th  
September,  
1946.  
Examina-  
tion.

No. 18.  
Kojo Yamoa.

KOJO YAMOA (Male). 2nd Witness for Plaintiff.

Sworn states in Fanti—

Live at Dominasi. Am Head of my Family. I am of the Anana Tribe. My mother was from Denkyira and so was my father. (Witness aged between 65 and 70 years). I had a case at Dunkwa and the Oman Denkyira has made me enter into a Bond. I gave evidence in a case about 7 years ago. I gave evidence—when I went back they made trouble for me.

Dominasi is on the land of Defendant's predecessor. Defendant is not 20 the Chief of Dominasi.

In reply to  
Court. IN REPLY TO COURT—

*Q.* Who gave the land to Defendant's predecessors?—*A.* In time of Ashanti—we looked upon Defendant's predecessors as the owners of the land—I bought some trees from Defendant's ancestor to saw timber—I bought them from Kofi Amoaku—trees were near Bremang. This was over 20 years ago.

EXAMINED—

When logs were being drawn out Kofi Amoaku told me the money paid in respect of those logs was being taken to Kwesi Kuma to share.

I paid the money after felling the trees.

30

**Kwesi Kuma** is Chief of Abinabina.

I paid the money. Money was taken to Dunkwa where it was shared.

In the  
Supreme  
Court  
(Divisional  
Court,  
Cape  
Coast).

IN REPLY TO COURT—

Cocoa was first introduced in our part over 25 years ago.

EXAMINED—

I sold the logs.

My own ancestors came from Ashanti.

When we crossed Offin—I was told that they met **Kodwo Kodu**, Chief of Abinabina, and settled first at Adaboi. While there Ashantis came and my ancestors were taken away as prisoners without a fight. One of my ancestors by name **Amoaku Kwesi** remained behind; he was living at Adaboi but had come down to Nkasawura to dig gold; he reported to Elders that he heard his people had been caught. **Kodwo Kodu** interned him and gave him a place to settle. **Amoaku** was given a place at Nkyiniso (not far from Dominasi). My ancestors settled there. If any treasure is found, finder gets 2/3rd and landowner 1/3rd. I live at Dominasi—I visit Nkyiniso and on these visits stay sometimes for one year.

Plaintiff's  
Evidence.

No. 18.  
Kojo  
Yamoa, 5th  
September,  
1946.  
Examina-  
tion—  
*continued.*

In reply to  
Court.

I know **Bremang**. People living there are all people of my grandfather—the one who got the land from Abinabina.

It was **Anhil** my ancestor who brought these people from Nkyiniso to **Bremang** with permission of **Yensanti**—the predecessor of Defendant. I did not fell trees at Dominasi. I felled them at **Bremang**. When animals were killed at Nkyiniso they sent a leg to Abinabina.

**Kuru Apia** was my father. He had a case against **Bisa**—Defendant's predecessor—I gave evidence in that case in this Court. Plaintiff came into that action; I gave evidence for him.

I saw **Anhil** build the houses which formed the village there. The place had gone to ruins and **Anhil** re-built there—I am just a boy then (indicates 6-8 years).

**Anhil** then occupied the Stool at Nkyiniso. He was asked to pay tolls of £4 to the Chief of Abinabina and that was a long time ago. The £4 was not paid and **Anhil** was told that if he did not pay he should quit.

IN REPLY TO COURT—

Cocoa at that time had not been introduced.

The £4 was demanded not as a toll but as a contribution to costs incurred by the Chief of Abinabina in litigation.

In reply to  
Court.

EXAMINED—

**Anhil** was driven away from the place (Nkyiniso).

Move from there to cross-road and settled there. **Yaw Asanti**, Chief of **Bremang**, heard of this and invited him to live at **Bremang**.

Examina-  
tion—  
*continued.*

CROSS-EXAMINED---

I knew **Bekwe**. It is in **Wassa** not near land at all.

Yes—I said my ancestors lived there.

Cross-exam-  
ination.

In the Supreme Court (Divisional Court, Cape Coast).

Plaintiff's Evidence.

No. 18.

Kojo Yamo, 5th September, 1946. Cross-examination—continued.

Q. As strangers you were asked for tolls?—A. Ntramuo Kesi was Odikro of Bekwe and a Safohene in the "Nkyidom" (Rearguard) of the Denkyira Ohene. They did not pay tolls at Bekwe—at that time no such thing as tolls were known.

Yes my ancestor moved from Bekwe to Nkyiniso—as he heard then that Dominasi had been established and that the Chief there was my Safuhene.

We settled at Nkyiniso with permission of Chief of Abinabina.

Yes not long again Defendant called on me for a contribution to fight this case. I paid some. I still owe him some.

10

IN REPLY TO COURT—

I am prepared to pay my share but I'm not prepared to lie.

NO RE-EXAMINATION.

(Good Witness).

Adjourned to 6.9.46.

(Sgd.) J. JACKSON,  
Judge.  
5.9.46.

No. 19. Ntiakun, 6th September, 1946. Examination.

No. 19. Ntiakun.

20

NTIAKUN (Male). 3rd Witness for Plaintiff.

EXAMINATION-IN-CHIEF.

30

Sworn states in Fanti—

Live in Akuropong in Amemfi Wassa State. I was the Omanhin of Amemfi Wassa. I abdicated about 10 years ago. Live there now. Was on the Stool for about a year when Tufuhene said he had a dispute with me and I abdicated. (Witness aged about 50—maybe a little less).

I learned the tradition of Abinabina from my ancestors who made Abinabina Stool—the Stool of a Safohene. My grandfather Yaw Owusu and Kwesi Owusu told me. I heard that Kojo Tibu was Denkyira Ohene—came from Ashanti—he fought Ashanti and he was driven away. He met Nana Kodu, the Abinabina Ohene—met him at Adaboi. Given place to settle after informing his master, Tiakun Bunyi, the Ohene of Wassa Amemfi.

40

When Kojo Tibu came Plaintiff's predecessors were living at Adaboi—Kojo Tibu then settled there. As it was too close to Ashanti he was brought to Awiem—it was Abinabina land, and from there the ancestor of the Plaintiff moved and then founded Abinabina to dig up gold and to keep away

from the Ashantis. Nkasawura, Obassi and Bremang were places given to them.

Aynafuri is part of Denkyira and was given place to live on—they also came from Ashanti.

No tolls demanded in old days.

I came to Dunkwa about 20 years ago and Abinabina collected tolls from Bremang.

NO CROSS-EXAMINATION.

In the  
Supreme  
Court  
(Divisional  
Court,  
Cape  
Coast).

Plaintiff's  
Evidence

No. 19.  
Ntiakun,  
6th  
September,  
1946.  
Examina-  
tion—  
*continued.*

No. 20.

J. T. Sampson.

No. 20  
John Taylor  
Sampson,  
6th  
September,  
1946.  
Examina-  
tion.

10

JOHN TAYLOR SAMPSON (Male). 4th Witness for Plaintiff.

EXAMINATION-IN-CHIEF.

Sworn states in English—

Native of Cape Coast. Soap maker. Am 68 years of age. At one time I was Clerk to the Gold Coast Selection Trust at Dunkwa, a Mining Company. Company acquired areas in Dunkwa District—one was at Nkasawura close to the Offin River. Bisa was then Chief of Nkasawura. Kwesi Kuma was then Chief of Abinabina. The Company when acquiring Concession Areas.

I, the Manager, the Chief of Nkasawura and some of his elders went to  
20 Abinabina—that would be about 1934; went to the Chief there with an option for a lease which I interpreted to him. The Chief of Nkasawura was claiming the land. The Chief of Abinabina claimed a portion of that area and Manager asked him to sign the document jointly with the Chief of Nkasawura and the Chief of Abinabina said that if that was—he would  
have to take the document to his master at Akropong—the Omanhene. (sic)  
The Chief of Nkasawura objected to this and said it should be taken to his Paramount Chief at Denkyira.

IN REPLY TO COURT—

I had been in that District for more than 10 years before this.

In reply to  
Court.

30 NO CROSS-EXAMINATION.

No. 21.

Kobina Amakun.

In the  
Supreme  
Court  
(Divisional  
Court,  
Cape  
Coast).

KOBINA AMAKUN (Male). 5th Witness for Plaintiff.

Plaintiff's  
Evidence

**EXAMINATION-IN-CHIEF.**

No. 21.

Sworn states in Fanti—

Kobina  
Amakun,  
6th  
September,  
1946.  
Examina-  
tion.

Live Fobenso. Am Denkyira man—my mother was Denkyira—also my grandmother. I was born in Wassa-Fiasi—My grandfather was at Fobenso and he was the Ohene there. His name was Ndu Asafo. I went to Fobenso. When Ndu Asafo died Kofi Duku succeeded him on the Stool. Kofi Duku is also dead. Ohenekun succeeded him. 10

*Q.* Have you ever been on the Stool?—*A.* I am now on the Stool. Fobenso is in Abinabina's land. I had a cocoa farm there. I have been on the Stool for about 10 years and have paid tolls to the Abinabina Ohene.

I first came about 15 years ago. Kobina Amakun was then on the Stool.

When he died I succeeded him and that is our Stool name.

My own name is Kweku Enin. Am now at Jukwa—have been there for about 3 years—at time of Kwesi Mensah dispute. People at Fobenso divided in two over the question—dispute was over the deposal of the Omanhin of Denkyera. 20

I knew Kojo Gyabin. He was my elder when I came to the Stool. He was a linguist but my brother Kobina Amakun deposed him as linguist.

Cross-  
examina-  
tion.

**CROSS-EXAMINED BY SACKEYFIO—**

*Q.* Did you not say at Dunkwa that both your father and mother were Wassa people?—*A.* I did not say so. Kobina Amakun died a long time ago. He sent for me to come for Wassa. 3 months after I arrived in Fobenso he died.

*Q.* So it was not your grandfather who sent for you, but your brother?—*A.* Yes—my brother. The Stool is in the hands of my Elders. 30

(Not a satisfactory Witness.)

Case closed for Plaintiff.

---



## DEFENDANT'S EVIDENCE.

No. 22.

Chief Kojo Enyimadu.

In the  
Supreme  
Court  
(Divisional  
Court,  
Cape  
Coast).

KOJO ENYIMADU (Male) Defendant.

Defendant's  
Evidence

EXAMINATION-IN-CHIEF.

No. 22.  
Chief Kojo  
Enyimadu,  
6th  
September,  
1946.  
Examina-  
tion—

Sworn states in Fanti—

Chief of Nkasawura. Am Odikro there in Denkyera State. The Stool has land. My Stool Land has boundary with Ayanfuri—it starts at Otin Stream. I showed the boundaries to the Surveyor. We were Asantis at first. My ancestors were at Nkasawura in ancient days—they went to Bansu to pay allegiance to the Denkyeras on the other side of the Offin River.

Aowin people were then troubling the Denkyera people there. The Denkyeras joined us and we drove the Aowins away and the Denkyera people settled on the land before Denkyera Ohene left Bansu. Denkyerahene migrated to Jukwa.

Amankra Diabo, Bisa I, Yaw Asanti, my uncle Akwesi Kuma (not to be confused with Plaintiff), Kobina Frempong, Kofi Bisa were my predecessors who occupied the Stool at Nkasawura. At no time have I paid contributions or tribute to the Plaintiff or his people. If a man killed an animal in this land a leg would be sent to the occupant of my Stool. If a stranger came there to farm a sheep was taken from him.

IN REPLY TO COURT—

Everyday I get—of an animal sent to me.

If a hunter kills an animal in the bush around Dominasi the leg is sent to me.

Q. If a hunter failed to give you a leg what would you do?—A. I would call him to account.

In reply to  
Court.  
(sic)

EXAMINED—

Kobina Amakun is not the Ohene of Fobenso. The Stool is at present in the hands of Gyabin. The last person to sit on the Stool was Amakun the brother of the Amakun who gave evidence this morning.

When they discuss Stool matters they do not discuss it with me.

Examina-  
tion—  
*continued.*

CROSS-EXAMINED BY BLAY—

Q. You have been on Nkasawura land for over 100 years?—A. It is a long time—it may be 100 years. Some of the Denkyeras were on one side and some on the other side of the Offin River when the Denkyerahene crossed the river. I don't know if he settled on another's land at Jukwa.

Cross-  
Examina-  
tion.

In the  
Supreme  
Court  
(Divisional  
Court,  
Cape  
Coast).

Defendant's  
Evidence.

No. 22.  
Chief Kojo  
Enyimadu  
6th  
September,  
1946.

Cross-  
Examina-  
tion—  
*continued.*  
In reply to  
Court.

Cross  
Examina-  
tion—  
*continued.*

*Q.* When driven across you became allies of Wassa and fought the Ashantis?—*A.* No. When Denkyerahene was in Ashanti—the Omanhene of Wassa Fiasi dealt with him as a brother. Wassa Amenfi people are from Akomu beyond Ashanti and when they arrived Denkyerahene told them to remain with the Wassa Afiasi. Had never had litigation with Abinabina before. Briscoe cut trees as well as many other people. Ayanfuri I heard had litigation with Abinabina about Bokitsi land. Ahendomen was a Chief of Ayanfuri. I don't know if there was any other litigation. I would not know what happened there. Yamo (Witness for Plaintiff) grew up at Bekwe in Wassa-Amenfi on Abinabina's land. 10

*Q.* He said Nkyiniso was given to his ancestors by Abinabina?—*A.* He is not a good man in our Denkyera State.

*Q.* How many Wiosos are there in this area?—*A.* On my land there is one.

IN REPLY TO COURT—

There are no houses there now. They removed to Dominasi. That was the first place they settled. They have never had any litigation.

CROSS-EXAMINED—

Have a boundary with Ayanfuri at old Fobenso.

My immediate predecessor was Bisa. 20

He had litigation with Kuru Apia. His lands were attached.

*Q.* And Plaintiff interpleaded and paid the money?—*A.* He did not pay any money. I raised a loan and gave to Denkyerahene who paid the debt.

I know Nkyiniso. It is near Wiosu. I know Chief Kodia. He is Tufuhene of Denkyeras. He lives at Diaso. I am not under Kodia. I am under the Nfuohene.

Denkyerahene migrated. Cannot say when Ayanfuris came on land.

In reply to  
Court.

IN REPLY TO COURT—

*Q.* Who came first Ayanfuri or Nkasawura—which is the older settlement?—*A.* My ancestors were the first. I was told how the Ayanfuris came. 30

CROSS-EXAMINED—

Fobenso people paid contributions to my predecessors.

*Q.* Why did they pay?—*A.* Because the people of Fobenso got permission from my ancestors to pay tolls.

Sampson was present which an agreement was made with Bisa.

We did not go to Abinabina at all. It was Abinabina who sent a message that they also would sign the document and we said we were not owning the land together. 40

NO RE-EXAMINATION.

No. 23.

Kofi Asamua.

KOFI ASAMUA (Male) 1st Witness for Defendant.

EXAMINATION-IN-CHIEF.

Sworn states in Fanti—

Farmer living Dominasi. Am a linguist there to the Ohene of Dominasi and am Safuhene as well. (Age about 75 years.) We have not yet enstooled an Ohene at Dominasi. Dominasi is on Defendant's land. Have never paid to Plaintiffs any money on account of this land.

In the  
Supreme  
Court  
(Divisional  
Court,  
Cape  
Coast).

Defendant's  
Evidence.

No. 23.  
Kofi  
Asamua,  
6th  
September,  
1946.  
Examina-  
tion.

10 CROSS-EXAMINED—

Dominasi is on Nkasawura land.

Yes the Chief of Nkasawura is under the Ohene of Dominasi.

We were not under Kodia.

I know Yamo. I introduced Timber business into Dominasi over 20 years ago. I was working with a European called Renard. I felled the trees at Dominasi for him ; he lived at Dunkwa.

No one objected.

Q. The proceeds of that timber were shared with Kwesi Kuma ?—

A. Nothing was discussed with him.

30 Kobina Bin was then Chief of Dominasi. Tinakua was Chief of Dominasi.

NO RE-EXAMINATION.

Adjourned to 2.30 p.m.

(Sgd.) J. JACKSON,  
*Judge.*  
6. 9. 46.

Cross-  
examina-  
tion—

---

No. 24.

Kojo Gyabin.

In the  
Supreme  
Court  
(Divisional  
Court,  
Cape  
Coast).

Resumed at 2.30 p.m.

KOJO GYABIN (Male) 2nd Witness for Defendant.

Defendant's  
Evidence.

EXAMINATION-IN-CHIEF.

No. 24

Sworn states in Fanti—

Kojo  
Gyabin,  
6th  
September,  
1946.  
Examina-  
tion.

Live Fobenso. Now I am at Jamang. I am Ohene's linguist at Fobenso. There is no Ohene there now. Last Ohene died about 5 or 6 years ago. When he died the Stool was in my possession as Caretaker. Before it came into my possession Kofi Yabuaku was "Caretaker." Have never 10  
acknowledged Plaintiff as overlord of Fobenso. Chief Enyimadu (Defendant) is the owner of the land on which village stands.

Kweku Enin (Kobina Amakun) is a young man ; he is not an Ohene. If he has even been on the Stool I do not know. When he was there I was in my father's village at Besiasi. If people are paying them anything I do not know. Before we paid nothing to the Plaintiff. Have a farm near Fobenso. Have never paid anything to Plaintiff.

In reply to  
Court.

IN REPLY TO COURT—

I don't know name of Kweku Enin's father. His mother's name is Eko. She comes from Enyebirim in Wassa-Fiasi. 20

Cross-  
examina-  
tion.

CROSS-EXAMINED—

Kweku Enin is not known as Kobina Amakun. I don't know. He is nephew of the last Ohene (Amakun).

*Q.* Why has no Chief been made at Fobenso up to now ?—*A.* When Kwesi Kuma's dispute arose—a part went to Abinabina and part went on my side. It was about the Denkyera Stool dispute. People at Fobenso are Denkyeras.

*Q.* Can you suggest any reason why they should go to Abinabina ?—*A.* Because we were on side of Denkyera Ohene. Yebuaku, Head of Stool family, was arrested and taken to Abinabina. 30

In reply to  
Court.

IN REPLY TO COURT—

The youngmen there fired a gun and killed 2 persons—matter taken to Court at Dunkwa.

Cross-  
examina-  
tion—  
*continued.*

CROSS-EXAMINED—

*Q.* Simple fact is this that Fobenso is on Abinabina land and when this trouble arose they went to Abinabina ?—*A.* No—we are on the boundary. Yabonaku was arrested by people of Fobenso. He was principal man in Fobenso.

I know Oboasi.

IN REPLY TO COURT—

Q. When did you last visit Oboasi ?—A. About 1½ years ago.

CROSS-EXAMINED—

Denkyera and Wassa people live there.

I know Wioso. From Bremang one passes through to Wioso to Oda. Oda is Kwesi Kuma's land.

IN REPLY TO COURT—

Denkyeras do live on Wassa land. At Oda there are Denkyera people on Wassa land.

10 Q. Do they pay Wassa people anything for living there ?—A. I would not know. But if one lives on another's land each year a sheep is taken from you. Wioso at present is deserted. The place was occupied by Ashanti people—and they left—the Denkyera people who were there moved to Dominasi. People lived there after Prempeh War (1896). Cannot remember when they left. Could not say time.

Q. Do you remember litigation about this place Wioso ?—A. I do not know there has been litigation about Wioso.

NO RE-EXAMINATION.

ON COURT'S OWN MOTION—

20 Sketch Plan in handwriting of presiding Judge and dated 4.7.1902 at page 163 of Volume III Concession Record Book 1902 put in evidence in explanation of Judgment of Bradford Griffith, Chief Justice. (Sarbah's Law Reports Page 148.)

---

No. 25.

Ababio Ampia.

ABABIO AMPIA (Male). 3rd Witness for Defendant.

EXAMINATION-IN-CHIEF.

Sworn states in Fanti—

Nimfahene (Ohene of Right Wing) of Ayanfuri.

30 IN REPLY TO COURT—

In peace time the Omanhene takes the Head of the State. In war time the Tufuhene takes the Head. When Denkyerahene was living at Jukwa the Tufuhene was living at Awiem near Jukwa.

CROSS-EXAMINED—

Kodia is Tufuhene of Denkyera.

In the  
Supreme  
Court  
(Divisional  
Court.  
Cape  
Coast).

Defendant's  
Evidence.

No. 24.  
Kojo  
Gyabin.  
6th  
September,  
1946.  
In reply to  
Court.

Motion by  
Court.

No. 25  
Ababio  
Ampia, 6th  
September,  
1946.  
Examina-  
tion.

In reply to  
Court.

Cross-  
Examina-  
tion.

In the  
Supreme  
Court  
(Divisional  
Court,  
Cape  
Coast).

Defendant's  
Evidence.

No. 25.  
Ababio  
Ampia, 6th  
September,  
1946.  
Cross-  
examina-  
tion—  
*continued.*

In reply to  
Court.

Cross-  
Examina-  
tion—  
*continued.*

In reply to  
Court.

*Q.* He lives near Offin River Diaso way?—*A.* He does not. He is now at Diaso.

*Q.* Where did he used to live?—*A.* He was formerly at Awiem near Jukwa. (Refers to the Jukwa fourteen miles from Cape Coast.) His people were at Diaso when he came to Jukwa and when Omanhin left Jukwa—he went back to Diaso. Omanhin left Jukwa about 3 years ago now. If Omanhin is not there the Gyasehene takes control. Edu Kofi commands the Gyasi. If Gyasehene is put aside then Kodia comes in. Doman was Ohene of Ayanfuri.

*Yes*—he had litigation with Abinabina a long time ago. The land they 10 disputed was near Prwieso—near Bokiti.

I do not know of any litigation in Eshiem's time—I only know Bokiti. I only know that Eshiem's litigation was about Bokiti land.

I was born but not grown up at time of Eshiem's case.

*Q.* The land they litigated about then was Wioso land?—*A.* I have not heard of the name Wioso.

IN REPLY TO COURT—

I am Denkyera. I was born at Ayanfuri.

CROSS-EXAMINED—

If there is a Wioso it may be on the side of Defendant—but it is not 20 near us.

NO RE-EXAMINATION.

IN REPLY TO COURT—

There is no history of how Ayanfuri settled.

No. 26.  
Kwamin  
Kwanie, 6th  
September,  
1946.  
Examina-  
tion.

No. 26.  
Kwamin Kwanie.

KWAMIN KWANIE (Male). 4th Witness for Defendant.

EXAMINATION-IN-CHIEF.

Sworn states in Fanti—

I am Twafuhene of Denkyera State. I am the one who goes in front in 30 War. Have never been to War. Ohene of Oboasi. Have land attached to my Stool. I saw Defendant's Surveyor. I showed him Kyiribra Stream. The railway passes through my land and the motor road. Trepuso is a village of mine.

Akrofur is not on my land. It is on land belonging to Kuren—a Safuhene of Denkyera.

Anwiawia is a village of mine. Bisiasi is also mine. At Bisiasi I have a boundary with Defendant.

IN REPLY TO COURT—

I remember Briscoe. He felled some trees on my land. I know Dompoase. That land belongs to Abinabina. I have never seen the village.

CROSS-EXAMINED BY BLAY—

I have a boundary with Plaintiff at Subin River. Have no boundary  
10 with him at Bisiasi.

I am between Kwesi Kuma and the Offin River.

Diaso from me is about 6 miles. Tufuhene lives there.

Kodia is Tufuhene. Diaso is above me on the boundary with Sefwi.

Q. Kuru Apia has no land there at all?—A. He is near Offin River. Awianwia is on my land completely.

Q. Kwesi Kuma's relatives live there?—A. I don't believe that.

Q. The land you occupy you occupy by leave of the Wassa?—A. From time immemorial from Kojo Tibu's I've lived on that land and have always been there until now.

20 My ancestors lived there and served Kojo Tsibu when he was living in Ashanti.

It is very long time ago since elephants were on the land. I have never seen elephants on the land—my predecessors saw them.

RE-EXAMINED—

Adaboi is not on my land. It belongs to Kudu Apia of Bremang—who serves Denkyerahene. (Good Witness.)

Case for Defendant.

Adjourned to 7.9.46.

(Sgd.) J. JACKSON,

Judge.

6.9.46

No. 27.

## Counsel's Addresses.

In the  
Supreme  
Court  
(Divisional  
Court,  
Cape  
Coast).

7.9.46.

No. 27.  
Counsel's  
Addresses,  
7th  
September,  
1946.  
For  
Defendant.

IN THE SUPREME COURT OF THE GOLD COAST, LANDS DIVISION, CAPE  
COAST, Saturday, the 7th day of September, 1946, before Mr. Justice  
JACKSON.

KWESI KUMA

v.

KOJO ENYIMADU.

SACKEYFIO addresses Court—

10

Plaintiff must recover on strength of his own title. Assuming evidence of Amakun which we deny, is true—there is only evidence of tolls having been collected at Fobenso. *Abotche and Others v. Adja Kodadja* (2 W.A.C.A. Page 24). Refers to Page 27—Evidence of farming in part not evidence of title to whole land. Have occupied land for over 100 years—never paid toll to Plaintiff or ever acknowledged his ownership.

If land did belong to Abinabina why did they stand by for so long before they made up their minds to oppose the Concession (Exhibit D) ?

Kru Apia's case (Exhibit 2A)—Judgment shows that predecessor in title of Defendant who was ordered to pay costs and not Plaintiff. 20

Exhibit B—claim for rents made in 1938. This action was taken in 1942. On 19.5.38 Divisional Court non-suited with liberty to bring action—since then action not pursued. Tolls refer solely to Fobenso—but submit that tolls refer to "Old" Fobenso and not the new Fobenso. (Reindorf's History Page 45.)

COURT—

You say Wassa was a tributary nation—would that affect land ownership in any way ?

SACKEYFIO—

Land became theirs by conquest. 30

Regarding Wioso—submit Exhibit 3 is vague and does not identify the land—refers to Ayanfuri and Abinabina. Bokiti case—the Wiosu referred to there is not the one shown on the Plan now before the Court.

Submit insufficient evidence to establish title. Ask for Judgment for Defendant.

BLAY replies—

Chief of Abinabina opposed the Concession and so the Company approached them and said that in consideration of money paid they would not oppose Concession.

For  
Plaintiff.



Submit Plaintiff has proved his title. We rely first on traditional evidence—and that land was always Wassa and that Denkyeras came from Ashanti and Abinabina allowed them to settle on Wassa land—Ashantis being their common enemy. History of Ayanfuri was fully discussed in the Bokitsi Concession Case (1902) and conclusion was that Wassas migrated from the East and not the North at Page 154 of Sarbah's Reports—Ayanfuris probably not in origin Denkyeras but absorbed by them—both Denkyeras and Wassas conquered by Ashantis.

10 Evidence of Yamuo that when anything killed portion sent to Abinabina—settlement at Nkyiniso with permission of Abinabina.

Action of Plaintiff has been consistent throughout—we brought action because we are denied our share of Concession or Timber rents.

COURT—

When settlement made—then economic questions were never in contemplation.

BLAY- -

20 That is so. Submit that evidence of Amakun is overwhelming—we were in the difficulty of having to call Denkyera to prove our case. Kwamina Kuma v. Kwesi Kuma (5 W.A.C.A. 4)—remark made in last paragraph at Page 7. Submit Plaintiff has proved his case. As to damages—we ask for nominal damages.

In the Supreme Court (Divisional Court, Cape Coast).

No. 27. Counsel's Address, 7th September, 1946 - continued.

No. 28.

Assessor's Opinion.

CHIEF DANSU—

30 I have some doubts—no evidence adduced as to who first settled on the land. Proved that Denkyeras migrated from Ashanti. My opinion tends to believe that a part of the Denkyeras were always this side of the Offin River. Wassas appeared to be their friends and had a boundary with them—often rivers and hills are boundaries. I believe it is only since Government drove Ashantis back that Offin and Prah Rivers have been recognized as boundaries. Have doubts about Yamoah's evidence—because of his allegation about being asked for money by Abinabina—but sending it to Dunkwa.

Judgment reserved. I will notify parties of date it will be delivered.

(Sgd.) J. JACKSON,  
Judge.  
7.9.46.

No. 28. Assessor's Opinion, 7th September, 1946.

No. 29.  
Judgment.

In the  
Supreme  
Court  
(Divisional  
Court,  
Cape  
Coast).

IN THE DIVISIONAL COURT AT CAPE COAST, Wednesday, the 16th day of  
October, 1946, before Mr. Justice JACKSON.

Suit No. 6/1942

No. 29  
Judgment,  
16th  
October,  
1946.

CHIEF KWESI KUMA II of Abinabina ... .. Plaintiff  
*versus*  
CHIEF KOJO ENYIMADU of Nkasawura ... .. Defendant.

JUDGMENT—

The people of Abinabina live in the Wassaw Amenfi State and claim 10  
through Kwesi Kuma, the Plaintiff in this action, that they are the owners  
of all that land shown as being edged in pink on the Plan marked and  
exhibited as No. 1 and which is described by them in paragraph 7 of their  
Statement of Claim as being known as “ Nkasawura ” lands.

They claim as against Kojo Enyimadu, who was substituted for Kofi  
Amoah deceased, whom they style the “ Caretaker of Nkasawura Stool,  
Denkera State.”

They plead that the Defendants occupied this land by the leave and  
licence of the predecessors in title of the Plaintiff’s predecessor upon the  
condition that tribute should be paid to the Abinabina Stool (Paragraph 3 20  
of the Statement of Claim) and that tribute was paid from time to time until  
one Chief Kofi Bissa of Nkasawura repudiated the agreement by refusing  
to pay tribute and claimed ownership of the land.

This alleged repudiation of the agreement occurred at the time when  
Messrs. The Gold Coast Selection Trust Limited sought a concession which  
was granted to them by the then Omanhene of Denkera and this said Chief  
Kofi Bissa (Exhibit “ A ”) of the area described on the Plan (No. 1) as  
Nkasawura Concession C.V.615 and situate along the right bank of the  
Offin River. The people of Abinabina opposed the grant by the Denkera  
State but were estopped from opposing in view of a covenant not to oppose 30  
entered into then by Deed with the then Claimant Company. This decision  
(Exhibit “ D ”) in no way estopped any claim by Abinabina as to their  
rights vis-a-vis the Denkera people, and I am satisfied that there was no  
undue delay by the Abinabina people at that time to set up a claim to title.  
That was in 1939.

On the 21st November, 1941, the Plaintiff issued out of the Native  
Tribunal of Akropong in the Wassaw Amenfi State a Writ of Summons  
claiming as against Kofi Amoah £100 damages for trespass for unlawfully  
permitting a European named Briscoe to fell Mahogany and other trees on  
this land. On the 9th March, 1942, leave was granted by that Tribunal to 40  
amend the claim for a declaration of title as set out in paragraph 7 of the  
Statement of Claim.

The Plaintiffs found their claim upon the ground that they were the original owners of the land. They found their case on

- (a) traditional evidence as to their ancestors original settlement at Adaboi
- (b) the defeat of the Denkyiras by the Ashantis, resulting in the Denkyiras being driven across the Offin River and the consequent conditional leave and licence to settle granted to them by Abinabina.
- 10 (c) admissions by conduct evidenced by Kojo Yamoah as to the settlement at Nkyiniso having been made by leave of the people of Abinabina
- (d) tribute having been paid in respect of timber felled in this area
- (e) tribute having been paid by the people of Denkyira living in the village of Fobinso
- (f) farming by people of Abinabina in the area claimed without payment of tribute
- (g) the following cases heard in the Supreme Court—
- (i) *Ahin Doman v. Acquassie Essaimin* (1879) (Exhibit 3)
- 20 (ii) Concession Enquiry No. 38 Cape Coast (Reported at pages 148, 159 Sarbah's Fanti Law Reports).

No. 29.  
Judgment,  
16th  
October,  
1946—  
*continued.*

The Plaintiffs sought to establish that the identity of the land in issue in these actions named Owiosu was situated at the place described on the Plan (No. 1) by them as being Wioso (Rns).

That Enquiry was held before the late Sir W. B. Griffith, C.J., in 1902, and assists materially in throwing light upon the evidence as to the traditional history of the Wassaws to which tribe the Plaintiffs belong.

Before me the Plaintiffs were unable to give any account of their original migration, i.e. how they came to settle as they told me at Adaboi, where I was told that to this day the annual custom is performed.

30 In the former Enquiry referred to before learned Chief Justice their origin was equally vague but there was one factor which is of considerable significance when viewing the credibility of the evidence given to me that their ancestors original settlement was at Adaboi and to which place I was told the Plaintiffs still make a pilgrimage each year to perform their annual custom.

Now Adaboi is situate some eleven (11) miles North West of the village of Ayanfuri. The enquiry of 1902 related to land at Bokitsi some miles South of Ayanfuri. At page 151 of the Judgment in the Bokitsi Concession Enquiry it is shown that the opposers (Abinabina) claimed

40 “ (3) that at any rate, the deserted village of Danyuan, which is  
“ practically the same as Bokitsi belongs to the Abinabina Stool,  
“ inasmuch as it is the place where their ancestors were buried,  
“ and where up to six years ago they made their annual custom ”

In the  
Supreme  
Court  
(Divisional  
Court,  
Cape  
Coast).

No. 29.  
Judgment,  
16th  
October,  
1946—  
*continued.*

This is a patent contradiction of the evidence given by the Plaintiffs before me at Dunkwa on the 21st May last as to the original ancestral home and that given by them to Griffiths C. J. forty-four years ago.

Now as to the identity of the site described as Wiosu. Are the Plaintiffs to be believed that it is the area round the place described by them as the ruins of Wiosu (No. 1) or are the Defendants to be believed when they aver that it was a Owiosu situate close to Bokitsi ?

An examination of the Judgment of Griffith C.J. at pages 152 and 153 of the Reports referred to shows the following findings :

Referring to the 1879 case *Ahin Doman v. Acquassie Esseamin* 10 (Exhibit 3) the learned Chief Justice says at page 152

“ But the case is stronger than this . . . . the gold mines are  
“ at Owiosu. It is stated to be near Aboosso (Aboasu) which  
“ the evidence shows to be between Princisu and Abinabina.”

At page 153 it is recited that

“ . . . . the opposers (Abinabina) strove to prove that there  
“ never was a village called Owiosu p. 336 and elsewhere, but it  
“ is clear from the opposer’s own evidence that Kofi Ahin Ampong  
“ was working at Princisu then, and the opposer’s witness Tiekou  
“ admits that there was a village of Owiosu about a quarter of 20  
“ a mile from the present Princisu.”

There is a sketch Plan in the learned Chief Justice’s own writing at page 163 of the Concession Record Book Volume III for that year, a copy of which I attach to this Judgment.

It shows clearly that the village of Princisu then referred to was situated some miles South of the village of Abinabina. It follows that the village of Owiosu then referred to was some 7–8 miles South of the place now claimed by the Plaintiffs as Wiosu.

It is clear upon the evidence given in 1902 that the Plaintiffs have been lying in the evidence they gave before me both as to their evidence 30 of tradition and as to their former settlement at Wiosu.

The only evidence given by the witnesses called by the Plaintiffs which impressed me at all favourably was that given by Kojo Uamoah as to his ancestors settlement at Nkyiniso, which he tells me his father told him was made with the permission of Abinabina. This evidence is admissible as a declaration against any interest in the land which the father of this witness might have set up. It is of some value as evidence against the interest of the whole Denkyira people. This witness was quite candid and told me that when tribute was demanded of him by Abinabina he left the village and settled at Breman. No attempt, it is 40 observed, was made by any person from Abinabina to demand tribute from him at Breman. It is evidence, but slender evidence to compromise a whole community, who, it is not evidenced were even aware of such an admission.

The evidence of the payment of tribute in recent years was of the most unsatisfactory nature and as to credibility I preferred the denials of the Defendants to the averments of the Plaintiffs in this connection.

I need not dwell upon the traditional evidence advanced by the Denkyiras other than to say I am inclined to believe that from the earliest days that tribe occupied land to some extent on either side of the River Offin and that at no time, within the area claimed, was that occupation made either with the leave or licence of the Plaintiffs, or anyone else and that for generations long before the limits of human memory the people of the Denkyira State have effectively occupied that area on the Plan shewn by them as being edged in green. That line however, in my Judgment, does mark the limits of that full ownership by original occupation. Beyond that the evidence shows they occupy with leave of the Abinabina.

In claims for declaration of title the onus lies upon the Plaintiff to establish his cause upon the strength of his own case and not upon the weakness of his opponents. In such action he must evidence such positive and numerous acts within living memory sufficiently frequent and positive to justify the inference that he is the exclusive owner.

This test the Plaintiff has failed signally to satisfy and I do dismiss the claim of the Plaintiff both in respect of the declaration sought for and in respect of that for damages for trespass.

Let the costs be taxed.

(Sgd.) J. JACKSON,  
*Judge.*

Cape Coast,  
16th October, 1946.

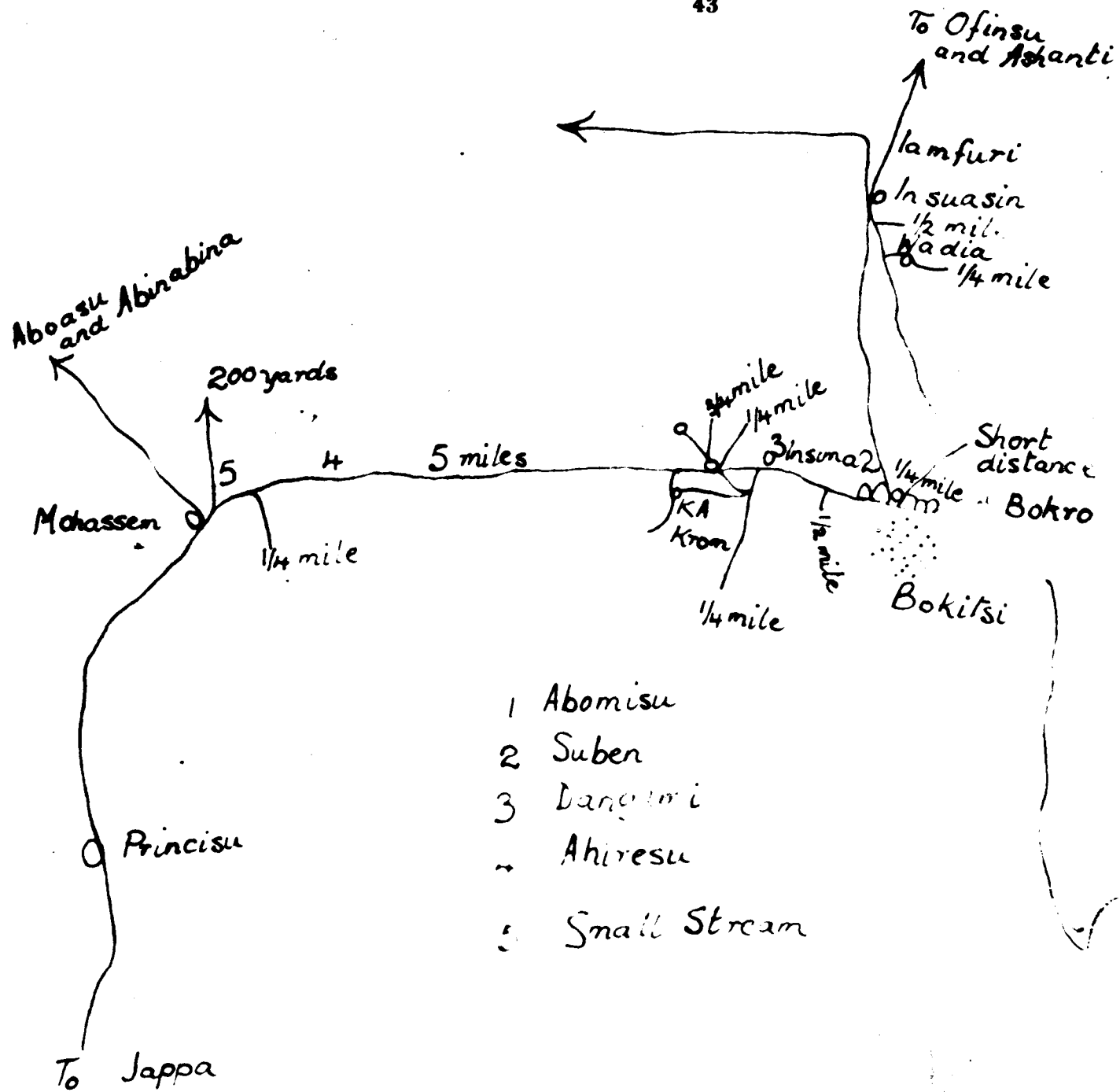
Counsel—

BLAY and BANNERMAN HYDE for Plaintiff.

SACKEYFIO for Defendant.

In the  
Supreme  
Court  
(Divisional  
Court,  
Cape  
Coast).

No. 29.  
Judgment,  
16th  
October,  
1946—  
*continued.*



In the  
Supreme  
Court  
(Divisional  
Court,  
Cape  
Coast).

No. 29.  
Judgment,  
16th  
October,  
1946—  
continued.

- 1 Abomisu
- 2 Suben
- 3 Dangiri
- 4 Ahiresu
- 5 Small Stream

K A Kweku Aaakrom

J. Jackson  
J.

No. 30.  
Grounds of Appeal.

In the  
Supreme  
Court  
(Divisional  
Court,  
Cape  
Coast).

IN THE SUPREME COURT OF THE GOLD COAST, CENTRAL JUDICIAL  
DIVISION, DIVISIONAL COURT, CAPE COAST.

CHIEF KWESI KUMA II of Abinabina ... .. *Plaintiff-Appellant.*

*vs.*

CHIEF KOJO ENYIMADU of Nkasawura ... .. *Defendant-Respondent.*

No. 30.  
Grounds of  
Appeal,  
24th  
January,  
1947.

The Plaintiff-Appellant being dissatisfied with the Judgment of the Divisional Court, Cape Coast delivered herein on the 16th day of October, 1946, having obtained Final Leave to Appeal therefrom dated 17th January, 1947, hereby appeals to the West African Court of Appeal upon the grounds hereinafter set forth :—

GROUNDS OF APPEAL.

1.—Because the Court having based its decision mainly on the Judgment of Griffiths, C.J., in Concession Enquiry 38 Cape Coast, was wrong in holding in effect that Fobenso and other places belonged to the Defendant as claimed by him.

2.—Because the Court was wrong in holding that Plaintiff's evidence as to tradition conflicted with that given in Concession Enquiry 38 Cape Coast as an original settlement at Adaboi is not inconsistent with a subsequent settlement at Danyuan.

3.—Because the Court failed to give weight to the evidence of Yamuah and the persistent conduct of the Plaintiff in opposing every attempt at alienation by the Defendant of the land in dispute.

4.—Because the Court was wrong in relying entirely upon the Sketch Plan made by the learned Chief Justice in the Concession Enquiry of 1902 for the purpose of discrediting the evidence of the Plaintiff as to the Wiosu referred to in the said Enquiry not being identical with the Wiosu shown in the Plan Exhibit I.

5.—Because Judgment should have been given in favour of the Plaintiff.

Dated at Marmon Chambers, Cape Coast, this 24th day of January, 1947.

(Sgd.) J. BANNERMAN-HYDE,  
*Solicitor for Plaintiff-Appellant.*

To the Registrar, Divisional Court,  
Cape Coast, and to the Defendant-  
Respondent, Chief Kojo Enyimadu of  
Nkasawura now at Cape Coast.

In the West  
African  
Court of  
Appeal  
(Gold Coast  
Session).

No. 31.  
Court Notes  
of  
Arguments,  
4th June,  
1947.

No. 31.  
Court Notes of Arguments.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at Victoriaborg, Accra, on Wednesday, the 4th day of June, 1947, before Their Honours Sir Walter HARRAGIN, C.J., Gold Coast (President), Sir John VERITY, Chief Justice, Nigeria, and John Alfred LUCIE-SMITH, O.B.E., Chief Justice, Sierra Leone.

8/47.

Civil Appeal.

CHIEF KWESI KUMA II of Abinabina ... .. *Plaintiff-Appellant*  
*versus*

CHIEF KOJO ENYIMADU of Nkasawura ... .. *Defendant-Respondent.* 10

Appeal from Judgment of Jackson, Judge, dated 16th October, 1946.

Mr. J. BANNERMAN-HYDE (with him Mr. R. S. BLAY and Mr. N. A. OLLENNU) for Appellant.

Mr. J. T. SACKEYFIO for Respondent.

MR. B. HYDE—

Sarbah's page 148, 2nd Edition 156. Grounds 1 & 4. Full Court Reports 1926-29 page 409. Objects to the Sketch Plan. Page 156 shows that Kodia people settled on the land with permission of Abinabina (Plaintiff) Chief. Page 20. Ground 2.

No. 32.  
Judgment,  
4th June,  
1947.

No. 32.  
Judgment.

20

In this case the Appellant asked for a Declaration of title in respect of certain land.

It should by this time be more or less universally known that in a claim of this sort the burden of proof rests heavily on the Claimant.

The learned trial Judge found that the Appellant had failed signally to prove his claim and we are in agreement with him in so finding.

Objection was taken by the Appellant to the use by the learned Judge of a Sketch Plan taken from the Judgment Book of Griffith, Chief Justice, in a Concession Case of 1902.

30



It appears to us that the learned Judge of the Land Court used this Sketch for the purpose of seeing how far Griffith, Chief Justice's Judgment could be read as relating to places shown on the Surveyor's Plan in evidence before the Land Court. We can see no objection to his so using the Sketch Plan.

The appeal is dismissed with costs assessed at £32.

(Sgd.) WALTER HARRAGIN,  
*President.*

(Sgd.) JOHN VERITY,  
*Chief Justice, Nigeria.*

(Sgd.) J. LUCIE-SMITH,  
*Chief Justice, Sierra Leone.*

10

4th June, 1947.

In the West African Court of Appeal (Gold Coast Session).

No. 32.  
Judgment  
4th June,  
1947—  
*continued.*

No. 33.

Order in Council Granting Special Leave to Appeal to His Majesty in Council.

AT THE COURT AT BUCKINGHAM PALACE.

The 25th day of April, 1950.

Present

THE KING'S MOST EXCELLENT MAJESTY.

20 LORD PRESIDENT.  
LORD PAKENHAM.

MR. BARNES.  
MR. TOMLINSON.

In the Privy Council.

No. 33.  
Order in Council Granting Special Leave to Appeal to His Majesty in Council, 25th April, 1950.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 29th day of March 1950 in the words following, viz. :—

30

“ WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of The Stool of Abinabina in the matter of an Appeal from the West African Court of Appeal between the Petitioner Appellant and Chief Kojo Enyinadu substituted for Chief Kofi Amoah (on behalf of the Stool of Nkasawura) Respondent setting forth : that the Petitioner desires special leave to appeal from a Judgment of the West African Court of Appeal given on the 4th June 1947 : that Chief Kwesi-Kuma II (thereinafter called

In the Privy  
Council.

No. 33.  
Order in  
Council  
Granting  
Special  
Leave to  
Appeal to  
His Majesty  
in Council,  
25th April,  
1950—  
*continued.*

' the Chief ' ) ( who was a sub-chief upon a Stool which is under the Paramount Stool of the State of Wassaw Amenfi in the Gold Coast Colony ) on the 21st November 1941 issued a Summons in the Tribunal of the Paramount Chief of the Wassaw Amenfi State against one Chief Kofi Amoah the immediate predecessor of the Respondent Chief Kojo Enyimadu upon the Stool of Nkasawura claiming £100 damages from the Defendant by reason of Defendant having unlawfully granted to one Mr. R. T. Briscoe mahogany trees and other timberlike trees without the knowledge and consent of the Chief : that on the 9th March 1942 this claim was amended and enlarged into a claim by 10 the Chief to establish the title of his Stool to the Nkasawura lands which are therein described as in the Wassaw Amenfi State ( such claim being accompanied by an allegation that the Defendant and his ancestors were tenants of the land and had acknowledged themselves as such until about 5 years previously when they had set up an adverse title ) plus a further claim for £100 damages by reason of the Defendant and his Agents having wrongfully cut timber trees : that this suit was on the 27th April 1942 transferred by the Provincial Commissioner ( under powers conferred upon him by the Native Administration Ordinance Section 75 ) to the Supreme Court 20 substantially upon the ground that the Wassaw Amenfi State Tribunal could not deal with it because the Stool of Wassaw Amenfi had an interest in the dispute which involved or might involve the question of whether the radical title to the land in dispute was in the Paramount Stool of Wassaw Amenfi or was in the Paramount Stool of the State of Denkyira of which the Defendant was a subject : that on the 16th October 1946 the Supreme Court dismissed the Chief's claims with costs and on the 4th June 1947 the West African Court of Appeal dismissed the Chief's Appeal with costs : that the Chief on behalf of the Petitioner was on the 8th December 1947 granted conditional leave to 30 appeal to Your Majesty in Council subject to conditions ( a ) within 3 months to deposit £500 in Court or to give security with 2 sureties to the satisfaction of the Court in the sum of £500 ; ( b ) within 3 months to deposit £50 in Court towards the cost of the record ; ( c ) within 3 months to give notice to the Respondent : that the Chief duly fulfilled conditions ( b ) and ( c ) and on or about the 18th February 1940 filed Notice of Motion to approve two named sureties to whose sufficiency however the Respondent took objection in an affidavit of the 6th March 1948 : that on the 11th March 1948 the Court directed that the sureties should justify and adjourned the application for that 40 purpose giving leave to the Chief to substitute other sureties for those originally tendered if he could provide sureties whose substance would not be disputed : that on the 3rd April 1948 the Court granted a further adjournment until 17th April 1948 with a view to the Chief exercising his right to make a money deposit instead of giving a bond with 2 sureties : that on the 14th April 1948 the Chief paid the sum of £500 into Court : that on the 20th April 1948 the application again

came on and Counsel for the Chief withdrew the motion before the single Judge to approve sureties and it was struck out accordingly : that on the 29th June 1948 the Chief by his Counsel moved a full bench of the West African Court of Appeal for final leave to appeal but that Court refused leave on the ground that the applicant was out of time under article 6 in respect of the security ordered and the Court had no power to extend such time under the West African (Appeal to Privy Council) Order in Council 1930 : And humbly praying Your Majesty in Council to grant to the Petitioner special leave to appeal from the Judgment of the West African Court of Appeal dated the 4th day of June 1947 or for such other Order as to Your Majesty in Council may appear just :

In the Privy Council

No. 33.  
Order in Council Granting Special Leave to Appeal to His Majesty in Council, 25th April, 1950—

*continued.*

10  
20  
“ THE LORDS OF THE COMMITTEE in obedience to His late Majesty’s said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof (no one appearing in opposition thereto) Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute its Appeal against the Judgment of the West African Court of Appeal dated the 4th day of June 1947 and that the Registrar of the said Court of Appeal ought to be directed to deposit in the Registry of the Privy Council as security for costs (less the expenses of remitting the same) the sum of £500 which on or about the 14th day of April 1948 Chief Kwesi-Kuma II on behalf of the Petitioner paid into the said Court of Appeal as security for costs :

30  
“ And Their Lordships do further report to Your Majesty that the proper officer of the said Court of Appeal ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same.”

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor or Officer administering the Government of the Gold Coast for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

E. C. E. LEADBITTER.

---

## EXHIBITS.

Plaintiff's  
Exhibit

" 3."

Proceedings  
Arkin  
Doman v.  
Chief A.  
Esseamin,  
3rd  
December,  
1879.

Plaintiff's Exhibit " 3."—Proceedings, Arkin Doman v. Chief A. Esseamin.

*(Marked 5th September, 1946).*IN THE SUPREME COURT OF THE GOLD COAST COLONY, WESTERN PROVINCE  
—Before His Honour J. MARSHALL, Judge, Wednesday, December 3,  
1879.

CHIEF ARKIN DOMAN

v.

CHIEF ACQUASSIE ESSEAMIN.

Land Case.

10

Parties in person.

Assessors—Chiefs ATTAH, ROBINSON, KUTTIA, ESSELL, YUMINIE, AMISSAH.

Arkin Doman Plaintiff of Ayanful in Denkirah : Am a chief of Denkirah under King Acquosie Kay. Defendant lives in Wassaw. The land in dispute is at Oweawosu in Denkirah. It is very large. On the South of Denkirah. There is a village on it. It is near Abosoo. There is a gold mine upon it called Oweawosoo. I used to work it. I worked it about a year ago. I am not working it now. There are stones which require hammers to break. I do not get hammers so I went to my village. When there Defendant went there and worked for gold and took it. I sent messengers to warn him not to do it as it was my land. He asked me to meet him and he would talk over the case and decide whose it was. On my way I met a person who told me I must not go or Defendant would fire a gun. I did not go.

The land first belonged to Tettee Kill who was born there and worked all the land—succeeded by Quamina Ampim—succeeded by Affaytay—succeeded by Bodee ; by Cudjoe ; Ampimar ; by Pripah ; by Bodee 2nd ; by Yow Safeeya ; by Banfoh ; by myself his nephew. He died after we returned from the Asanti War. He did not go to the property as he was sick and died at Duguah. Yow Safeeyeh worked it and when he died Banfoh took possession of it. When Banfoh died I took possession of it. My people went there to work and brought me the gold. I kept it until I went to get hammers. Defendant is not of the family. I do not know him at all. I and all my ancestors used to get gold from this mine.

People who go there to work pay me dues. They go to Defendant now. Some of them still pay me. When I went for hammers I took all the people away. Those who paid dues also, they went with me to my village. When we were away Defendant took the mine. Two months after I heard of that I came to Cape Coast and took out a Summons. I hold the land under the King—but I have my Stool. This palaver has not been before him. He was at Duguah, far away.

40

BY ASSESSORS—

When we went for hammers people occupied the land—They have all left now—My ancestors lived on the land in Sir Chas. MaCarthy's time.

Originally the land was called Boa Gakun, the name of the person who lived in the village named after him. A river called Botee is the boundary between me and my relations. I do not know the boundary between Wassaw and Denkirah.

DEFENDANT—

At request of Chief Arhin the Defendant's son Quow Nooakun speaks  
10 for him.

QUOW NOOAKUN—

Defendant is my grandfather. The claim of Plaintiff is false. The land is called Abina Brimah. The gold mines are at Oweawosu and they belong to the Defendant. They first belonged to Cudjoe Quadoo. 2nd Aidoo Ampon—he was succeeded by Defendant—his brother died during the Elmina War. When Aidoo Ampon died he was in possession of the land. When he was sick Defendant worked the gold mine and when he died Defendant took possession and worked the mine, and has kept it ever since. The Plaintiff has never had it. I quite know the land in dispute—It is in  
20 Wassaw. It is under the Stool of King Appay Kang King of Western Wassaw. Defendant is one of his chiefs. Plaintiff has never been in possession of the land. Defendant is in possession now and his people are on the land. When he received the Summons he told his people not to work out of respect to the Court until the case was finished.

BY ASSESSORS—

Originally Wassaw people were on the land. When the Wassaws were on the land the Denkirahs were in Asanti under the King of Asanti. In MaCarthy's time the Wassaws were under the British Government. I produce a gold and beads found by the Denkirah people and brought to  
30 Defendant.

The Chief of Acquasie Kay King of Denkirah asked permission of Defendant to work a portion of this land which was given him and finding these things produced he brought them to Defendant. They were buried. The boundary between Wassaw and Asanti used to be the River Offee or Offin. Formerly we and the Denkirahs were not friends ; now we are.

PLAINTIFF'S WITNESS—

Yah Yowah Yabowah of Denkirah—mother-in-law of Plaintiff. And elderly person called Attobrah Inquantah went to Plaintiff's predecessors and asked for permission to work this land. He got permission and went and  
40 lived on the land. Attobrah died and Kay succeeded him and worked the land. During the late War I came to Cape Coast and returned to Duguah and have not been there since.

Plaintiff intimated his chief witness had been intimidated and would not come.

Plaintiff's  
Exhibit

“ 3.”

Proceedings  
Arkin  
Doman *v.*  
Chief A.  
Esseamin,  
3rd  
December,  
1879.

Plaintiff's  
Exhibit

JOHN APPEAH—

“ 3.”  
Proceedings  
Arkin  
Doman v.  
Chief A.  
Esseamin,  
3rd  
December,  
1879.

I was employed to serve a Subpoena on Sakim of Geman in Wassaw issued by the Plaintiff. I served the Subpoena on Sakim and made him understand he was to come here as a witness. He said that King Appa Kang of Western Wassaw sent to tell him that if he came to Cape Coast and gave evidence he would have something to say to him.

Plaintiff's case adjourned for the witness to be brought.  
Defendant's witnesses called.

COFFEE AWHIN AMPON of Djuquah a chief under the King of Denkirah—I knew the land in dispute. I was very young and went to Defendant's village. I asked Defendant for a piece of land to work on to get gold to pay my debts. He gave me a piece which is a portion of the land now in dispute—My people are still there working. Recently I went to Inquanfoosu and in my absence the dispute between the parties arose. 10

I got the land from Defendant—Plaintiff says it is his. The land is large and both Denkirahs and Wassaws work there. I do not know who owns it. The part I hold is in dispute. That is the only part in dispute.

(Plaintiff and Defendant corroborate this statement).

I found plenty of gold in this bit and did not pay the right dues to the Defendant who questioned me about it and I gave him 8/- in satisfaction. This was about 5 years ago. I have left the ground and placed a person in charge who sends me gold sometimes. 20

XXD. BY PLAINTIFF—

You were not present when Defendant gave me the land.

You once told me the land was yours and that if I worked I was not to give Defendant any portion. This was about a year and half ago. I said I knew the Defendant and that he gave me the land. You said the land was yours. I gave rum to Defendant.

Adjourned for production of Plaintiff's witness.

(Sgd.) J. MARSHALL. 30

Wednesday, December 17, 1879.

CHIEF ARKIN DOMAN

v.

CHIEF ACQUASSIE ESSIAMIN.

Ejectment.

Continued from December 3.

PLAINTIFF'S WITNESS.

Cudjoe Sakim chief in Wassaw—I did not come when subpoenaed because I was sick and not able to come. Before this King Apaykon sent to tell me that if I went to Cape Coast and gave any evidence he will have 40

something to say to me. He also said he had eaten fetish with me and that if I went to Cape Coast he would deal with me.

I know the land in dispute between Plaintiff and Defendant. I do not know Coffee Ampon—I do not know about the land. I do not say this because of threat. I know something but would rather one of the elder men spoke.

10 Cudjoe Essiamin chief at Seckery Wassaw. I know the land in dispute—It is called Oweawosu. It belongs to the Plaintiff. My ancestors lived on one side of this land and the Plaintiff on the other. A river Bontee is the boundary between my predecessor's land and the Plaintiff's. There is a ruined village called Boboassie on Plaintiff's ground. The Plaintiff owns the land where the gold mine is. That is his land—The Plaintiff worked the gold mine a long time ago. Oweasoh is in Plaintiff's land. When the Summons was served Defendant was on the land working but since then he has ceased. I was not there when Defendant went there. I don't know how he got there. He stole them. I do not know Coffee Ampon. Defendant has land at Afransie. I do not know of Defendant having land adjoining Plaintiff's.

BY ASSESSORS—

20 I am under Chief Sakim, who is under King Enemil. My ancestor Oyanbodun gave this land to Plaintiff's predecessor Teckee Kell. The Wassaws first possessed this land.

Assessors retire and give their opinion through Chief Robertson.

We give our opinion and find that the land belongs to Defendant.

JUDGMENT—

The land Oweawosoo belongs to the Defendant and the Judgment is in his favour with costs.

(Sgd.) J. MARSHALL.

December 31st, 1879, before J. MARSHALL, Acting Chief Justice.

30

DOMMAH

v.

ESSEYAMIE.

Ejectment—heard December 17th.

Mr. Brew S. S. C. for the Plaintiff applied for leave to appeal against the Decree given in Plaintiff's favour.

The conditions of appeal are that the costs of the former action be paid, and that the Defendant Esseyamie gives security for £50 for payment of all such costs as may be awarded to the Respondent and complies with the provisions for appeals laid down in the Supreme Court Ordinance.

40

(Sgd.) J. MARSHALL.

Plaintiff's  
Exhibit

“ 3.”  
Proceedings  
Arkin  
Doman v.  
Chief A.  
Esseamin,  
3rd  
December,  
1879.

Plaintiff's  
Exhibit

Plaintiff's Exhibit " 4."—Lease (extracts).

" 4."

(Marked 5th September, 1946).

Lease  
(extracts),  
22nd April,  
1936.

" A "

Deeds Registry  
No. 289/1936.

S'di 396/36.

Stamp Duty £36. 5/-.

This Indenture made the 22nd day of April One Thousand Nine Hundred and Thirty-six Between Chief Kwesi Kuma III of Abinabna in the Wassaw District of the Western Province of the Gold Coast Colony acting for himself and as the representative of the elders and people of the said Stool of Abnabna whose assent to or concurrence in these presents is necessary according to Native Law and Custom of the said Stool which assent or concurrence is testified by the execution of these presents by some of such elders and people (hereinafter called " The Lessors " which expression shall where the context so admits or requires include the Chief for the time being and the elders and people of the said Stool and their respective heirs successors and assigns) of the one part and Gold Coast Selection Trust Limited a Company registered under the Companies Acts England and having its registered office at Finsbury Pavement House Moorgate in the City of London (hereinafter called " The Company " which expression shall where the context so admits or requires include its successors and assigns) by Laurence Richard Jackson its duly appointed Attorney of the other part Whereas the Company has applied to the Lessors for the grant of a lease of the land and premises situate in the Cape Coast District of the said Colony as described in the Schedule hereunder written conferring the rights hereinafter set out which the Lessors have agreed to do for the consideration hereinafter mentioned and upon the terms and conditions hereinafter appearing Now This Indenture Witnesseth that in pursuance of the said agreement and in consideration of the sum of One Hundred and Twenty Pounds (£120) payable as hereinafter provided and in consideration also of the rent hereinafter reserved and the covenants and conditions hereinafter contained and on the part of the Company to be paid observed and performed The Lessors Do Hereby Grant and Demise unto the Company All The Land And Premises situate in the said Cape Coast District and more particularly described in the Schedule hereunder written Together with All the mines beds seams and veins of gold and minerals of all and every description and kind whatsoever as well opened and unopened and all precious stones lying and being in and under the said piece or parcel of land To Have and To Hold the same unto the Company for the term of Ninety-nine Years computed from the 22nd day of April 1936 determinable nevertheless by the Company as hereinafter mentioned Yielding and Paying



therefor yearly and every year during the continuance of the said term the yearly Occupation Rent of Fifty Pounds (£50) by equal quarterly instalments of the four usual quarter days Provided Always And It Is Hereby Agreed And Declared that upon the winning of gold minerals and/or precious stones by machinery used in dredging and/or reef mining operations on the said land hereby demised but for so long only and as often as the winning shall continue the yearly Mining Rent of Two Hundred and Fifty Pounds (£250) shall be paid instead and in lieu of the said Occupation Rent of Fifty Pounds (£50) the first payment of the Mining Rent to become due and

10 payable on the first quarter day which shall happen after the winning of gold minerals and/or precious stones in manner aforesaid And

*(Grant of exclusive mining rights and of ancillary rights)*

Provided Further And It is Hereby Agreed And Declared that according to the Custom of the Lessors the Paramount Stool of Akropong is entitled to be paid and receive one-third share of the consideration and rents hereinbefore reserved and made payable And Further that the said consideration and rents shall be withheld by the Company until after the grant of a Certificate of Validity by the Concessions Division of the Supreme Court of the Gold Coast in respect of this Concession.

20 *(Lessees' Covenant to pay rents. Proviso for re-entry on non-payment. Proviso for determination by the Lessees on notice.*

*Covenant by Lessors for quiet enjoyment. Power for lessors to remove gotten minerals and plant within 6 months of the end of the term.)*

#### THE SCHEDULE ABOVE REFERRED TO.

All that Piece or Parcel of Land situate in the Cape Coast District of the Central Province of the Gold Coast Colony including the beds of all streams coming within the limits thereof the boundary of which is as follows :—

30 Commencing at the confluence of the Kotin Stream with the Offin River 6° 0' 32" N. and 1° 54' 10" W. and proceeding S. 59° 30' W. for 7,300 Feet to the junction of a path near the 14 mile post on the Domenasi-Ayanfuri Road 5° 59' 55" N. and 1° 55' 12" W. Thence in a north-westerly direction along the said Domenasi-Ayanfuri Road for 12,700 Feet measured direct to the village of Brofoyedru 6° 1' 19" N. and 1° 56' 45" W. Thence N. 34° 30' E. for 6,500 Feet to the South or Right Bank of the Offin River 6° 02' 12" N. and 1° 56' 08" W. Thence in a south-westerly direction along the South or Right Bank of the Offin River to the point of commencement. The co-ordinates bearings and measurements being taken from Government Field Sheet No. 49 Scale 1 : 62500. The said piece or parcel of land contain-

Plaintiff's  
Exhibit  
" 4."  
Lease  
(extracts),  
22nd April,  
1936—  
*continued.*

Plaintiff's Exhibit ing an approximate area of 3 square miles and delineated on the Plan hereunto annexed and thereon edged pink.

" 4."  
Lease  
(extracts),  
22nd April,  
1936—  
*continued.*

Marked Sealed and Delivered by the said Chief Kwesi Kuma III of Abnabna his elders and people after the same had been read over and interpreted to them in the Fanti Language by G. C. W. Smith of Dunkwa and they appeared to understand its provisions in the presence of :	}	CHIEF KWESI KUMA III	Their	
		(Chief of Abnabna)	X LS.	
		YAA KOMPI	X LS.	
		(Representing Queen-Mother Yaa Pomba)		
		ELDER ASIAM KOFI	X LS.	10
		„ KWEKU AYENSU	X LS.	
		„ KOFI GHANFI	X LS.	
		„ ABBINA AMOASI	X LS.	

(Sgd.) RICHARD HOMIAH, Clerk. G.C.S.T. Linguist KOFI SARABU X LS. Marks

(Sgd.) G. C. W. SMITH,  
*Stool Clerk, Abinabina.*  
Witness to Marks and Interpreter.

Signed Sealed and Delivered by the said Laurence Richard Jackson as Attorney for and on behalf of Gold Coast Selection Trust Limited in the presence of :	}	(Sgd.) L. R. JACKSON.	LS.	20

(Sgd.) S. S. BARCLAY,  
*Accountant,*  
G.C.S.T. Ltd.,  
Dunkwa.

*(Indorsements follow of proof of execution before District Commissioner and of Assessment of Stamp Duty and of registration in the Gold Coast Land Registry as No. 289 of 1936).* 30

**Defendant's Exhibit " B."—Writ and Proceedings in Chief Kwesi Kuma III v. Amuaku and Others.**

Defendant's Exhibit

(Marked 7th June, 1946).

No. 25/1937.

Suit . . . .

**NO. 9—WRIT OF SUMMONS.**

" B."  
Writ and Proceedings in Chief Kwesi Kuma III v. Amuaku and Others, 15th January, 1938 to 19th May, 1938.

IN THE SUPREME COURT OF THE GOLD COAST. WESTERN PROVINCE, SEKONDI. DIVISIONAL COURT HOLDEN AT SEKONDI.

10 Between { CHIEF KWESI KUMA III of Abinabina Wassaw Amenfi State for himself and as representing the Stool of Abinabina ... .. Plaintiff  
and  
(1) AMUAKU, Chief of Fibinsu Wassaw Amenfi State, (2) YEBOAKU, (3) AWUAH, (4) KWEKU APPIAH, (5) GYARBIN, (6) ANKRAH, (7) YAW DONKOR, All Elders of the Stool and Oman of Fibinsu ... .. Defendants.

TO AMUAKU, YEBOAKU, AWUAH, KWEKU APPIAH, GYARBIN, ANKRAH and YAW DONKOR, all of Fibinsu.

20 You are hereby commanded in His Majesty's name to attend before this Court at Sekondi on Tuesday the 15th day of February, 1938, at 9 o'clock in the forenoon then and there to answer a Suit by Chief Kwesi Kuma III of Abinabina against you.

The Plaintiff claims from the Defendants jointly and severally the sum of £100 estimated rents due from the Defendants to the Plaintiff on cocoa farms cultivated by the Defendants on Plaintiff's lands.

Issued at Sekondi the 15th day of January, 1938.

	Sum claimed	...	...	100	-	-
	Court fees	...	...	2	-	-
	Bailiff's fees	...	...	3	4	-
30				<hr/>	<hr/>	<hr/>
				105	4	-
				<hr/>	<hr/>	<hr/>

(Sgd.) W. SAVARY,  
*Judge,*  
Divisional Court, Sekondi.

**CERTIFICATE OF SERVICE BY BAILIFF.**

Upon 18th day of January, 1938, this summons was served by me on Amuaku, Yeboaku, Awuah, Kweku Appiah, Ankrah and Yaw Donkor, Defendants. This I did by serving a copy of the above Summons on the said Defendants personally at Fibinsu.

40 (Sgd.) W. ANTHONY BARTELS,  
*Bailiff of Supreme Court.*

Defendant's IN THE SUPREME COURT OF THE GOLD COAST, WESTERN PROVINCE,  
Exhibit DIVISIONAL COURT, SEKONDI.

Suit No. /1937.

" B."

Writ and  
Proceed-  
ings in Chief  
Kwesi

CHIEF KWESI KUMA III of Abinabina Wassaw Amanfi State  
for himself and as representing the Stool of Abinabina ... *Plaintiff*  
and

Kuma III  
v. Amuaku  
and Others,  
15th  
January,  
1938 to 19th  
May, 1938  
—continued

1. AMUAKU, Chief of Fibinsu Wassaw Amanfi State,
2. YEBOAKU,
3. AWUAH,
4. KWEKU APPIAH,
5. GHARBIN,
6. ANKRAH,
7. YAW DONKOR, All Elders of the Stool of Fibinsu for them-  
selves and as representing the Stool and Oman of  
Fibinsu ... .. *Defendants.*

10

#### PARTICULARS OF CLAIM.

1.—That the Plaintiff is the owner of all the lands attached to the Stool of Abinabina.

2.—That Defendants are farmers farming on the said lands belonging to the Plaintiff, and they do so subject to the payment of rents to the Plaintiff. 20

3.—That the Defendants have now refused to pay the said annual rents.

4.—Plaintiff therefore claims £100 being the estimated rents due.

Dated at Sekondi this 14th day of January, 1938.

(Sgd.) R. S. BLAY,

*Counsel for Plaintiff.*

The Registrar,

The Divisional Court, Sekondi.

19.5.38.

THE DIVISIONAL COURT, SEKONDI, Thursday, 19th May, 1938, Coram, 30  
BARTON, Judge.

*(Title as in Writ).*

#### RULING—

This action, in which the parties are all natives, was filed in this Court on the 22nd December, 1937, and is an action relating to the ownership, possession or occupation of land which the Plaintiff alleges is situated within the Wassaw Amenfi State, Western Province. The claim is one which would be properly cognizable by the Paramount Chief's Tribunal but for the fact as from the 18th March, 1937, the jurisdiction of that Tribunal was suspended by the Governor under the powers conferred by section 121A of the Native Administration Ordinance, now section 128 (1) of the Native Administration (Colony) Ordinance. The Notice of this suspension appears in the Gold Coast Gazette, 1937, page 274. The question raised is whether this Court has jurisdiction to determine the claim. Counsel for the Defendants has submitted that by virtue of the provisions of section 121B of the 40

Native Administration Ordinance, a new section inserted by Ordinance No. 4 of 1937, the jurisdiction of the Tribunal has been transferred to the Provincial Commissioner's Court that being the Court to which appeals from the suspended Tribunal previously lay. Counsel for the Plaintiff has submitted that section 121B only refers to cases which were pending in the Tribunal at the date of the suspension and that therefore the operation of that section does not apply to the present case. The Plaintiff's Counsel further contends that as the Tribunal is not functioning this Court has jurisdiction to hear the claim by virtue of the proviso to section 65 of the said Ordinance.

10 In my opinion there is no substance in the contention that section 121B applies only to cases pending in the Tribunal at the date on which the Tribunal was suspended; to put such a construction on the section would be not only to go contrary to the plain meaning of the words used, but would also be to go contrary to the intention of the Legislature as expressed in the objects and reasons of the bill; in this connection it is stated in the Supplement to the Gold Coast Gazette, 1937, Page 204, that in the clause provision is made "for the transfer of jurisdiction and of pending cases." I will now deal with the submission that this Court has jurisdiction by virtue of the proviso to section 65 of the Ordinance. By section 80 it is enacted that "in any suit or matter relating to the ownership, possession or occupation of any land an appeal shall lie from the decision of the Paramount Chief's Tribunal to the Provincial Commissioner's Court." The effect of this section together with section 121B is that whenever a Paramount Chief's Tribunal has been suspended under section 121A its jurisdiction in land cases is vested in the Provincial Commissioner's Court as a Court of first instance.

30 The jurisdiction of a Provincial Commissioner's Court is set out in section 57 of the Courts Ordinance and a perusal of that section shows that the jurisdiction assigned to the Provincial Commissioner's Court by the operation of section 121B and section 80 of the Native Administration Ordinance is jurisdiction which comes under sub-division (c) of the said section 57. Under section 17 (a) of the Courts Ordinance it is provided that the Supreme Court shall not exercise jurisdiction in the Gold Coast Colony ". . . in any cause or matter within the jurisdiction conferred on a Provincial Commissioner's Court by section 57 . . ." It follows from these words that the power given to the Supreme Court to exercise jurisdiction under section 65 of the Native Administration (Colony) Ordinance does not apply in cases where the Tribunal has been suspended by the Governor under the powers conferred by section 128 (1). For these reasons this Court has no jurisdiction to entertain the Plaintiff's claim. The Plaintiff is accordingly non-suited but is at liberty to bring his claim in the Court or Tribunal authorised by law to determine it. The Plaintiff is ordered to pay the Defendants' costs of the proceedings in this Court; such costs to be taxed if not agreed upon between the parties.

(Sgd.) C. M. BARTON,  
*Judge.*

Mr. R. S. BLAY for the Plaintiff.  
Mr. E. C. CONDUA for the Defendants.

Defendant's  
Exhibit

.. B.  
Writ and  
Proceed-  
ings in Chief  
Kwesi  
Kuma III  
v. Amuaku  
and Others,  
15th  
January,  
1938 to 19th  
May, 1938  
—continued.

Defendant's  
Exhibit

**Defendant's Exhibit " C."—Concession Enquiry No. 2293.**

" C."  
Concession  
Enquiry  
No. 2293.  
21st  
November  
1939.

27.8.38.

(Marked 7th June, 1946).

**CONCESSION ENQUIRY NO. 2293 CAPE COAST.**

**" NKASAWURA CONCESSION."**

1.	Notice of Concession filed	...	...	...	11.5.38
2.	List of Documents filed	...	...	...	19.5.38
3.	Lease dated	...	...	...	23.3.38
4.	Notice published in Gazette No. 7 of 1938-- Concessions Supplement Page 34.				10
5.	Certificate of posting Notices in Courts, viz. :				
	(a) Cape Coast	...	...	...	22.7.38
	(b) Accra	...	...	...	25.7.38
	(c) Sekondi	...	...	...	25.7.38
	(d) Tarkwa	...	...	...	26.7.38
	(e) Dunkwa	...	...	...	25.7.38
	(f) Oda	...	...	...	27.7.38
	(g) Kumasi	...	...	...	26.7.38

KINGSFORD for Claimants : Calls--

RICHARD HOMIAH. Xtian S. O. Bible :

20

Clerk to G.C.S.T. Ltd. I see this Document. It is a Lease of the Nkasawura Concession. I signed as Interpreter and attesting Witness of the signatures of Omanhene Nkwantabisa of Denkera and his elders and by Chief Kofi Bissa and his elders. I interpreted the Document to all those who executed except the Omanhene who read it himself. The Stool Clerk Sibo Arthur also was present and he also signed as attesting Witness to all the signatures or marks. Those who could not read appeared to understand the contents of the Document from my interpretation before they executed the Document. The Omanhene signed and sealed the Document in my presence, and the illiterate executants touched pen and seal in my presence. 30  
The Omanhene signed receipt on the Document for £40 which he wholly received and Chief Kofi Bissa received £80 and he executed the other receipt and the Document in my presence. This is the Document.

(Admitted as Exhibit " A ").

(Omanhene Nkwantabisa represented by Linguist Kofi Safi).

(Chief Kofi Bissa in person, Linguist Kwasi Mensah in person).

The evidence of the Witness having been interpreted to the grantors, and the terms of Exhibit " A " being put to them by the Court, they state that the Document is correct and acknowledge its execution by them. They admit receipt of the Consideration Money. Being asked if there are any 40

fetish rights to be protected, they state that there is a burial grove not far from the confluence of Foben and the Offin Rivers. Defendant's Exhibit

ORDER—

I am satisfied that Exhibit " A " was properly executed by the grantors with full knowledge of its contents and that the provisions of section 12 (1) and (8) have been complied with. I order survey of the Concession, with regard to section 12 (9) I direct that the grantors point out to the Surveyor the burial grove they refer to, that the Surveyor mark this grove on the Plan to be prepared. The Certificate of Validity to contain suitable provision, the terms of which may be decided later, in respect of this burial grove. 10

" C. " Concession Enquiry No. 2293, 21st November, 1939—  
*continued.*

(Sgd.) A. N. DOORLY.

DIVISIONAL COURT, CAPE COAST, CONCESSIONS DIVISION, Tuesday, the 21st day of November, 1939, Coram : BRUCE, Judge.

CONCESSION 2293. NKASAWURA.

Governor's Certificate produced and marked " B " Plan and three tracings approved and certified, and original Plan marked " C. "

Final Order made for issue of Certificate of Validity.

Draft Certificate of Validity to be submitted in due course.

Original documents to be handed over to Messrs. Giles Hunt & Company to be bound up in the original Certificate. 20

(Sgd.) T. D. H. BRUCE,  
*Judge.*

21.11.39.

Plaintiff's Exhibit " 2a. "—Evidence and Ruling as to Costs.

Plaintiff's Exhibit " 2A. " Evidence and Ruling as to Costs, 14th July, 1939.

14.7.39. (Marked 5th September, 1946).

DIVISIONAL COURT, CAPE COAST, Friday, the 14th day of July, 1939, Coram BRUCE, Judge.

CHIEF KOFI BISSA	...	...	...	...	...	<i>Judgment-Debtor</i>
	<i>versus</i>					
30 KWESI KRU APPIAH	...	...	...	...	...	<i>Judgment-Creditor</i>
CHIEF KWESI KUMAH II	...	...	...	...	...	<i>Claimant</i>
NKWANTABISSA	...	...	...	...	...	<i>Claimant</i>

WARD BREW for Judgment-Creditor  
BLAY, for KWESI KUMAH  
AWOONOR WILLIAMS NKWANTABISSA.

Awoonor Williams says that the Judgment Debtor and his Omanhene. Nkwantabissa, one of the Claimants in this case, are tendering the costs to the Judgment Creditor in respect of which the Judgment Creditor caused

Plaintiff's  
Exhibit

2A.

Evidence  
and Ruling  
as to Costs.  
14th July,  
1939—  
*continued.*

the Fi.Fa to be issued in these proceedings. In these circumstances, when the costs, £341. 11. 9. have been paid, these proceedings will terminate, and the Writ of Fi.Fa will be withdrawn.

Blay agrees with the position as stated by Awoonor Williams, but asks that Nkwantabissa be ordered to pay the costs of these proceedings up to date.

Ward Brew says his client, Judgment-Creditor, came to this Court on account of the Interpleader Suits, and he is therefore asking that the Claimants be ordered to pay the costs of the Judgment-Creditor; such costs to be taxed, the reason being that the Judgment-Creditor, having had his money from Claimant Kwesi Kumah, was ready to withdraw the Fi.Fa but Kwesi Kumah and Nkwantabissa drew the Judgment-Creditor into these proceedings. 10

Awoonor Williams says the Writ of Fi.Fa attached the whole land without any reservation as to interests of Nkwantabissa. Nkwantabissa was therefore compelled to come to this Court to protect his interests. These proceedings were therefore necessary. The evidence led by Kwesi Kumah's witnesses show that Nkwantabissa is a chief entitle to tribute, hence these interpleader proceedings by him. Judgment-Creditor not entitled to costs. As far as Kwesi Kumah is concerned he was an interloper. 20 On the evidence he is not a chief of the Denkera tribute. On his own admission Kwesi Bissa and his predecessor have been in possession and occupation of the land entirely for over 100 years. Kwesi Kumah has already had £24 costs. No further costs.

BLAY—

By Nkwantabissa paying the Judgment debt and satisfying the claim under the Fi. Fa. he has admitted the Judgment Creditor was right in attaching the land, otherwise he would not have paid. But for his interpleading this suit would have been terminated long ago. Costs already awarded my client were for adjournments not his fault. 30

Court adjourns as to cost—Ruling 31.7.39.

Writ of Fi. Fa. in this case to be withdrawn as from 14.7.39.

(Sgd.) T. D. H. BRUCE,

*Judge.*

14.7.39.



## Plaintiff's Exhibit " 2."—Ruling as to Costs.

Plaintiff's  
Exhibit*(Marked on 21st May, 1946).*" 2."  
Ruling as to  
Costs, 31st  
July, 1939.IN THE SUPREME COURT OF THE GOLD COAST. DIVISIONAL COURT, CAPE  
COAST, Monday, the 31st day of July, 1939, Coram : BRUCE, Judge.CHIEF KOFI BISSA on behalf of himself and Ahinfi  
Family of Nkasawura ... ..*Judgment-Debtor**versus*

KWESI KUR APPIAH of Breman ... ..

*Judgment-Creditor*10 CHIEF KWESI KUMA II for himself and as repre-  
senting the Stool of Abinabina ... ..*(1st Claimant)*OMANEHENE NKWANTABISSA III, Omanhene of Den-  
kere State, as representing the Paramount Stool  
of Denkera State ... ..*(2nd Claimant).*

## RULING AS TO COSTS :

In this case when the Judgment-Creditor sought to execute on property alleged to belong to the Judgment-Debtor, the 1st Claimant stepped in, and claimed the property as his. At the same time, or very nearly at the same time, the 2nd Claimant declared that the property belonged to him, and also interpleaded. The 1st Claimant appeared so satisfied that the property was his that he actually paid off the debt owing by the Judgment-Debtor, but the 2nd Claimant pressed his claim and there were several hearings of the case. Eventually, and before the case was finished, the 2nd Claimant admitted that his position vis-a-vis the Judgment-Debtor was that the Judgment-Debtor owned the property but was liable to pay him, the 2nd Claimant, tribute thereon.

In these circumstances the 2nd Claimant paid the sum owing, and the Judgment debtor has, I understand, entered into a Bond to repay the 2nd Claimant that sum. The Fi. Fa. was then withdrawn, and this interpleader action ceased and the question of costs now arises. The Judgment-Creditor says that he is entitled to his costs from both Claimants. The 1st Claimant says that he should not pay the costs of the Judgment-Creditor but that the 2nd Claimant should pay all his (the 1st Claimant's) costs, and the 2nd Claimant denies that he is liable to pay any costs either to the Judgment-Creditor or to the 1st Claimant. In my opinion, in all the circumstances of this case, the fairest way of dividing up the costs is as follows : I consider that the Judgment-Creditor is entitled to his costs, and that such costs should be paid by the 1st Claimant and the 2nd Claimant in the following proportions, namely, the 1st Claimant should pay the Judgment-Creditor's costs up to the date when the 1st Claimant agreed to pay the debt to the Judgment-Creditor, and the 2nd Claimant should pay the balance of the Judgment-Creditor's costs, and I order accordingly.

Plaintiff's  
Exhibit

" 2."

Ruling as to  
Costs, 31st  
July, 1939—  
*continued.*

With regard to costs between the 1st and 2nd Claimants, I consider that the 2nd Claimant should pay to the 1st Claimant the 1st Claimant's costs subsequent to the date when the 1st Claimant agreed to pay the amount owing to the Judgment-Creditor. At that stage, both the Judgment-Creditor and the 1st Claimant were prepared to discontinue the action but were forced to continue it owing to the attitude adopted by the 2nd Claimant. I accordingly order that the 2nd Claimant do pay to the 1st Claimant the 1st Claimant's costs subsequent to the date when the 1st Claimant agreed to pay the Judgment debt to the Judgment-Creditor.

All costs to be taxed.

(Sgd.) T. D. H. BRUCE,  
*Judge.*

31.7.39.

10

Mr. Ward BREW for Judgment-Creditor.

Mr. BLAY for Kwesi Kuma.

Mr. Awoonor WILLIAMS for Nkwantabissa III.

Defend-  
ant's  
Exhibit

**Defendant's Exhibit " D."—Judgment in Concession Enquiry 2293.**

*(Marked 7th June 1946).*

" D."  
Judgment  
in Con-  
cession  
Enquiry  
2293, 19th  
August,  
1939.

IN THE SUPREME COURT OF THE GOLD COAST, CENTRAL PROVINCE,  
DIVISIONAL COURT, CAPE COAST, CONCESSIONS DIVISION, Saturday, 20  
the 19th day of August, 1939, Coram BRUCE, : Judge.

*In re* CONCESSION ENQUIRY NO. 2293 (CAPE COAST)  
NKASAWURA CONCESSION.

This is an application, under Rule 11 of Rules of the Court made by the Chief Justice under Section 6 of the Concessions Ordinance (Chapter 27 of the old Revised Edition) by Chief Kwesi Kumah II for leave to oppose the grant of a Certificate of Validity in the Nkasawura Concession. Rule 11 of the above-mentioned Rules provide (*inter alia*) that where as here, Notice of Intention to oppose the grant of a Certificate of Validity, has not been given in time, the person who has not given due notice may at any time by leave and on such terms as the Court may think just be made a party to the enquiry for the purposes of opposition. The facts of the case which are admitted on both sides, are as follows :—

The Nkasawura Concession was granted to the Claimants on the 23rd March, 1938, by the Stool of Denkera and Nkasawura. On the 27th August, 1938, the Divisional Court, Cape Coast, enquired into the grant of the Concession and made an Order for the survey of the area therein comprised. The survey has been carried out and the requisite Plans deposited with the

30

Survey Department for checking and approved. By Deed made the 26th March, 1938, between the Stool of Abnabna (of which Kwesi Kumah II is the Stool holder) of the one part and the Claimants of the other part, the Stool, Abnabna, in consideration of the sum of £100,

- (a) Covenanted with the Claimants not to oppose the grant of a Certificate of Validity for the Concession, nor in any other way oppose the Concession.
- (b) Agreed to ratify and affirm the Concession.
- By the said Deed dated the 26th March, 1938, the Claimants agreed :—
- 10 (a) In the event of the said Stool of Abnabna being successful in establishing its title to the land and premises comprised in the Concession or any part thereof in a Competent Native Tribunal or Court of Law to have the name of the Stool of Abnabna endorsed on the Certificate of Validity in accordance with the provisions of Section 29 of the Concessions Ordinance (Chapter 27 of the Laws of the Gold Coast Colony, 1928 Edition).
- (b) To apply to the Court in the Enquiry to make an endorsement on the Certificate of Validity to the effect that it is granted without prejudice to the Claimant of the Stool of Abnabna to the land
- 20 comprised in the Concession.

Now, in spite of this Agreement, made by Deed, the Applicant comes to the Court at this stage of the proceedings and asks for leave to oppose the grant of the Certificate of Validity. The Claimants oppose the application and say it should not be granted, that the Deed cannot be abrogated in this way by the applicant and that they the Claimants, have spent a lot of money on Plans, etc., and that it would be manifestly unjust to allow the applicant to oppose at this stage.

- Now the applicant relies on the Privy Council case of *James Jackson* versus *J. M. Cooke* which he says shows that the jurisdiction of this Court is not ousted by this Deed having been entered into, but it is not denied that this Court has jurisdiction to entertain this application, and it has entertained it. What I have to consider is, is this Deed of Agreement not to oppose binding on the Applicant? Now it is a well-established rule of law that no one can be permitted (except on grounds of fraud or deceit) to aver or to prove anything in contradiction to what he has avowed by Deed. No fraud or deceit is alleged here, and that rule, on the face of it, would resolve this application adversely to the applicant, but, since this Deed deprives the applicant of certain rights of opposition which he possesses under the Concessions Ordinance, I have felt that I must ask myself is a Deed which
- 40 deprives a person of rights under an Ordinance valid as against that person? The answer in my opinion is in the affirmative, on the authority of the case of *Griffiths* versus *The Earl of Dudley* reported at page 357 *et seq.* of Law Reports 9 Q.B.D. (1882). In this case, which was a case under the Employers Liability Act, 1880. where an employee had contracted out of the Act by Agreement, and had agreed with his employer that he would not claim any

Defendant's  
Exhibit

“ D. ”

Judgment  
in Con-  
cession  
Enquiry  
2293, 19th  
August,  
1939—

*continued.*

Defendant's  
Exhibit  
" D. "  
Judgment  
in Con-  
cession  
Enquiry  
2293, 19th  
August,  
1939—  
*continued.*

compensation under the Act for personal injury, and then sought to have the contract set aside, the Divisional Court, upsetting the County Court Judge held that a person could contract out of an Act of Parliament unless it was expressly stated in the Act that he could not do so. Field, J., in his Judgment, said, " In all cases referred to in argument, in which the Legislature " has intended to enact that a person shall not be allowed to contract " himself out of an Act of Parliament, very express words have been used. " As a general rule, entire freedom of contract has been preserved ; it has " only been interfered with in order to obviate great public injustice. It is " legitimate to see what would be the consequence if the construction 10 " contended for by the Plaintiff's Counsel prevailed, because, if injustice " would result, it is unlikely the Legislature intended that construction. " I think great injustice would result, because the workman might obtain " the benefit of the contract for years in the form of higher wages to cover the " risk of injury, and then claim full additional compensation when he was " injured." Now, this case is on all forms with that case in principle. The applicant got £100 for abandoning his right to oppose and he got terms which presumably satisfied him. There is no provision in the Old Concessions Ordinance forbidden contracting out. In my opinion he cannot now come and say " I have changed my mind and I would like to oppose." I 20 think great injustice might result if this application were granted, because the applicant would have got his £100 for abandoning his opposition, and might then oppose the grant of a Certificate of Validity root and branch. Further, although this is not an application for an Injunction, I think the following passage taken from Addison on Torts, Eighth Edition at page 114 is applicable in principle to this case :—

" A man who lies by while he sees another person expend his " capital and bestow his labour upon any work which he claims to " have a right to prevent, without giving the person any notice " or attempting to interrupt him, and who thus acquiesces in pro- 30 " ceedings inconsistent with his own claims, will in vain ask for an " Injunction, the effect of which would be to render all the expense " useless which he voluntarily suffered to be incurred."

The applicant has stood by for a year and seen the Claimants, acting on the faith of this Deed incurring large expenses in connection with the issue of a Certificate of Validity, and has done nothing and now, on the eve of the grant of a Certificate of Validity, he comes and says " I have reconsidered the " matter and I want to oppose." In my view, he cannot be allowed to come in and oppose now. For the above reasons, I refuse this application with costs. 40

Costs assessed at £5. 5. 0.

(Sgd.) T. D. H. BRUCE,  
*Judge.*

Mr. R. S. BLAY for Applicant.

Defendant's Exhibit "A."—Certificate of Validity.

Defendant's  
Exhibit

(Marked 21st May, 1946).

Deeds Registry.

No. 15/1940.

"A."  
Certificate  
of Validity,  
27th  
December,  
1939.

IN THE SUPREME COURT OF THE GOLD COAST, CENTRAL PROVINCE,  
CONCESSIONS DIVISION—CAPE COAST.

CONCESSION ENQUIRY NUMBER 2293 (CAPE COAST)

"NKASAWURA CONCESSION."

Certificate of Validity No. 615.

10 PERSONS AT PRESENT ENTITLED TO THE BENEFIT OF THE SAID CONCESSION  
AND OF THIS CERTIFICATE OF VALIDITY.

Gold Coast Selection Trust Limited,  
Finsbury Pavement House,  
Moorgate,  
London, E.C.

20 Subject as Below the Concession of Nana Nkwantabissa III Omanhene  
of Denkera and Chief Kofi Bissah of Nkasawura both in the Cape Coast  
District of the Central Province of the Gold Coast Colony their elders and  
people to Gold Coast Selection Trust Limited dated the 23rd day of March,  
1938, and registered in the Gold Coast Land Registry at Accra on the 2nd  
May, 1938, as No. 376/1938 to which this Certificate is attached and which is  
signed as relative hereto is hereby declared to be valid.

BOUNDARIES, EXTENT AND SITUATION OF LAND IN RESPECT OF WHICH THIS  
CERTIFICATE IS GIVEN :

The land comprised in the said Concession is situate in the said Cape  
Coast District of the Central Province of the Gold Coast Colony.

The boundaries of the Concession are as shown on the Plan attached  
and signed as relative hereto.

30 The extent of the land to which this Certificate applies is 4.208 square  
miles.

NATURE OF CONCESSION :

3 The Concession confers rights of mining and dredging for all gold metals  
mineral substances diamonds and other precious stones with rights sub-  
sidiary and ancillary thereto as in the Concession set out.

Defendant's RENTS—  
Exhibit

“ A. ”  
Certificate  
of Validity,  
27th  
December,  
1939—  
*continued.*

The rents payable in respect of the Concession shall be :

- (a) the sum of Twenty five Pounds (£25) per annum Occupation Rent,  
and
- (b) the sum of Two Hundred and Fifty Pounds (£250) per annum  
Working Rent.

All Rents shall be payable by equal quarterly instalments on the four usual quarter days.

LIMITATIONS, MODIFICATIONS AND CONDITIONS IMPOSED BY THE COURT—

The burial grove on the land comprised in the Concession near the 10 junctions of the Fobene and Anwianwia streams with the Ofin River and shown in green colour on the said Plan hereto attached shall be protected so far as is reasonably possible during mining or dredging operations in the vicinity.

MAINTENANCE OF BOUNDARIES—

The Holders of this Certificate of Validity for the time being shall keep the posts and name plates marking the boundaries of the Concession in good order and condition and the name or initials of the Holders or of the Concession legibly marked thereon.

DATE OF FINAL ORDER FOR ISSUE OF THIS CERTIFICATE OF VALIDITY— 20

Tuesday, the 21st day of November, 1939.

Given Under My Hand And The Seal of the Court at Cape Coast this 27th day of December, One Thousand Nine Hundred and Thirty-nine.

(L.S.) (Sgd.) T. D. H. BRUCE,  
*Judge.*

Certified True Copy.

(Sgd.) CHARLES A. BANNERMAN,  
*Registrar,*  
Divisional Court,  
Cape Coast. 30

This Instrument was delivered to me for registration by the Registrar, Divisional Court, at Cape Coast through the post at 1.35 o'clock in the afternoon this 10th day of January, 1940.

(Sgd.) T. F. GOODMAN,  
*Registrar of Deeds.*

GOLD COAST LAND REGISTRY.

Registered as No. 15/1940.

(Sgd.) T. F. GOODMAN,  
*Registrar of Deeds.*

Compared and verified with the Original. 40

(Sgd.) T. F. GOODMAN,  
*Registrar of Deeds.*

**Defendant's Exhibit " A. "—Extracts from Lease referred to in Certificate of Validity No. 615.**

Deeds Registry.

No. 376/1938.

Exhibit " A. "

Put in evidence by Claimants *in re* Concession Enquiry  
(No. 2293 Cape Coast).

(Intd) J. H.,  
for Registrar,

Sdi. 293/38.

27/8/38.

Defendant's  
Exhibit

" A. "

Extracts  
from Lease  
referred to  
in  
Certificate  
of Validity,  
27th  
December,  
1939.

10

This Indenture made the 23rd day of March One Thousand Nine Hundred and Thirty-eight Between Nana Nkwantabissa III Omanhene of Denkera and Chief Kofi Bissah of Nkasawura both in the Cape Coast District of the Central Province of the Gold Coast Colony acting for themselves and as representatives of the elders and people of the said Stools whose assent to or concurrence in these presents is necessary according to Native Law and Custom of the said Stools which assent or concurrence is testified by the execution of these presents by some of such elders and people (hereinafter called " the Lessors " which expression shall where the context so admits or requires include the Chiefs for the time being and the elders and people of the said Stools respectively and their respective heirs successors and assigns) of the one part and Gold Coast Selection Trust Limited a Company registered under the Companies Acts England and having its registered office at Finsbury Pavement House Moorgate in the City of London (hereinafter called " the Lessee " which expression shall where the context so admits or requires include its successors and assigns) by Abraham Hendrik Douw its duly appointed Attorney of the other part Witnesseth that in consideration of the sum of One Hundred and Twenty Pounds (£120) paid by the Lessee to the Lessors on or before the execution of these presents (the receipt whereof the Lessors do hereby admit and acknowledge) and in consideration also of the rents hereinafter reserved and the covenants and conditions hereinafter contained and on the part of the Lessee to be paid observed and performed The Lessors Do Hereby Grant And Demise unto the Lessee All That piece or parcel of land and premises situate in the Central Province of the Colony aforesaid and more particularly described in the Schedule hereunder written Together with all gold metals minerals mineral substances diamonds and precious stones lying and being in or under the said land and premises And all timber timber-like trees saplings and undergrowth now growing and being and hereafter to grow or be upon the said land and Together Also with

*(full dredging and other mining rights as therein specified)*

To have and To Hold all the said land and premises unto the Lessee for the term of Ninety-Nine Years from date of these presents with full right and power Yielding and Paying therefor yearly and every year during the said

Defendant's term unto the Lessors the annual occupation rent of Twenty-five Pounds (£25) by equal quarterly payments on the usual quarter days in each year Provided Always And It Is Hereby Agreed And Declared that upon the commencement of winning of gold diamonds precious stones metals and minerals from the said land hereby demised but for so long only and as often as the same shall continue the annual Working Rent of Two Hundred and Fifty Pounds (£250) shall be paid instead and in lieu of the aforementioned Occupation Rent of Twenty-five Pounds (£25) the first payment of the Working Rent to become due and payable on the first quarter which shall happen after the commencement of winning of gold diamonds precious stones metals and minerals in manner aforesaid. 10

Defendant's Exhibit  
 " A. "  
 Extracts from Lease referred to in Certificate of Validity, 27th December, 1939—  
*continued.*

*(Lessors' Covenant for quiet enjoyment ; Power for lessees to remove the gotten minerals, dredges and plant within 12 months after end of lease ; Lessees' covenant to pay rent ; Usual Reservation of hunting farm cultivation, etc., in favour of Lessees ; Arbitration Clause ; Proviso for re-entry on non-payment of rent or breach of covenants ; Power for Lessees to determine on notice).*

In Witness Whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

#### THE SCHEDULE ABOVE REFERRED TO.

All that piece or parcel of land known as Nkasawura Concession, situate in the Cape Coast District of the Central Province of Gold Coast Colony, covering an area of approximately 4.22 square miles, bounded as follows :— 20

#### ON THE NORTH—

By the south-eastern boundaries of Nkasawura-Offin Concession, Enquiry No. 2288 (Cape Coast), commencing at a point on the south-western bank of the Ofin River, situate approximately Latitude  $6^{\circ} 02' 12''$  North : Longitude  $1^{\circ} 56' 08''$  West, thence follow a straight line in a south westerly direction on an approximate bearing of  $214^{\circ} 30'$  to a point situate approximately Latitude  $6^{\circ} 01' 46''$  North : Longitude  $1^{\circ} 56' 29''$  West : Thence follow a line in a north-westerly direction, parallel to, south-west from, and distant one half of a mile from the south western bank of the Ofin River, to a point on the Dunkwa-Wiawso Motor Road, situate approximately Latitude  $6^{\circ} 02' 20''$  North Longitude  $1^{\circ} 57' 06''$  West. 30

#### ON THE NORTH-EAST—

By the south-western bank of the Ofin River, the northern extremity being a point situate approximately Latitude  $6^{\circ} 02' 12''$  North : Longitude  $1^{\circ} 56' 08''$  West : the southern extremity being the junction of the south-western bank of the Ofin River with the centre of the Kotin Stream, situate approximately Latitude  $6^{\circ} 00' 30''$  North : Longitude  $1^{\circ} 54' 10''$  West. 40

#### ON THE SOUTH-WEST—

By the north-eastern side of the Dunkwa-Wiawso Motor Road, the northern extremity being the point situate approximately Latitude  $6^{\circ} 02'$



20" North : Longitude 1° 57' 06" West : the southern extremity being a point situate approximately Latitude 5° 59' 42" North : Longitude 1° 54' 55" West.

Defendant's Exhibit

" A. "

ON THE SOUTH AND EAST—

Extracts from Lease referred to in Certificate of Validity, 27th December, 1939—  
*continued.*

10 By a straight line, running due east for approximately one half of a mile, commencing at the point on the Dunkwa-Wiawso Motor Road, situate approximately Latitude 5° 59' 42" North, Longitude 1° 54' 55" West, and ending at the centre of the Kotin Stream, at a point situate approximately Latitude 5° 59' 42" North, Longitude 1° 54' 32" West : Thence by the centre of the Kotin Stream, running in easterly and northerly directions, to its junction with the south-western bank of the Ofin River, at the point situate approximately Latitude 6° 00' 30" North : Longitude 1° 54' 10" West. These boundaries are for purposes of identification only shown delineated and edged in pink colour on the attached Plan.

20	Signed Marked and Sealed and Delivered by the said Nana Nkwantabissa III Omanhene of Denkera his elders and people after the same had been read over and interpreted to them in the Fanti Language by Richard Homiah of Dunkwa and they appeared to understand its provisions in the presence of :	(Sgd.)	NKWANTABISSA	(LS)	Their X
			DENKERAHENE III	(LS)	
			YAW AKATU,		
			Representative for Gyasehene, Kwesi Siaw.	(LS)	
			AKYEAMEHENE	X	
			KOBINA NTWAKWA	(LS)	
			KYEAME KOBINA ATTA	X	
				(LS)	

(Sgd.) G. H. SIBO-ARTHUR,  
*Stool Clerk, Ayanfuri.*

Marks.

(Sgd.)

30 (Sgd) RICHARD HOMIAH,  
*Clerk, G.C.S.T.*

30	Marked Sealed and Delivered by the said Chief Kofi Bissah of Nkasawura his elders and people after the same had been read over and interpreted to them in the Fanti Language by Richard Homiah of Dunkwa and they appeared to understand its provisions in the presence of :	(Sgd.)	Chief KOFI BISSAH	X	(LS)	Their X X X X X Marks. (LS)
			Elder KOFI AMUAH	X	(LS)	
			Elder KOBINA WIREKU	X	(LS)	
			Elder KOJO ENYIMADU	X	(LS)	
			Linguist KWESI MENSAH	X	(LS)	
			(Sgd.) J. E. MENSAH.		(LS)	

40 (Sgd.) G. H. SIBO-ARTHUR,  
*Stool Clerk, Ayanfuri.*

(Sgd.) RICHARD HOMIAH,  
*Clerk, G.C.S.T.*

Defendant's Signed Sealed and Delivered by the said  
Exhibit Abraham Hendrik Douw as Attorney for  
" A." and on behalf of Gold Coast Selection Trust  
Extracts from Lease referred to in Certificate of Validity, 27th December, 1939—  
*continued.*

} (Sgd.) A. H. DOUW (LS)  
Limited in the presence of :

(Sgd.) S. S. BARCLAY,  
*Accountant, G.C.S.T., Ltd.*

(*Endorsed :—Receipts for premium ; Memoranda of proof before District Commissioner ; Assessment of Stamp Duty ; Memorandum of Registration in Gold Coast Land Registry as No. 376 of 1938).*)

*In re* CONCESSION ENQUIRY NO. 2293 (CAPE COAST). 10

This is the Lease referred to in the annexed Certificate of Validity granted on the 21st day of November, 1939, and signed as relative thereto. Dated at Cape Coast this 27th day of December, 1939.

(LS) (Sgd.) T. D. H. BRUCE,  
*Judge.*

Plaintiff's Exhibit

**Plaintiff's Exhibit " 1."—Letter from Denkerahene to D. C., Dunkwa.**

" 1."

(*Marked on 4th November, 1944.*)

Letter from Denkerahene to D. C., Dunkwa, 25th April, 1944.

Central Province.

Denkerahene's Office,  
P.O. Box 36, Dunkwa.

25th April, 1944. 20

My Good Friend,

I have to communicate with you to-day upon an important topic and hope same shall not escape your mind.

2.—I remember on last Sunday, when we met at the Police Station we had some discussions about the dispute which arose between Chief Kofi Kuran, Nyinawusuhene and Abinabinahene, where you promised to let the Sub-Inspector of Police go to investigate into the matter, and I should be grateful if you would let me know as to what decision you have arrived at in this regard.

3.—I have to act according to the advice given me, as I will see to avoid 30 all troubles which may come into my State ; and have spoken to my Chiefs also about this, but if any other person from different State wishes to trouble any of them they should keep me informed when I shall also let you know of it.

4.—Abinabinahene does not belong to Denkera State, but what authority has he to enter into Denkera State to demarcate boundary without my knowledge ? Whose fault it would if there arose any quarrel or fighting ?

Plaintiff's  
Exhibit

1.

Letter from  
Denkera-  
hene to  
D. C,  
Dunkwa,  
25th April,  
1944—  
*continued.*

5.—Abinabinahene has alleged that it was Government who instructed him to go round demarcating boundaries ; and this does not mean that he should enter into my State without my knowledge. He says Government has engaged a Surveyor with whom to demarcate boundaries ; and have to inform you that if he Abinabinahene fails to consult me in this connection  
10 and whenever he enters into my State to demarcate boundaries and anything happens I may not be held responsible for that.

I am,

Your Good Friend,

(Sgd.) OWU BORI II,

*Denkerahene.*

His Worship,  
The District Commissioner,  
Dunkwa.

# In the Privy Council

Appeal No. 5 of 1951.

ON APPEAL FROM THE WEST AFRICAN COURT  
OF APPEAL (GOLD COAST SESSION).

---

BETWEEN

THE STOOL OF ABINABINA

*(Plaintiff) Appellant*

AND

CHIEF KOJO ENYIMADU

on behalf of the Stool of

Nkasawura ... *(Defendant) Respondent.*

---

## RECORD OF PROCEEDINGS

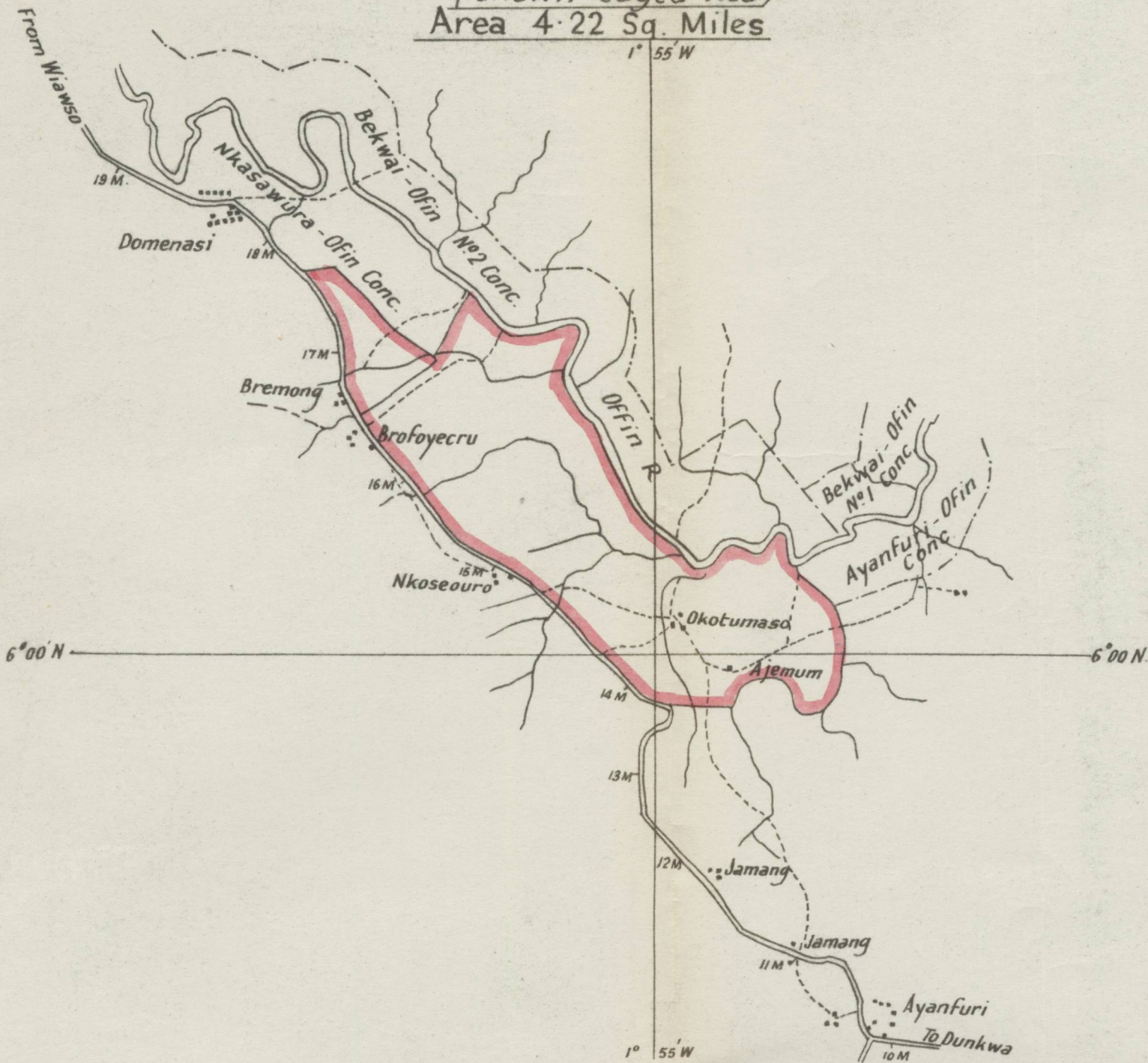
---

A. L. BRYDEN & WILLIAMS,  
53 Victoria Street,  
London, S.W.1,  
*Solicitors for Appellant.*

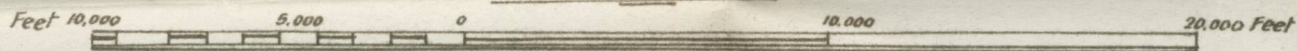
T. L. WILSON & CO.,  
6 Westminster Palace Gardens,  
Artillery Row,  
Victoria Street,  
London, S.W.1,  
*Solicitors for Respondent.*

# NKASAWURA CONCESSION

(Shown edged Red)  
Area 4.22 Sq. Miles

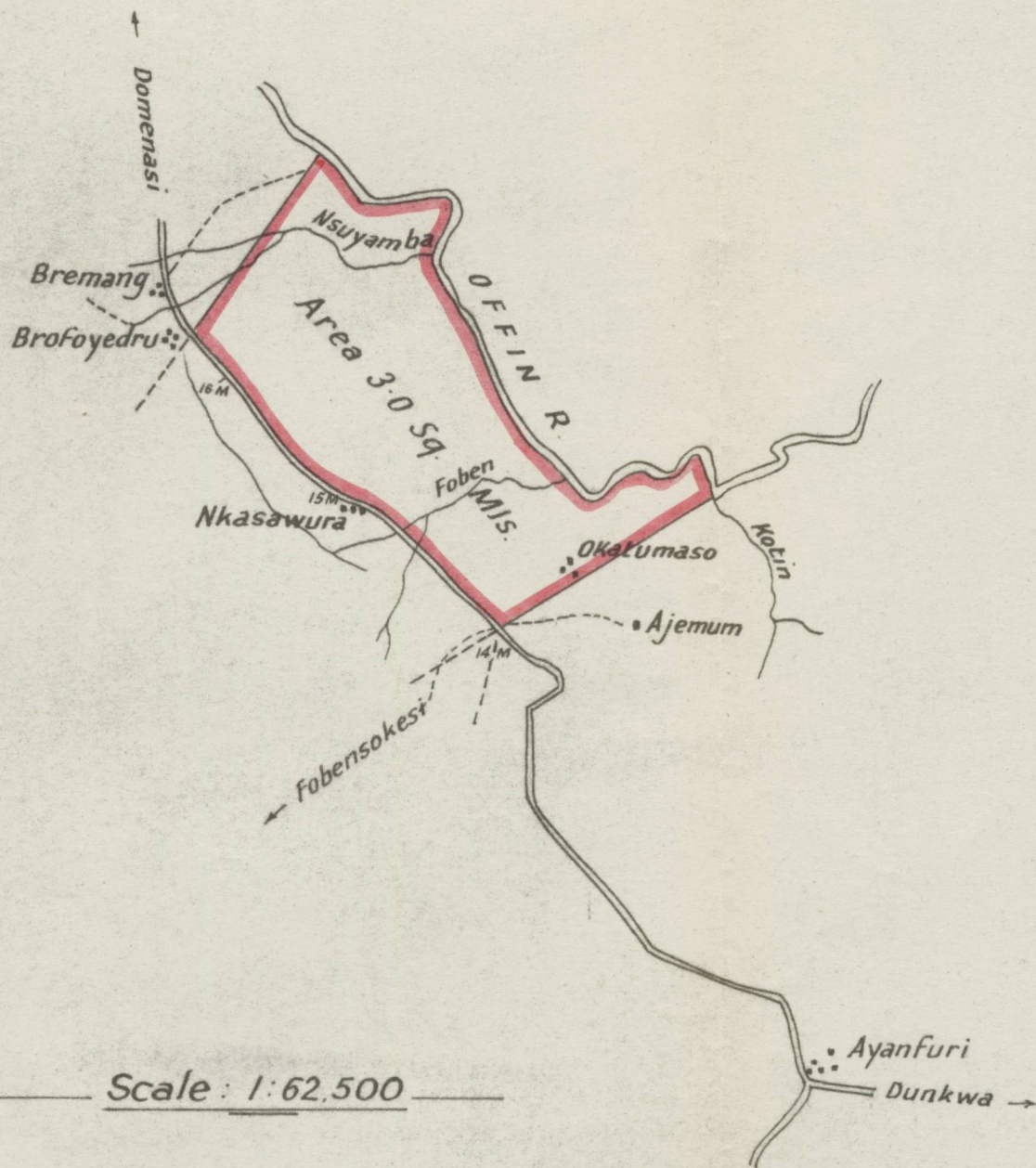


Scale: 1:62,500



Traced From G.C.S Field Sheets 49 & 85

Lease of 23 March 1938



NKASWURA MINING & DREDGING  
CONCESSION

*From Lease of 22 April 1936*