

32,1953

In the Privy Council.

No. 20 of 1950

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

44448

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

BETWEEN

W WUDANU KWASI, Acting Chief of Atipradaa, and  
MANKRADO KWASI ANSAH, Acting Chief  
of Wusuta (Defendants) . . . . . *Appellants*

AND

Y NANA OSEI TWUM, Ohene of Bukuruwa (sub-  
stituted for YAW NKANSAH II, Dsasehene of  
Bukuruwa-Kwahu) (Plaintiff) and NANA  
AKWAMOA AKYEAMPONG, Omanhene of  
Kwahu (Co-Plaintiff) . . . . . *Respondents.*

RECORD OF PROCEEDINGS

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# In the Privy Council.

No. 20 of 1950.

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

BETWEEN

WUDANU KWASI, Acting Chief of Atipradaa, and  
MANKRADO KWASI ANSAH, Acting Chief of  
Wusuta (*Defendants*) ... .. *Appellants*

10

AND

YAW NKANSAH II, Dsasehene of Bukuruwa-Kwahu  
(*Plaintiff*) and NANA AKWAMOA AKYEAMONG,  
Omanhene of Kwahu (*Co-Plaintiff*) ... .. *Respondents.*

## RECORD OF PROCEEDINGS

No. 1A.

Civil Summons.

No. 12/40.

IN THE TRIBUNAL OF THE PARAMOUNT CHIEF.  
DIVISIONAL CHIEF.

20 THE KWAHU STATE.  
DIVISION.

GOLD COAST COLONY.

Between

NANA KOFI BAADU II of Bukuruwa ... .. *Plaintiff*

and

CHIEF TAWIA of Atipradaa and DAVID AKUAMOA alias  
Yaw Akoi of Adukrom ... .. *Defendants.*

To CHIEF TAWIA of Atipradaa and DAVID AKUAMOA alias Yaw Akoi of  
Adukrom.

30 You are hereby commanded to attend this Tribunal at Abene on the  
10th day of April, 1940 at 9 o'clock a.m. to answer a suit by Nana Kofi  
Baadu II of Bukuruwa against you.

In the  
Tribunal of  
the Para-  
mount Chief  
of the  
Kwahu  
State.

No. 1A.  
Civil  
Summons.  
13th March,  
1940.

In the  
Tribunal of  
the Para-  
mount Chief  
of the  
Kwahu  
State.

The Plaintiff's claim is as against the Defendants for a Declaration of Title to All that piece or parcel of land situate at Kwaekesiem in Kwahu and bounded on the North by the River Faa, on the South by the River Afram, on the East by the River Volta and on the West by the Plaintiff's Stool land.

And for an Injunction to restrain the Defendants their agents and servants from cultivating the said land or interfering with the Plaintiff's ownership thereof.

No. 1A.  
Civil  
Summons.  
13th March,  
1940—  
*continued.*

Issued at Abene the 13th day of March, 1940.

Claim	...	...	...	Landed Property.	10
Tribunal fee	...	...	...	£1 5 -	
Mileage and Service	...	...	...	1 2 -	
				<hr/>	
				£2 7 -	
				<hr/>	

(Sgd.) J. C. ADDO, (Sgd.) AKUAMOA AKYEMPON,  
*Regr.* *Omanhene of Kwahu.*

No. 1B.  
Civil  
Summons  
(as  
amended).  
13th March,  
1940.

No. 1B.  
Civil Summons (as amended).

Writ of Summons as amended by Orders of Court dated 25/8/45, 27/9/45, 25/10/45 and 17/4/47. (See Pages 19, 22, 23 and 64 of Record of Appeal.) 20  
Civil Summons. No. 12/40.

IN THE TRIBUNAL OF THE PARAMOUNT CHIEF.  
DIVISIONAL CHIEF.

THE KWAHU STATE.  
DIVISION.

GOLD COAST COLONY.

Between  
YAW NKANSAH II Dsasehene of Bukuruwa, Kwahu ... *Plaintiff*  
NANA AKWAMOA AKYEAMPONG, Omanhene of Kwahu ... *Co-Plaintiff*  
*versus*  
WUDANU KWASI, Acting Chief of Atipradaa, DAVID  
AKUAMOA alias Yaw Koi of Adukrom and CHIEF  
DJABAH III, Chief of Wusuta ... *Defendants*  
CHIEF DWAMENA AYIRIPEH II of Nkwatia, Kwahu ... *Co-Defendant.* 30

To WUDANU KWASI, DAVID AKUAMOA alias Yaw Koi, and CHIEF DJABAH III.

You are hereby commanded to attend the Tribunal at Abene on the 10th day of April, 1940 at 9 o'clock a.m. to answer a suit by Nana Yaw Nkansah, etc., of Bukuruwa against you.



The Plaintiffs' claim is as against the Defendants for a Declaration of Title to All that piece or parcel of land situate in Kwahu and bounded on the North by River Obosom, on the South by the River Afram, on the East by the River Volta and on the West by Abetifi, Nkwatia, Pitiko and Kwahu Tafo Stool lands.

And for an injunction to restrain the Defendants their agents and servants from cultivating the said land or interfering with the Plaintiffs' ownership thereof.

Issued at Abene the 13th day of March, 1940.

10	Claim ... ..	Landed Property
	Tribunal fee ... ..	... £1 5 -
	Mileage and Service ... ..	... 1 2 -
		£2 7 -

In the Tribunal of the Paramount Chief of the Kwahu State.

No. 1B.  
Civil Summons (as amended)—  
13th March, 1940—  
*continued.*

(Sgd.) AKUAMOA AKYEAMPON,  
*Omanhene of Kwahu.*

(Sgd.) J. C. ADDO,  
*Regr.*

21.3.42.

No. 2.

20 Order transferring Suit to Supreme Court.

In the Provincial Commissioner's Court.

IN THE PROVINCIAL COMMISSIONER'S COURT EASTERN PROVINCE, held at Koforidua on Saturday the 21st day of March, 1942, before His Worship ERIC ANDERSON BURNER, Esquire, Acting Deputy Provincial Commissioner.

No. 2.  
Order transferring Suit to Supreme Court.  
21st March, 1942.

NANA KOFI BAADU II of Bukuruwa, Kwahu ... *Plaintiff*

*versus*

CHIEF TAWIA of Atipradaa and DAVID AKUAMOA alias Yaw Koi of Adukrom ... .. *Defendants-Opposers.*

30 MOTION ON NOTICE of AKILAGPA SAWYERR of Counsel on behalf of the above-named Plaintiff for an Order transferring the above case from the Tribunal of the Paramount Chief of Kwaku to the Divisional Court, Accra. And for such further Order or Orders therein as to this Honourable Court might seem fit.

Mr. SAWYERR for Plaintiff Mover.

Mr. VAN LARE for Defendant, Opposers.

Counsel heard. Affidavit of Opposer read.

In the  
Provincial  
Com-  
missioner's  
Court.

**ORDER.**

There has been and still is a political Dispute between the Kwahus and the Owusutas (Wusutas) and I doubt if justice can be obtained at the Kwahu Tribunal so long as this state of affairs exists.

In the interest of justice I order that the hearing of this case now pending before the Kwahu Tribunal be stopped and transferred to the Divisional Court for hearing and determination.

No. 2.  
Order  
transferring  
Suit to  
Supreme  
Court.  
21st March,  
1942—  
*continued.*

(Sgd.) E. A. BURNER,  
*Acting Deputy Provincial Commissioner.*

In the  
Supreme  
Court of  
the Gold  
Coast.

No. 3.

10

**Plaintiff's Motion for joinder of Osei Tutu, Chief of Wusuta,  
as Defendant.**

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN PROVINCE  
DIVISIONAL COURT, ACCRA.

Between

NANA KOFI BAADU II of Bukuruwa, Kwahu ... .. *Plaintiff*

and

CHIEF TAWIAH of Atipradaa and DAVID AKUAMOA alias  
Yaw Koi of Adukrom ... .. *Defendants.*

No. 3.  
Plaintiff's  
Motion for  
joinder of  
Osei Tutu,  
Chief of  
Wusuta, as  
Defendant.  
12th June,  
1942.

MOTION ON NOTICE by Akilagpa Sawyerr of Counsel for and 20  
on behalf of the above Plaintiff for an Order for the joinder of Osei Tutu,  
Ohene of Owusuta as one of the Defendants, herein. And for such further  
Order or Orders herein as to this Honourable Court might seem fit.

To be moved on Wednesday the 8th day of July, 1942, at 8.30 o'clock  
in the forenoon or so soon thereafter as Counsel for the Plaintiff may be  
heard.

Dated at Accra this 12th day of June, 1942.

(Sgd.) AKILAGPA SAWYERR,  
*Solicitor for Plaintiff.*

The Registrar, Divisional Court, Accra,  
and to the above-named Defendants  
their Agent or Solicitor Atipradaa and  
Adukrom.

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No. 4.

## Affidavit in support of Motion for joinder.

IN THE SUPREME COURT OF THE GOLD COAST EASTERN PROVINCE,  
DIVISIONAL COURT, ACCRA.

Between

NANA KOFI BAADU II of Bukuruwa, Kwahu... .. Plaintiff  
and  
CHIEF TAWIAH of Atipradaa and DAVID AKUMOA alias  
Yaw Koi of Adukrom ... .. Defendants.

In the  
Supreme  
Court of  
the Gold  
Coast.

No. 4.  
Affidavit in  
Support of  
Motion for  
joinder.  
13th June,  
1942.

10

## AFFIDAVIT OF TUKWA III.

I, TUKWA III, Mankrado of Bukuruwa and Odikro of Asabi in the  
Kwahu District, but now at Accra make oath and say:—

1.—I am Mankrado of Bukuruwa and Odikro of Asabi, and have been  
authorised by the Plaintiff to swear to this Affidavit on his behalf.

2.—Osei-Tutu, Ohene of Owusutaa in the Mandated Territory of  
Togoland is interested in the land the subject matter of the above case,  
and the above named Defendants who are his subjects claim that they  
occupy the said land under his authority.

3.—I crave leave to refer to the Affidavit which I swore to in support  
20 of the Plaintiff's application for transfer of the above named case.

4.—And I make this Affidavit in support of Plaintiff's application for  
a Joinder of the said Osei Tutu, as one of the Defendants herein.

Sworn at Accra this }  
13th day of June, 1942. }

(Sgd.) TUKWA III.

Before me,

(Sgd.) V. L. BUCKLE,  
Commissioner for Oaths.

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Court Notes of joinder.

In the Supreme Court of the Gold Coast.

8th July, 1942.

No. 5. Court Notes of joinder. 8th July, 1942.

IN THE SUPREME COURT OF THE GOLD COAST EASTERN PROVINCE, held at VICTORIABORG, ACCRA, on Wednesday the 8th day of July, 1942, before His Honour Mr. Justice WOOLHOUSE BANNERMAN.

NANA KOFI BAADU II } v. CHIEF TAWIA AND OTHERS. }

Motion for a Joinder.

Mr. AKILAGPA SAWYERR moves—

10

Mr. VAN LARE for Defendants—says he does not oppose.

BY THE COURT :

Application granted in terms of Motion Paper and Affidavit—Let Osei Tutu, Ohene of Owusutaa be joined in this case as one of the Defendants. Let copy of the Summons and all relevant documents be served on the aforesaid Osei Tutu accordingly.

Case to be mentioned on the 7th August.

(Sgd.) WOOLHOUSE BANNERMAN, Judge.

No. 6. Statement of Claim of Bukuruwa Chief. 19th December, 1942.

Statement of Claim of Bukuruwa Chief

IN THE SUPREME COURT OF THE GOLD COAST EASTERN PROVINCE, DIVISIONAL COURT, ACCRA.

Transferred Suit No. 1/1942.

Between

NANA KOFI BAADU II of Bukuruwa, Kwahu ... .. Plaintiff and

CHIEF TAWIA of Atipradaa and DAVID AKUAMOA alias Yaw Koi of Adukrom ... .. Defendants

OSEI TUTU of Wusuta ... .. Co-Defendant. 30

THE PLAINTIFF'S STATEMENT OF CLAIM.

1.—The Plaintiff is the Ohene of Bukuruwa in the Kwahu District and the owner as such Ohene of All that piece or parcel of land situate at Kwaekesiem in Kwahu, and bounded on the North by the River Faa, on the South by the River Afram, on the East by the River Volta, and on the West by the Plaintiff's Stool land.

2.—The said land is the ancestral property of the Plaintiff's Stool to which it is attached and has been in the possession and occupation of the

Plaintiff and his predecessors on the said Stool of Bukuruwa from time immemorial.

3.—The Defendant Osei Tutu is the Chief of Wusuta in Togoland and the Defendants Chief Tawia and David Akuamoah alias Yao Koi are natives of Togoland and subjects of the Defendant Osei Tutu.

4.—During the German occupation of Togoland, Adom the father of the Defendant Chief Tawia sought for and obtained the permission of one of the Plaintiff's predecessors to reside on the land in dispute with his family and to hunt and make farms thereon on payment of tolls to the Plaintiff's predecessor through his Jasehene.

5.—The said Adom lived on the said land with his family including the Defendant Chief Tawia for several years and paid tolls to the Plaintiff's predecessors during his occupation until his death.

6.—The said Adom was succeeded on the land by his son the Defendant Chief Tawia who also paid tolls for several years after the death of his father, but subsequently refused to do so.

7.—The Defendant David Akuamoah obtained permission from the Plaintiff about the year 1933 to farm on the said land and paid tribute to the Plaintiff therefor until 1938 when he also refused to pay further tribute to the Plaintiff.

8.—The Defendants Chief Tawia and David Akuamoah are still farming and hunting on the land in dispute, but refuse to pay tolls to the Plaintiff's Stool, and together with the Defendant Osei Tutu, now lay claim to the said land as part of the Stool property of the Wusuta Stool on which the Defendant Osei Tutu sits as Chief.

The Plaintiff therefore claims as against the Defendants :—

(1) A declaration of his title to All that piece or parcel of land situate in Kwahu and bounded on the North by the River Obosom, on the South by the River Afram, on the East by the River Volta, and on the West by Abetifi, Nkwatia, Pitiku and Kwahu Tafo Stool lands.

(2) And an Injunction to restrain the Defendants their agents and servants from cultivating the said land or interfering with the Plaintiff's ownership thereof.

Dated at Accra this 19th day of December, 1942.

(Sgd.) AKILAGPA SAWYERR,  
*Solicitor for Plaintiff.*

The Registrar, Divisional Court, Accra,  
and to the above-named Defendants,  
their Agent or Solicitor Mr. W. B. Van  
Lare, Accra.

In the  
Supreme  
Court of  
the Gold  
Coast.

No. 6.

Statement  
of Claim of  
Bukuruwa  
Chief.

19th  
December,  
1942—  
*continued.*

Amended by  
30 Order dated  
17.4.1947  
L. M.

AG : C.J.

No. 7.

Defence of Chiefs of Adukrom and Wusuta.

In the Supreme Court of the Gold Coast.

No. 7. Defence of Chiefs of Adukrom and Wusuta. 5th February, 1943.

IN THE SUPREME COURT OF THE GOLD COAST EASTERN PROVINCE, DIVISIONAL COURT, ACCRA.

Transferred Suit No. 1/1942.

NANA KOFI BAADU II of Bukuruwa, Kwahu ... .. Plaintiff

versus

CHIEF TAWIA of Atipradaa and DAVID AKUAMOA alias Yaw Koi of Adukrom ... .. Defendants

and

OSEI TUTU of Wusuta ... .. Co-Defendant. 10

STATEMENT OF DEFENCE filed on behalf of the Defendant DAVID AKUAMOA alias Yaw Koi and the Co-Defendant OSEI TUTU hereinafter referred to as second and third Defendants.

1.—The 2nd and 3rd Defendants deny generally the main allegations of the Plaintiff contained in paragraphs 1-8 inclusive of the said Plaintiff's Statement of Claim.

2.—In further answer to paragraph 1, the said 2nd and 3rd Defendants specifically deny that the Plaintiff as Ohene of Bukuruwa is the owner of all that piece or parcel of land described in paragraph 1 of the Statement of Claim, and the said 2nd and 3rd Defendants say that the Major Portion of the Land described belongs to the three Defendants herein for their subjects and people—and that the remaining portion belongs to other neighbouring chiefs, but that no portion of the land described in paragraph 1 of the Statement belongs to or is owned by the said Plaintiff.

3.—In further answer to paragraph 2 of the Statement of Claim, the said 2nd and 3rd Defendants say that the Plaintiff's Stool has never been the owner of the land claimed in the Writ nor has the said land been in any way attached to the said Plaintiff's Stool and the said Defendants emphatically deny that the said land has ever been in the possession and occupation of the Plaintiff and his predecessors from time immemorial— And the said 2nd and 3rd Defendants say that the Major Portion of the land claimed has belonged to them together with the 1st Defendant from time immemorial and that it is subjects of the respective stools of the Defendants that have been in possession and occupation from time immemorial and have cultivated extensively up to date hereof. 30

4.—Paragraph 3 of the Plaintiff's Statement is admitted, but with the amplification or further explanation that Osei Tutu is the Head Chief of Wusuta and Chief Tawia, his sub-chiefs and David Akuamoah his subject.

In the  
Supreme  
Court of  
the Gold  
Coast.

5.—In reply to paragraphs 4 and 5 of the Statement of Claim, it is emphatically denied that Chief Tawia ever sought and obtained leave from any predecessor of the Plaintiff before occupying his portion of the land in dispute, and the 2nd and 3rd Defendants say that to their knowledge Chief Tawia the 1st Defendant and his predecessors as Chiefs of Atipradaa, together with their subjects and peoples, occupied their portion of the land in dispute and were cultivating same long before the German advent in Togoland.

No. 7.  
Defence of  
Chiefs of  
Adukrom  
and  
Wusuta.  
5th  
February,  
1943—  
*continued.*

6.—In further answer to paragraphs 5 and 6 it is denied that any tolls were ever paid to the Plaintiff by any of the Defendants in respect of the said Defendants' occupation of the land—and the Defendants allege that all of them or their subjects and servants have occupied and cultivated the land in dispute as owners thereof without any question of paying tolls to any person or persons in respect of such occupation of the land.

7.—In answer to paragraph 7 of the Statement of Claim the 2nd Defendant denies that it was only in 1933 that he went into occupation of the land in dispute or that he obtained permission from the Plaintiff and paid tolls to the said Plaintiff—and the 2nd Defendant says that his predecessors had occupied and lived on the land before him—and that he himself has been on the land for a long time without paying tolls to any person.

8.—The Defendants admit paragraph 8 of the Statement of Claim, and say that they have always maintained that the land is their Stool land—and the Defendants deny that the Plaintiff is entitled to either or both of the Reliefs claimed in the Writ.

Dated at Azinyo Chambers Accra this 5th day of February, 1943.

30

(Sgd.) K. ADUMUA-BOSSMAN,  
*Solicitors for Defendants.*

The Registrar, Divisional Court, Accra,  
and to the above-named Plaintiff Nana  
Kofi Baadu II of Bukuruwa Kwahu,  
his Solicitor or Agent, Accra.

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## No. 8.

## Defence of Chief of Atipradaa.

In the  
Supreme  
Court of  
the Gold  
Coast.

—  
No. 8.  
Defence of  
Chief of  
Atipradaa.  
13th April,  
1943.

IN THE SUPREME COURT OF THE GOLD COAST EASTERN PROVINCE,  
DIVISIONAL COURT, ACCRA.

A. D. 1943.

Transferred Suit No. 1/1942.

NANA KOFI BAADU II of Bukuruwa, Kwahu ... .. *Plaintiff*  
*versus*  
CHIEF TAWIA of Atipradaa and DAVID AKUAMOA alias  
Yaw Koi of Adukrom ... .. *Defendants* 10  
OSEI TUTU of Wusuta ... .. *Co-Defendant.*

STATEMENT OF DEFENCE on behalf of CHIEF TAWIA of Atipradaa  
herein referred to as the 1st Defendant.

1.—The 1st Defendant admits paragraph 3 of the Plaintiff's Statement of Claim but with the amplification that he the said 1st Defendant is a sub-chief of Osei Tutu of Wusuta the 3rd Defendant herein.

2.—Save and except the admission contained in paragraph 1 supra 1st Defendant denies each and every allegation contained in paragraphs 1, 2, 4, 5, 6, 7 and 8 of the Plaintiff's Statement of Claim.

3.—In further answer to paragraph 2 of the said Statement of Claim 20 the 1st Defendant says that part of the land in dispute now in the occupation and possession of the 1st Defendant has never at any time within human memory formed part of the Stool lands of the Plaintiff and that the Plaintiff and his predecessors-in-title have never been in possession and occupation of the said land.

4.—In further answer to paragraphs 4, 5 and 6 the 1st Defendant says that his predecessor-in-title as sub-chiefs of the Wusuta Divisional Chief and their subjects, long before the time of his Father the said Adom and long before the advent of the Germans in Togoland, occupied, possessed and quietly enjoyed without interruption his portion of the land in dispute 30 which has since been attached to the sub-stool of Atipradaa with the Customary Licence of the Divisional Chief of Wusuta and his predecessors-in-title; and that they the 1st Defendant, his predecessors-in-title and their subjects have since their possession of the said land from time immemorial built a number of villages on the said land, one of the villages being Atikpaleh the Stool Headquarters of the sub-stool of Atipradaa.



5.—The 1st Defendant therefore prays that inasmuch as the said land has from time immemorial formed part of the Stool-lands of the Wusuta Division the Plaintiff is not entitled to the Declaration and Relief sought in his said Statement of Claim.

Dated at Kwakwaduam Chambers Accra this 13th day of April, 1943.

(Sgd.) AKUFO ADDO,  
*Solicitor for 1st Defendant.*

To the Registrar, Divisional Court, Accra,  
and to the above-named Plaintiff Nana  
10 Kofi Baadu II of Burkuruwa Kwahu, or  
his Solicitor.

In the  
Supreme  
Court of  
the Gold  
Coast.

No. 8.  
Defence of  
Chief of  
Atipradaa.  
13th April,  
1943—  
*continued.*

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No. 9.

Application by Chief of Nkwatia for joinder of himself as Co-defendant.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN PROVINCE,  
DIVISIONAL COURT, ACCRA.

NANA KOFI BAADU II of Bukuruwa, Kwahu ... .. *Plaintiff*  
*versus*  
CHIEF TAWIA of Atipradaa, Yaw Koi of Adukrom ... .. *Defendants*  
OSEI TUTU of Wusuta ... .. *Co-Defendant.*

No. 9.  
Application  
by Chief of  
Nkwatia  
for joinder  
of himself  
as Co-  
defendant.  
31st  
January,  
1944.

20 Take Notice that this Honourable Court will be moved by EDMUND  
ALEXANDER BANNERMAN of Counsel for and on behalf of CHIEF DWAMENA  
AYIRIPEH II of Nkwatia Kwahu for an Order joining him as a Defendant  
in the above-named suit upon the grounds set forth in the Affidavit in  
support hereof: And for such other Order or Orders as to the Court may  
seem fit.

To be Moved on Tuesday the 8th day of February, 1944, at 8.30 o'clock  
in the forenoon or so soon thereafter as Counsel can be heard.

Dated at Accra the 31st day of January, 1944.

(Sgd.) E. A. BANNERMAN,  
*Solicitor for Applicant.*

30 The Registrar, Divisional Court, Accra,  
and to the above-named Plaintiff or his  
Solicitor, Accra, and to the above-named  
Defendants and Co-Defendant their  
Solicitors or Agents, Accra.

## No. 10.

In the  
Supreme  
Court of  
the Gold  
Coast.

**Affidavit in support of application for joinder of the Chief of Nkwatia.**

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN PROVINCE,  
DIVISIONAL COURT, ACCRA.

No. 10.  
Affidavit in  
support of  
application  
for joinder  
of the  
Chief of  
Nkwatia.  
31st  
January,  
1944.

NANA KOFI BAADU II of Burkuruwa, Kwahu ... .. *Plaintiff*  
*versus*  
CHIEF TAWIA of Atipradaa, DAVID AKUAMOA alias  
Yaw Koi of Adukrom, ... .. *Defendants*  
OSEI TUTU of Wusuta ... .. *Co-Defendant.*

AFFIDAVIT of OKYEAME ASARE ABROKWA and ADIHYEHENE KWAKU 10  
MENSAH in support of Motion herein.

We, OKYEAME ASARE ABROKWA and OPANYIN KWAKU  
MENSAH of Nkwatia-Kwahu make oath and say as follows :—

1.—That we are the linguist and Adikyehehe respectively of Nkwatia  
Stool and have the authority and consent of the Ohene and Elders of  
Nkwatia to depose to the facts herein in support of this application on  
behalf.

2.—That in the above-named suit now pending before this Honourable  
Court the Plaintiff claims against the Defendants a Declaration of Title to  
all that piece or parcel of land situate at Kwaekesiem in Kwahu and bounded 20  
on the North by River Faa on the South by River Afram on the East by  
River Volta and on the West by the Plaintiff's Stool land and also for an  
injunction restraining the Defendants from interfering with Plaintiff's  
ownership.

3.—The land described above forms part of the Stool lands of Nkwatia  
and has belonged to our Stool from time immemorial.

4.—On the 29th October, 1943 the Ohene of Nkwatia received a letter  
from Nana Osei Tutu of Wusuta, the Co-Defendant informing him of the  
proceedings herein pending before the Court and of an Order by this  
Honourable Court requesting all parties to point out their boundaries to 30  
Surveyors (I crave leave to refer to the said letter).

5.—On the 22nd of November, 1943 Nana Kofi II the Plaintiff herein,  
also wrote to the Ohene of Nkwatia informing him of the above-named  
suit and asked him to send some elders of Nkwatia to witness the survey  
of the land in dispute (I crave leave to refer to the said letter).

6.—The Ohene of Nkwatia sent some of his elders to witness the survey  
and they discovered that practically the whole land in dispute is Nkwatia.

Stool land and that there are about 27 villages on the said land founded by and belonging to Nkwatia people.

7.—The Applicant as Ohene of Nkwatia has interest in the lands claimed by the parties herein and will be vitally affected by the result of the suit particularly as both the Plaintiff and the Co-Defendant have brought the proceeding herein to his notice.

8.—We make this Affidavit in support of the application herein for an Order of Joinder of the Applicant herein as a Defendant in the above-named suit.

10 Sworn at Accra this 31st day of January, 1944, the foregoing having been first read over interpreted and explained to the Deponents by E. K. Ofori in the Twi language when they seemed perfectly to understand the same before affixing their signatures or marks thereto.

(Sgd.) OKYEAME ASARE ABROKWA  
His  
OPANYIN KWAKU MENSAH X  
Mark

(Sgd.) E. K. OFORI  
*Interpreter.*

Before me,

20 (Sgd.) B. CROSBY DAVIES  
*Commissioner for Oaths.*

In the Supreme Court of the Gold Coast.

No. 10.  
Affidavit in support of application for joinder of the Chief of Nkwatia.  
31st January, 1944—  
*continued.*

No. 11.

**Affidavit of the Chief of Bukuruwa in opposition to joinder of Chief of Nkwatia as Defendant.**

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN PROVINCE  
DIVISIONAL COURT, ACCRA.

NANA KOFI BAADU II of Bukuruwa, Kwahu ... .. *Plaintiff*

and  
CHIEF TAWIA of Atipradaa, DAVID AKUAMOA alias

30 Yaw Koi of Adukrom ... .. *Defendants*

OSEI TUTU of Wusuta ... .. *Co-Defendant.*

I, KOFI BAADU, Ohene of Bukuruwa, and the Plaintiff in the above-named case, make oath and say :—

1.—The Affidavit of Okyeame Asare Abrokwa and Opanyin Kwaku Mensah of Nkwatia sworn to herein has been read and interpreted to me.

2.—Paragraphs 3, 6 and 7 of the said Affidavit are untrue.

3.—I crave leave to refer to the Writ of Summons and the Pleadings of the several parties herein, and to all the other papers in the case.

No. 11.  
Affidavit of the Chief of Bukuruwa in opposition to joinder of Chief of Nkwatia as Defendant.  
10th February, 1944.

In the Supreme Court of the Gold Coast,

No. 11.  
Affidavit of the Chief of Bukuruwa in opposition to joinder of Chief of Nkwatia as Defendant.  
10th February, 1944—  
*continued.*

4.—About two years ago I took out a Writ of Summons against the Ohene of Nkwatia who seeks to be made a Co-Defendant herein for the demarcation of the boundary between our respective Stool lands. The matter was submitted to the arbitration on the Kwahu State Council who subsequently gave a decision and demarcated the boundaries between our Stool lands.

5.—The lands the subject matter of the above action do not include any portion of any lands which is the property of the said Nkwatia Stool.

6.—I will be greatly embarrassed in the presentation of my case should the said Ohene of Nkwatia be joined herein as a Co-Defendant. 10

7.—And I make this Affidavit in opposition to the application of the said Ohene of Nkwatia for a joinder.

Sworn at Accra this 10th day of February, 1944, the foregoing having been first read over interpreted and explained to the Deponent by me in the Twi language when he seemed perfectly to understand the same before affixing his mark thereto

KOFI BAADU

His  
X  
Mark

20

Before me

(Sgd.) V. L. BUCKLE,  
*Commissioner for Oaths.*

**No. 12.**

No. 12.  
Court Notes granting application for joinder of Chief of Nkwatia as Defendant.  
11th February, 1944.

**Court Notes granting application for joinder of Chief of Nkwatia as Defendant.**

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN PROVINCE held at VICTORIABORG, ACCRA, on Friday the 11th day of February, 1944, before His Honour Mr. Justice QUASHIE-IDUN, Ag. J.

MOTION—

NANA KOFI BAADU II *v.* CHIEF TAWIA AND OTHERS. 30

Motion on Notice for Order joining CHIEF DWAMENA AYIREPEH II as Defendant.

MR. BANNERMAN for Applicant.

MR. SAWYERR for Plaintiff.

MR. ATTOH for Mr. BOSSMAN for 2nd and 3rd Defendants states leave matter for Court.

Mr. Bannerman moves in terms of Motion Paper and Affidavit. Refers to paragraphs 2, 3, 4, 5, 6 and 7 of Affidavit. Refers to Schedule 3 Order 3

Rule 5. The claim is for a declaration of title to land not for remedy against persons for a tort. Judgment *in rem* would affect us. Refers to English and Empire Digest on Pleading Practice, etc. page 411, pp. 1104—

10 Mr. Sawyerr argues *contra* · submits that the Applicant is not entitled to be joined as a party. Rule 5 Order 3 gives a discretionary power. Submits that there is no common question of fact or law between Plaintiff and the Applicant. Refers to Order 14 Rule 4 of the White Book. The Applicant's remedy is to bring action against the parties before the Court for trespass. If the Order is made it will embarrass the Plaintiff at the trial especially at this stage. Submits that the application should not be granted.

Mr. Bannerman replies :—Submits that as to paragraph 4 of the Affidavit of the Plaintiff the allegation is denied and that even if it is true, it would be a matter of estoppel against the Applicant and if it is maintained, Applicant can be struck out from the suit. Refers to 1943 White Book page 247 Order 14 Rule 4. Submits that only Defendant can claim to be embarrassed.

20 BY COURT—After reading Affidavit filed in this matter and hearing Counsel the Court hereby orders that the Applicant be joined as a Co-Defendant in the suit. Applicant to be served with a copy of the Writ of Summons and all papers filed in the proceedings—application by Applicant. Applicant to file Statement of his Defence within 21 days and reply thereto by Plaintiff and other parties within 14 days.

Mr. Bannerman states that Order should be made for Applicant to point out the land to the Surveyor.

BY COURT—Let Applicant point out to the Surveyor the land in order that same may be demarcated—Plans to be submitted to the Court. Costs of this to be borne by Applicant. Costs of this Motion allowed Applicant assessed at £2. 10/- against the Plaintiff.

(Sgd.) S. O. QUASHIE-IDUN,  
Ag. J.

No. 13.

30 Certificate of substitution of Dzabra II.

CERTIFICATE OF THE ORDER OF THE COURT IN THE WEST  
AFRICAN COURT OF APPEAL.

MOTION *Ex-parte* for the Plaintiff-Appellant herein for an Order for the substitution of Dzaba II, the newly installed Chief of Wusuta in place of the Defendant-Respondent Osei Tutu, who has been destooled And for such further Order or Orders therein as to this Honourable Court may seem fit.

Dated the 12th day of October, 1944.

Supreme Court of the Gold Coast.

No. 12  
Court Notes granting application for joinder of Chief of Nkwatia as Defendant.  
11th February, 1944—  
*continued.*

In the West African Court of Appeal.

No. 13.  
Certificate of substitution of Dzabra II.  
14th October, 1944.

In the West African Court of Appeal  
 No. 13.  
 Certificate of substitution of Dzabra II. 14th October, 1944—  
*continued.*

NANA KOFI BAADU II ... .. *Plaintiff-Appellant*  
*v.*  
 CHIEF TAWIA, DAVID AKUAMOA alias Yaw Koi,  
 OSEI TUTU of Wusuta and CHIEF DWAMENA  
 AYIREPEH II ... .. *Defendants-Respondents.*

This Motion coming on for hearing on the 14th day of October, 1944, before Doorly, Ag. C.J., Gold Coast, sitting as a single Judge of Appeal in the presence of Hon. A. Sawyerr for the Applicant.

I hereby certify that an Order was made as follows :—

Substitution as prayed. 10

Given under my hand and the Seal of the Court this 14th day of October, 1944.

(L.S.) (Sgd.) A. N. DOORLY,  
 Ag. Chief Justice.

No. 14.  
 Certificate dismissing appeal of the Chief of Bukuruwa against the joinder of the Chief of Nkwatia. 22nd November, 1944.

No. 14.  
**Certificate dismissing Appeal of the Chief of Bukuruwa against the joinder of the Chief of Nkwatia.**

CERTIFICATE OF THE ORDER OF THE COURT IN THE WEST AFRICAN COURT OF APPEAL.

Appeal from the Order of Quashie-Idun, Ag. J., of the Divisional 20 Court of the Eastern Province, Acera, dated the 11th day of February, 1944.

NANA KOFI BAADU II of Bukuruwa, Kwahu *Appellant*  
*versus*  
 CHIEF TAWIA of Atipradaa and DAVID  
 AKUAMOA alias Yaw Koi of Adukrom ... *Defendants-Respondents*  
 DZABA II, Ohene of Owusutaa and CHIEF  
 DWAMENA AYIREPEH II of Nkwatia-Kwahu *Co-Defendants-Respondents.*

This appeal coming on for hearing on the 22nd day of November, 1944, before Kingdon, C.J., Nigeria (President), Harragin, C.J., Gold Coast, and Doorly, J., Gold Coast, in the present of Hon. A. Sawyerr for the Appellant, 30 and Mr. N. A. Ollenu for the Respondents.

I Hereby Certify that a Judgment was given as follows :—

The appeal is dismissed with costs assessed at £21.10.6 in favour of Chief Dwamena Ayiripeh II.

The Court below to carry out.

Given under my hand and the Seal of the Court this 22nd day of November, 1944.

(L.S.) (Sgd.) DONALD KINGDON,  
 President.

No. 15.

Notice of Motion by the Chief of Bukuruwa for joinder of the Paramount Chief of Kwahu as Co-Plaintiff.

In the Supreme Court of the Gold Coast.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN JUDICIAL DIVISION,  
LANDS COURT, ACCRA.

No. 15.  
Notice of motion by the Chief of Bukuruwa for joinder of the Paramount Chief of Kwahu as Co-Plaintiff.  
24th August, 1945.

NANA KOFI BAADU, of Bukuruwa, Kwahu ... .. Plaintiff

*versus*

CHIEF TAWIA of Atipradaa, DAVID AKUAMOA alias Yaw Koi  
of Adukrom and OSEI TUTU of Wusuta ... .. Defendants

10 CHIEF DWAMENA AYIREPEH II of Nkwatia, Kwahu ... .. Co-Defendant.

Motion on Notice by AKILAGPA SAWYERR of Counsel for the above-named Plaintiff for an Order for Nana Akuamoia Akyeamong Omanhene of Kwahu to be joined as a Plaintiff herein.

And for such further Order or Orders therein as to this Honourable Court might seem fit.

To be Moved on Saturday the 25th day of August, 1945, at 8.30 o'clock in the forenoon or so soon thereafter as Counsel for the Plaintiff may be heard.

Dated at Accra this 24th day of August, 1945.

20

(Sgd.) AKILAGPA SAWYERR,  
*Solicitor for the Plaintiff.*

The Registrar, Lands Court, Accra.  
The Defendants or their Agent or Solicitor, Accra, and to the above-named Co-Defendant his Agent or Solicitor, Accra.

Upon the 25th day of August, 1945, I hereto effect service on K. A. Bossman, N. A. Ollennu and Akufo Addo but they refused to accept service and say that service should be effected on their clients personally.

30

(Sgd.) TITUS EPU,  
*Bailiff.*



In the  
Supreme  
Court.

No. 16.

**Affidavit of Kwasi Amoa in support of Motion for joinder of Paramount Chief of Kwahu.**

No. 16.  
Affidavit of  
Kwasi  
Amoa in  
support of  
motion for  
joinder of  
Paramount  
Chief of  
Kwahu.  
24th  
August,  
1945.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN JUDICIAL DIVISION,  
LANDS COURT, ACCRA.

NANA KOFI BAADU II of Bukuruwa, Kwahu ... .. *Plaintiff*  
*versus*  
CHIEF TAWIA of Atipradaa, David AKUAMOA alias Yaw Koi  
of Adukrom and OSEI TUTU of Wusuta ... .. *Defendants*  
CHIEF DWAMENA AYIRIPEH II of Nkwatia, Kwahu ... .. *Co-Defendant.* 10

AFFIDAVIT of KWASI AMOA.

I, KWASI AMOA of Abene in the Kwahu District, but now at Accra make oath and say :—

1.—I am the Kyidomhene of Abene aforesaid and have been sent by the Omanhene of Kwahu, Nana Akuamoa Akyeampong to swear to this Affidavit on his behalf.

2.—All the lands in the Kwahu District are under the said Omanhene and his Sub-Chiefs throughout the whole District look after their respective portions of the said lands on his behalf.

3.—The land the subject matter of the above action is a portion of the 20 lands under the said Omanhene who has great interest therein.

4.—I make this Affidavit in support of the application of the said Omanhene to be made a Co-Plaintiff herein.

Sworn at Accra, this 24th day of August, 1945, after the foregoing had been read over interpreted and explained to the within-named Kwasi Amoa in the Twi language by Emml. Otukwa when he seemed perfectly to understand the same before making his mark	}	KWASI AMOA	His X Mark
		Witness to Mark : (Sgd.) EMM. OTUKWA in Krontihene.	30

Before me,  
(Sgd.) R. A. BANNERMAN,  
*Commissioner for Oaths.*



No. 17.

Court Notes as to joinder of Paramount Chief of Kwahu.

25th August, 1945.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN JUDICIAL DIVISION, held at Victoriaborg, Accra, on Saturday, the 25th day of August, 1945, before M'CARTHY, Acting Chief Justice.

In the Supreme Court.

No. 17.  
Court Notes as to joinder of Paramount Chief of Kwahu. 25th August, 1945.

NANA BAADU II v. CHIEF TAWIAN AND OTHERS.

APPLICATION FOR JOINDER OF OMANHENE AS CO-PLAINTIFF.

10 SAWYERR for Nana Akuamoaa Akyeampong Omanhene of Kwahu states that Notice of Motion has not been served on Defendants, but asks that Motion be heard *ex-parte* as obviously the Omanhene has an interest in the case and has a right to become a party.

BY COURT :

An Order will be made *ex-parte* for joinder of the Omanhene as Co-Plaintiff. Notice of this Order to be given to all interested parties.

Liberty to apply within 14 days of service of Notice.

Omanhene to be served with copies of Pleadings filed. Statement of Claim to be delivered within 14 days, 14 days for Defence, and 7 days for

20 Reply (if any).

L. M.



In the  
Supreme  
Court.

No. 18.

Order for joinder of Paramount Chief of Kwahu.

No. 18.  
Order for  
joinder of  
Paramount  
Chief of  
Kwahu.  
25th  
August,  
1945.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN JUDICIAL  
DIVISION, LAND COURT, ACCRA.

Transferred Suit No. 1/1942.

(L.S.)

(Sgd.) L. V. M'CARTHY,  
*Acting Chief Justice.*

NANA KOFI BAADU II, of Bukuruwa, Kwahu ... .. *Plaintiff*

*versus*

10

CHIEF TAWIA of Atipradaa DAVID AKUAMOA alias  
Yaw Koi of Adukrom and OSEI TUTU of Wusuta ... .. *Defendants*

CHIEF DWAMENA AYIRIPEH II of Nkwatia, Kwahu ... .. *Co-Defendant.*

ORDER FOR JOINDER.

Upon Hearing Mr. Akilagpa Sawyerr of Counsel for the Plaintiff herein And Upon Reading the Affidavit of Kwasi Amoah, Kyidomhene of Abene, filed on 24th August, 1945, in support of application for an Order for Nana Akuamoah Akyeampong, Omanhene of Kwahu, to be joined as Co-Plaintiff herein :

It is Ordered that the said Nana Akuamoah Akyeampong, Omanhene of Kwahu, be joined as Co-Plaintiff in the above named case and that he be 20 served with copies of the Pleadings filed herein.

It is Further Ordered that the said Co-Plaintiff deliver his Statement of Claim within 14 days : Defendant's Statement of Defence to be filed 14 days thereafter, and Co-Plaintiff's Reply (if any) within 7 days after service of the Defence.

It is Further Ordered that Notice of his Order be served on all parties interested and that Liberty is granted to either party to apply within 14 days of service of Notice.

Given under my hand and the seal of the said Court at Victoriaborg, Accra, the 25th day of August, 1945.

30

(Sgd.) K. O. QUANSAH,  
*Registrar, Divisional Court.*

## Statement of Claim of the Paramount Chief of Kwahu.

In the  
Supreme  
Court.IN THE SUPREME COURT OF THE GOLD COAST, EASTERN JUDICIAL  
DIVISION, LANDS COURT, ACCRA.No. 19.  
Statement  
of Claim of  
the  
Paramount  
Chief of  
Kwahu.  
7th  
September,  
1945.NANA KOFI BAADU II of Bukuruwa ... .. *Plaintiff*  
NANA AKUAMOA AKYEAMPONG Omanhene of Kwahu, Abene *Co-Plaintiff*  
*versus*CHIEF TAWIA of Atipradaa DAVID AKUAMOA alias Yaw  
Koi of Adukrom, OSEI TUTU of Wusuta, and CHIEF  
10 DWAMENA AYIRIPEH II of Nkwatia, Kwahu ... .. *Defendants.*

## CO-PLAINTIFF'S STATEMENT OF CLAIM.

1.—The Co-Plaintiff is the Omanhene of Kwahu, and the Paramount Chief of the Kwahu State; the Plaintiff being the Ohene of Bukuruwa and one of his Sub-chiefs.

2.—All the lands in the said Kwahu State are under the jurisdiction of the Co-Plaintiff and are owned and possessed by the different Chiefs and Subchiefs of the said State for and on behalf of themselves and the Co-Plaintiff as the Paramount Chief of the said Kwahu State.

3.—The land the subject matter of the above suit is in the said State, and under the jurisdiction of the Co-Plaintiff. The said land has been  
20 attached to the Stool of the Plaintiff from time immemorial for and on behalf of said Plaintiff and the Co-Plaintiff as the Omanhene of Kwahu; and the Plaintiff serves the Co-Plaintiff with the said land.

4.—None of the Defendants herein own or possess the said land or any portion thereof or is in any way entitled thereto. And the Co-Plaintiff claims :—

(a) A Declaration that the land the subject matter of the above suit is a portion of the Kwahu lands attached to and possessed by the  
30 Stool of the Plaintiff for and on behalf of the said Plaintiff and the Co-Plaintiff.

(b) And an Injunction to restrain the Defendants, their agents and servants from cultivating the said land or in anywise interfering with the ownership thereof of the Plaintiff, and Co-Plaintiff.

Dated at Accra this 7th day of September, 1945.

(Sgd.) AKILAGPA SAWYERR,  
*Solicitor for Plaintiff.*

The Registrar, Eastern Judicial Division,  
Accra, and to the above-named Defendants  
their Agents or Solicitors, Accra.

In the  
Supreme  
Court.

No. 20.

Order for substitution of Yaw Nkansah II as acting-Chief of Bukuruwa.

No. 20.  
Order for  
substitution  
of Yaw  
Nkansah II  
as acting  
Chief of  
Bukuruwa.  
27th  
September,  
1945.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN JUDICIAL  
DIVISION, LAND COURT, ACCRA.

(L.S.)

Transferred Suit No. 1/1942.

(Sgd.) L. V. M'CARTEHY.

NANA KOFI BAADU II of Bukuruwa ... .. Plaintiff  
NANA AKWAMOA AKYEAMPONG Omanhene of Kwahu ... Co-Plaintiff

versus

CHIEF TAWIA of Atipradaa, DAVID AKUAMOA alias Yaw ... .. 10  
Koi of Adukrom, OSEI TUTU of Wusuta ... .. Defendants

CHIEF DWAMENA AYIRIPEH II of Nkwatia, Kwahu ... Co-Defendant.

ORDER FOR SUBSTITUTION.

Upon Hearing Mr. Akilagpa Sawyerr of Counsel for Plaintiffs herein,  
And Upon Reading the Affidavit of Yaw Nkansah II, Dsasehene of  
Bukuruwa filed on the 26th day of September, 1945, in support of an  
application for an Order for the substitution of Yaw Nkansah II, Dsashene  
of Bukuruwa in place of the above-named Nana Kofi Baadu II, the Plaintiff  
herein, now destooled :

It is Hereby Ordered that Yaw Nkansah II, Dsasehene of Bukuruwa, 20  
in his capacity as the proper person who according to Native Custom is to  
act as Ohene of Bukuruwa in the absence of a Mantse on the Stool be  
substituted as Plaintiff in place of the said Nana Kofi Baadu II.

It is Also Ordered that Notice of this Order be served on all parties  
concerned.

Given under my hand and the seal of the said Court at Victoriaborg,  
Accra, the 27th day of September, 1945.

(Sgd.) K. O. QUANSAH,  
Registrar Land Court.



No. 21.

## Order for substitution.

In the  
Supreme  
Court.IN THE SUPREME COURT OF THE GOLD COAST, EASTERN JUDICIAL  
DIVISION, LAND COURT, ACCRA.No. 21.  
Order for  
Sub-  
stitution.  
25th  
October,  
1945.

(L.S.)

Transferred Suit No. 1/1942.

(Sgd.) L. M'CARTHY.

YAW NKANSAH II, Dsasehene of Bukuruwa, Kwahu ... *Plaintiff*NANA AKWAMOA AKYEAMPONG Omanhene of Kwahu ... *Co-Plaintiff**versus*10 CHIEF TAWIA of Atipradaa, DAVID AKUAMOA alias Yaw  
Koi of Adukrom, OSEI TUTO of Wusuta ... .. *Defendants*CHIEF DWAMENA AYIRIPEH II, of Nkwatia, Kwahu ... *Co-Defendant.*

Upon Hearing Mr. Akilagpa Sawyerr of Counsel for the Plaintiffs herein And Upon Reading the Affidavit of Yaw Nkansah II, in support of application by *ex-parte* Motion for Order for the substitution of Wudam Kwasi, Acting Chief of Atipradaa in place of the Defendant Chief Tawia of Atipradaa And Chief Dzabra III, Chief of Wusuta in place of the Defendant Osei Tutu II herein :

20 It is Hereby Ordered that Wudam Kwasi, be substituted in his capacity as Acting Chief of Atipradaa for the Defendant Chief Tawia of Atipradaa, deceased.

It is Also Ordered that Chief Dzabra III be substituted in his capacity as Chief of Wusuta in place of Defendant Osei Tutu, destooled.

It is Further Ordered that Notice of this Order be served on all parties affected.

Given under my hand and seal of the said Court at Victoriaborg, Accra, the 25th day of October, 1945.

(Sgd.) K. O. QUANSAH,  
*Registrar Divisional Court.*

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In the  
Supreme  
Court.

No. 22.  
Court Notes.

12th September, 1946.

No. 22  
Court  
Notes.  
12th  
September,  
1946.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN JUDICIAL DIVISION,  
LANDS DIVISION, held at VICTORIABORG, ACCRA, on Thursday the  
12th day of September, 1946, before M'CARTHY, Ag. C.J.

YAW NKANSAH II AND OTHERS *v.* WUDANU KWASI AND OTHERS.

APPLICATION FOR JOINDER OF ASUO KWASI IV AS  
CO-DEFENDANT.

BOSSMAN for Applicant.

10

SAWYERR for Respondent.

Refers to Affidavit of Applicant of 15th August, 1946. Applicant  
was present at the time of the Survey and says that the area claimed  
embraces land belonging to him.

SAWYERR objects.

Refers to Affidavit of Yaw Nkansah of 11th September, 1946.

BY COURT—

The balance of convenience at this stage is against the joinder of yet  
another party, particularly as this would delay the hearing.

Application refused.

20

L. M.

YAW NKANSAH AND OTHERS *v.* WUDANU KWASI AND OTHERS.

CLAIM FOR DECLARATION OF TITLE TO LAND AND FOR AN  
INJUNCTION.

SAWYERR for Plaintiffs.

BOSSMAN for Defendants.

BOSSMAN states that he was instructed by Osei Tutu Chief of Wusuta  
to appear for his Stool. He was since destooled and Chief Djaba the new  
Chief was substituted for him. The new Chief has since seen him, but has  
not instructed him. He is not in a position therefore to appear for the  
Wusuta Stool. 30

DAVID AKUAMOA alias Yaw Koi present asks adjournment to enable  
him fully to instruct Bossman.

COURT CLERK produces letter from Chief Djaba II asking for  
adjournment on ground of ill-health.

SAWYERR points out that his clients have travelled several times to Accra from Togoland with their witnesses only to be sent back.

In the Supreme Court.

BY COURT—

The case must go on. The Writ was issued in 1942. For one reason or another it has not yet been started.

No. 22. Court Notes. 12th September, 1946—*continued.*

Chief Djaba who apparently is on a health trip could have sent some one to represent him.

10 Wudanu Kwasi has decided not to come without Chief Djaba (according to a letter of 23.8.46 on the file). This is his own affair.

David Akuamoah has had plenty of time to engage a Lawyer.

K. ASANTE is appointed Assessor.

SAWYERR opens—

Case transferred from Kwahu Tribunal by Order of Provincial Commissioner's Court dated 21.3.42 to the Divisional Court. Survey ordered by Divisional Court on 17th February, 1943, and Plan has been prepared.

Refers to pleadings.

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**PLAINTIFFS' EVIDENCE.**

**No. 23.**

**Kwamina Armah Kwantung, 1st Witness.**

Plaintiffs' Evidence.

20 KWAMINA ARMAH KWANTUNG,

1st Witness for Plaintiffs.

No. 23. Kwamina Armah Kwantung, 1st Witness. 12th September, 1946.

EXAMINATION-IN-CHIEF.

Licensed Surveyor living in Accra. I know the parties in this case. Upon instructions from this Court I began to survey the land in dispute in 1943. The boundary starts at the junction of the Volta and Afram Rivers, on the Western bank of the Volta.

Examination.

30 I was accompanied by Otukwa, representative of Badu, the Dsasehene of Bukuruwa and Plaintiff. Fia Yao (identified) represented the Chief of Wusuta. David Akuamoah was present, though not at the beginning. Various people representing the Defendants showed me the boundaries at various points.

Both sides showed me their boundaries and all their "sign of possession."

I made a Plan and sent a copy to this Court. It is signed 8th February, 1944. The area comprises about twenty square miles. I drew the Plan on Government Survey Sheets, showing the boundaries and additional details. (Tendered—marked Exhibit "A.")

Otukwa showed me the boundaries claimed by the Plaintiff, the Dsasehene of Bukuruwa. Otukwa lives at Asabi in South-East of land—

In the  
Supreme  
Court.

Plaintiffs'  
Evidence.

No. 23.  
Kwamina  
Armah  
Kwantung,  
1st  
Witness.  
12th  
September,  
1946.

Examina-  
tion—  
*continued.*

No. 24.  
Yaw  
Nkansah II,  
2nd  
Witness.  
12th & 13th  
September,  
1946.

Examina-  
tion.

it is shown on the Plan. Asabi is on the bank of the Volta and is an old village.

Also Nkami which is under another Chief subordinate to Bukuruwa. It is an old village.

Amankwakrom is in middle of land. Another old village Odonkorkromm also in middle of land is another old village. Oprida is another. There is a new village, by the site of the ruins of an old village.

Santaboma is on the west. Another old village a fetish priest lives there. I marked fetishes with a Red Cross. There is a fetish at Asabi, another at Santaboma, and one at Fenfaro (South of Asabi).

The Defendants showed me a lot of villages. They appeared to be definitely of more recent origin than those pointed out by the Plaintiff. Some were quite new.

DAVID AKUAMOA asks leave to reserve right to cross-examine. Leave granted.

10

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No. 24.

Yaw Nkansah II, 2nd Witness.

YAW NKANSAH II, Sworn, states :  
2nd Witness for Plaintiffs.

**EXAMINATION-IN-CHIEF.**

20

I am Dsasehene of Bukuruwa, Kwahu State. I live at Asabi. I know the Defendants in this case. They belong to Wusuta. (Sawyerr says that Chief Dwamena Ayiripeh is a Kwahu Chief, and decided to retire from the case when the Omanhene of Kwahu joined as Co-Plaintiff).

The land in dispute belongs to the Stool of Bukuruwa which serves the Paramount Stool of Kwahu. The Ohene of Bukuruwa has been destooled. I am acting for him.

The Chief of Bukuruwa does not live on the land. Various Sub-chiefs look after the land for him.

The tradition is this. In old days the Chief of Bukuruwa, Nana Baadu was King of all Kwahus.

A Kwahu Chief, Nana Ataalafinan lived on the land in dispute at Janbuafo. There was trade between the Kwahus and Northern Territories people in kola. The chief Trade Route ran through the land in dispute.

The subjects of Ataalafinan used to kill the Northern Territories traders. This was reported to King Baadu who ordered that this should cease. The order was disregarded so King Baadu declared War on Ataalafinan who was defeated and driven from the land.

The land was taken over by Nana Baadu, who built on it the town of Asabi which means "Some Wars are good." Baadu was succeeded by Nana Adom. At that time the Akwamus were at Nyanawasi, and migrated to either side of the Volta. They fought with the Kwahus under Adom,

40



who was killed. That was about 1730. The Akwamus became established in their present territories, but did not displace the Kwahus from Asabi on the land in dispute. In the Supreme Court.

Ever since then the Kwahus have remained in possession.

As a result of this War the Stool of Abene became the Paramount Stool of Kwahu. Plaintiffs' Evidence.

The Kwahus have villages on the land, hunt and farm on it. The Asabi Stool serves the Bukuruwa Stool. Bukuruwa is about ten miles west of the land in dispute. The boundaries of the land in dispute are shown in Red on Exhibit "A." The land is part of the lands of the Bukuruwa Stool. No. 24. Yaw Nkansah II, 2nd Witness. 12th & 13th September, 1946.

I am Dsasehene of Bukuruwa, Otukwa is the Mankrado. We both live at Asabi and look after the land in that locality.

Chief Kweku Domfe looks after another part of land in dispute. Chief Okuntun Djiawu of Asabi looks after another portion. Chief Kwame Kai of Donkorkrom looks after another portion. Donkorkrom is near Edukrom where Defendant Akuamoa lives. Examination—continued.

Kofi Yentumi of Santaboma looks after another portion. Kojo Korie and Kwasi Baadu of Abomasalifu look after another. Kofi Yeboa of Esikesu does likewise. We have numerous headmen of the land each in charge of a portion.

The original Defendants were Chief Tawia of Atipradaa (on the land in dispute) and David Akuamoa. Chief Tawia is dead, and Chief Wudanu Kwasi was substituted for him.

Chief Tawia's father called Adom obtained permission from Brakatu, a predecessor of mine, to live on the land, for farming and hunting. This was done. He was put on land called by us Odwenwinasi, but by the Wusutas "Atipradaa." They made it a town. Adom came from Wusuta across the Volta. He sought refuge with us because of the trouble given him by the Germans.

Adom lived on the land giving tribute in kind—the fore legs of big game and one tusk of each elephant killed on the land.

On his death he was succeeded by his son Chief Tawia, who rendered tribute up to '1939, when he stopped.

Adjourned to tomorrow.

L. M.

13th September, 1946.

SAWYERR for Plaintiffs.

BOSSMAN asks for adjournment until Monday to enable him to get in touch with Chief Djaba.

Application refused.

EVIDENCE OF YAW NKANSAH (*continued*)—

YAW NKANSAH :

David Akuamoa came to Bukuruwa and asked Nana Kofi Baadu II for land for farming. Being a Presbyter he made his application through

In the  
Supreme  
Court.

Plaintiffs'  
Evidence.

No. 24.  
Yaw  
Nkansah II,  
2nd  
Witness.  
12th & 13th  
September,  
1946.

Examina-  
tion—  
*continued.*

the Presbyters of Bukuruwa. That was in 1933. He belongs to Aveme in Wusuta. He was allotted a portion of the land in dispute under the ebusa system, that is, he agreed to pay one third of proceeds of land to the Chief as landlord Kwami Mikai was deputed by the Chief to take Akuamoa to the caretaker of that part of the land. Ata Koranyemi, who was living at Donkwakrom. He was given land for residence and farming.

After successful farming he started to pay tribute. First £5, once £50. The amounts varied. He stopped payment in 1939. He said that the Wusutas were claiming the land and he could not go on paying. He was called before the Chief of Bukuruwa and stated this in the presence of the 10 Presbyters.

When Chief Baadu agreed to let Akuamoa live and farm on his land a paper was prepared and executed by Akuamoa and other people on behalf of whom Akuamoa acted as well as for himself. This is it—It is dated 3.5.1933 (Marked " 1 " for identification). This is another document dated 13.7.36 (Marked " 2 " for identification).

These documents were handed to me by Ex Chief Baadu for this case. I was not present when they were made.

(Akuamoa asks leave to reserve his cross-examination of the Witness until Monday when he hopes to have retained a Lawyer—states that he is 20 not prepared to cross-examine now.)

No. 25.  
Kweku  
Dumfe,  
3rd  
Witness.  
13th  
September,  
1946.

Examina-  
tion.

No. 25.

Kweku Dumfe, 3rd Witness.

KWEKU DUMFE, Sworn, states :  
3rd Witness for Plaintiffs.  
EXAMINATION-IN-CHIEF.

I live at Ahupe on Bukuruwa Stool land. I knew one Tawiah at Asabi. I knew his father—Tawia farmed on land in dispute, and lived at Atipradaa. His father Adom came and obtained permission from Asafohene Brakatu who lived on the land to occupy part of it. I was present. I went 30 with my uncle Ofori Kwao to Asabi as Brakatu sent for us. Brakatu told us of Adom's request. My uncle Ofori and Brakatu agreed to give Adom land upon condition that he gave the fore legs of game, the tail and one tusk of all elephants killed on the land, also one shoulder of big game killed, as tribute. At the yearly Odwira ceremony he was to bring yam, one sheep and a bottle of drink.

He agreed, and farmed and hunted on the land, and observed the conditions. The arrangement was reported to Chief Baadu of Bukuruwa.

When Adom died he was succeeded by Tawiah, his son. He also observed the condition of tenure until a short time before the last German 40 War.

On my uncle's death a long time ago I succeeded him.  
(Akuamoa wishes to reserve cross-examination.)

## No. 26.

Thomas Sampon, 4th Witness.

THOMAS SAMPON, Sworn, states :

4th Witness for Plaintiffs.

EXAMINATION-IN-CHIEF.

I am a Presbyter of the Presbyterian Church at Bukuruwa. I am a farmer. I know Defendant Akuamoa. He came to Bukuruwa and introduced himself to our Minister and the Presbyters as a Presbyter of Aveme Dzara. He wanted us to approach Nana Baadu for land. We went  
10 with him to the Chief, who agreed to let him have a portion of the land.

Akuamoa gave two bottles of Schnapps to the Chief and two bottles to the Queen Mother. He said he wanted land in locality of Adukrom. The Chief directed him to Ata Koranyemi, and pointed out to him land that would suit him. Koranyemi lives at Donkorkrom on land in dispute. He and Kofi Yeboa allotted land to Akuamoa.

This was reported to the Chief who in presence of the Presbyters informed Akuamoa of the conditions of his tenure. A paper was prepared by Akuamoa's son Akufo alias Kwasi Akuamoa. I made my mark to the paper, as did others. I can sign my name and read Twi. This paper  
20 marked " 1 " for identification is the paper I and others Kwadjo Danso and Kofi Ampedu made our marks as Witnesses.

Akuamoa made his mark, after the contents had been read over to all in Twi, and all agreed. Besides Akuamoa there was with him his son. I do not remember that there were other people with him. I remember now that some other Togolanderns came with Akuamoa, and joined him applying for land. They also joined in marking the paper.

No Cross-examination.

In the  
Supreme  
Court.Plaintiffs'  
Evidence.No. 26.  
Thomas  
Sampon,  
4th  
Witness.  
13th  
September,  
1946.Examina-  
tion.

In the  
Supreme  
Court.

## No. 27.

## Robert Kojo Kaanning, 5th Witness.

Plaintiffs'  
Evidence.

No. 27.  
Robert  
Kojo  
Kaanning,  
5th  
Witness.  
13th  
September,  
1946.

Examina-  
tion.

ROBERT KOJO KAANNING, Sworn, states :  
5th Witness for Plaintiffs.

## EXAMINATION-IN-CHIEF.

I live at New Koforidua in Ashanti Akim. I am Produce Buyer. I know the land in dispute, and have known it since 1909. I was then a Preventive Officer. My last station was Ahupe on the land in dispute. I resigned in 1913, and I joined the Gold Coast Regiment in 1914. I was discharged from the Regiment in 1919.

I obtained some land near Asabi for farming in 1930. I got it from Kwadjo Kankan the Chief of Asabi. The land is in the land in dispute. I lived and farmed on it.

I knew Chief Tawiah, because my farm was near his village. About 1932 I found that sawyers had trespassed on my land. I spoke to Chief Tawiah about it in the presence of his sons. He told me to report to the Chief of Asabi, the owner of the land.

I did not pay tribute. I bought the land.

No Cross-examination.

10

## No. 28.

## Emmanuel Otukwa, 6th Witness.

20

No. 28.  
Emmanuel  
Otukwa,  
6th  
Witness.  
13th, 16th  
and 17th  
September,  
1946.

Examina-  
tion.

EMMANUEL OTUKWA, Sworn, states :  
6th Witness for Plaintiffs.

## EXAMINATION-IN-CHIEF.

I live at Asabi on land in dispute. I am Mankrado of the Baadu Stool of Bukuruwa, and a Chief of Asaby.

Adjourned to Monday 16th instant.

L. M.

16th September, 1946.

AKILAGPA SAWYERR for Plaintiff.

BOSSMAN for 2nd Defendant.

EVIDENCE of EMMANUEL OTUKWA (*continued*).

The land in dispute belongs to Baadu Stool which is under the Paramount Stool of Kwahu. The land is bounded on the North by the River Aboso. The Arkoso people are on the other side of the River.

30

Fia Yao and another person representing the Wusuta Chief told the Surveyor that the people across the River on the North were Akrosos and Nkunyias. On the West (from North to South) we have boundaries with the Stools of Abetifi, Pitiko, Nkwatia and Tafo and Begoro. The Nkwatia boundary with us ends on the South at Mframenyo.

From the Volta the Afram is the boundary between us and the Akwamus. We have villages all round the land in dispute. At the junction of the Volta and Afram is the village of Mpeasem, North of this is Konforma, then Edjebeni, Akolikope, Ewakope, Ahupe and so on. Only a few of the  
10 Defendants' villages are shown in the Government Survey Map. This is because they are mostly recent.

Adjourned to this afternoon at 2.30.

L. M.

Faso is a town on the Volta boundary. It was founded by Yaw Beng, a Kwahu from Abetifi. During the German occupation of Togoland Dei came and hid there with his followers. He begged Yaw Beng for permission. This was given and confirmed by Chief Baadu, to whom he paid tribute.

He lived at Faso with Yaw Beng. When the latter died he took over  
20 the place.

The Wusuta villages on the land are mostly new and small. Higher up is Dadiase a town on the Volta. One Kojo Bafuor a Wusuta got into trouble because he killed an elephant on the land, and did not give our Chief one of the tusks. The Government held an Enquiry into the question of ownership between the Kwahus and the Wusutas. There was a decision in favour of the Kwahus.

CROSS-EXAMINED BY BOSSMAN—

The Asabis and the Nkamis are the same people. Asabi was settled before Nkami. We are Akans, and Kwahus. The Asabi never stayed at  
30 Nyanawasi under the Akwamus. It is not true that the Asabis migrated to the Volta with the Akwamus, or that the Asabis and Nkamis quarrelled with the Akwamu Chief and went North to Asabi and neighbourhood.

Kofi Bekow was at one time Chief of Nkami. The present Chief is Okuntun Diawuo. I cannot speak of the history of the Nkamis. When I said that the Nkamis and Asabis were one I meant that all are under one Chief. The Nkamis serve the Asabi Stool. The Nkamis came from Nyanawasi. We conquered them.

The Asabis came from Denchera. The Nkamis at one time served the Akwamus at Nyanawasi, but were driven away by the Akwamus. They did not migrate together with the Akwamus, and settle with them at Anum.  
40 The Asabis were on the land before the Akwamus left Nyanawasi. Then Asabis and the Bukuruwas are all one.

In the  
Supreme  
Court.

Plaintiffs'  
Evidence.

No. 28.  
Emmanuel  
Otukwa,  
6th  
Witness.  
13th, 16th  
and 17th  
September,  
1946.

Examina-  
tion—  
*continued.*

Cross-exam-  
ination.

In the  
Supreme  
Court.

Plaintiffs'  
Evidence.

No. 28.  
Emmanuel  
Otukwa,  
6th

Witness. 17th  
13th, 16th  
and 17th  
September,  
1946.

Cross-exam-  
ination—  
*continued.*

Re-exam-  
ination.

It is not true that the Asabis and Nkamis at first lived together at Asabi and that later the Nkamis obtained permission from the Avemes to settle at Nkami.

I heard that they settled at Basampa before going to Nkami. I never heard that they were at Dukludja before Nkami. We fought the Nkamis South of the Afram at Aframso. After we beat them we let them settle at Basampa.

Adjourned to tomorrow morning.

L. M.

17th September, 1946.

10

CROSS-EXAMINATION OF OTUKWA (*continued*).

According to our tradition the Denkeras were defeated by the Ashantis. One section of the Denkeras under Baadu refused to serve Ashanti, and migrated to Bukuruwa. I do not know how soon afterwards Baadu fought against Taalafina. He died at Asabi, to where he moved his residence. Adom succeeded him and lived at Asabi where he died. Adom was succeeded by Mfodwo Kwame who was succeeded by Anochi I, who was succeeded by Minta I, then Anochi II, then Abura, then Minta II. All these lived at Asabi.

Yaw Nkansah I became acting Chief after Minta II, and took the Stool 20 to the Ashantehene. Some years later the Abene Chief who had become Paramount Chief in the absence of the Baadu Stool sent for their Stool. It was then returned to Kwahu. One Kweku Tano was put on the Stool by the Stool Family of Baadu and the Abene Chief (the Paramount Chief) at Bukuruwa. This town was then rebuilt after having been deserted. When Baadu settled at Asabi he took the Stool there.

It is not true that Adom brought the Asabis from Nyanawasi to Asabi, or that Baadu never removed from Bukuruwa. There are a Gyase Stool and a Manrado Stool at Asabi. The great oath of the Paramount Chief of Kwahu is Asasi Aban, which relates to a disaster to an Abene Chief in a cave. 30

The Kwahus first came under Kofi Tchum from Denkeras. When he died Baadu occupied his Stool, and in Baadu's time the Kwahu State was founded. Ya Dom was one of the first Nkwatia Chiefs. At one time Nkwatia claimed the middle part of the land in dispute from us. As the result of the intervention of the Omanhene the claim was settled.

RE-EXAMINED BY SAWYERR—

The Omanhene held an arbitration on the dispute, and demarcated the boundary between Nkwatia and Bukuruwa. This is shown on the Map (Exhibit "A"). We then brought this action. For some reason or other the Nkwatias got joined as Co-Defendants, but on the Omanhene becoming 40 Co-Plaintiff, they withdrew.

When the Baadu Stool was away in Ashanti the Subchiefs of the Stool took charge of the land.

BY BOSSMAN—

I remember an Enquiry held by two District Commissioners at Asabi.

## No. 29.

## Yaw Nkansah II, 2nd Witness, recalled.

In the  
Supreme  
Court.

Plaintiffs'  
Evidence.

No. 29.

Yaw  
Nkansah II,  
2nd  
Witness,  
recalled.  
17th  
September,  
1946.

NKANSAH II, Recalled for Cross-Examination.

2nd Witness for Plaintiffs.

CROSS-EXAMINED BY BOSSMAN.

I know an Nkami Chief Kofi Bekwon. He has a Stool which serves the Baadu Stool through my Stool (the Gyasehene's). He was destooled and died. The Chief of Nkami has been made Mponsahene of Kwahu.

10 I have not heard the Nkamis say they got their land from the Evemes. My version of our history is not different from that given in evidence of Otukwa.

Cross-exam-  
ination.

The first Chief who brought the Baadu Stool to Bukuruwa from Denkeras was Osei Tchum. This was in the time of Oti Akengteng, who was the Kumasi Chief before the time of Osei Tutu. This was before the defeat of the Denkeras.

I do not know in what Ashanti King's reign the Abene and other tribes joined Bukuruwa and formed the Kwahu State.

Asabi was settled by our people before Osei Tutu fought the Denkeras War.

20 Ataalafinan and his people were neither Akans, Guans or Ewes. We call the tribe Sialifo. They fled to Buoso in the Bimbila region in the Northern Territories.

The Nkamis were at one time subjects of the Akwamus and lived at Nyanawasi. They were driven away by the Akwamus, and conquered by us. We are now one.

30 When our people first settled at Asabi, the Togolandans were on the other side of the Volta. I do not know of any War between the Bukuruwa Stool and the Togolandans. It is true that the Bukuruwa Stool was removed to Asabi. During this period a few people were left in Bukuruwa which was not entirely abandoned.

It is not true that the Asabis were originally Akwamus. I attended school in Anum. I have relatives on my father's side at Anum.

RE-EXAMINED—

Re-exam-  
ination.

The Chief on the Baadu Stool at Asabi remained Paramount Chief of Kwahu until the death of Minta II, when the Stool was taken to Ashanti. Then the Abene Chief acted, and later became Paramount Chief.

In the  
Supreme  
Court.

No. 30.

**Kweku Dumfe, 3rd Witness, recalled.**

Plaintiffs'  
Evidence.

No. 30.  
Kweku  
Dumfe,  
3rd  
Witness,  
recalled.  
17th and  
18th  
September,  
1946.

**KWEKU DUMFE, Sworn, states :**  
**3rd Witness for Plaintiffs.**

**BOSSMAN** says that he does not wish to cross-examine any more of the Witnesses for the Plaintiffs who have given evidence.

Adjourned to tomorrow.

L. M.

18th September, 1946.

(The documents marked 1 and 2 for identification are admitted by 10 Bossman as having been made by his client Akuamoa. Marked Exhibits " B " and " C. " )

**KWEKU DUMFE** Recalled at Plaintiffs' request.

I remember an Enquiry held years ago by a white man called Crabbe. It related to the land in dispute. The dispute was between the Kwahus and Ewes. Kwahu was represented by Sasu, the Omanhene's Linguist. Nnti Yamo, the Ohene of Nkwatia's Linguist, Ohene Kwaku Tano of Bukuruwa, Kwame Afram, Ohene of Nkama, Kweku Marfu of Asabi, Gyasehene of Bukuruwa.

The Ewes were represented by Kwesi Kuma, Chief of Owusuta, the 20 Onyamiga, Osei Kwame, the Chomi Chief, Afeto the Gyifa Chief.

The matter was gone into. The decision was in favour of the Kwahus.  
No Cross-Examination.

No. 31.  
Franco  
Ribeiro-  
Ayeh,  
7th  
Witness.  
18th  
September,  
1946.  
Examina-  
tion.

No. 31.

**Franco Ribeiro-Ayeh, 7th Witness.**

**FRANCO RIBEIRO-AYEH, Sworn, states :**  
**7th Witness for Plaintiffs.**

**EXAMINATION-IN-CHIEF.**

I live at Accra and am Assistant Colonial Secretary. I am authorised to produce the Report and evidence taken by J. T. Crabbe, Travelling 30 Commissioner, in an Enquiry into a land dispute between Kwahus and Krepis. The land in dispute stretched from Mprasu past the Ada River to the Akroso River. The Enquiry was held on the Governor's instructions. The Report is dated 3rd November, 1903.

(Tendered.)



BOSSMAN asks to be allowed to cross-examine.

CROSS-EXAMINED BY BOSSMAN—

The Enquiry was not held under the Commissions of Enquiry Ordinance or under the Order of any Court. I do not know whether the Ewes concerned lived in German or British Territory.

(BOSSMAN objects that the decision is inadmissible.)

RE-EXAMINED BY SAWYERR—

Colonial Secretary File No. 137/1903 contains the relevant documents. First there is an agreement dated 21st September, 1903, purporting to contain the marks of the Chiefs of Ourisita, Agruman, Chomi, Gefaga and Nkami and to be an agreement between these parties for the land dispute to be settled before the Travelling Commissioner Crabbe in the presence of the King of Kwahu or his Linguist. This is a Certified True Copy of the Agreement.

(Tendered no objection—Exhibit “ D.”)

The file also contains the Award or decision of the Travelling Commissioner. It is dated the 8th November, 1903. This is a Certified True Copy.

(Tendered.)

20 BOSSMAN objects on the ground that the Chief of Bukuruwa was not a party to the Agreement. The File also contains the evidence taken by the Travelling Commissioner. This is a Certified Copy.

SAWYERR tenders this to enable the Court to see the scope of the Enquiry, the subject matter of the dispute, and the part taken at the Enquiry by the Chiefs of Nkami, Asabi, Bukuruwa and Wusuta.

BOSSMAN does not object—Exhibit “ E.”

---

### No. 32.

#### Court Notes of Ruling.

BY COURT—

30 I am now in a position to rule as to the admissibility of the Award. In my opinion this is clearly admissible. The land in dispute was more or less the same as now, although the only Kwahu Chief who signed the submission (Exhibit “ D ”) was the Chief of Nkami, it is clear from the proceedings that the Nkami Chief and his superior the Chief of Asabi, and their overlord the Chief of Bukuruwa were all acting together ultimately on behalf of the Bukuruwa Stool against the Ourisita (Wusuta) Chief. All obviously took part in the Enquiry as parties and are bound by the Award, as is the Wusuta Chief who actually signed it (by making his mark)—Award marked as Exhibit “ F.”

In the  
Supreme  
Court.

Plaintiffs'  
Evidence.

No. 31.

Franco  
Ribeiro-  
Ayeh,  
7th  
Witness.  
18th  
September,  
1946.

Cross-exam-  
ination

Re-exam-  
ination by  
Sawyers.

No. 32.  
Court Notes  
of Ruling.  
18th  
September,  
1946.

In the  
Supreme  
Court.

**PLAINTIFFS' EVIDENCE. (continued)**

**No. 33.**

Plaintiffs'  
Evidence.

**Yaw Nkansah II, 2nd Witness, recalled.**

No. 33.  
Yaw  
Nkansah II,  
2nd  
Witness,  
recalled.  
18th  
September,  
1946.

**YAW NKANSAH II, Recalled, by Leave.  
2nd Witness for Plaintiffs.**

I remember the Tribunals functioning in the Asabi area before the Native Administration Ordinance 1927. There was a Tribunal at Nkami. The Chief of Nkami presided. Appeals from the Tribunal lay to the Omanhene's Tribunal. There was no Tribunal at Asabi. The Wusuta Chief had a Tribunal, but did not exercise jurisdiction over the land in 10 dispute or on the West of the Volta.

Examina-  
tion.

Under the Native Administration Ordinance the Nkami Tribunal ceased to function. Under the new Native Courts Ordinance, a Native Court D sits at Worobong on the other side of the Afram, and exercises jurisdiction in the land in dispute. All the persons appointed to the panel are Kwahus.

Order by Governor in Council No. 93 of 1946 (Supplement to Gazette No. 60 of 17th August, 1946.) Marked Exhibit "G."

Cross-exam-  
ination by  
Bossman.

**CROSS-EXAMINED BY BOSSMAN :**

During the German occupation of Togoland no Chiefs in German 20 territory exercised jurisdiction under the Native Jurisdiction Ordinance on the British side.

Re-exam-  
ination by  
Sawyerr.

**RE-EXAMINED BY SAWYERR**

The area in dispute has long been known as Kwahu land.

No. 34.  
Kofi Buobi,  
8th  
Witness.  
18th  
September,  
1946.

**No. 34.**

**Kofi Buobi, 8th Witness.**

**KOFI BUOBI, Sworn, states :  
8th Witness for Plaintiffs.**

Examina-  
tion.

**EXAMINATION-IN-CHIEF.**

I live at Akolekope on the land in dispute. My father took me there 30 as a small boy from Bator 54 years ago. He obtained permission from the Kwahus to live on the land from Chebu Kwao, a Kwahu Asafohene and Caretaker of the land. My father paid tolls to Bukuruwa through the Asafohene, and I have continued the payment.

No cross-examination.

## No. 35.

## Kwame Dapaa, 9th Witness.

KWAME DAPAA, Sworn, states :  
9th Witness for Plaintiffs.

## EXAMINATION-IN-CHIEF.

I live at Asabi, and am a farmer. I was born at Asabi. My father was Kwame Acquah. Brakatu succeeded my father on the Gyasehene Stool.

10 I knew Adom who came from Wusuta. He lived at Atipradaa on the land in dispute. He was succeeded by Tawiah. He left German territory, because of German trouble, and got permission from my father's successor Brakatu to live on the land. Adom founded the village of Atipradaa. He paid tolls on account of the land so did his successor Tawiah for some time. He stopped payment, and that led to this case.

No cross-examination.

In the  
Supreme  
Court.

Plaintiffs'  
Evidence.

No. 35.

Kwame  
Dapaa,  
9th  
Witness.  
18th  
September,  
1946.

Examina-  
tion.

## No. 36.

## Kwesi Amoah, 10th Witness.

KWESI AMOAH, Sworn, states :  
10th Witness for Plaintiffs.

## 20 EXAMINATION-IN-CHIEF.

I am Twidomhene of the Kwahu State, I used to be Chief Linguist to the Omanhene. I know the land in dispute. It belongs to the Omanhene. It is in charge of the Bukuruwa Chief. The Volta River is the Kwahu boundary on the East. The Omanhene fixed a boundary between the Nkwatias and the Bukuruwas. That was about 3 years ago, and before this action began.

No cross-examination.

30 Nkami serves the Omanhene through the Bukuruwa Stool. Formerly Nkami served the Bukuruwa Stool through Asabi, but about 3 years ago the Chief of Nkami was raised to the rank of Mpoanahene of Kwahu and serves Bukuruwa direct.

SAWYERR closes his case.

Adjourned to tomorrow.

L. M.

No. 36.

Kwesi  
Amoah,  
10th  
Witness.  
18th  
September,  
1946.

Examina-  
tion.

In the  
Supreme  
Court.

No. 37.

Court Notes.

No. 37. 20th September, 1946.  
Court  
Notes.  
20th  
September,  
1946.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN JUDICIAL DIVISION,  
held at VICTORIABORG, ACCRA, on Friday the 20th day of September,  
1946, before M'CARNEY, Ag. C.J.

YAW NKANSAH II AND OTHERS *v.* WUDANU KWASI AND OTHERS.

Same Counsel.

BOSSMAN states that he has now been instructed to appear on behalf  
of Wudanu Kwasi, Acting Chief of Atipradaa and Chief Djaba III of  
Wusuta, and that he appears for them. 10

SAWYERR asks leave to call a further witness, although he has closed  
his case. Says that he did not anticipate a serious defence.  
Application granted.

Plaintiffs'  
Evidence.

PLAINTIFFS' EVIDENCE. (continued)

No. 38.  
Gbonyo  
Kofi,  
11th  
Witness.  
20th  
September,  
1946.

No. 38.

Gbonyo Kofi, 11th Witness.

GBONYO KOFI, Sworn, states :  
11th Witness for Plaintiffs.

EXAMINATION-IN-CHIEF.

20

Examina-  
tion.

I live at Nkami and am a farmer. I have been authorised by the  
Chief of Nkami, Okuntum Diawo to represent him on the subpoena issued  
to him in this case. I was formerly Chief of Nkami, but abdicated from the  
Stool. I have been on the Stool twice eleven years ago. I know the land  
in dispute and its history. The land in dispute belongs to the Baadu  
Stool of Bukuruwa.

Nkami serves Bukuruwa. A long time ago a Commissioner called  
Crabbe held an Enquiry into a dispute about the land between the Nkami  
Chief Kwame Afram and the Wusuta Chief and other Krepe Chiefs. The  
Nkami acted on behalf of the Chief of Bukuruwa.

30

Cross-exam-  
ination by  
Bossman.

CROSS-EXAMINED BY BOSSMAN—

The present Nkami Chief is too old to travel. I knew Kofi Bekow  
one time Chief of Nkami. The Nkamis originally came from Nyanawasi.  
At that time we had no connection with Bukuruwa. When we left

Nyanawasi during the Akwamu Wars we did not cross the Volta. Okuntun led our people. He was independent Chief. He took the Nkamis to Onyra Konto, on Baadu's land in the land in dispute. The land was vacant. It proved unsuitable so the Nkamis went and stayed with Baadu at Asabi.

In the  
Supreme  
Court.

Plaintiff's  
Evidence.

Later Baadu gave us the land where we settled and which is now known as Nkami. The people on the other side of the Volta were Krepes, both opposite Asabi and Nkami. It is true that we got land on which to found Nkami from Baadu.

No. 38.

Gbonyo  
Kofi.

11th

Witness.

20th

September,  
1946.

- 10 I have heard that we stayed at Basampa before going to Nkami, but not that we crossed the river to a place called Dukludja, or that a Krepe Chief Ton Yaw took our Chief to Odikro Fia of Aveme and obtained from him permission for our people to settle on the land now called Nkami. I have not heard that Chief Kofi Bekow gave this tradition in the case between Head Chief Gazali III *v.* Head Chief Dagadu III in the Court of the District Commissioner at Kpandu in 1925.

Cross-exam-  
ination—  
*continued.*

I knew the Ferguson Road from Akuse along the bank of Volta to Krachi. I was a small boy when it was constructed. It was the road leading to the North, and ran through the land in dispute.

- 20 I know the village of Dadiase. It is not far from Nkami. It is on Baadu's land, and I installed their Chief. He is dead. No doubt the Krepes have made another Chief. I do not know the name of the man now shown to me (who calls himself Toin Yao). I know he lives at Dadiase. Dadiase was founded by Obofo before I was born. When Obofo died I made his son Dadiase Kōjo Chief. There is a man called Toin Yao living across the Volta.

When I was on the Stool one Kofi Sifa was Chief of Nkwatia. He had been destooled. He did not claim any portion of the land in dispute. At the time of the Crabbe Enquiry I held no official position.

30 RE-EXAMINED BY SAWYERR—

Obofo obtained permission from my grand-father Kwesi Bekoe Chief of Nkami to found Dadiase. Nkami elders told me. Openyina who became Chief of Dadiase after Bekoe brought me the fore legs of game and tusks of elephants. I sent them to Baadu. I have not heard about Chief Kofi Bekoe giving a different tradition from mine before the District Commissioners. I cannot explain why he should do so. I brought these papers from Nkami with me. They were given to me by the Chief. They have something to do with Kofi Bekoe (Marked 3, 4 and 5 for identification). Kofi Bekow is dead. I know Chief Gazali of Aveme personally. He obtained permission from Kofi Bekoe to farm on the land in dispute. The transaction was recorded in writing, and drink was given. Baadu was informed.

Re-exam-  
ination by  
Sawyers.

- 40

Permission is given to Sawyerr to call the Chief of Akroso.

In the  
Supreme  
Court.

No. 39.

Kofi Djanti, 12th Witness.

Plaintiffs'  
Evidence.  
No. 39.

KOFI DJANTI, Sworn, states :  
12th Witness for Plaintiffs.

EXAMINATION-IN-CHIEF.

Kofi  
Djanti,  
12th  
Witness.  
20th  
September,  
1946.

I am Linguist to Kwabena Oduro Chief of Akroso. I represent him in this case. I know the land in dispute. The River Obosom is the boundary between Akroso land and the land in dispute. Akroso is in Ashanti. Formerly we served the Asantehene but now we are directly under the District Commissioner at Ashanti—Mampong. The land on the other side of the Abosom belongs to Baadu, Chief of Bukuruwa. The land on the other side of the Volta belongs to the Nkonyas. 10

Examina-  
tion.

Cross-exam-  
ination by  
Bossman.

CROSS-EXAMINED BY BOSSMAN—

The Akrosos are Twis or Akans. We met the Agyaris when we first settled on the land, which was given to our ancestors by them. The Agyaris are subjects of the Asantehene. We came from Denkeria.

On the other side of the Volta there are the Atipas and Bowiris before you meet the Nkonyas. The latter are not our neighbours. The Atipas and Bowiris belong to Buem. This is the first time I have given evidence about the land in dispute. 20

The Nkami people the people, we call our neighbours on the South. We intermarry.

Our present Chief is not partly from Nkami. Baadu put the Nkamis on the land. I do not know the tradition. I do not know of any Ewe Chiefs on the land in dispute. I do not know of the Eveme or Wusuta Chiefs. There are many people on the other side of the Volta.

When the Agyaris first gave Akrosos the land we formed boundary with Baadu. Afterwards he put the Nkamis on the land. The Agyaris are on our North.

30

DEFENDANTS' EVIDENCE.

Defendants'  
Evidence.

No. 40.

Fia Yao, 1st Witness.

No. 40.  
Fia Yao,  
1st  
Witness.  
20th & 23rd  
September,  
1946.

BOSSMAN calls—  
FIA YAO, Sworn, states :  
1st Witness for Defendants.

EXAMINATION-IN-CHIEF.

Examina-  
tion.

I live at Wusuta. I am the stool father and speak on behalf of the Stool. The land in dispute belongs to Ewe Stools. Wusuta claims the

land from the extreme North to the Kobina Stream near Asabi. The Botokus own the land from there to the Aframa, then come the Tongo people. The Wusutas and Evemes are one.

The big tribe are Krepes. In ancient times Kwadjo Dei was head chief of all the Krepes. He fought the Ashantis. From ancient times the land in dispute belonged to Krepe. The Volta was our river. We lived on both sides of it. The Asabis and Nkamis both live on the land in dispute. They migrated from Nyanawasi with the Akwamus and came together to us. They said that they fought the Akwamus and that these killed Adom the Asabi Chief. The Nkamis and Asabis were one and had one Chief.

After Adom was killed the remnants of these people fled North from Akwamu and went to the Tongo people North of the Afram. They met Jamina Koni as Chief of Tongo. They were given land to settle on, where they lived under him. They were called "Asabi" because they had fled on account of the war.

Later they moved further North to Botoku land. After Nkansah the successor of Adom had married a Botoku woman. They were given land by the Botokus and settled at Asabi under Botoku. Part of the Asabis moved to a hill called Basampa. From there they went to Aveme Toko or Dukludja, where Ton Yao of Aveme gave them land. From there they moved to their present home—it is called Nkami and is on the Western bank of the Volta. They were called "Nkamis," because they had become a remnant as a result of War. They became our subjects, and we still regard them as such. They used the land in common with our people. We both made villages on the land.

Adjourned to Monday the 23rd instant.

L. M.

23rd September, 1946.

FIA YAO.

30 1st Witness for Defendants.

EXAMINATION-IN-CHIEF (*continued*).

One of our villages is Atiperada—Frow from Wusuta founded it—he is dead, was succeeded by Sikoro, who is dead, was succeeded by Adiakpor, who is dead, was succeeded by Adom, who is dead, was succeeded by Kwame Tawiah, who is dead, was succeeded by Wudanu Kwasi.

Another village is Nframa—founded by Mgbemu from Wustuta, succeeded by Kobar, succeeded by Yaw Asare, succeeded by Fofie, succeeded by Atsu, succeeded by Agbesi, the present headman. He is a young man.

40 The next village going North is Bunnpai—founded by Gbli of Wusuta,

In the  
Supreme  
Court.

Defendants'  
Evidence.

No. 40.  
Fia Yao,  
1st  
Witness.  
20th & 23rd  
September,  
1946.

Examina-  
tion—  
*continued.*

In the Supreme Court. succeeded by Buambasa, succeeded by Kofi Buabasa, succeeded by Komla Buabasa, present headman.

Defendants' Evidence. The next is Betiasa, founded by Aniyatse of Wusuta, succeeded by Yaw Beng, succeeded by Yaw Mensah, present headman.

No. 40. Fia Yao, 1st Witness. 20th & 23rd September, 1946. Next is Fasu of Fanu where there used to be a Preventive Station—founded by Abew of Wusuta, succeeded by Tsetse, succeeded by Hodomanu, succeeded by Fia Dei, present headman.

Examination—continued. Next Jifaji, founded by Agbetor, present headman, Gamposu, Next Dadiase. It is an Aveme village. Aveme is under Wusuta. Founded by Abofour, succeeded by Kodjo Abofuor, succeeded by someone (Agbenyo identified). Aveme and Wusuta have a boundary on the Volta with Botoku at the Kobia Stream (on the East bank) and the Demketa rocks (on the West bank) 10

In the old days our ancestors used to hunt on the land in dispute. They did not farm on it because of wild animals. Our villages were hunters' camps.

Our ancestor Djaba Chief of Wusuta, son of Wusu our first Chief, was the first to hunt on the land. According to our tradition he met at his hunting camp Yadom Ativi of Nkwatia (Kwahu). They made a pact of friendship because of the ferocity of the wild animals, both called many hunters together and the pact was sealed by a solemn ceremony. This was at Kosipepe (which means where Kwasi, the son Djaba met. The Twis called it Kwasipepe). 20

That is our Western boundary. Going North from there the boundary runs through Dedeso to the Busum.

Going South from Kwasipepe the boundary follows the Dem Stream to Dempeta, then to Nframanyo at a point where the Chebi, Dem and Nfamanyo Rivers meet, then to the Afram River which is our Southern boundary.

In the old days the fore leg of an animal or a tusk of an elephant killed on the land was taken to Djaba (Stool name of Chief of Wusuta). This is still the custom. It would be sent through the local headman. 30

There are Kwahus farming on the land. During the German occupation of Togoland we were forbidden by the Germans from crossing to the Western bank of the Volta, although we had lands and towns there.

The Nkamis and Asabis were with us on the land long before the Germans came. During the German occupation they ceased to pay tribute to Djaba, a few of our people remained in our villages on the land. We came in contact with them secretly. If caught by the Germans our people were imprisoned and ill-treated. 40



I heard of the Crabbe Enquiry. I did not attend. I was a youngman. At that time Osei Tutu I was Wusuta Chief. Kwasi Kuma was at the time Wusuta Chief on the Western side. He lived at Nframa. I gave evidence at the Enquiry into the Kwahu-Krepe dispute held about 1939 by District Commissioners Lindsell and Chalmers at Asabi. So did Chief Nkansah and Otukwa.

In the  
Supreme  
Court.

Defendants'  
Evidence.

—  
No. 40.

Fia Yao,  
1st

Witness.

20th & 23rd  
September,  
1946.

Cross-exam  
ination by  
Sawyer.

CROSS-EXAMINED BY SAWYER—

Nkami was founded with our permission—likewise Asabi. I deny that the Wusutas on the land originally settled there by permission of Bukuruwa. I also deny that recently our people took some of the land by force. It was ours originally, and the Kwahus wanted to take it by force from us we did not agree. The land does not belong to the Kwahus. I and my clerk were fined by the District Commissioner in 1943 for fighting in connection with the dispute.

I know Akuamoa alias Yaw Koi. He is a Wusuta but was brought up abroad.

There is a difference between me and Chief Djaba because he was enstooled without my concurrence, I being Stool Father. I wanted to represent the Stool in this case because of my experience. At first he would not agree, but he now agrees, as the result of intervention of the Head Chief of Akpini at Kpandu.

Chief Bekoe of Nkami gave evidence in a certain case. I did not bribe him to give false evidence. Gazari III is the Chief of Aveme-Gbohom. He serves the Akpini Chief direct. He has villages on the Western bank on top of ours. Therefore he is interested in the land. We have a boundary with Nkwatia on the West of the land. I do not know about Kwahu Tafo. Pitiko or Abetifi boundaries with the land.

I did not tell the Surveyor that the Akims and Akwamus have boundaries with us on the South. I do not know who are on the South. I know of the Nkwatias because of our tradition. I do not know with whom we have boundary on the North.

I went along part of the boundary with the Surveyor, but not all of it. I deputed my clerk to go.

Chief Djaba has attended the Court in this case on occasions. At present Wusuta and Aveme each serves Akpini Stool direct. Formerly we served the Peki Stool, and Aveme served it through us.

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In the  
Supreme  
Court.

## No. 41.

Verdanu Kwasi, 2nd Witness.

Defendants'  
Evidence.

VERDANU KWASI, Sworn, states :  
2nd Witness for Defendants.

No. 41.  
Verdanu  
Kwasi,  
2nd  
Witness.  
23rd  
September,  
1946.

EXAMINATION-IN-CHIEF.

I live at Atiperada. I am the Stool Father. I am Acting Chief, Frow of Wusuta founded my town. He was succeeded by Sukoro, Adiakpor. Adom, then Tawiah. There are small farm villages around Atiperada. I pointed them out to the Surveyor. I know the boundary with Botoku near Asabi—it is the Komla Stream.

10

Examina-  
tion.

Mpeta marks the Western boundary. Bontoku has boundary with Tongo. I know the tradition as to how Wusuta acquired the land. It is as stated by Fia Yao.

Cross-exam-  
ination by  
Sawyers.

CROSS-EXAMINED BY SAWYERR—

My evidence is based on what was told me by my elders.

Re-exam-  
ination by  
Bossman.

RE-EXAMINED BY BOSSMAN—

I was born and bred on the land, and so was my father.

Adjourned to tomorrow.

L. M.

## No. 42.

20

No. 42.  
James  
Michael  
Kwame  
Afari,  
3rd  
Witness.  
24th  
September,  
1946.

James Michael Kwame Afari, 3rd Witness.

24th September, 1946.

JAMES MICHAEL KWAME AFARI. Sworn, states :  
3rd Witness for Defendants.

EXAMINATION-IN-CHIEF.

I live in Botoku, British Togoland. I am Linguist to the Fia of Botoku, whom I represented at the time of the Survey of the land in dispute. The Botokus are Krepes. In ancient times we were under Kodjo Dei, Chief of Peki and all the Krepes. We settled on Eastern bank of the Volta. We had land on the Western bank.

30

Examina-  
tion.

The Asabis came under their Chief Nkansah and applied to Tamtia the Botoku Chief for land. They were allowed to occupy land on the Western bank.

Dei Korkor was a Botoku sub-chief living on the Western side. The Asabis before they came were living at Adamuadei on Tongo land. While

there the Asabis fought with the Akwamus, and their Chief Adom was killed.

They fled to Botoku. Chief Tamtia who allowed them to settle at a place called Apoti on Eastern bank. Later they crossed to the Western bank and were allowed to settle at the place called Asabi or Kwaniakwa under Dei Korkor. The Asabi Chief had married Dei Korkor's daughter.

10 Trouble developed among the Asabis. A section left Asabi and settled first on Aveme land on the Eastern bank and later at Nkami on the Western. The Asabis were on their site before the Ashanti-Krepe War, which was before the Garnet Wollesley War (1873-4).

We have a boundary with Wusuta, on the East it is Kwamla Stream, on the West it is the Dempeta Rock. On the South we have a boundary with Tankaw on the South, East bank at the Kpenyami rapids, West at junction of Mframanyo, Demusu and Chebi Rivers.

CROSS-EXAMINED BY SAKYI-DJAN

We were stopped from being under Kodjo Dei when the Germans occupied Togoland (1896 ?).

20 Kodjo Dei was under Akwamu when we were serving him. The Ewes (Krepes) under Kwadjo Dei were attacked by the Ashantis in 1869, under their General Adu Bofoo. The Asabis and Botokus fought under Kwadjo Dei. Nkansah the Asabi Chief died in the War.

At present the village of Nframanyo is inhabited by Twis. There we have a boundary with Nkwatia. Further North on the boundary is Dempeta. I pointed out Komla Stream to the Surveyor as our boundary with Wusuta. Descendants of Dei-Korkor are still living at Asabi. If we fight on the land and complain to the District Commissioner Kpandu he sends us to the District Commissioner Mpraeso.

30 On account of the German occupation we could not continue our control of our land on the West. The few people we had over there were swamped by numbers of Kwahus, and so they came under Kwahu Chiefs. But this was only by force of circumstances.

No. 43.

Akpenyon Mensah, 4th Witness.

AKPENYON MENSAH, Sworn, states :  
4th Witness for Defendants.

EXAMINATION-IN-CHIEF.

40 I am an Elder of the Deiase Chief Adentsei Abufor. I have come in his place as he has lost his mother. Tomnu Yao, Chief of Dra in Aveme made him Chief. Adentsei Abufor succeeded Kojo Abufor, who succeeded his father Abufor. Dotsu Foli was founder of the village. He came from

In the  
Supreme  
Court.

Defendants'  
Evidence.

No. 42.

James  
Michael  
Kwame  
Afari,

3rd  
Witness.  
24th  
September,  
1946—  
*continued.*

Cross-exam-  
ination by  
Saki-Djan.

No. 43.

Akpenyon  
Mensah,  
4th  
Witness.  
24th  
September,  
1946.

Examina-  
tion.

In the  
Supreme  
Court.

**Dra.** He was succeeded by Ata, then by Bona, then by Abufor. It is not true that the Nkami gave us the land Dadiase people hunt farm and fish. The land belong to Aveme.

Defendants'  
Evidence.

**CROSS-EXAMINED BY SAWYERR.**

No. 43.  
Akpenyon  
Mensah  
4th  
Witness.  
24th  
September,  
1946.

Dutso Foli made a Stool. I was a child when Bufor was alive. I heard of the Crabbe Enquiry. I do not know this man (Ex-Chief of Bukuruwa).

[At this stage it is ordered that the following Chiefs be joined as Defendants in the case.]

1. Gazali III, Chief of Aveme.
2. Tamtia IV, Chief of Botoku.
3. Asua Kwasi IV, Chief of Tonkaw.

10

Cross-exam-  
ination by  
Sawyerr.

Usual Notices to be served, and copies of Pleadings filed.

No. 44.  
John Tonu  
Yao,  
5th  
Witness.  
24th & 25th  
September,  
1946.

**No. 44.**

**John Tonu Yao, 5th Witness.**

**JOHN TONU YAO, Sworn, states :**  
5th Witness for Defendants.

**EXAMINATION-IN-CHIEF.**

Examina-  
tion.

I live at Aveme Dra. I am Nifahene to Gazali III. Head Chief of Aveme, who lives at Gbohene. The Avemes and Wusutas were originally one people, but the Avemes broke away from the rest. My ancestor 20  
Tonu Yao founded Dra. The Dra people first settled in this region. Gazali I left Wusuta and lived on it. We served him.

Nkami is on the West bank of the Volta. The land belongs to me. Tonu Yao I granted permission to the elder who brought the Nkamis from Nyanawasi. His name was Nkuntun. They first settled on Dra land at Tchrikesa near Dukludja before they went across the river.

Bekoe I succeeded Nkuntun.

We ourselves occupied villages on the West. Adanta, Dadiase, Dediasu was founded by Dotsu Foli. His descendants occupy it.

The present Chief is Dutso Foli IV. He has a Stool. The land is 30  
mine, but it is under the Head Chief. I pay tribute to the Head Chief.

The Northern boundary of the land in dispute is the Bosum River. The Western boundary runs from Kwasikpepe, through Kpetoe, along the Dedesu to the Bosum River. The Twi name for Kwasikpepe is Kwasisimpe.

A hunter from Wusuta met a hunter Adegbe from Nkwatia at Kwasikpepe where they made a pact that the hunters on each side should not kill one another. They also agreed that they should treat Kwasikpepe as a boundary, and pay a penalty if they killed game on the wrong side of the boundary.

The Akrosos live on the North of the Obosum South of the Afram are the Akwamus.

Adjourned to tomorrow.

25th September, 1946.

EXAMINATION-IN-CHIEF OF JOHN TONU (*continued*).

I attended the Surveyor, and pointed to him a number of Aveme villages on the land. I live at Dra on the East, but I own a farm on the West of the Volta. I have farmed there for 28 years. My father and  
10 grandfather farmed there before me. During the German occupation my father lived at Dadiase on the West.

About 1925 a case between Chief Gazali of Aveme and Dagado of Kpando was tried at Kpando. Chief Bekoe of Nkami gave evidence in the case, before the District Commissioner.

CROSS-EXAMINED BY SAWYERR.

There is a village called Jifagi on either side. The Jifagi on the West is now much smaller than formerly. All the elders of Aveme under Chief Gazali authorised him to speak on behalf of Aveme in this case. I can write my name and so can Chief Gazali. The Chief's former clerk was  
20 Theodore Leh.

I know Sub-chief Koranteng of Aveme Agbetsi, Sub-chief Kotoku Gaka of Worakosi. I do not know Sub-chief Adiko of Torkaw.

I see what purports to be Chief Gazali's signature on this document (5 for identification). It does not look like his handwriting. When the Aveme elders and people got to hear of the document marked 5 for identification, we took serious objection, on the ground that it was made by Gazali without our consent. We complained to Capt. Lilley the District Commissioner. The reason apparently why the Chief had addressed such paper to the Nkami Chief was that he was a comparative stranger and  
30 did not know our custom.

We wanted to destool him, but in the end fined him £24 and rum. We also sent a Linguist with deputees to the Nkami Chief repudiating the letter. This letter (5 for identification) was written by Chief Gazali without the authority of the Aveme Elders. (Marked Exhibit "H.")

We heard about the letter in 1931 and took action about it at once. I summoned a meeting the same day. After a few months we summoned the Chief before us. He produced Exhibit "H" and also the document marked 4, for identification (marked Exhibit "J.")

In the  
Supreme  
Court.

L. M. Defendants'  
Evidence.

No. 44.  
John Tonu  
Yao,  
5th  
Witness.  
24th & 25th  
September,  
1946.

Examina-  
tion--  
*continued.*

Cross-exam-  
ination by  
Sawyers.

In the  
Supreme  
Court.

I do not know who signed these documents as Tribunal Registrar of Aveme Gbohomo. I do not recognise the signature. It is not that of our Tribunal Registrar, Theodore Leh.

Defendants'  
Evidence.

No. 44.  
John Tonu  
Yao,  
5th  
Witness.  
24th & 25th  
September,  
1946.

Chief Gazali told us that he signed Exhibit "G" at Nkami, and that it was witnessed by the Nkami Tribunal Registrar. Of the two sub-chiefs who signed Exhibit "G" one died before our meeting with the Chief. We deposed the other Sub-chief Kotoku Gaka of Worakosi the same day that we had our meeting with Chief Gazali about the matter. The present Chief of Aveme Agbesia was put on the Stool about six years after the death of Kofi Koranteng II.

10

Cross-exam-  
ination—  
*continued.*

Chief Gazali was enstooled about 1922. The Chief Bekoe II who made Exhibit "J" is the Chief Bekoe who gave evidence in the case at Kpandu.

I have told the truth. Our people have never paid tolls to Nkami.

Re-exam-  
ination by  
Bossman.

RE-EXAMINED BY BOSSMAN.

None of our people ever took up any land under Exhibits "G" and "J." Before the date of these documents our people were in the area concerned. Some people are still farming there.

Adjourned to Monday, 30th instant.

L. M. 20

No. 45.  
Court Notes  
revoking  
Order for  
joinder. 24th  
February,  
1947.

No. 45.

**Court Notes revoking Order for joinder.**

24th February, 1947.

Transferred Suit No. 1/1942.

Same Counsel.

The Court Clerk produces a telegram to effect that it has been impossible to serve the parties with Hearing Notice.

No Statements of Defence have been filed.

By consent of both Counsel who respectively represent all parties concerned the Order of Joinder of the 24th September, 1946, is hereby 30  
revoked, with the result that the case will be confined to the parties in the case prior to the making of that Order.

Hearing date fixed for 31st March, 1947.

L. M.

## DEFENDANTS' EVIDENCE (continued).

No. 46.

Kwaku Osei, 6th Witness.

In the  
Supreme  
Court.Defendants'  
Evidence.

Same Counsel.

3rd April, 1947.

No. 46.

KWAKU OSEI, Sworn, states :  
6th Witness for Defendants.

Kwaku

Osei,

6th

Witness.

3rd &amp; 14th

April, 1947.

Examina-  
tion.

EXAMINATION-IN-CHIEF.

I am a hunter and farmer. I live at Fanu often called Fasu. It is on the Western bank of the Volta. Fia Dei is the head of the village.  
10 I am his son. He is very old. The village was founded by one Kodu. Kodu was Sub-Chief to the Chief of Wusuta. He lived and died in the village. His son Abiw succeeded him as head of the village. We are Krepis. Abiw was succeeded by Foli Tsetse, who was succeeded by Tsetse Kwasi, who was succeeded by Hodomanu, who was succeeded by the present head.

I am one of the Sub-Chief's Councillors. I was born at Fasu.

20 There used to be a Preventive Station at Fasu. The Site can be recognised. Rent was paid by Government to my father for the land used as Preventive Station. I produce an Agreement made between Government and my father's predecessor Hodomanu. My father has been headman for over 30 years. (Agreement dated 23rd June, 1913 tendered—Sawyers says that no questions have been asked his witnesses about the document, and it does not appear to come from proper custody.)

My father the Sub-Chief gave this document to me to bring to this Court.

(BY COURT—The document being over 30 years ago and being produced from proper custody is admitted—Exhibit "K.")

30 Fasu owes no allegiance to Nkami or Bukuruwa. We serve Wusuta. South is Fasu is Betiase, another Ewe village. It was founded by Jebenor, a woman who was my father's full sister. Their father was Abiw Foli Tsetse.

Betiase is now in care of a man Djabom, who succeeded Anyatse, who succeeded Gebenor. The inhabitants are Wusutas.

A little further South is Burupai, another Wusuta village.

It was founded by Atorboi, a woman. She is dead. She was succeeded by her son Buabasa Kofi. He was succeeded by Hotsome Kwame who was succeeded by Buabasa Komla.

40 Further South is Nfame. I have been there once. It is an Ewe village. From Fasu to Atiperada belongs to Wusuta.

On the South Wusuta has a boundary with Botoku. I do not know the exact boundary.

On the North of Fasu there is a Jifaji, a Wusuta village. It was

In the  
Supreme  
Court.

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Evidence.

No. 46.  
Kwaku  
Osei,  
6th  
Witness.  
3rd & 14th  
April, 1947.

Examina-  
tion—  
*continued.*

founded by a Wusuta man a long time ago. There are many strangers there now. Some are hunters. I do not know who is the present head.

I know Chamfe village in the middle of the land in dispute. The heads are Aliheli and Galenku.

It is not a Kwahu village. It was founded by a Wusuta man, Kwasi Kukra. When he died another Wusuta got permission from the Wusuta Chief Gedji Kofi Tavie to settle there and hunt. When Gedji Kofi Tavie died Galenku succeeded him, being his nephew.

It is a hunting village. Many elephants are killed there. The tusks and also legs of game are sent to the Wusuta Chief through Fia Dei. The Wusuta Chief gives Fia Dei his share. 10

Not far from Fasu is an uninhabited village called Abochiri. It was founded by one Ata Kuma. It was a hunting village. There are a number of small villages in the neighbourhood inhabited by Ewes. One is Tojo also known as Abotarkwai. It was founded by Linus, an Ewe.

On the north Wusuta was a boundary with Aveme. I do not know the exact boundary.

I know a village called Kayera in the middle of the land, to the North. Osei Tutu, the destooled Chief of Wusuta had a village there. Fia Kofi son of the Chief of Wusuta, is in charge of it. He is younger brother of Fia Yao. 20

Neither the Nkamis nor the Asabis have claimed tolls from the Wusutas in respect of any of these villages or lands. Nor has the Bukuruwa Chief ever collected any tribute.

Cross-exam  
ination by  
Sawyers.

CROSS-EXAMINED BY SAWYERR.

I have heard of the Nkami Chief.

I have never been to Nkami. I have been once to Asabi. I do not know the Chief. Asabi is sometimes called Kwamiakwa. It is a small town, a little larger than Fasu.

Asabi consists of two towns. 30

I was born at Fasu. Fia Dei is my cousin. My actual father was Tsetse Kwasi. There is an ancient stool at Fasu.

My father told me all about our tradition. Later the present Chief told me also. He is an old man.

(Witness appears to be under fifty years of age).

Burupai is very near Fasu. My father told me about the Burupai tradition. He was brought up there by his uncle.

I have not come here under subpoena.

I knew Fia Yao. He died recently. After he gave evidence they called me to give evidence. 40

Burupai was founded by Atorboi.

It is not true that Kayera was only built since this litigation started. I was a married man with children when this village was founded, but it was built before the Kaiser War.

Gebanor founded Betiase. She was succeeded by Anyatse.



Kayera and Abotchire are the only villages which I have mentioned which were established "in my presence."

I know the second Defendant Yaw Koi alias David Akuamo. I knew him at Aveme. He lives at Bethel on the land in dispute.

Yaw Koi says that he built the village himself. I was not present. He told me rather a long time ago. That was long before this case started. Before the last War.

I once visited Yaw Koi in his village. I asked him about the village and he told me he founded it.

10 I visit many people in their villages. I have known Yaw Koi for many years.

He knows that the land belongs to Wusuta. He is an Aveme.

I have only been once to his village.

Gazali is the Aveme Chief at present. The Wusuta Chief is Djaba.

The Preventive Station was given up by Government during the 1914-18 War and the Customs came back and repaired the Station. Soon after the War they gave it up finally.

I do not know the Nkwatia Chief.

Kwahus have some villages far North of Fasu.

20 I know Donkorkrom. It is an Avema village. Kwahus live there, but they got permission from the Chief of Aveme.

I do not know the man now shown to me as Kwami Kai, headman of Donkorkrom. This village is under Aveme and not under Wusuta. The Headman I know is Hausa.

The village sometimes called Nframa we called Afarama. That is an Ewe name. Nframa might be Twi.

RE-EXAMINED BY BOSSMAN.

Nkami is on Aveme land, not Wusuta land. The Preventive Station at Fasu was first established before my time.

30 Adjourned to 8th April.

L. M.

14th April, 1947.

Same Counsel.

Leave given to SAWYERR to put further questions.

Yaw Obeng was never in charge of Fasu. One Dei was formerly in charge. I do not know whether Chief's Clerk was Haizel. Dei had no regular Clerk. I know a man called Sam (identified). He stayed at Fasu. Off and on long ago, but I have not seen him there for eight years.

40 I know that there was a dispute between Bukuruwa and Nkwatia about the land in question. I do not know that the Fasu Chief wrote to the Chief of Nkwatia or went to see him about the palaver.

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Court.

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Evidence.

No. 46.

Kwaku

Osei,

6th

Witness.

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April, 1947.

Cross-exam-  
ination—  
continued.

Re-  
examina-  
tion by  
Bossman.

Further  
cross-exam-  
ination.

In the  
Supreme  
Court.

No. 47.

Gallenu, 7th Witness.

Defendants'  
Evidence.

GALLENUE, Sworn, states :  
7th Witness for Defendants.

No. 47.  
Gallenu,  
7th  
Witness.  
14th April,  
1947.

EXAMINATION-IN-CHIEF.

Examina-  
tion.

I live at Kayera in the middle of the land in dispute. I am a hunter. The village belongs to the Chief of Wasuta. It was founded by Osei Tutu the Chief of Wasuta. He lived in Wasuta town but appointed his son Kofi as headman of Kayera. He is still there. I was born at Kaviepe (near Ho). I have lived at Kayera for about ten years. Before that I lived at Chemfi on the land in dispute South of Kayera. I was taken there by my uncle Gedzi Kofi. He settled there by permission of Osei Tutu. Kwasi Kukra founded the village a long time ago. He was a Wasuta. My uncle took me there about 33 years ago. My uncle died 3 years ago. My uncle killed 41 elephants on the land. He used to send the ear, one tusk, the tail and a leg to the Wasuta Chief through Fia Dei the Fasu Chief. 10

As a hunter I observe the same custom, I kill big game. The elephants have left our part. I was an assistant hunter to my uncle as was Aliheli.

Kayera and Aliheli are both Wasuta villages.

Aliheli is a Grunshi. He married a Wasuta woman. 20

Cross-exam-  
ination by  
Sawyer.

CROSS-EXAMINED BY SAWYER.

I am not in any way connected with Wasuta. The tradition was told me by my uncle who was not a Wasuta.

I have heard of Gabi (Nkami), but I have not been there.

I have not heard of Asabi. Fia Dei is present Chief of Fasu. I know him personally.

I do not know Fasu ever had a Tribunal.

No. 48.  
Dzadei  
Kwami,  
8th  
Witness.  
14th April,  
1947.

No. 48.

Dzadei Kwami, 8th Witness.

30

Examina-  
tion.

DZADEI KWAMI, Sworn, states :  
8th Witness for Defendants.

EXAMINATION-IN-CHIEF.

I live at Atikplale Kekadji. I am a native of Bakpa, in the Tongo Confederacy. I am a fisherman. I have lived in Atikplale about 25 years. My people were living there before I was born.

sic.

It is a fishing village. I am the headman. Akui Satchi were head before me. There were headman between us. Akui Satchi was the

founder. I did not know him. Akui Satchi was from Tongo. He came from Bakpa and many Bakpa people followed him and settled there. I settled there by permission of the Chief of Atikplale. Tawia Vidzie was the Chief at the time.

There are many fishing villages North and South of Atikplale, three North.

The fishermen pay tolls to the Chief of Atikplale. I collect them from the villages I have referred to. Monthly two fish presented by each fisherman for the purpose. I have done this for twenty-five years.

**10 CROSS-EXAMINED BY SAWYERR—**

I first heard about a week ago of the present dispute.

I am a "stranger" where I live. I do not know what the Chief of Atikplale does with the tolls. I was told by the Chief of Atikplale that Osei Tutu of Wusuta appointed him Fia.

In the  
Supreme  
Court.

Defendants'  
Evidence.

No. 48.  
Dzadei  
Kwami  
8th  
Witness  
14th April,  
1947—

*continued.*  
Cross-exam-  
ination by  
Sawyers.

**No. 49.**

**Aliheli, 9th Witness.**

ALIHელი, Sworn, states :  
9th Witness for Defendants.

**EXAMINATION-IN-CHIEF.**

**20** I am a Grunshie and live at Chenfi. I am a hunter. I have been there twenty years. Gedzi Kofi took me there. I used to hunt under Gedzi Kofi, who introduced me to Fia Dei of Fasu.

I have killed about five elephants. The custom is for the hunter to send to the Wusuta Chief an ear, tusk, a leg and the tail.

I am now headman of Chemfi. My wife is a grand-daughter of Chief Dei. We two are in charge of the village.

I know Kayera. Osei Tutu's son Kofi is the headman.

I have heard of Asabi but have not been there. Kwahus have never interfered with me on the land.

**30 CROSS-EXAMINED BY SAWYERR—**

I first went to Fasu—that was twenty-five years ago, and later went to Chemfi.

I knew one Otchame Onwona at Fasu. I know this man (Kofi Anson) by sight. He is Kwahu man. He was at Chemfi. He did not live at Fasu or Chemfi but he used to visit there.

When I lived at Fasu Fia Dei was Chief.

I heard of his going at times to Kwahu, but he did not pass through my village.

I do not know whether Fia Dei had a tribunal.

**40** Gadzi Kofi died about 3 years ago.

Fia Dei is alive.

No. 49.  
Aliheli,  
9th  
Witness.  
14th April,  
1947.

Examina-  
tion.

Cross-exam-  
ination by  
Sawyers.

In the  
Supreme  
Court.

No. 50.

Kwasi Frimpong, 10th Witness.

Defendants'  
Evidence.

KWASI FRIMPONG, Sworn, states :  
10th Witness for Defendants.

No. 50.  
Kwasi  
Frimpong,  
10th  
Witness.  
14th April,  
1947.  
Examina-  
tion.

EXAMINATION-IN-CHIEF.

I come from Aveme Beme. I am Sub-Chief under the Aveme Chief, Gazali.

Aveme is claiming part of the land was surveyed for this case. The boundary on the River Volta between Wusuta and Aveme is a stream called Buglame. It is South of Nkami. On the West the boundary is a river 10 called Dedesu.

According to tradition the Nkami settled on Aveme land. Recently there was case between Aveme and Kpandu. I represented Aveme. The case was tried by the District Commissioner. That about 1925.

The Nkami Chief at that time and up to now is Kofi Bekoe.

We called him to give evidence in the case. I called him to give evidence as to who gave the Nkamis their land. He gave evidence to the effect that Aveme gave the Nkami the land they are settled on.

In the end we won our case. Copy of proceedings in *Gazale III vs. Dagudu III*—pages 21–24 containing evidence of Kofi Bekoe tendered— 20 Exhibit “L.”

The Aveme and Wusutas are one tribe, but they are under separate Head-Chiefs. The Head-Chief of Wusuta has some seniority over the Aveme Head-Chief, because at the time of our coming to these parts we all settle in one town. Later on there was a split, and the Avemes went to settle elsewhere.

The Wusuta Head Chief lives at Dzigbe. The Aveme Chief lives at Aveme Gbohome.

On the West Aveme has a boundary with Kwahus, which particular division I do not know. My own boundary with the Kwahus is the Kpatoe 30 River which is also called Dedesu.

I have been Chief of Aveme Beme for about forty years.

I remember the Ferguson Road from Akuse to Krachie. It is no longer used. The road was made before I became a Chief. It was made when Kofi Bufuor was Chief of Dadiase. The Avemes cleared their section, and the Wusutas cleared their section, as did the Botokus. Payment for this was made by the Government.

At one time the Wusutas and Avemes were under the Kodjo Dei, Chief of Peki. He was an Ewe.

I have never heard that the Asabis conquered the Nkamis, and then 40 allowed them to live on the land in dispute. The land on both banks of the Volta belongs to Ewes. To the Western boundary with the Kwahus is five days walking from the Volta.

sic

## CROSS-EXAMINED BY SAWYERR.

I have always lived in Aveme Beme which is about four miles walking from the Volta. It is on the Eastern side.

I know all about Nkami. The present Chief was brought from far away in Twi country. He is a Kwahu. Gbotsi Kofi (identified) was twice on the Nkami Stool. I know him well. I do not know who is Chief of Asabi now. I do not know the present Chief (identified) or the Mankralo (identified).

10 I understand that Asabi belongs to the Botoku.  
It was in my presence that Bufuor helped to make the Fergusson Road, that was before I became Chief. I got to know this from the people working on the road. They laughed at us who live on the German side, where we were made by the Germans to make roads without pay. Kotoku Gaka lives at Worakosi, a sub-division of Aveme.

I know Kofi Koranteng. He lives at Agbesia. It is on the Eastern side of the Volta.

I knew Adiku of Torko on the Eastern bank of the Volta. It faces Nkami on the other side.

20 These men are or were sub-chiefs.  
I know Kwami Adjepong of Nkami.

I have heard of a former Chief of Nkami called Kwami Afram.

## RE-EXAMINED BY BOSSMAN.

When the Nkamis settled on their present site they served Aveme. But when the Germans came they forbade us to have intercourse with people on the Western side of the Volta. There was a certain amount of secret intercourse and occasionally we could obtain a permit to cross the river. During this time the Nkamis ceased to serve Wusuta.

30 I remember when the Germans first came. At that time we were serving Kojo Dei, Chief of Peki, who was the leader of the Ewes. He was leader during the War with Ashanti. In that war the Kwahus joined the Ashantis. The Ashantis crossed the river and fought in Wusuta and caused much confusion.

It was after this War that the Ashantis came.

After the Germans in our part were conquered by the British (1914) we had a chance to move freely on the other side of the river.

Then our people settled on that side were united with us once again, and in a sense were able to serve their Head Chief on the Eastern side. The Nkamis refused to do so.

40 Administratively even under the Mandate the separation between our people on the sides of the river was maintained. The Head Chiefs on the Eastern side have not been allowed to exercise jurisdiction over their people on the other side. But unofficially the latter acknowledge allegiance to the Head Chief on the East.

Adjourned to tomorrow.

In the  
Supreme  
Court.

Defendants'  
Evidence.

No. 50.

Kwasi  
Frimpong,  
10th  
Witness.

14th April,  
1947—

*continued.*  
Cross-examination by  
Sawyers.

Re-examination by  
Bossman.

L. M.

In the  
Supreme  
Court.

## No. 51.

Elias Appiah Kodjo, 11th Witness.

Defendants'  
Evidence.

15th April, 1947.

No. 51.

ELIAS APPIAH KODJO, Sworn, states :  
11th Witness for Defendants.

Elias  
Appiah  
Kodjo,  
11th  
Witness.  
15th April,  
1947.

EXAMINATION-IN-CHIEF.

I am Linguist to the Chief of Botoku, and live in Botoku town. Botoku is on the Eastern bank of the Volta. The Botoku Chief owns land on the Western bank. On that side he has a boundary on the North with the Kwahus. The Denkpata River marks the boundary. 10

Examina-  
tion.

Wusuta has a boundary from the Komla River (which runs into the Volta) across the land to the Denkpata.

Asabi town is on Botoku land. The Asabis obtained permission from Botoku to settle there. The Chief who gave them permission was Tamfia Dei Kokor.

I have farms on the Western side, and so have other Botokus. Several Botoku villages are on the land. I was present when the land was surveyed for this case, and pointed Botoku villages.

I lived in Botoku town on the Eastern side under the German occupation. Some Botokus remained on the Western side during the 20 occupation. After the Germans left more Botokus joined those on the West.

I have never heard that the Asabis conquered the Botokus and took the land on which Asabi town stands. That is not true.

I do not know the Asabis as Kwahus.

Cross-exam-  
ination by  
Sawyers.

CROSS-EXAMINED BY SAWYERR.

I know Otukwa. He is headman of Asabi. It is our right to instal the Chief of Asabi, so as we have not done this for a long time I do not call Otukwa a Chief.

Similarly I only know Ghansah as a Headman. I knew his predecessor 30 Tatra. We Botokus made Tatra Chief. That was in my time.

Tatra is still alive. He is not a Kwahu. He came from Anum. He was taken from Anum to be made Chief.

I have heard that he is brother of Ghansah.

It is not true that the land in dispute belongs to Bukuruwa under the Head Chief of Kwahu.

I have not heard of Kwami Afram Chief of Nkami.

I have not heard of any Enquiry held at Nkami a long time ago.

Recently I represented Botoku on an Enquiry held at Asabi by two District Commissioners. 40

## No. 52.

## Robert Pra, 12th Witness.

In the  
Supreme  
Court.Defendants'  
Evidence.

ROBERT PRA, Sworn, states :  
12th Witness for Defendants.

## EXAMINATION-IN-CHIEF.

No. 52.  
Robert Pra,  
12th  
Witness.  
15th April,  
1947.

I am at present living at Akim Oda. I was former Chief of Wusuta under the official name of Osei Tutu II.

I was at one time joined as Co-Defendant in this case. I was later destooled and the new Chief has taken my place.

10 I was eight years on the stool. My Predecessor was Osei Tutu I. He was on the Stool before the Ya Asantewa War (1900), and was on the Stool during the first Great War. After he died there was a long interval before I was enstooled.

On my enstoolment I was instructed in the tradition of the Stool. I represented the Wusuta Stool at the time of the survey for this case and pointed out the boundaries.

The only Kwahu Stool connected with the Wusuta land in dispute is Nkwatia, with which Stool we have boundary at Kwasiampe, a hill of sand. It is not a village.

20 Traditionally it is the place where the Wusutas and Nkwatias took a fetish oath and made a settlement to prevent future quarrels on account of people from either side of this point trespassing on land beyond their own.

I showed the Surveyor the boundary between Aveme and Wusuta.

The Plaintiffs employed Armah Kwantreng for the survey. We employed one Zidah. The two worked together.

I know the Defendant Akuamoa. I found that he was working (farming) on Wusuta land. I went to the spot and on learning that he was allowed to farm there by the Chief of Bukuruwa I ordered him to  
30 stop paying busua to the Bukuruwa Chief. Consequently these proceedings were instituted.

## CROSS-EXAMINED BY SAWYERR.

Cross-exam-  
ination by  
Sawyers.

I did not ask Akuamoa how long he had been on the land. This incident was about 7 years ago. Akuamoa was established on the land—he had huts there and workmen.

I wrote to the Bukuruwa Chief at the time informing him what I had done. I instructed my clerk to send the letter. Akuamoa told me that he received a reply from the Chief of Bukuruwa.

40 Nkami is not under Wusuta. I do not know who is overlord. The same applies to Asabi.

In the  
Supreme  
Court.

I have been told that Kwasi Kumah was a Chief of Wusuta. I never heard that there was big land palaver in his time between him and Bukuruwa Chiefs.

Defendants'  
Evidence.

I did not know of any claim to the land by the Plaintiffs before the Akuamoah incident.

Dei is Fia of Fasu.

No. 52.

Robert Pra,  
12th  
Witness.

RE-EXAMINED BY BOSSMAN.

15th April,  
1947—

I was told that when the Nkamis first came to our parts they got land from Tong Yaw, Chief of Aveme.

*continued.*

In the time of Kwasi Kumah as Chief, the Krepi War occurred and the Ashantis under Addo Bafuor invaded our country. They overrun our country and then returned to Ashanti. 10

Re-exam-  
ination.

No. 53.  
Frederick  
Kwamin  
Zidah,  
13th  
Witness.  
15th April,  
1947—  
*continued.*  
Examina-  
tion.

No. 53.

Frederick Kwamin Zidah, 13th Witness.

FREDERICK KWAMIN ZIDAH, Sworn, states :  
13th Witness for Defendants.

EXAMINATION-IN-CHIEF.

I am a Licensed Surveyor living at Kadjibi in Togoland.

I was employed by Defendants to work with Mr. Armah Koranteng in the preparation of the plan. We worked together. (The witness marks on the Plan, Exhibit "A," the boundary between Aveme and Wusuta.) It is the river Gublah. On the West it is near Dedesu—the ruins of a village, which the Defendants called Kwami Kope. (Also marked.) 20

(Witness also marks the boundary between Wusuta and Botoku.) It is a stream running into the Volta, called Komla. This is the Eastern boundary.

(Witness also marks the boundary on the West.) This is a big rock by the river Dem. The river is called Dempeta.

I should say that of the population on the land in dispute, 60 per cent. are Ewes, including Wusutas, 20 per cent. Kwahus, and 20 per cent. strangers. 30

I do not agree with Mr. Kwantreng's evidence that the villages pointed out by the Defendants were of recent origin. There are a number of new villages, but some are old.

The Plaintiffs did not claim Atukpala. Of the Defendants' villages the following are old, Nframa, Burupai, Atikplale, Betiase, Fasu, Jifaji, Abochira, Mem, Chemfi.

Most of the Kwahus occupying the land are Nkwatias.



CROSS-EXAMINED BY SAWYERR.

Donkorkrom is occupied by Kwahus ; they are of mixed origin. The same applied to Dedesu, Samahia and Adiembra, also Esikesu near Donkorkrom.

Both sides were busy making new villages when I went on the land. Asabi is an old village Nkami is another.

The natural features I have referred to are shown in the Government Survey Sheet on which we prepared Exhibit " A," but the names were not given. I have added them now.

10 Adjourned to tomorrow.

L. M.

In the Supreme Court.

Defendant's Evidence.

No. 53. Frederick Kwamin Zidah, 13th Witness. 15th April, 1947—*continued.*

No. 54.  
Court Notes.

16th April, 1947.

20 BOSSMAN submits that Exhibits " H " and " J " alleged admissions by the Chief of Aveme should now be rejected, as the Defendants are Wusutas or claim under Wusuta, and the said alleged admissions are not admissible against them.

SAWYERR objects that this is an attempt to limit his case to such area as the Wusutas claim, whereas his case is that the whole land in dispute belongs to Bukuruwa. Admissions by neighbouring Ewe Chiefs is relevant, whatever their weight may be.

BOSSMAN repeats that as the documents do not concern his clients they are neither relevant nor admissible in this action.

BY COURT.

I am inclined to think that the evidence is admissible. It is quite usual in land cases to accept evidence as to the status of neighbouring lands. It is not of course binding on a party unless he was a party to the particular transaction or case or line of conduct. But it may be of weight.

Cross-examination.

No. 54. Court Notes. 16th April, 1947.

30 DEFENDANTS' EVIDENCE. (continued)

No. 55.

Seth Kobi Leh, 14th Witness.

SETH KOBI LEH, Sworn, states :  
14th Witness for Defendants.

EXAMINATION-IN-CHIEF.

I am a native of Peki, but I live at Aveme. I was Registrar to Chief Ghazali about 1930.

Defendants' Evidence.

No. 55. Seth Kobi Leh, 14th Witness. 16th April, 1947.

Examination.

In the  
Supreme  
Court.

Defendants'  
Evidence.

No. 55.  
Seth Kobi  
Leh  
14th  
Witness  
16th April,  
1947.

Examina-  
tion—  
*continued.*

I did not sign Exhibit " H " or " J " I did not prepare either. I do not know who did. I was Tribunal Registrar at the time.

I saw these documents at Aveme. Whether they were made in duplicate I do not know. I saw documents like these. Chief Ghazali brought the documents to me. On reading them I reported the contents to Tong Yaw, Nifahene of Aveme, and Caretaker of Aveme land for the Stool.

A meeting was called. He was threatened with destoolment for having signed these documents without the knowledge of his elders. The Stool Father Saiyia begged on his behalf. On this supplication for forgiveness the Chief was ordered to pay £24, 3 sheep and drink as pacification. This he did, and he was forgiven. 10

Tong Yaw sent messengers to the Chief of Nkami for the delivery of the documents given to him by Chief Ghazali (original or counterparts of Exhibits " H " and " J "). Owing to the illness of my mother I had to leave Aveme before the messengers returned. On my return I learnt that the messengers reported that the Nkami Chief said that he had destroyed the documents.

Chief Ghazali could read and write in Ewe. He was slightly educated.

Although the Exhibits " H " and " J " purport to bear the marks of a number of Aveme Elders, Tong Yaw charged Ghazali with forgery on the ground that the Elders had nothing to do with the documents or the transaction. 20

I ceased to be Tribunal Registrar in 1932. I do not know whether Chief Ghazali is in Accra now.

Re-exam-  
ination by  
Bossman.

RE-EXAMINED BY BOSSMAN.

Ghazali can sign his name, and is slightly literate in Ewe, but knows no English. He cannot speak or write it.

No. 56,  
Emmanuel  
Akoto  
Ababio,  
15th  
Witness.  
16th April,  
1947.

No. 56.

Emmanuel Akoto Ababio, 15th Witness.

30

EMMANUEL AKOTO ABABIO, Sworn, states :  
15th Witness for Defendants.

EXAMINATION-IN-CHIEF.

I am ex-Omanhene of Akwamu. I was enstooled in 1910 and destooled in 1937.

I know the traditions of Akwamu and something about neighbouring peoples.

I know the Asabis. They were formerly not Kwahus. They are settled some distance from Akwamu across the Afram.

Examina-  
tion.

There was in the past war between Akwamu and Asabi. Adom was the Asabi Chief and Akoto Nsoh or Akoto Panin was Akwamu Chief. The Asabis at that time living across the Afram, to the North. The Asabi Chief was a great Chief. He made a market which people used to attend. A son of the Akwamu went there to sell. A market toll was demanded. He refused to pay. He was beaten by the Asabis. This led to war. The Asabis were defeated. Adom was killed and his head taken to Akwamu. It is still on the State Drum.

In the  
Supreme  
Court.

Defendants'  
Evidence.

No. 56.  
Emmanuel  
Akoto  
Ababio,  
15th  
Witness.  
16th April,  
1947.

Examina-  
tion—  
*continued.*

A section of the Asabis went to Ashanti side, another section came to  
10 Akwamu, under Chief Otukwa with his Stool. He was the Mankralo or  
Krontihene under Adom.

Later, but long before my time the Asabis settled on the present site of Asabi. Less than fifty years ago in my presence the Asabis who had settled on the Akwamu side went back across the Afram with their Stool.

The Akwamus fought some of the Ewes and Nkonyas before we settled on our present territory.

My great grand-father Akoto Kwafo I, Omanhene of Akwamu reported to Karikari, Asantehene that the Ewes who had been serving Akwamu under Chief Kodjo Dei after their defeat now refused to serve him. The  
20 Asantehene sent an army under Adu Bofo to fight the Ewes under Kodjo Dei. In those days the Akwamus had not yet come under the British. As a result of this war the Ewes became independent of Akwamu.

The Ashantis and Akwamus defeated the Ewes. Kodjo Dei fled to Ada. The Kwahus fought on our side against the Ewes, who were very numerous.

After the war Adu Bofo and his army returned to Ashanti.

The main reason why Akwamu had invited Ashanti to help fight the Ewes was that the latter had taken fetish oath with the Bosos and Anums to fight against us.

30 I have gone up the Volta by canoe beyond Asabi as far as Kratchi.

I know the Ferguson Road. In 1898 I was a boy being brought up by an Accra Lawyer. It was about then that the road was made. When I was put on the Stool the road was still in use.

I know Khami Town. A man of royal descent from Nkami once stayed with me.

In the old days the Nkamis served Akwamu. At that time we lived at Nyanawasi, the Nsawam hill. They are Twis.

The Nkonyas are Guans. They also served us at Nyanawasi. They were the first to revolt, and fled across the Volta.

40 The Nkamis also revolted and crossed the Volta (about Senchi). How they came to settle on their present site I do not know. At that time the Akwamus were very warlike, and many tribes serving them migrated away from them. Eventually the Akwamus fought a combination of Gas, Akims and other tribes, and we were forced to migrate.

In the  
Supreme  
Court.

Defendants'  
Evidence.

No. 56.  
Emmanuel  
Okoto  
Ababio,  
15th  
Witness  
16th April,  
1947—  
*continued.*

**CROSS-EXAMINED BY SAWYERR—**

I first went to Asabi in 1906. The Chief then was Adja Kwei. The head Chief was Kwaku Tanor of Bukuruwa. Adja Kwei was the man who reigned at Asabi after the removal from Akwamu. He and my father belonged to the Agona Clan.

After we fought the Asabi and Adom was killed the Chief who succeeded him on his Stool went off with a section of the people and settled at Bukuruwa.

Adjourned to tomorrow.

L. M. 10

Cross-exam-  
ination by  
Sawyerr.

No. 57.

**Samuel Hope Donkor, 16th Witness.**

17th April, 1947.

No. 57.  
Samuel  
Hope  
Donkor,  
16th  
Witness.  
17th April,  
1947.

**SAMUEL HOPE DONKOR, Sworn, states :**  
16th Witness for Defendants.

**EXAMINATION-IN-CHIEF.**

I am Regent of Peki State. I represent Kwadjo Dei Fiaga of Peki who is too old to function. I attend on subpoena to him.

I know Wusutas, Botokus, Avemes and Tongors.

They are Krepis. They were under the Fiaga of Peki up to the time 20  
of the German occupation of Togoland. Up to then the territory occupied  
by these tribes on the West of the Volta were under my Stool.

The Tongor territory which is in Westerly bend of the Volta and remained British protection, is still under the jurisdiction of my Stool. But it lost control of the other tribes and lands when the Germans gained under them. Before then all the Ewes were under British protection. Before then the Kwahus did not claim that their land extended to the Volta.

The Asabis and Nkamis who had settled by the Western bank of the Volta were my subjects. Ewe land extended west as far as the junction 30  
of the rivers Dede and Dem.

The Fiaga of Peki was the King of the Ewes. The British called these old Krepis and I have in Court stick given to my ancestor over a hundred years ago with the words " King " of the Krepis inscribed on the silver knob. The British arms are embossed on it also. Although the Wusutas, Avemes and Botokus are no longer under me officially under my Stool, the connection is not entirely severed.

When the Peki Stool is displayed to the public, we send for them, and they used to come. The Tongors serve Peki through Boso.

I have given the Asabis land to settle on through the Tongors on their first arrival in our parts. They were given land called Gyamani on the 40  
East of the Volta. After that they moved to Botoku land on the West at Asabi.

Examina-  
tion.

There was a split and one section of them moved North to Nkami in Aveme land.

I know of the Ferguson Road. Before it was constructed my Stool gave permission to Government through Ferguson, who produced two cases of gin. He asked that our subjects should be allowed to assist in its construction.

In the  
Supreme  
Court.

Defendants'  
Evidence.

No. 57.

Samuel  
Hope  
Donkor,  
16th  
Witness.  
17th April,  
1947—

*continued*

Cross-exam-  
ination by  
Sawyers.

CROSS-EXAMINED BY SAWYERR.

- 10 I am slightly literate. I am 39 years of age.  
I have been giving our tradition as told me by the elders.  
The Peki Stool was at one time under the Akwamus.  
The Nkamis and Asabis have severed connection with Peki, and  
I do not know whom they serve now. They severed connection with my  
Stool at the time of the German occupation of Togoland.  
I know of a town called Dukludja.

RE-EXAMINED BY BOSSMAN.

Dukludja is in Aveme land exactly opposite to Nkami.

Re-exam-  
ination by  
Bossman.

BY COURT :

Before the German occupation the Wusutas, Avemes and Nkonyas and other Ewe tribes served Peki through Anum.

- 20 Anum served Peki and was not its ally. It formed the right wing of  
Kodjo Dei. Later Boso became the right wing (Nifa).

No. 58.

Victor Kwasi Kuma Ghazari III, 17th Witness.

No. 58.  
Victor  
Kwasi  
Kuma  
Ghazari III,  
17th  
Witness.  
17th April,  
1947.

VICTOR KWASI KUMA GHAZARI III, Sworn, states :  
17th Witness for Defendants.

EXAMINATION-IN-CHIEF.

I am the Divisional Chief of Aveme, which is now under Kpando in the British Sphere of Togoland.

At one time we were under Akwamus. Later we served Peki through Anum.

- 30 I can sign my name, and read and write in English.  
Some time ago I had a case with Kpando in the District Commissioner's Court about Aveme land. Brempong, the Dsasehene represented Wusuta, but gave evidence as to the boundaries.

Examina-  
tion

In the  
Supreme  
Court.

Defendants'  
Evidence.

No. 58.  
Victor  
Kwasi  
Kuma  
Ghazari III,  
17th  
Witness.  
17th April,  
1947.

Examina-  
tion—  
*continued.*

Kofi Bekoe Chief of Nkami gave evidence in that case. He admitted that the Nkamis got their land from Aveme. That was the truth. It was in 1925.

Exhibits "H" and "J" bear my signature.

One day I visited the Chief of Nkami at Nkami privately.

I told them that my subjects were farming on his side, and that we should arrange to tax them and share the proceeds. The Nkami Chief was to collect the tax. He agreed to my proposal. Nothing was put in writing that day. He told me that his clerk was not there, but that when he saw him he would get him to put my proposal again. 10

Six days later he invited me to meet him at Tokor. Chief Bekoe had with him a literate who read out a paper which contained the terms of my proposal, to the effect that any of our subjects farming on the Western side of the river should pay a tax to be shared by us two Chiefs, and that at the end of each year they should present two sheep for each Chief.

It was not then stated that I had begged for land from Bukuruwa and Nkami for my subjects. I was given two documents which I signed. I showed them on my return home to my clerk, who told me of their contents.

The clerk reported me to Tong Yaw. I was queried by Tong Yaw and my Elders to whom I explained what had happened. 20

I was fined £24 cash, 3 sheep and 3 bottles of gin, which I produced.

Tong Yaw took the documents. He said that he would see the Nkami Chief about them.

I was not told what happened, as I was in trouble with my people.

This was in 1930. Kofi Bekoe knew quite well the land belonged to me.

Cross-exam-  
ination by  
Sawyerr.

CROSS-EXAMINED BY SAWYERR.

Agraman is North of Aveme town on the East of the Volta. Agraman is under the Aveme Stool.

Onyamigah was Chief of Agraman. I remember him. 30

The Aveme Elders who are shown in Exhibits "H" and "J" as having signed them did not do so in my presence. When I got into trouble at Aveme these Elders confirmed what I had said. They accompanied me to Nkami.

No. 59.  
Court  
Notes.  
17th April,  
1947.

### No. 59. Court Notes.

Subject to tendering an old German map which will probably arrive tomorrow, Bossman closes his case.

SAWYERR asks permission to prove letters containing relevant statements by the Chief of Fasu contrary to statements made by the 40 representative of Fasu who gave evidence in this case.

BOSSMAN objects that it is too late.

Objection overruled.

## PLAINTIFFS' EVIDENCE (continued).

No. 60.

Gyimah Victor Johnson, 13th Witness.

In the  
Supreme  
Court.Plaintiffs'  
Evidence.No. 60.  
Gyimah  
Victor  
Johnson,  
13th  
Witness.  
17th April,  
1947.

GYIMAH VICTOR JOHNSON, Sworn, states :  
13th Witness for Plaintiffs.

## EXAMINATION-IN-CHIEF.

I am Clerk to the Omanhene and State of Kwahu. I am the State Secretary. I produce from official custody three letters forwarded to the Chief of Nkwatia by the Chief of Fasu. One is dated 8.1.1923, another 10 20.4.1925, another 12.3.1927. There is also a statement of account dated 24.10.1926 signed by Haizel to the Chief of Fasu. I know his handwriting. I had official correspondence with him. The three letters are signed by him. His name was J. W. Sam Haizel. He is now dead. (Tendered. BOSSMAN objects that they are not admissible. Haizel's signature on the letters does not prove them. He should attend and prove them.)

SAWYERR replies. Haizel was the clerk of the Fasu Stool and it was part of his duty to write letters on behalf of the Fasu Chief. Official 20 correspondence thus conducted is admissible against the Fasu Stool on proof of his signature. It will be appreciated that he is now dead.

## BY COURT TO WITNESS—

I have been in the Omanhene's Office since 1920. I visited Fasu in 1927 and stayed with Haizel for three weeks. I saw him employed as clerk to the Fasu Stool, and saw him write letters dictated by the Chief.

I saw no other literate person besides Haizel in Fasu at the time.

(Three letters admitted as Exhibits "M," "N" and "O" Statement of Account as Exhibit "P.")

The Kwahu Paramount Stool exercises jurisdiction over the land in dispute, both administratively and judicially.

## 30 CROSS-EXAMINED BY BOSSMAN—

There was formerly a Native Tribunal at Asabi—that was under the Native Jurisdiction Ordinance and before the 1927 Ordinance (N.A.O.). There were also Tribunal at Fasu and Nkami.

I am telling the truth. Here is a letter written on behalf of the Chief of Fasu to the Chief of Nkwatia dated 11.11.1924, which proves it (Exhibit "Q").

In 1926 and 1927 I was attached to the Chief of Nkwatia's Office. Except for that period I have been in the Omanhene's office. When I was in the Nkwatia office I saw all the Exhibits produced by me. The Nkwatia

Examina-  
tion by  
Court.Cross-exam-  
ination by  
Bossman.

In the  
Supreme  
Court.

Stool office was closed in 1944 and all records including the Exhibits were transferred to the Omanhene's office of which I am in charge.

Plaintiffs'  
Evidence.

I do not know how these letters came to be written. I was not there at the time.

No. 60.  
Gyimah  
Victor  
Johnson,  
13th  
Witness.  
17th April,  
1947.

The Nkwatias claim that they own land between Asabi and Nkami lands. They do not claim any other parts of the land in dispute. However this is an internal dispute between Nkwatia and Bukuruwa, which has nearly been settled by the Omanhene.

I do not know of any date when Government recognised Asabi and Nkami. From ancient times they have been part of Kwahu. 10

I am a native of Nkwatia.

Cross-exam-  
ination by  
Sawyers—  
*continued.*

I deny that it was only in 1900 that Kwahu claimed jurisdiction over Nkami and Asabi.

No. 61.  
Court  
Notes  
amending  
Writ of  
Summons.  
17th April,  
1947.

No. 61.

### Court Notes amending Writ of Summons.

BY THE COURT.

The Asabis are Kwahus by origin. They migrated to Asabi from Bukuruwa, a three days' journey by foot.

Bukuruwa is a sub-division under the Adontenhene who is under the Omanhene. Bukuruwa is separated from the land in dispute by land 20 belonging to other divisions, but this is not unusual in Kwahu.

SAWYERR asks permission to amend the description of the land claimed in the Writ of Summons. Reminds the Court that he had made this application earlier and that the Court had asked for the amendment to be typed.

BY COURT.

Let Writ of Summons and Claim in Statement of Claim be amended as prayed.

Adjourned to tomorrow.

L. M. 30



## Court Notes. Addresses by Counsel.

In the  
Supreme  
Court.

18th April, 1947.

No. 62.  
Court  
Notes—  
Addresses  
by Counsel.  
18th April,  
1947.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN JUDICIAL DIVISION,  
LANDS DIVISION, held at Victoriaborg, Accra, on Friday, the 18th  
day of April, 1947, before M'CARTHY, Ag. C.J.

YAW NKANSAH II AND ANOTHER *v.* WUDANU KWASI AND OTHERS.

BOSSMAN addresses—

Bossman  
Addresses.

10 Plaintiff has tendered as usual Traditional Evidence as to occupation.  
Previous Adjudication.

CRABBE Award :

That dispute was between certain tenants of the Wusuta Stool and Nkami.

At that time the Germans ruled Togoland and no negotiations between the Wusuta Chief then proper representative of the Wusutas and Kwahus could take place without the official permission of the German Authorities. There is no evidence of that.

Kwasi Kumah although a Wusuta was Chief of Mframa, but stated plainly that he was not Chief of Wusuta whose Stool was at Wusuta.

20 The Chief of Wusuta at the time was Osei Tutu I, according to evidence of Robert Prah, ex-Chief of Wusuta.

The Award is of no weight against the claim of the Wusuta Chief, as his predecessor had no opportunity at the time of vindicating his claim to the land.

The fixing of the international boundary line through Wusuta territory could not deprive the Stool of land belonging. According to international law such an act could not affect private property.

30 There is strong evidence that prior to the advent of the Germans the land in dispute was Ewe land. Even in 1903 the Ewes were actively present on it as is shown by the Arbitration proceedings.

Submits that the Arbitration proceedings were irregular. The Commissioner who was Arbitrator called individual witnesses before him and examined them on his own. It does not appear that any opportunity was given to the parties to cross-examine or call witnesses.

On P. — of Arbitration proceedings it is recorded that the Arbitrator put question to *put* based on a previous incident, and actually called a witness to confirm his recollection of it. This is evidence of bias on the part of the Arbitrator. *sic*

SAWYERR replies—

Sawyers  
replies.

40 The attitude of the Defence throughout these protracted proceedings is significant. The Defendants have shown reluctance to go on with

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Sawyer  
replies—  
*continued.*

the case. Refers to proceedings on 12th September, 1946, the failure of the Defendants to take part in the case up to the 16th September, 1946, when Bossman appeared for Wudanu Kwasi, 2nd Defendant. On the 20th September, he appeared also for Chief Djaba III of Wusuta. Important witnesses for the Plaintiffs Kweku Domfe and Thomas Sampon were not cross-examined, although full opportunity for this was given by the Court. 2nd Defendant has not given evidence.

Finally Bossman after addressing the Court on one point viz.: the Crabbe Award, left the Court on the ground that he had an appointment at Ada, and the Defendants or their representatives, witnesses and followers 10 trooped after him. Thus the case is coming to a conclusion in their absence. All along the conduct of the Defence has shown a lack of conviction in its strength. Chief Djaba, Chief of Wusuta, has taken no apparent part in the case, nor has the Chief of Fasu.

Evidence as to ownership of the land.

The Award is relied on not as an estoppel but as supporting Plaintiffs' case.

The Defence made much of the evidence adduced by them as to Fasu. But it is not surprising that the Chief of Fasu did not come to Court and give evidence having regard to his letters to the Chief of Nkwatia.

All the towns on this side of the Volta mentioned in this case are 20 shown in the Chief's list for 1941 as being under Kwahu. It is beyond dispute that they have long been under the jurisdiction of Kwahu.

The Defence now limit the claim of Wusuta to land opposite their land on the Western side. But in their Statement of Defence they repeatedly alleged that the major portion of the land claimed by the Plaintiffs belonged to the Defendants.

Reverting to the Award, there is no ground for imputing bias to the Commissioner, or for holding that he did not give either side full opportunity for putting forward their case.

It is true that the Wusuta Chief was not present or officially represented. Yet the Commissioner did the best he could in the circumstances, and allowed all available evidence to be called in support of Kwasi Kumah's 30 case.

Asks for Declaration of Title to the whole of the land claimed.

Judgment reserved.

L. M.

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IN THE SUPREME COURT OF THE GOLD COAST, EASTERN JUDICIAL  
DIVISION, LANDS DIVISION, held at Victoriaborg, Accra, on  
Thursday the 2nd day of May, 1947, before M'CARNEY, Ag. C.J.

Transferred Suit No... 1/1942.

YAW NKANSAH II Dsasehene of Bukuruwa, Kwahu ... *Plaintiff*  
NANA AKWAMOA AKYEAMPONG Omanhene of Kwahu ... *Co-Plaintiff*

10

*versus*

WUDANU KWASI, Acting Chief of Atipradaa, DAVID  
AKUAMOA alias Yaw Koi of Adukrom and CHIEF  
DJABA III, Chief of Wusuta ... .. *Defendants.*

JUDGMENT.

The Writ of Summons in this case was issued on the 13th March,  
1940, in the Kwahu State Tribunal at the instance of Nana Kofi Badu II  
Chief of Bukuruwa as Plaintiff against Chief Tawia of Atipradaa and  
David Akuamoah alias Yaw Koi of Adukrom. The case was transferred to  
the Divisional Court by Order of the Commissioner of the Eastern Province  
dated the 21st March, 1942, and by virtue of recent legislation falls within  
the jurisdiction of this Court (the Land Court). Chief Osei Tutu of Wusuta,  
the overlord of Chief Tawia, was joined as Co-Defendant on the 8th July,  
1942.

Pleadings having been ordered, the Statement of Claim was delivered  
on the 19th December, 1942. The Claim as amended is for a Declaration  
of Title to a large area of land bounded on the North by the River Obosum,  
on the South by the River Afram, on the East by the River Volta, and  
on the West by Kwahu territory belonging to various divisions of the  
Kwahu State. The land contains forest in which until recently elephants  
were hunted, farm lands, rivers and numerous villages, these especially  
on the West bank of the important River Volta.

The land claimed has been surveyed under an Order of the Court dated  
the 10th February, 1942. All parties took advantage of the opportunity  
to indicate to the Surveyor boundaries and any features on the land which  
they desired to be shown in the Plan. The preparation of the Plan was  
a big undertaking, and it was not completed until the 8th February, 1944.

The Statement of Defence of the 1st Defendant, Chief Tawia, is dated  
the 13th April, 1943, that of the 2nd and 3rd Defendants is dated the  
5th February, 1943.

The trial of the case was delayed by efforts made by the 3rd Defendant  
Chief Osei Tutu and his superior the Head Chief of the Akpini State to  
have the dispute referred to arbitration.

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*continued.*

By the time the actual trial started before me Yaw Nkansah II, Dsasehene of Bukuruwa had been substituted for Kofi Badu II as Plaintiff and Akwamoa Akyeampong Omanhene of Kwahu, had been joined as Co-Plaintiff. Also Wudanu Kwasi had been substituted for Chief Tawia of Atipradaa, and Chief Djaba II for Chief Osei Tutu of Wusuta.

Although the hearing started on the 12th September, 1946, it was not until the 16th September, that Mr. Bossman appeared for the 2nd Defendant, or until the 20th September that the 1st and 3rd Defendants were represented, by the same Counsel. Although this course of events was obviously unsatisfactory all parties were enabled to put their cases fully 10  
before the Court.

The main issue in this case is sufficiently clear. The Plaintiff's claim is that the Bukuruwa Stool hold the land under the Kwahu Stool, the ultimate owner. The 3rd Defendant pleaded that the major part of the land is the property of the Wusuta Stool, and that various sub-chiefs including the 1st Defendant, the Chief of Atipradaa, hold parts of it under his Stool and that the 2nd Defendant is his tenant. This is the position taken by the 1st and 2nd Defendants. The 3rd Defendant does not claim all the land claimed by the Plaintiffs. He says that such portions as do not belong to his Stool belong to certain other Ewe Stools. 20

On the 24th September, 1946, it was ordered that these Stools, Aveme, Botoku and Tonkaw should be joined as Co-Defendants. But when the case was next called on the 24th February, 1947, after an unavoidably long adjournment, this Order was rescinded by consent. It was felt that the joinder would lead to embarrassing complications and protract the hearing.

The 3rd Defendant submits that in any event the Plaintiffs cannot obtain a Declaration outside the land claimed by him on behalf of Wusuta. The Plaintiffs press for a Declaration in respect of all the land claimed by them, although it is realised that such a Judgment will only be binding 30  
on the Wusuta Stool and those claiming under it. It does not seem to me that the Wusuta Stool need be concerned with anything done in relation to land not claimed by it. The Plaintiffs' case of course is that none of the land belongs to Wusuta. The land claimed by Wusuta is not delineated on the Plan (Exhibit "A").

The main territory of the Kwahus, who constitute a large single State, lies West of the land in dispute. Further to the North-West they have a boundary with the Ashantis. The Wusutas, Avemes, Botokus and Tonkaws belong to the large Ewe tribe whose main territory lies on the other side of the Volta, and who comprise many States. The term "Ewe" 40  
is generic and corresponds to "Akan," the name given to the stock to which most of the States in the Colony and Ashanti belong.

The Wusutas and the other Ewe Divisions mentioned are established on the other side of the Volta, where they hold territory, and have their respective principal towns. Although the broad River Volta might well form a boundary between the Ewes on the East and the Kwahus on the

West, it may be that the Ewes have long been settled at least in parts of the land in dispute. The Kwahus arrived in these parts after the Ewes.

The Kwahus and the Ewe tribal organization (sometimes called "Krepi") to which the Wusutas formerly belonged have each an eventful history, which the land in dispute is involved. Evidence has been given of the respective traditions, parts of which have passed into history, and references have been made in the course of the case to passages in Ward's Short History of the Gold Coast, relating to Wars between the Ashantis and the Krepis in 1866-69 (Pages 155, 162 and 163 and elsewhere).

10 The Kwahus fought on the side of the Ashantis who were victorious and overran the Krepi country, not only on the East of the Volta but also South of it, including Anum and Peki. At that time the Peki Stool was at the head of the Krepis, and Wusuta served Peki through Anum. About 1869 the Shanti army returned to Ashanti.

It seems probable that any Wusutas then settled on the West bank of the Volta on the land in dispute would have fled before the enemy, and that for some time at any rate there could have been no question of the Kwahus serving Wusuta or any other Ewe Stool. Conditions in those parts continued to be unsettled for a number of years. It is likely  
20 though that at least some of the Wusutas who fled before the enemy resettled on the land in dispute after the withdrawal of the Ashantis. The Wusuta case is that the Wusutas regained dominion over the land.

The next relevant matter to mention is the advent of the Germans who in 1886 acquired Ewe territory, called by them Togoland, the international boundary of which the British in the region under consideration was the Volta.

It is notorious that it was a feature of German policy to weaken tribal organisation. The evidence establishes that the Germans prohibited their subjects from crossing to British territory except by special  
30 permission. There was no possibility of official contact between the Wusuta and other Ewe Stools on the German side (East) and such of their peoples as were living on the British side (West) of the Volta. From the German point of view these Stools ceased to have any political or territorial rights in respect of British territory, and it is clear that they were not able to assert any. This state of affairs lasted 1886 to 1914.

It is against this background that it is necessary to view a dispute between Wusuta Chiefs established on the British side and the Kwahus, which came to a head in 1903. The dispute concerned the ownership of much of the land now in dispute. On the one hand were the Kwahu Stool  
40 represented by its linguist, the Chief of Bukuruwa, the Chief of Asabi, whose Stool was alleged to hold the land under Bukuruwa, and the Chief of Nkami another local Chief at that time under Asabi. On the other hand were Kwasi Kumah who claimed to be a Chief of Ourisita (Wusuta) on the German side and to be the Chief of Nframa on the land in dispute. He claimed in effect to be the senior Wusuta Chief on the British side and stated that most of the Wusuta settlements on that side were under him. With him were ranged the other local Wusuta Chiefs.

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*continued.*

The dispute in many essentials was much the same as in the present case. Much the same traditions were given before the Arbitrator, the Travelling Commissioner, to whom the dispute was referred for settlement. The Arbitration proceedings are in evidence (Exhibit "D"). There was a full enquiry, at the end of which the Commissioner summed up his award in these terms (Exhibit "F") :—

" That as it is a matter of common knowledge the land from  
" Mprasam (and afterwards, from the Ada River—3 miles North  
" of Mprasam) up to Akrosu formerly belonged to the Asabis : 10  
" that after the Ashantis took Nkansa, the King of the Asabis,  
" into Ashanti and killed him there, the Kwahu King, either by  
" payment or other consideration, was given and took charge of  
" the Asabi lands : and as no evidence has been given before the  
" Court other than to show that all the Defendants in the case  
" are either refugees from the German side, or strangers here ;  
" therefore all the land that was formerly Asabi now belong to  
" Kwahu, and all the Chiefs and people now living on this land  
" are subject to and serve the King of Kwahu and his Stool."

The one important respect in which the Arbitration may be distinguished from the present proceedings is the fact that the principal 20  
Wusuta Chief who lived under the Germans was for obvious reasons unable to appear or be officially represented.

On this ground Mr. Bossman Counsel for the Defendants maintains that the award is not evidence against the 3rd Defendant, the Chief of Wusuta (whose territory is now part of Togoland under British Mandate). His argument is that there has been nothing to deprive him of his rights of property in British territory.

The position in 1903 was that the Wusuta Head Chief had for political reasons been unable to assert any rights over the land in dispute for seventeen years, and that so far as could be seen this would remain to be 30  
so indefinitely. It was expedient for administrative reasons and generally in the public interest that the dispute should be settled one way or another. The Arbitration proceedings were conducted in the fairest manner possible in the circumstances. Under Native Customary Law assuming that the ultimate ownership rested in the Wusuta Head Chief, the local Wusuta Chiefs would have vested interests in the land held under him. As the Head Chief's right were indefinitely in abeyance it seems reasonable that the local Wusuta Chiefs should be regarded as succeeding to them, for the time being at any rate. If these local Chiefs had proved to the satisfaction 40  
of the Arbitrator that the land had been held by the Wusutas independently of the Kwahus, they would have been declared the owners. The departure of the Germans could not have been anticipated, but when this occurred it would have been open to the Head Chief to seek to resume his territorial rights in relation to his former sub-chiefs. As the Kwahus won, I do not see how the Wusuta Stool, 54 years after the German occupation of

Togoland (counting from the date of the writ), can expect the Court to ignore the award made 37 years before the issue of the Writ in the circumstances above-mentioned.

Mr. Sawyerr does not contend that the award operates as an estoppel, but he does contend that it is evidence against the Defendants and I agree with him.

10 It seems to me highly relevant that the Travelling Commissioner, who dealt with the dispute *on a town in the land in dispute*, and heard a large number of witnesses who could speak as to relevant matters within their own knowledge, should have decided in favour of Kwahus. He obviously was in a far better position than I to find out the truth of the matter.

Having regard to the nature of the Pleadings, I should, if of opinion on the evidence before me that the Commissioner came to a wrong decision, give effect to that opinion. But having weighed the evidence outside the award my view is that the balance is slightly in favour of the Kwahu Stools.

20 Mr. Bossman in his final address, notwithstanding the mass of evidence adduced on both sides, did not consider it worth while to deal except very generally with any point other than the admissibility of the award. For my part I do not propose to discuss the evidence in detail.

30 I would however state that it does appear that at present there are more Ewes on the land than Kwahus. This is probably due to movements that have taken place since 1903, the date of the award. It should be added that this does not affect the legal position. In 1903 it appeared to the Arbitrator that all the people who stood on the side of the Wusutas in the dispute were either refugees from the German side or strangers. This negatives any contention that immediately before the first German occupation the Wusutas were in control of the land, or that this was the position between them and the time of the award. This also is the impression I have derived from the evidence. It is only right though that I should make it clear that in my final conclusion I have been influenced by the award.

In the result I find in favour of the Plaintiffs, and grant the Declaration claimed.

Costs to be assessed. Counsel's cost assessed at ninety guineas.

(Sgd.) L. V. M'CARTHY,  
*Acting Chief Justice.*

I concur.

(Sgd.) K. ASANTE,  
*Assessor.*

In the West African Court of Appeal.

No. 64. Grounds of Appeal.

FORM II

No. 64. Grounds of Appeal 13th June, 1947.

IN THE WEST AFRICAN COURT OF APPEAL.

Between

- 1. WUDANU KWASI (Substituted for Chief Tawiah decd.)
2. DAVID AKUAMOA alias Yao Koi and
3. FIA DJABAH II (Substituted for Fia Osei Tutu) all of Wusuta ... .. Appellants

10

NANA YAW NKANSAH II, Jasehene of Bukuruwa (Substituted for Nana Baadu) and OMANHENE AKUAMOA AKYEAMPONG ... .. Respondents.

The Appellant being dissatisfied with the Judgment of the Land Court delivered on the 2nd May 1947, and having obtained Final Leave to Appeal therefrom dated the 7th day of June, 1947, hereby appeals to the West African Court of Appeal upon the grounds hereinafter set forth.

GROUND OF APPEAL.

- 1.—The Judgment was wholly against the weight of the evidence.
2.—The Judgment was based on material inadmissible evidence wrongly received, to wit Exhibits " D " and " F " the so-called proceedings and Award of Travelling Commissioner Crabbe.
3.—The Court was wrong in deciding in effect that Exhibit " F " operates as res judicata against the Defendants when it said as follows :— " It is only right though that I should make it clear that in " my final conclusion I have been influenced by the Award."
4.—The Plaintiffs had to discharge the burden of proving how the Defendant and his people in possession have occupied the Land for a long number of years adversely against the said Plaintiffs—and they failed to discharge that Burden.
5.—That on the evidence before the Court the Plaintiffs should have been Non-Suited.

30

Dated this 13th day of June, 1947.

(Sgd.) K. ADUMUA-BOSSMAN, Counsel for Appellants.

To the Registrar, Land Court, Accra, and to the above-named Plaintiffs-Respondents, Nana Yaw Nkansah II and Omanhene Akuamo Akyeampong, their Solicitor or Agent, Accra.

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No. 65.

## Additional Grounds of Appeal.

## FORM II

IN THE WEST AFRICAN COURT OF APPEAL.

WUDANU KWASI (Subtd. for Chief Tawiah decd.), DAVID  
AKUAMOA alias Yao Koi and FIA DJABAH II (Subtd.  
for Fia Osei Tutu) all of Wusuta ... .. *Appellants*  
and

NANA YAW NKANSAH II, Jasehene of Bukuruwa (Subtd.  
10 for Nana Baadu) and OMANHENE AKUAMOA AKYEAMPONG *Respondents.*

The Appellants being dissatisfied with the Judgment of the Land Court, Accra, delivered on the 2nd day of May, 1947, and having obtained Final Leave to Appeal therefrom dated the 7th day of June, 1947, hereby appeals to the West African Court of Appeal upon the grounds hereinafter set forth.

## ADDITIONAL GROUNDS OF APPEAL HERETO ANNEXED.

No. 6.

(1) This Appeal is brought by (1) Wudanu Kwasi, Acting Chief of Atipradaa (Subchief to the Chief of Wusuta) and (2) Chief Djaba III  
20 Chief of Wusuta one of the Native Divisions or States in British Mandated Togoland against Yaw Nkansah II Dasehene of Bukuruwa Kwahu and Nana Akuamoah Akyeampong, Omanhene of Kwahu, in respect of a Judgment dated 2/5/47 of the Land Court Accra (Constituted by M'Carthy Acting C. J. sitting with an Assessor) which awarded ownership of a large tract of Land to the latter parties who claimed declaration of title thereto as against the former.

(2) The proceedings commenced with a Writ of Summons issued in the Tribunal of the Omanhene of Kwahu by Nana Kofi Baadu II Ohene of Bukuruwa-Kwahu, against (Chief) Tawiah of Atipradaa and David Akuamoah  
30 alias Yao Koi of Adukrom, claiming Declaration of Title. The action was transferred by the Provincial Commissioner for hearing in the Divisional Court by Order dated 21st March, 1942.

(3) In the Divisional Court the then Chief of Wusuta to whom the Chief of Atipradaa was subordinate applied and was made Co-Defendant on the ground that he claimed the area in dispute and that it was upon his orders that the Atipradaa Chief had stopped David Akuamoah from paying tolls to the Plaintiff who admittedly gave to the said David Akuamoah originally the right to cultivate the land and make cocoa farms thereon.

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Court of  
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Additional  
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In the West African Court of Appeal.

No. 65. Additional Grounds of Appeal. 17th February, 1948—*continued.*

The Co-Plaintiff was also in due course joined as overlord of the original Plaintiff.

(4) The original parties were largely substituted during the course of the suit—Yaw Nkansah being substituted for Kofi Baadu when the latter was destooled, and Wudanu Kwasi Acting Chief for the original Chief Tawiah of Atipradaa when the latter died, and Fia Djabah III for Fia Osei Tutu when the latter was destooled as Chief of Wusuta, and the action finally came to be heard by the Land Court by virtue of the Courts Amendment Ordinance No. 23 of 1944.

(5) The action raised the question of the ownership of a large area of 10 land West of and adjacent to the River Volta as between the Kwahus who comprise one of the principal Akan or Twi speaking Native States of the Gold Coast and are known to have settled over 100 miles away from the area in dispute, and the Ewe or Krepi Tribes who are known historically to have their territory along the Volta Lands both East and West close to and actually or parts of the Land in dispute. In this connection it is important to note the somewhat grudging admissions of the trial Judge as follows :—

“ Although the broad River Volta might well form a boundary  
 “ between the Ewes on the East and the Kwahus on the West 20  
 “ it may be that the Ewes have long been settled at least in parts  
 “ of the land in dispute. The Kwahus arrived in these parts  
 “ after the Ewes.”

(6) The “ onus ” was on the Plaintiffs to establish title and it is the Appellants’ contention that such Evidence as the Plaintiff adduced was not sufficient to destroy the Defendants’ case “ that they have all along  
 “ been in possession as original settlers of Krepi or Ewe land and have  
 “ continued in such possession without acknowledging the overlordship  
 “ of the Kwahus by payment of tribute or by any other conduct, and that  
 “ the Plaintiffs should have been non-suited ”. 30

(7) The trial Judge did not deal with the respective traditions in his résumé of the case to credit or discredit the one or the other tradition—particularly as to the settlement of two important towns of the Plaintiffs Asabi on the South and Nkami on the North. Those were the first settlements with which the Plaintiffs claim association—and it was of vital importance to decide whether the Plaintiffs’ tradition as to the settlement was true or whether the Defendants’ tradition was the true one.

(8) Sufficient to say that the tradition related by the Plaintiffs that this whole area of land belonged to a Kwahu Chief called “ Ataatafinan ” against who the Bukuruwa Chief then the Paramount Chief of Kwahu 40 made war and conquered and took the land—has no historical foundation or support. Indeed it is clearly disposed of by the findings that the Land in dispute was originally Ewe Land. On the contrary the case of the Defendants that their ancestors, already settled on Ewe Land before the advent of the ancestors of the Asabis and Nkamis, granted permission to

them to settle near them for shelter and protection, long before the commencement of the Ashanti Wars in which the Krepis or Ewes became involved—has strong historical foundation and backing and renders the Defendant's version of the tradition far more acceptable.

In the West African Court of Appeal.

(9) The Learned Trial Judge without sufficiently considering and weighing up the opposing testimony to credit or discredit one or the other, decided the case on two important points.

No. 65. Additional Grounds of Appeal.

10 (a) The effect of the German Settlement of Togoland and the fixing of the Volta as the International Boundary between the British Gold Coast and German Togoland in 1886—which the Learned Judge held to operate to make the Ewe Tribes under German domination to waive all their rights to any land which they previously owned on the British side of the Volta and

17th February, 1948—*continued.*

(b) Certain Arbitration proceedings which are alleged to have taken place between the Ewe Settlers on the British side and the Kwahus—before a Travelling Commissioner named Crabbe (accepted in evidence against the objections of the Defendants as Exhibit “ D ”) which the Learned Judge held as conclusive of the question of ownership.

20 (10) Although in one breath he says as regards these proceedings and so-called Award that they are not tendered as *res judicata* in another breath he says :—

“ It seems to me highly relevant that the Travelling Commissioner, who dealt with the dispute in a town on the Land in dispute, and heard a large number of witnesses who could speak as to relevant matters within their own knowledge should have decided in favour of the Kwahus. He obviously was in a far better position than I to find out the truth of the matter ”

30 by which the trial Judge seems to mean that the matter had long ago been decided by the Crabbe decision, so that was the end of it. It will be observed that he would not even consider the objections as to whether the Arbitration proceedings were admissible at all against the Wusuta Chief who was admittedly no party to the proceedings because he was then on the German side.

40 (11) One striking feature when one reads the whole of the so-called Arbitration proceedings—is the obvious bias in favour of the Kwahus under British Protection and in British Territory—as against the Ewes under German Protection living on Ewe land within British Territory. From beginning to end the Ewes are ridiculed (See notes and observations of the Commissioner as he takes the Statement from the Ewes). In some cases the Commissioner seems even to take offence that a person making a statement has dared to come from the German Zone to the British Zone.

(12) It is very difficult to know how and under what authority he was appointed to act as Arbitrator ; or the circumstances under which the

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persons who signed consent for him, came to do so and the circumstances which led to the Enquiry are all left to the imagination, and it is submitted that the proceedings were not valid judicial proceedings and were not admissible to affect the Appellants. It would appear that when the Kwahus and Ewes were hotly disputing control of the Area, the British Authority stepped in to settle and regularise the Eastern Boundary up to the German Frontier, by the simple expedient of declaring the nearest Native State having some semblance of a claim—the owner of the land, and it is submitted that no Administrative Officer of the Government was qualified by reason of interest to act as Arbitrator in the matter. 10

(13) On the first point that the effect of the German Settlement of Togoland was that the Ewe Chiefs or Stools under them “Ceased to have any Political or Territorial rights in respect of British Territory and it is clear that they were not able to assert any” it is respectfully submitted that there was not sufficient evidence on Record (beyond the evidence that the Germans did not readily allow crossing to the other side without a permit) to warrant the trial Judge in coming to that conclusion and in making such assertions as :

- (a) “It is notorious that it was a feature of German Policy to weaken tribal organisation.” 20
- (b) “There was no possibility of official contact between the Wusutas and other Ewe Stools on the German side and such of their peoples as were living on the British side of the Volta.”

(14) As to the 2nd point, namely the validity and admissibility of the so-called Arbitration proceedings, it is respectfully submitted that the said proceedings are invalid on the following grounds :—

- (a) Because prior to the enactment of the Arbitration Ordinance No. 9 of 1928 the only Arbitration known to the Natives of the Colony was Arbitration according to Native Customary Law—which was not what took place before Commissioner Crabbe. 30
- (b) Because if an Arbitration according to English Law could take place prior to the enactment of the Arbitration Ordinance, then it had to conform to the requirements of the Common Law Procedure Act 1854, Secs. 11 to 17 inclusive, and the proceedings relied on, do not so conform to the said Statute in that
  - (i) The so-called submission does not show what was the matter in difference, and
  - (ii) No proper Award was produced as prescribed by the Act.
- (c) Because the so-called Arbitrator was disqualified by reason of his interest as a Political Officer in the dispute from acting—and in 40 acting he misconducted himself.
- (d) Because in any event the Wusuta Head Chief was not a party to the proceedings.

(15) The Appellants respectfully submit that the Judgment of the Land Court should be set aside on the grounds above set out and

(a) Either a New Trial Ordered, or

(b) Judgment given against the Plaintiffs-Respondents in favour of the Appellants.

Dated this 17th day of February, 1948.

(Sgd.) K. ADUMUA-BOSSMAN,  
*Counsel for Appellants.*

The Registrar, West African Court of  
10 Appeal, Gold Coast Session, Accra,  
and to the above-named Plaintiff-  
Respondents, Nana Yaw Nkansah II,  
and Omanhene Akuamoa Akyeampong  
or their Solicitor Mr. Akilagpa Sawyerr,  
Accra.

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No. 66.

Court Notes of Counsels' Arguments on Appeal.

24th February, 1948.

20 IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION,  
held at Victoriaborg, Accra, on Tuesday the 24th day of February,  
1948, before Their Honours JOHN ALFRED LUCIE-SMITH, O.B.E.,  
C.J., Sierra Leone (Presiding J.), JAMES HENLEY COUSSEY and SAMUEL  
OKAI QUASHIE-IDUN, JJ., Gold Coast.

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Court Notes  
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24th, 25th  
& 27th  
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C.A. No. 9.

YAW NKANSAH III, Dsasehene of Bukuruwa-Kwahu *Plaintiff-Respondent*

NANA AKUAMOA AKYEAMONG, Omanhene of Kwahu

*versus* *Co-Plaintiff-Respondent*

30 WUDANU KWASI, Acting Chief of Atipradaa, DAVID

AKUAMOA alias Yaw Koi of Adukrom and CHIEF

DJABA III, Chief of Wusuta ... .. *Defendants-Appellants.*

Mr. BOSSMAN for Appellants.

SAWYERR and SAKYI DJAN for Respondents.

BOSSMAN

Judgment 69 - 73. Page 58. *Krepis v. Kwahu.*

Respondent claimed all the land as being originally Kwahu. Page 26  
(Refer page 33) pages 69 and 70.

Bossman  
for  
Appellants.

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No. 66.  
Court Notes  
of Counsels'  
Arguments  
on Appeal.  
24th, 25th  
& 27th  
February,  
1948.  
Bossman  
for  
Appellants.  
—continued.

Krepi—Wusuta.

Trial Judge did not find in favour of Respondent's tradition.

Krepis—Wusuta—Ewe.

Judge found that Appellants were amongst the parties herein, the first settlers on the land in dispute.

Respondents did not claim as allies of Ashantis. Grounds of Appeal 3 (p. 74, para. 3). "F" was not pleaded. Pages 72, 73, page 71, page 34, page - , page - .

Wusuta Paramount Chief not a party to the Arbitration. No Arbitration Rules in 1903. 10

The Appellant is the Paramount Chief of the Wusutas. At the time of the Crabbe Arbitration the Appellant's predecessor the then Paramount Chief was in German Territory and was unable to have and in fact had no part in the Arbitration proceedings. Therefore in view of the wording of M'Carthy's Judgment the Respondents would have failed to satisfy him as to their title and Judgment would have gone against them.

So-called submission to Arbitration bad for vagueness. 17 and 18 Victoria Cap 125 Sections 11, 15. No written Award.

"D," "E," and "F" improperly admitted. If admissible not relevant. 20

Ground I—

Tradition—Establishment of Asabi and Nkami—Page 40, page 60, page 98, page 62, page 30.

(Sgd.) J. LUCIE-SMITH,  
*Presiding Judge.*

25th February, 1948.

Part heard.

Appearances as before.

BOSSMAN *continuing*

Head Chief, pages 71, 72, 73. 30

Pages 8, 15.

Respondents failed to prove title.

The 2 witnesses for Respondent gave contradictory evidence.

See pages 26-33. Refer 32.

Page 26, pages 62, 60.

Traditional evidence 2 W.A.C.A. 24 at 25 (last paragraph).

*Plaintiff's Witness 2.*

No mention of Ashanti Wars as driving away Togoland. Page 71.

*Elephant.*

Page 49, pages 49, 52, 53. 40

Plaintiff claimed title and must succeed by the strength of his title not by weakness of his Opponent. 2 W.A.C.A. 336 at page 337.

Page 68.

## SAWYERR.

Pages 57, 58, 25.

Respondents in active occupation of the land.

Nkami and Asabi occupied by Respondents and they rule land all round. Page 26.

*Historical Background.*

Pages 9, 42.

Ward's Short History of Gold Coast, page 20.

Page 33.

10 Judgments 1911-16, page 56.

Gold Coast Law Reports (1926-29) page 220 at page 233. Pages 24, 28, 34. Exhibits B, C. Page 50.

Plaintiff's case.

Page 67, page 28.

(Sgd.) J. LUCIE-SMITH,  
*Presiding Judge.*

27th February, 1948.

Appearances as before.

SAWYERR *continuing.*

20 *Arbitration.* Page 42. Kwasi Kumah obviously caretaker and was a party to Arbitration. Page 92.

1 W.A.C.A. 253 at 257.

*Tradition.* Pages 70, 71.

Cap 203 (page 1024).

## BOSSMAN in reply.

17 & 18 Victoria Cap 125. Page 1312, Section 11, Section 15.

Award really treated as *res judicata*.

Refers to evidence other than the Award.

Exhibit L page 98.

30 Exhibit E wrongly admitted—this Court must reject.

*Jacker v. International Cable Company* 5 T.L.R. 13.

Exhibit E only admitted for inspection—Privy Council Reports 47.

Exhibits "M," "N," "O," "P"—Page 65 improperly admitted.

*Kufo v. Kwame.*

Occupation *versus* Tradition. Privy Council Reports 99 at 101.

2 W.A.C.A. 24 at 29.

2 W.A.C.A. 336 at 337.

C. A. V.

(Sgd.) J. LUCIE-SMITH,  
27.2.48.

40

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24th, 25th  
& 27th  
February,  
1948—  
*continued.*  
Sawyerr  
for  
Respond-  
ents.

Bossman  
for  
Appellants.

In the West African Court of Appeal.

No. 67.

Judgment.

1st March, 1948.

No. 67. Judgment. 1st March, 1948.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at Victoriaborg, Accra, on Monday the 1st day of March, 1948, before Their Honours JOHN ALFRED LUCIE-SMITH, O.B.E., C.J., Sierra Leone (Presiding J.), JAMES HENLEY COUSSEY, and SAMUEL OKAI QUASHIE-INDUN, JJ., Gold Coast.

Civil Appeal No. 43/1947.

YAW NKANSAH II, Dsasehene of Bukuruwa-Kwahu	... ..	<i>Plaintiff-Respondent</i>	10
NANA AKWAMOA AKYEAMPONG, Omanhene of Kwahu	... ..	<i>Co-Plaintiff-Respondent</i>	
<i>versus</i>			
WUDANU KWASI, Acting Chief of Atipradaa, DAVID AKUAMOA alias Yaw Akoi of Adukrom and CHIEF DZABRA III, Chief of Wusuta	... ..	<i>Defendants-Appellants.</i>	

JUDGMENT—Read by COUSSEY, J., Gold Coast.

This is an Appeal by the Defendants against a Judgment of the Lands Division of the Supreme Court (M'Carthy, Acting C.J.) in a suit in which the Plaintiffs obtained a declaration of title to a large area of land, about twenty square miles in extent, having as its Eastern boundary the River Volta, the principal river in the Gold Coast Colony and which, until the expulsion of the Germans about the year 1915, was the International Boundary between British Territory and German Togoland.

The Plaintiffs on the Writ of Summons as finally amended are the Omanhene or Paramount Chief of Kwahu and his subordinate Chief the Dsasehene of Bukuruwa. The Kwahus are one of the large Akan States of the Gold Coast.

The third defendant is the Chief of Wusuta, one of a large tribe known as the Ewe whose lands extend Eastward from the Eastern bank of the Volta.

The action was originally brought by, the Plaintiffs against Chief Tawia of Atipradaa, a sub-chief of the Stool of Wusuta and the second Defendant Akuamo a subject of the Aveme Stool, both Ewes to whom the Plaintiffs allege they gave permission to live and work on portions of the disputed area.

According to the Plaintiff's case, after many years' occupation by the first and second Defendants and, in the case of the first Defendant, of his predecessor also during which period they had rendered tribute to the



Plaintiffs, about the year 1940 on the authority of the third Defendant their superior Chief they disputed the Plaintiffs' title, hence the third Defendant was joined on the Plaintiffs' application and a declaration of title is sought against him also.

In the West African Court of Appeal.

The immediate cause of the litigation is that the first and second Defendants had refused further to recognise the Plaintiffs' title in the circumstances above stated. Both parties relied upon their traditional history and also upon evidence of present occupation of the land in dispute. To explain why their occupation had not been so full as the title they claim warranted, the Defendants suggest that the declaration of the River Volta as the Anglo-German boundary in the year 1886 prevented their exercise of full dominion over the land from that time, because as German subjects they were not allowed to cross the frontier. In spite of this, however, they say that a connection was maintained between them and the Ewes settled on the land.

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*continued.*

Reviewing the rival traditions the trial judge supported by recorded history, found that the Ashantis, a powerful nation from the North, in one of their wars, 1866–1869, fought and drove the Krepis, led by the Peki Stool and with them the Wusutas, from the land in dispute to the East of the Volta River. In that war the Kwahus were allies of the Ashantis. When the Ashanti army receded the Kwahus, as allies of the Ashantis, remained in possession of the land in dispute as owners, the Ashantis advancing no claim thereto.

The learned Judge summed up the situation, after the Ashanti war referred to, as follows :—

“ It seems probable that any Wusutas then settled on the West bank of the Volta on the land in dispute would have fled before the enemy, and that for sometime at any rate there could have been no question of the Kwahus serving Wusuta or any other Ewe Stool. Conditions in those parts continued to be unsettled for a number of years. It is likely though at least some of the Wusutas who fled before the enemy resettled on the land in dispute after the withdrawal of the Ashantis. The Wusuta case is that the Wusutas regained dominion over the land.”

This accords with the methods by which one tribe by conquest acquired ownership of the territory of another. In such circumstances when conditions became settled it is within native concepts that the new owners would allow the conquered Wusuta and other Ewe peoples to occupy parts of the land for cultivation so long as no adverse claim was made. (See *Kuma v. Kuma*, Privy Council, 15th November, 1938.)

In our view the learned Judge drew a fair and proper conclusion from the rival traditions presented by the parties.

In the course of the trial, the proceedings and award of a Travelling Commissioner in an Enquiry relating to the disputed land in which certain Ewe Chiefs, including the third Defendant's predecessor on the one part

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*continued.*

and the Plaintiffs represented by the Chief of Nkami on the other part were admitted in evidence as part of the Plaintiffs' case, although they had not been pleaded by them. After reviewing the state of affairs at the time of the Enquiry, the trial judge found that the award referred to supported the Plaintiffs' case. We set this out in his own words:—

“It seems to me highly relevant that the Travelling Commissioner, who dealt with the dispute in a town on the land in dispute, and heard a large number of witnesses who could speak as to relevant matters within their own knowledge, should have decided in favour of Kwahus. He obviously was in a far better position than I to find out the truth of the matter.”

“Having regard to the nature of the pleadings, I should, if of opinion on the evidence before me that the Commissioner came to a wrong decision, give effect to that opinion. But having weighed the evidence outside the award my view is that the balance is slightly in favour of the Kwahu Stools.”

At the end of his Judgment the learned Judge declared that he had been influenced by the award in his final conclusion.

The Judgment appealed from is criticised on two main grounds: (1) That the onus was on the Plaintiffs to establish a right to a declaration of title and that the Plaintiffs' evidence did not destroy the Defendants' case that they were the original Krepi or Ewe settlers on the land who had always maintained possession without acknowledging the title of the Kwahus. (2) That the arbitration proceedings and award were not admissible in evidence against the Defendants.

Dealing firstly with the second objection, in our view the proceedings at the Enquiry were not in fact admitted in evidence for the purpose of forming part of the Plaintiffs' case. Looking at the record we observe that the proceedings were tendered to enable the Court to see the scope of the Enquiry in order to rule as to the admissibility of the award. The Defendants' Counsel did not object to their admission for this purpose, but it is clear on general principles that the notes of evidence given at that Enquiry could not be used as evidence of the facts then shown to exist: that evidence was not admitted on the ground that some or all of the witnesses were dead, or on any other exceptional ground which would have rendered it admissible.

The submission to arbitration is in writing. It does not provide that an award shall be in writing and therefore a parol award is not excluded, although a written award is more usual.

According to the report of the Commissioner it appears that a parol award was in fact made. The fact that a parol award appears to have been made, in our view, rules out Exhibit F as the award of the Commissioner; it is in fact a report to the Governor of the effect of the award delivered. There is no evidence therefore before the Court as to the terms of the actual award made, although there is evidence in the Plaintiffs' case that it was in favour of the Chief of Nkami and the Kwahus.

Before proceeding further we shall refer to three Exhibits M, N and O, letters said to have been written by Cudjoe Dei, Ewe Chief of Fasu village

on the land in dispute to the Nkwatia Chief of Kwahu. These letters were tendered by the Plaintiffs as containing admissions of their title. The writer of the letters is said to be dead. Cudjoe Dei is illiterate and the letters are said to bear his mark. Containing admissions as they are said to do of the Co-Plaintiff's title through his Sub-chief of Nkwatia who had withdrawn from the suit as a Co-Defendant, we are not satisfied that they were strictly proved to convey what Cudjoe Dei intended so that they might be admitted in evidence to weigh against the defence. It was open to the Plaintiffs as Cudjoe Dei is alive, to have called him as a witness and to put  
 10 the letters to him as a foundation for their admission in evidence. In dealing therefore with the other main ground of appeal we have excluded from our consideration the proceedings and the so-called award and the three letters referred to. We have now to consider the following finding of the trial Judge which has already been referred to. We set it out again :—

“ Having regard to the nature of the pleadings I should,  
 “ if of opinion on the evidence before me that the Commissioner  
 “ came to a wrong decision, give effect to that opinion. But  
 “ having weighed the evidence outside the award my view is that  
 “ the balance is slightly in favour of the Kwahu Stools.”

20 This is a general finding of fact in the Plaintiffs' favour on the evidence before the Court, and we propose to examine the evidence to see how far this can be supported. It is unfortunate that in a case which occupied the trial Court for a considerable time there was not a full analysis of the evidence. In a great measure this appears to be due to the attitude adopted by Counsel for the Defence in his final address to the Court and indeed to the general conduct of the Defence. We feel it our duty therefore in this appeal under the general powers of this Court provided for by Rule 31 of the Rules of the West African Court of Appeal to examine the evidence fully to arrive at our Judgment. In doing so we keep before us the principles  
 30 which have been urged very forcibly for the Defendants-Appellants, namely that the onus is on the Plaintiffs to satisfy the Court that they are entitled on the evidence brought by them to a declaration of title and that they must rely on the strength of their own case and not on the weakness of the Defendants' case, and further that if the whole evidence in the case be conflicting and confused and there is little to choose between the rival stories the Plaintiffs fail.

During the four days that this appeal has been argued before us, it has been increasingly clear to us that the evidence is far from slightly in favour of the Plaintiffs' Stools as the learned Judge found. We are satisfied upon  
 40 a review of all the evidence that the Plaintiffs are entitled to the declaration. The traditional evidence as found by the trial Court is consistent in our view with the conditions existing to-day. Taking first the Plaintiffs' case as to the grant of occupation of a portion of the land at Atipradaa near Asabi to Adom, the predecessor of the first Defendant and the acknowledgment by the original first Defendant and his predecessor of the Plaintiffs' title, in our view, this is proved by the Plaintiffs' witnesses Yaw

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*continued.*

Nkansah II and Kweku Dumfe. We do not overlook the fact that when Counsel came into the case for the Defendants, although Kweku Dumfe was recalled into the witness-box, Counsel for the Defendants did not cross-examine him on the important evidence the witness had given and Counsel stated further that he did not wish to cross-examine other witnesses who had been called up to that stage in proof of the grants to the second Defendant Akuamoa and to the first Defendant's predecessors Chief Tawia and Adom. The evidence of Robert Kojo Kaaning, the Plaintiffs' fifth witness, must be referred to. He gave material evidence to the effect that he obtained from the Chief of Asabi, a Kwahu sub-chief, a portion of the land in dispute near Asabi and near to Chief Tawia and that he lived on and farmed his land. He says that in the year 1932 when he found that some sawyers had trespassed on his land he spoke about it to Chief Tawia the second Plaintiff's predecessor in the presence of his sons and that Chief Tawia told him to report to the Chief of Asabi the owner of the land. This evidence, unchallenged as it was, is an important admission of the Plaintiffs' title because the Plaintiffs' case is that Chief Tawia was also occupying the Plaintiffs' land. It was not cross-examined to. Similarly as to the Plaintiffs' case against the second Defendant Akuamoa. In his statement of claim the first Plaintiff averred that David Akuamoa obtained permission about the year 1933 to farm on the land and that he paid tribute to this Plaintiff until the year 1938 when he refused to pay further tribute. The Defendants denied by their Defence that any such permission had been obtained from the Plaintiffs, or that any such tolls had been paid. Evidence was given by the Plaintiffs' representative Yaw Nkansah and also by Thomas Sampon, a Presbyterian, in support of the grant to Akuamoa, and in the course of the proceedings when the actual memoranda made by Akuamoa at the time of the grant were tendered in evidence, the Defendant Akuamoa through his Counsel, admitted the documents evidencing the grant to him, whereas in the pleadings filed he had categorically denied any such permission. Akuamoa did not give evidence.

The question arises : if the land in dispute were in the ownership of the Defendants and other Ewe Stools, why should Adom and Akuamoa apply to a Kwahu Chief for permission to farm portions of the land on tribute ? The Defendants say they were prevented from exercising control over the land owing to the German occupation. At the longest estimate German hindrance ceased at the conclusion of the 1914-18 war when the former German territory to the East of the Volta River in these parts came under British Mandate. To our mind, that in 1933 Akuamoa should obtain a grant evidenced in writing long after German restriction had ceased is strong support of the Plaintiffs' title. It is inconsistent with the case of the Defendants and of the ownership claimed by the Defendant Stools.

Robert Prah, the Defendants' twelfth witness, who was Chief of Wusuta before the present Co-Defendant, states that he found the Defendant Akuamoa working on the land and that on learning that he was allowed to farm there by the Chief of Bukuruwa, he ordered him to stop

paying tribute to the Bukuruwa Chief and consequently, as already stated, these proceedings were instituted by the Plaintiffs. He fixes the date of this incident at the year 1940 which coincides with the institution of these proceedings. The Defendants called as their fifth witness John Tonu Yao, Nifahene to Ghazari III, Head Chief of Aveme, who now claims the Northern area of the land in dispute up to the River Obosum. In the course of his evidence he claimed that Nkami on the West bank of the Volta River and its land belong to his Stool. He was confronted with an Agreement admittedly made by Chief Ghazari (Exhibits "H" and "J")

10 who however, when called to give evidence some six months later, endeavoured to explain away the effect of the Agreement.

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*continued.*

That Agreement provides evidence that the Head Chief of Aveme did "beg" for some land from the Kwahu Chief of Nkami, the land being situate at Ofra Aboma. The place referred to is deep in the land in dispute. The evidence of Chief Ghazari given at the conclusion of the Defendants' case is in itself expressive of the Plaintiffs' title. He says, "Exhibits H and J bear my signature. One day I visited Chief of Nkami at Nkami privately. I told him that my subjects were farming

20 "on his side and that we should arrange to tax them and share the proceeds."

In our view this is an admission that the Chief of Aveme's subjects were farming on Kwahu land in the control of the Chief of Nkami namely land on the Western side of the River Volta as opposed to Aveme or Ewe land on the Eastern side of the River and that, if Chief Ghazari's account of the arrangement can be accepted but as to which we express no opinion, the Kwahus were to receive tribute for occupation of their land whilst part of the money collected would go to the Ewe Chief of Aveme not in right of the land, but because the Ewe people were his subjects. This affords in our opinion strong support of the Plaintiffs' case. We have no doubt that it was considered by the learned Judge in arriving at his general finding.

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Then there is the Akroso Chief a neighbouring owner called by the Plaintiffs who testifies that the land to the South of the Obosum River which is the Northern limit of the disputed land belongs to the Plaintiff the Chief of Bukuruwa.

Apart from traditional evidence and evidence of occupation the Defendants relied upon an alleged admission made by Kofi Bekoe, a former Chief of Nkami to the effect that the Nkami people in the course of their migrations crossed the Volta River to a place called Dukludja and that

40 later the Chief of Aveme gave the Nkami people permission to settle at the site of the present Nkami. In support of this the transcript of evidence of Kofi Bekoe in certain proceedings between Head Chief Gazari III *v.* Head Chief Dagadu III before a District Commissioner was put in evidence. We are unable to find that this record supports the Defendants' contention. Reviewing that evidence it is not possible to say with certainty what land was then in dispute. If the claim in the suit had been put in evidence

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*continued.*

it might have assisted the Court. Nowhere in the evidence do we find a statement that the Chief of Aveme granted the site of the present Nkami to the Nkami Chief, or that he granted any land whatever finally to the Nkamis on the Western Bank of the River Volta. Mention is made of a clay pit and that the people of Aveme would take the soil of the pit, presumably as proof of title to the land, but it is not clear to us where the clay pit was or is or that it is anywhere on the land now in issue.

Viewing that evidence as a whole and noting the frequent references in it to Kpandu, the witness may well have been speaking of other land far away on the Eastern side of the Volta which admittedly is in the 10 ownership of Ewe tribes. We note that most of the older villages on the land bear Akan names; some of the more recent villages claimed by the Defendants also bear Akan names. Most of the streams on the land bear Akan names also, all indicating Kwahu occupation. Taking therefore the evidence as a whole and giving due weight to the documentary evidence admissible, we have come to the conclusion that the Plaintiffs are the owners of the land claimed; that they did discharge the onus of proof; that the Plaintiffs' case was not answered satisfactorily by the evidence offered by the Defence and that there is therefore no reason for interfering with the decision arrived at by the trial Judge after a patient hearing 20 during which he must have formed his own estimate of the various witnesses.

The appeal is dismissed with costs assessed at £71 15s. 6d.

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

(Sgd.) J. HENLEY COUSSEY,  
*Judge, Gold Coast.*

(Sgd.) S. O. QUASHIE-IDUN, 30  
*Judge, Gold Coast.*

Counsel :

Mr. K. A. BOSSMAN for Appellants.

Mr. AKILAGPA SAWYERR (with him Mr. S. SAKYI DJAN) for Respondents.

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No. 68.

## Certificate of Judgment.

In the West  
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## CERTIFICATE OF THE ORDER OF THE COURT

IN THE WEST AFRICAN COURT OF APPEAL.

Appeal from the Judgment of M'CARNEY, Ag. C.J., of the Land Court,  
Eastern Judicial Division, Accra, dated the 2nd day of May, 1947.

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Certificate  
of  
Judgment.  
1st March,  
1948.

YAW NKANSAH II, Dasehene of Bukuruwa—

KWAHU ... .. *Plaintiff-Respondent*

NANA AKWAMOA AKYEAMPONG, Omanhene of

10 Kwahu ... .. *Co-Plaintiff-Respondent**versus*

WUDANU KWASI, Acting Chief of Atipradaa,

DAVID AKUAMOA alias YAW AKOI of Adukrom

and CHIEF DZABRA III, Chief of Wusuta ... *Defendants-Appellants.*

This Appeal coming on for hearing on the 24th, 25th, 26th and 27th days of February, and the 1st day of March, 1948, before Lucie-Smith, C.J., Sierra Leone (Presiding J.), Coussey, and Quashie-Idun, JJ., Gold Coast, in the presence of Mr. K. A. Bossman for the Appellants, and Mr. Akilagpa Sawyerr (with him Mr. S. Sakyi Djan) for the Respondents.

20 I Hereby Certify that a Judgment was given as follows :—

The Appeal is dismissed with costs assessed at £71.15.6.

The Court below to carry out.

Given under my hand and the Seal of the Court this 1st day of  
March, 1948.

(Sgd.) J. LUCIE-SMITH,  
*Presiding Judge.*

In the West African Court of Appeal.

No. 69.

**Court Notes granting Final Leave to Appeal to the Privy Council.**

No. 69.  
Court Notes granting Final Leave to Appeal to the Privy Council.  
25th March, 1949.

25th March, 1949.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at Accra, on Friday, the 25th day of March, 1949, before His Honour ARTHUR WERNER LEWEY, J.A., sitting as a single Judge of Appeal.

Civil Motion.

NANA BAADU III, Ohene of Bukuruwa Kwahu  
*Plaintiff-Respondent-Respondent*  
and

NANA AKUAMOA AKYEAMPONG, Omahene of Kwahu ... ..  
*Co-Plaintiff-Respondent-Respondent* 10

v.

WUDANU KWASI, Acting Chief of Atipradaa and MANKRADO KWASI ANSAH, Acting Chief of Wusuta ... ..  
*Defendant-Appellants-Appellants.*

**MOTION ON NOTICE FOR FINAL LEAVE TO APPEAL TO THE PRIVY COUNCIL.**

Mr. BOSSMAN for Applicants.

No appearance for Respondents—who were duly served.  
Final Order made for leave to appeal, as prayed.

20

(Sgd.) ARTHUR LEWEY,  
*Justice of Appeal.*  
25.3.49.

No. 70.  
Order substituting Nana Yaw Nkansa II for Nana Baadu III.  
11th April, 1949.

No. 70.

**Order substituting Nana Yaw Nkansa II for Nana Baadu III.**

**CERTIFICATE OF THE ORDER OF THE COURT.**

IN THE WEST AFRICAN COURT OF APPEAL.

Motion on Notice for and on behalf of NANA YAW NKANSA II Gyasehene of Bukuruwa for an Order to substitute the name of the said NANA YAW NKANSA II in his capacity as Gyasehene of Bukuruwa as Plaintiff-Respondent herein for that of NANA BAADU III now destooled and/or for

30



any such further or other order or orders as to this Honourable Court may seem fit.

Dated the 11th day of March, 1949.

NANA BAADU III, Ohene of Bukuruwa-Kwahu

*Plaintiff-Respondent-Respondent*

and

NANA AKUAMUA AKYEAMPONG, Omanhene of

Kwahu ... .. *Co-Plaintiff-Respondent-Respondent*

*versus*

10 WUDANU KWASI, Acting Chief of Atiprada and

MANKRADO KWASI ANSAH, Acting Chief of

Wusuta ... .. *Defendant-Appellants-Appellants.*

This motion coming on for hearing on the 11th day of April, 1949, before Smith, Ag. C.J., Gold Coast, sitting as a single Judge of Appeal in the presence of Akufo Addo for the Applicant herein, Nana Yaw Nkansa II, and Bossman for the Respondents (Appellants).

I Hereby Certify that an Order was made as follows :—

Order as prayed.

Given under my hand and the Seal of the Court this 11th day of 20 April, 1949.

(Sgd.) A. C. SMITH,  
*Ag. Chief Justice.*

In the West  
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Court of  
Appeal.

—  
No. 70.  
Order sub-  
stituting  
Nana Yaw  
Nkansa II  
for Nana  
Baadu III  
11th April,  
1949—  
*continued.*

Exhibits,

EXHIBITS.

Plaintiffs' Exhibit.

Plaintiffs' Exhibit.

“ D ”  
Agreement between Chiefs of Ourisita and others to settle land dispute before Commissioner. 21st September, 1903.

“ D.”—Agreement between Chiefs of Ourisita and Others to settle and dispute before Commissioner.

Intd. J.E.K.A. for R.D.C.  
18/9/46.

Brit. Nkami,  
21st September, 1903.

We, the Chiefs of Ourisita, Chomi, Agruman and Gefugi, and Nkami, hereby agree to have the dispute about the land settled before Travelling Commissioner Crabb at Nkami in the presence of the either the King of Kwahu or his linguist. 10

			Marks
Chief of Ourisita	...	Kwasi Kuman	X
„ „ Agruman	...	Onyamigah	X
„ „ Chomi	...	Osai Quamin	X
„ „ Gefagi	...	Ahfelor	X
„ „ Nkami	...	Kwami Afram	X

Witnesses to marks :  
(Sgd.) J. M. ARTHURSON.  
T. A. WILSON.

20

Plaintiffs' Exhibit.

“ F.”  
Extract from Report of Commissioner on land dispute between Kwahus and Krepis. 8th November, 1903.

“ F.”—Extract from Report of Commissioner on land dispute between Kwahus and Krepis.

Tendered by Plaintiffs, objected to, admitted in evidence and marked “ F ” in re Y. Nkansa II and Others v. W. Kwasi and Others.

Intd. K.A.  
18.9.46.

Certified True Copy  
(Sgd.) F. RIBEIRO AYEH,  
*Assistant Colonial Secretary.*  
16.9.46.

30

The Secretary for  
Native Affairs,  
Accra.

H.M. Customs,  
Kpong.  
8th November, 1903.

LAND DISPUTE BETWEEN KWAHUS AND KREPIS :  
REPORT ON ENQUIRY AT NKAMI.

\* \* \* \* \*

Sir,

7. I attach, on separate sheet, the evidence given by the different Chiefs, and after hearing all that both sides had to say, decided against the Krepis, summing up as follows :—

10 “ That as it is a matter of common knowledge the land from  
 “ Mprasam (and afterwards, from the Ada River—3 miles North  
 “ of Mprasam) up to Akrosu formerly belonged to the Asabis ;  
 “ that after the Ashantis took Nkansa, the King of the Asabis  
 “ into Ashanti and killed him there, the Kwahu King, either by  
 “ payment or other consideration, was given and took charge of  
 “ the Asabi Stools and nobles and therefore of the Asabis lands :  
 “ and as no evidence has been given before the Court other than  
 “ to show that all the Defendants in the case are either refugees  
 “ from the German side, or strangers here : therefore all the  
 “ land that was formerly Asabi now belong to Kwahu, and all the  
 “ Chiefs and people now living on this land are subject to and serve  
 “ the King of Kwahu and his Stool.”

Exhibits.  
 ———  
 Plaintiffs’  
 Exhibit.  
 ———  
 “ F.”  
 Extract  
 from  
 Report of  
 Com-  
 missioner  
 on land  
 dispute  
 between  
 Kwahus  
 and Krepis  
 8th  
 November,  
 1903—  
*continued.*

\* \* \* \* \*

I am, Sir,  
 Your obedient Servant,  
 (Sgd.) J. T. CRABB,  
*Travelling Commissioner.*

---

Defendants’ Exhibit.

“ K.”—Agreement, Chief of Fasu and Comptroller of Customs.

Defend-  
 ants’  
 Exhibit.  
 ———  
 “ K ”  
 Agreement  
 Chief of  
 Fasu and  
 Comptroller  
 of Customs.  
 23rd June,  
 1913.

20 Tendered in evidence by Defendants, objected to, admitted and marked  
 Exhibit “ K ” in *re* Nkansah II and Others *v.* W. Kwasi and Others.

Intd. K.A.  
 3.4.47.

30 AGREEMENT made this 23rd day of June, 1913, between Hodomanu  
 Chief of Fasu and John Atkinson Inspector of the Volta River Preventive  
 Service as representing the Comptroller of Customs, I, Hodomanu Chief  
 of Fasu do agree to maintain and keep in good and habitable repair the  
 houses of the Customs Preventive Stations at Fasu for one year from  
 1st January, 1913, and thereafter to keep the houses of the said Stations  
 in habitable repair for the sum of Five Pounds per annum payable each year  
 in December of that year. I further agree that should I fail to keep the  
 said houses in habitable repair the Comptroller of Customs may have them  
 repaired at my expense and deduct the cost of such repairs from any monies  
 that may be due by him to me under this contract.

THIS AGREEMENT shall remain in force for one year from the date  
 hereof and thereafter till determined by either party on giving three months’  
 notice.

Exhibits. IN WITNESS thereof I have this 23rd day of June, 1913, affixed my  
mark.

Defendants' Exhibit

" K "

Agreement Chief of Fasu and Comptroller of Customs 23rd June, 1913—  
*continued.*

Hodomanu Chief of Fasu

His  
X  
Mark

Signed this 23rd day of June, 1913.

Witness to mark

(Sgd.) JOHN ATKINSON,  
*Inspector, Volta River  
Preventive Service.*

(Sgd.) E. W. DONKOH,  
*Officer-in-Charge  
of Fasu Pr. Station.*

10

Witness to signature

(Sgd.) E. W. DONKOH,  
*Officer-in-Charge.*

The mark of the said Hodomanu Chief of Fasu was made hereto and this Agreement was sealed and delivered by him after the same had been interpreted to him by E. W. Donkoh (Sworn Interpreter (of the Supreme Court) in the Tschwi Language when he seem full to understand the same in the presence of

His  
X  
Mark

20

(Sgd.) JOHN ATKINSON,  
*Travelling District Commissioner.*

(Sgd.) E. W. DONKOH,  
*Interpreter.*

Plaintiffs' Exhibit.

30

Plaintiffs' Exhibit.

" M."—Letter—Cudjoe Dei to Chief of Nkwatia.

" M." Letter—Cudjoe Dei to Chief of Nkwatia. 8th January, 1923.

Tendered in evidence by Plaintiffs objected to admitted and marked Exhibit " M " in re Nkansah II and Another v. W. Kwasi and Others.

Intd. K. A.  
17.4.47.

Fasu,  
Volta River,  
8th January, 1923.

To the Chief of Nkwatia.

Dear Chief,

I have the honour beg to acknowledge the receipt of your favourable letter dated on the 29/12/22 received with thanks, and the contents therein 40

were carefully noted. And the reply I beg therefore to state that personal apprehensions of the said Kreppi, which you had been forgotten the party's name to up make of issuing warrant to be signed by D. C. Kwahu. I now beg to remind you again that the name of the said party was Kwamin Tawiah Chief of Otikpalale and his Linguist Gasi Kuma. They is to be charged, of crossing matters of the Gold Coast to over side Togo, to the Head Chief of Owusuata for settled. Such as your oath's matters and ordinary cases.

Exhibits.  
 ———  
 Plaintiffs'  
 Exhibit.  
 ———  
 " M. "  
 Letter—  
 Cudjoe Dei  
 to Chief of  
 Nkwatia.  
 8th  
 January,  
 1923—  
*continued.*

2. He had been sold the almost part of the big sticks, on that land at  
 10 Otikpalale for sawyers for sawing Planks and Beams, without any account  
 been made to me since three (3) years and some months ago. Even I had  
 been sent for him for several times for account and he was rejected to  
 attend my calling.

3. Again including the Botoe men who are fishing in your part of  
 River Volta. He was to received collection from them and without a penny  
 had been sent to me since three (3) years and some months ago. And  
 through that I wish you send a warrant as this being a hard matter.

I have the honour to be,

Sir,

20

I am your humble Servant

His  
 Cudjoe Dei X Chief of Fasu.  
 Mark

N.B.

I here mourn the dead of Kwamin Affram son Cudjoe Desi who  
 expired in dead at Awulahai and beg to let you know I have been written  
 a letters to the families. Please forwarded to me.

P.S.

Send me some writing papers and envelopes as none here to use at all.

30

Kwadjoe Dei His  
 X  
 Mark.



Exhibits.

Plaintiffs' Exhibit.

Plaintiffs' Exhibit.

“ Q.”—Letter—Cudjoe Dei to Chief of Nkwatia.

“ Q.”

Letter—  
Cudjoe Dei  
to Chief of  
Nkwatia.  
11th  
November,  
1924.

To

Kofi Sefah,  
Chief of Nkwatia.

Fasu,  
Volta River District,  
11th November, 1924.

Dear Chief,

This few lines will inform you that the Gunpowder, Lead permits and Native Jurisdiction Ordinance Book sent per Yao Tsikorang without a letter of instructions been duly come to hand. Please Sir ! I may let you know that, without the other Court articles, such as Record Books, Summons Book, Receipt Books, Warrant Books, Summons to Witness Books and Defendant Bill of Cost Books etc. :—Without such Books besides the Ordinance Book, I cannot do otherwise with the said Ordinance. Hence on the receipt of this letter, please try your best and forward me the remaining Books mentioned on the letter sent to you, so as to enable me to feel my Court. Reply awaiting early.

I am your son,  
Cudjoe Dei . X His  
Chief of Fasu Mark.

10  
20

Writer :

Sgd. ?  
T. C. FASU.

“ N.”

Letter—  
Cudjoe D e  
to Chief of  
Nkwatia.  
20th  
February,  
1925.

Plaintiffs' Exhibit.

“ N.”—Letter—Cudjoe Dei to Chief of Nkwatia.

Tendered in evidence by Plaintiffs, objected to, admitted and marked Exhibit “ N ” in re Nkansah II and Another v. W. Kwasi and Others.

Int. K. A. 30  
17.4.47.

Fasu,  
Volta River District,  
20th February, 1925.

Kofi Sefa,  
Chief of Nkwatia.

Dear Chief,

I have the honour beg to acknowledge the receipt of your letter dated on the 10th instant received, and the contents thereto, were carefully understood ; and the reply I beg therefore to say that in references in

matter of the Land at Fasu, which wishes me to send you an ancient details about that, to my surprise is quite wonder that the Chief of Bukuruwa is troubling you all the time concerning Fasu's Land. Whilst the said land was not his ; but what I can say about that Land is this, I do not know, the said Chief of Bukuruwa mentioned on your letter written to me that he had sworn an oath on you about the Land at Fasu, and is taking you before to the King of Coomasi or Accrat hat the Land is for him, it matters not, but so long as am here, please be not afraid. He must take you to any place which he likes best, when case comes to witness I will come and be a witness whatever on behalf of you against the said Chief who is trying to deprive the said land from you. But I know perfectly that said portions of the Land at Fasu which under my control is for you alone to whom am collecting yearly Tolls for you from the said Land ! But how ! the said Chief of Bukuruwa sworn an oath on you that the Land is for him ! are you sure ? And is he dreaming ? Please Sir, do not mind him, I am on behalf of you always. My Clerk shall be at your end for a short run of time. Do not be afraid about the Land's case between you and Chief of Bukuruwa, so long as am here you may always play ; and enjoy your health. Nothing strange more to report.

20 Best Compliments to you and all the Betters joining in health.

I am faithfully yours,

His  
Cudjoe Dei X Chief of  
Mark Fasu.

Writer  
Sgd.  
J. C. F.

P.S.

30 Note that all the villages under my control have been written to you already since a year ago concerning about your land here. Please ! are you remember that ?

C. D.  
*Chief of Fasu.*

Exhibits.  
—  
Plaintiffs'  
Exhibit.

—  
" N. "  
Letter—  
Cudjoe Dei  
to Chief of  
Nkwatia—  
20th  
February,  
1925—  
*continued.*

Exhibits.

Defendants' Exhibit.

Defendants' Exhibit.

“ L. ”—Depositions of Kofi Beko in Gazali III v. Dagadu III.

“ L. ”

Int. K.A.,  
14.4.47.

Depositions of Kofi Beko in Gazali III v. Dagadu III. 12th October, 1925.

IN THE SUPREME COURT OF THE GOLD COAST COLONY held this Twelfth day of October, 1925, at KPANDO before His Worship P. D. LE LIEVRE, Esquire, District Commissioner.

HEAD CHIEF GAZALI III }  
                                  *versus* } Vide P. 53.  
HEAD CHIEF DAGADU III }

10

8TH WITNESS FOR PLAINTIFF S.A.R.B.

My name is Kofi Beko. I live at Nkami. I am the Sub-Chief. The Chief of Nkami resided at a place called Nyanawase. On account of a War we removed to Basamba. He found there was no one else living near and so he looked round for other people. Another Chief later crossed the river and came to Dukludja—at that time there was no market there. They settled near a stream between Tchome and Aveme. They met there one Toing Yao. They asked him for some land and he referred them to the Head Chief of Aveme one Odikro. This land was given to the people and they settled there. There they started to die and a certain fetish was approached to enquire the cause—the fetish said it was due to the Stream which hated talking. Therefore another name was given to the stream Chiri Kaso (“hates talk”). They then asked the Chief of Aveme for another place—he pointed out a place where there was a hill called Pepotia. There they used to suffer thefts of their property by some people—this was again reported to the Head Chief of Aveme and they said they would recross the river. There was also child-stealing. The Head Chief said it must be the people from Feasi as there was disagreement between himself and Feasi. The Feasi Chief asked Adjaba, Chief of Wusuta to come and settle the dispute between himself and the Chief of Aveme 20 The Chief of Nkami was asked to assist in settling the place. The Chief of Wusuta came and stayed on the bank of the river and sent a message to the Chief of Feasi to come. This the Chief refused and asked the meeting should be held at Yokpui. There the matter was settled by a sheep and bottle of rum given by each side. Each side drank palm wine from the same calabash that all dispute was over. It was arranged no one from Aveme should go past Yokpui and the same with Kpando people. Some time a hunter from Nkami came across a clay pit and send some soil back to the village as we were pot makers. At that time the people of Aveme did not know how to make pots until we showed them. When the 40



Chief of Nkami crossed back over the Volta the Chief of Aveme sent 35 men with guns to watch them crossing the river. After this he made one with the people of Aveme and to help make a market. A market was made and then one Aduboafu from Ashanti came to bring war. Therefore the market was not attended. Aduboafu stayed 3 years and the market became overgrown. We both cleared the weeds away. At that time there were some uprooted trees in the place and some of the Ashantis who remained used to be charge tax for attending the market. They objected as they said the market was bad, with its uprooted trees—hence the name

10 Dukludja. Dza means a market and Duklu is the Tsf name for the space between roots of a tree (Notably between buttress roots of silk cotton tree). It was agreed if any village failed to attend the market, the Chief should have to pay one sheep. It was arranged with regard to the claypit that the people of Aveme would take the soil but if any accident occurred the matter would be reported to the Chief of Nkami who would perform the necessary fetish customs.

Therefore the clay belonged to the Chief of Aveme.

XX. : DEFENDANT:

20 Q. Which is the elder people. Nkami or Aveme?— (Those who settled on the land first)—A. Aveme.

Q. Do you remember the War between myself and Aveme?—  
A. I haven't heard of it.

Q. How do you know of the agreement between Nkami and Aveme? but didn't hear of the War between them?—A. I only tell what I have heard.

Q. Do you remember a War between Nkami and Kpando?—  
A. I haven't heard of it.

Q. Do you remember Nkami people settling near Atanlo?—A. No.

30 Q. Where is this Pepotia?—A. On the right side when going from Kpando to River Atanlo by motor road.

Q. Were the Kpando people there when you got permission to live at Pepotia?—A. We did not know of them but Avemes told us of Feasi.

Q. Were the Tchome people there?—A. Yes.

Q. Who was the Chief of Feasi when you came to Pepotis?—A. The Chief of Aveme said it was Akpedja.

Q. What town did he tell you he was Head Chief of?—A. Feasi and other towns under him too if there are any.

Q. Then you believed there were other towns?—A. Yes.

Q. What are they?—A. They were all called Kpando towns.

40 Q. Therefore Feasi came first or Kpando?—A. We were told the head chief lived at Feasi.

Q. Did you Nkami people see the Feasis yourself?—A. No.

Q. What brought the war between Kpando and Aveme?—A. Each side used to try and catch each others wives so that the husbands used to try and shoot the men who had stolen his wife.

Q. Who is the woman caught by Kpando people?—A. I was not told.

Exhibits.  
—  
Defendants'  
Exhibit.  
—  
"L."  
Depositions  
of Kofi  
Beko in  
Gazali III  
v. Dagadu  
III.  
12th  
October,  
1925—  
continued.

- Exhibits. Q. When the settlement was made was that woman brought to your  
seeing?—A. No.
- Defendants' Q. Did your grandfather tell you he saw the woman there?—A. No.
- Exhibit. Q. When two people meet to settle a dispute, will they bring with  
them the actual cause of the dispute?—A. In the case of persons.
- "L." Q. Where is the boundary between Aveme and Feasi?—A. Yokpui.
- Depositions Q. Was this boundary defined by your elders and those of Wusuta?—  
of Kofi A. No—the boundary was there already.
- Beko in Q. When Aveme people took the clay, did you hear Kpando people  
Gazali III also came?—A. Yes. 10
- v. Dagadu Q. Did Kpando people buy pots at Dukludja?—A. Yes.
- III. Q. Do you know a man called Duklu?—A. No.
- 12th Q. What was the name of the place before the market was made?  
October, —A. I don't know salt was bought there.
- 1925— Q. Have you heard Aveme people assisted the Ashantis against the  
continued. Ewe people?—A. No.
- Q. Did the Nkami people present the clay pit to Aveme or was it  
in possession of Aveme before?—A. We discovered it and gave it to them.
- Q. Then previous to this, the land was not for Aveme?—A. Yes, it  
was. Only they didn't know how to use the clay. 20
- Q. Have you heard the pit killed some Kpando people one day?  
—A. Yes.
- Q. Who performed the customs?—A. Aveme Head Chief reported to  
me and I sent representatives to perform the custom. The relative of the  
deceased has to provide the necessary things.
- Q. What things?—A. Goats. The real man in charge is Atadje—he  
can tell better.
- Q. Did your representatives say the Kpando people brought the  
necessary things?—A. I was not at Nkami. I only heard of it.
- Q. Have any deaths of Kpando people occurred since you were put  
on the Stool?—A. Yes. 30
- Q. What did your representatives say the Kpando people brought?  
—A. I was present at the last time. Atadje produced a goat, not the  
Kpando people.
- Q. Did the people of Kpando refuse to give anything?—A. I don't  
know.
- Q. Did Atadje tell you he bought the goat on behalf of the Kpando  
people?—A. He bought the goat himself.
- Q. Why was this?—A. I don't know.
- Q. How many times have you sent representatives?—A. Not myself, 40  
that was about my predecessor.
- Q. How many times he sent representatives?—A. I was not told.
- Q. Do you know one Atadje?—A. Yes.

(Sgd.) P. D. LE LIEVRE,  
D.C.,

12/10/25.

## Plaintiffs' Exhibit.

## " P. "—List of Game for Omanhene of Kwahu Abene.

Tendered in evidence by Plaintiffs, objected to, admitted and marked Exhibit " P " in *re* Nkansah II and Others *v.* W. Kwasi and Others.

Intd. K.A.

17.4.47.

24/10/26.

Exhibits.  
Plaintiffs'  
Exhibit.

" P. "  
List of  
Game for  
Omanhene  
of Kwahu  
Abene.  
24th  
October,  
1926.

The list of games of animal collected at Fasu Volta River Branch Kwahu District in charge of the Representative Kwasi Asare for Omanhene of Kwahu Abene on the land in dispute between Nkwatia and Bukruwa is as follows :—

							£	s.	d.
	26/6/26	Chief Dei	...	...	...	...	2	14	0
	27/6/26	Gifagi fishing	...	...	...	...	3	13	0
	do.	Abochere	...	...	...	...	0	16	0
	27/8/26	Gatsi Kofi	...	...	...	...	1	18	6
	do.	Tusks Elephant	...	...	...	...	6	10	0
		Atiprada Bonts fishing	...	...	...	...	8	0	0
	7/10/26	Bulpai as do.	...	...	...	...	1	5	0
20		Kobina Koko	...	...	...	...	1	10	0
		Nyanapong	...	...	...	...	1	0	0
		Total Amount	...	...	...	...	£27	6	6
		Deducted 1 Tusk Elept.	...	...	...	...	6	10	0
							£20	6	6
		Divided into 3 parts—							
		2 parts for Asare	...	...	...	...	13	11	0
		1 do. Chief Dei	...	...	...	...	6	15	6
							£20	6	6
		Total Amount for Asare	...	...	...	...	13	11	0
30		„ Tusk Elephant	...	...	...	...	6	10	0
							£20	1	0

Copy  
(Sgd.) ?

Exhibits.

## Plaintiffs' Exhibit.

Plaintiffs'  
Exhibit.

" O."—Letter—Cudjoe Dei to Chief of Nkwatia.

" O."  
Letter—  
Cudjoe Dei  
to Chief of  
Nkwatia.  
12th March,  
1927.Tendered in evidence by Plaintiffs, objected to, admitted and marked  
Exhibit " O " in *re* Nkansah II and Others *v.* Kwasi and Others.Intd. K.A.  
17.4.47.To  
Kofi Sefah,  
Chief of Nkwatia.Fasu,  
District of Kwahu,  
Volta River Branch.  
12th March, 1927. 10

Dear Chief,

I have now beg to acknowledge the receipt of your letter, in references in matter of my present position as you said, has duly come to hand with many thanks, and the contents therein were carefully noted, and the reply I beg therefore to say that, will you please, kindly oblige me to know my present Rank? If should in case you have been placed another man as sub-chief beside me here to take a charge over on aforesaid land in disputes between yourself and Bukuruwa, you may let me know at once per returning Bearer, just to know what step to take? But the reason of my so saying because from since the Representative came here he has not done any 20  
wrong concerning about his affairs, that would induce me to send in a report about him his word was justice, and has even put the Land of Nyampong Lifie.

In disputes between myself and Chief of Nkami in good order now had set a scheme between Nyamapong and Nkami, and now a days Nkami's put stop of coming there, by the authority of the Representative sent here by Omanhene of Kwahu, had I seen that, is taking the Land for Bukuruwa, I might have reported to you ere long, therefore on the receipt of this my humble petition, you may try your possible best and send him what so ever ask from you don't failed. I know perfectly that, the Representative is trying or does well for you do not hear anybody else 30  
complaint, accept when hear from me. If you follows people advice, otherwise you will spoil your litigation, because the man is fighting for you always about the said land, don't be afraid he is on behalf of you. The Representative incline his ear, before giving Judgment to all cases tried here, only justice he follows, there is no least charge against to be reported to you, since he came here for Omanhene's duties in regarding to the disputes Lands between you and Bukuruwa's Chief. I end here.

Best compliments,

I have the honour to be,

Dear Chief,

40

Your most obedient Servant,

Cudjoe Dei X His Mark.

*Chief of Fasu, Volta River Branch.*

Writer :  
 (Sgd.) ?  
 Free of Charge.

Exhibits.  
 Plaintiffs'  
 Exhibit.

P.S.—This few lines would inform you that a certain man name Kwaku native of Kratchi lost at a village called Nyamapong, I went to his search for a couple of days and was not discovered, and beg to let you know his funeral custom still lay down, till further orders from you or Omanhene of Aveme before able resume the funeral.

“Q.”  
 Letter—  
 Cudjoe Dei  
 to Chief of  
 Nkwatia.  
 12th March,  
 1927—  
*continued.*

C. D.

10

**Plaintiffs' Exhibit.**

“ H. ”—Agreement signed by V. E. Gazari III.

“ H. ”  
 Agreement  
 signed by  
 V. E.  
 Gazari III.  
 3rd  
 February,  
 1930.

Marked 5 for identification in *Nkansah v. Kwasi.*

Intd. K. A. 20.9.46.

Tendered by Plaintiffs and marked Exhibit “ H ” in *re Nkansah II* and  
*Another v. W. Kwasi and Others.*

Intd. K.A. 25.9.46.

I head Chief of Aveme Gbohome was the party who begged the said forest situated at Ofram Aboma to be cultivated by my subjects at the rate of £2. 8 every 72 yards in four corners. Also £1. 4 and One bottle of gin from any farmer every year as a sheep for British Nkami Stool.

Dated at Nkami this 3rd day of February 1930.

(Sgd.) V. E. GAZARI III,  
*Head Chief of Aveme Gbohome.*

Witness

Their

	Sub-chief Kofi Koranten II	X	Aveme Agbesia
	„ Kotoku Gaha	X	Worakosi
	„ Aditu	X	Torko
	Gyasehene Ado Kwahu	X	Nkami
	Linguist Djanfosu	X	„
30	Amah Aframea	X	„
	Queen Mother Abina Dapah	X	„
	Kwami Adjepon	X	„
	Yao Amanfo	X	„
	Awere Mensah	X	„
	Kwami Dapah	X	„
	Kwadjo Yeboah	X	„

Marks

Wit. to their marks  
 40 (Sgd.) ?  
*T. Registrar, Aveme Gbohome*  
*Kpando District.*

(2d. Stamp)  
 3rd February 1930  
 British Nkami  
 Gold Coast  
 (Sgd.) V. E. Gazari III.

N.B.—Sitting Rum 1 C/S of Gin and £3 6.

Exhibits.

## Plaintiffs' Exhibit.

Plaintiffs'  
Exhibit.

" J. "—Authority Kofi Bekoe II to V. E. Gazari III.

" J " Marked 4 for identification in *Nkansah v. Kwasi*.Authority  
Kofi  
Bekoe II to  
V. E.  
Gazari III.  
3rd  
February,  
1930.Intd. K.A.  
20.9.46.Tendered in evidence by Plaintiffs, marked Exhibit " J " in *re Nkansah II and Others v. W. Kwasi and Others*.Intd. K.A.  
25.9.46.

## AUTHORITY NOTE.

10

I, the undersigned KOFI BEKOE II Chief of British Nkami together with the Chief of Bukuruwa Kwahu District have today's date given a parcel of forest situated and lying at Ofram Aboma near Abomasarefu, the forest ends to the Kwahu old main road, to be cultivated by the Head Chief of Aveme Gbohome and his subjects at the rate of £2. 8 every farm which is to be cultivated by any person from Aveme 72 double yards in four corners.

Every person from Aveme should pay £1. 4 every year if when his cocoa commence to bear fruits as a sheep for Nkami Stool. Every person who will enter into the forest without written note from the Head Chief 20 of Aveme, will be liable to a fine not exceeding £5.

Head Chief Gazari of Aveme Bgohome has to plough the forest free of charge.

Rules to be observed are as follows :—

- (1) If elephant was killed, one hand one tusk one ear and tail if any for the Chief of Nkami.
- (2) Every big animal that will be killed by any Aveme subjects its hand should be sent to the Chief of Nkami.
- (3) Every leopard skin should be sent to the Chief of Nkami.
- (4) Lions skin should be divided into 2 parts  $\frac{1}{2}$  for the Chief of 30 Nkami  $\frac{1}{2}$  for the founder.
- (5) If treasury was found in the land on any thing value should be divided into 3 parts 2 for the founder and 1 for the Chief of Nkami.

Dated at British Nkami this 3rd day of February, 1930.

Kofi Bekoe II  
Chief of Nkami.

His  
X  
Mark

Chief Kofi Bekoe also represented Kwabena Badu Chief of Kwahu Bukuruwa. Exhibits.

Witnesses		Their	Plaintiffs' Exhibit.
	Gyasehene Addo Kwaku	X	"J."
	Linguist Kobina Gyanfosu	X	Authority
	Amah Aframea	X	Kofi
	Queen Mother Abina Dapah	X	Bekoe II to
	Kwami Adjipon	X	V. E.
	Yaw Amanfo	X	Gazari III.
10	Awere Mensah	X	3rd
	Kwami Dapah	X	February,
	Kwadjo Yeboah	X	1930—
	Sub-chief of Aveme Agbesia Kofi Koranten II	X	<i>continued.</i>
	"    " Wora Kosi Kotoku Gaha	X	
	"    " Torko Adiku	X	
	Mensah	X	
	Kwami Atiamoh	X	
	Kwasi Donkor	X	

Marks

20 Sitting rum One case of Gin £3. 6.

Witness to their marks

(Sgd.) ?

*Tribunal Registrar,*  
Aveme Gbohome,  
Kpando District.

(2d.)

(Stamp)

3rd February, 1930.

Chief Kofi Bekoe II.

His

X

Mark.

**Plaintiffs' Exhibit.**

30 " B."—Agreement—Nana Kofi Baadu II and David Akuamoa Yao Kpuie and Others.

Intd. K.A.

18/9/46.

Stamp Duties 2/6

2/6

3516/46

Kwahu Bukuruwa

3rd May, 1933.

" B."  
Agreement  
—Nana

Kofi  
Baadu II  
and David  
Akuamoa  
Yao Kpuie  
and others.  
3rd May,  
1933.

I, the undersigned DAVID AKUAMOA YAO KPUIE Vice  
Presbyter of Aveme Dzeme came to Nana Kofi Badu II Chief of Bukuruwa  
and begged him to work on his land (Cocoa farming).

40 He consented and favoured me with a portion of land which is lying  
at Adukrom near to Atakora or Donkokrom. The arrangement is

Exhibits. that, if the work has prospered, it must then be divided into three equal parts.

Plaintiffs' One third ( $\frac{1}{3}$ ) of it is for the Landlord Nana Kofi Badu II and ( $\frac{2}{3}$ ) two thirds for I the worker David Akuamoaa Yao Kpuie.

" B." There are other parties too under me who also got the same land from the same Nana Kofi Badu II in the same arrangement. Each of the workers in addition to me, has paid or given " Rum " to the Landlord Nana Kofi Badu to pray with it and as a signe of witnes and and afirmitie.

Agreement —Nana Kofi Baadu II and David Akuamoaa Yao Kpuie and others. This is my own or our own " Receipt " given to the Landlord Nana Kofi Badu II.

3rd May, 1933— I David Akuamoaa Yao Kpuie. His X Mark. 10

continued. The other parties too are

- |                       |                  |                       |    |
|-----------------------|------------------|-----------------------|----|
| 1. Kwabena Kuma Ofori | His<br>X<br>Mark | Native of Aveme Dzeme |    |
| 2. Yao Buafuor        | His<br>X<br>Mark | " " " "               | 20 |
| 3. Kwami Djaso Ofori  | His<br>X<br>Mark | " " " "               |    |
| 4. Alfons Kuma Yao    | His<br>X<br>Mark | " " Daiagba           |    |
| 5. Kofi Kuma Moge     | His<br>X<br>Mark | " " Awrokosi          |    |
| 6. Kofi Bona Agbla]   | His<br>X<br>Mark | " " Dra               | 30 |

Witnesses :

- |  |                  |                                     |    |
|--|------------------|-------------------------------------|----|
| 1. Alexander Kwasi Akuamoaa son of David Akuamoaa Yao Kpuie. | His<br>X<br>Mark | Presbyter of the Church<br>Bukuruwa |    |
| 3. James Kofi Ampedu   | His<br>X<br>Mark | " " " "                             | 40 |
| 4. Thomas Sampong  | His<br>X<br>Mark | " " " "                             |    |
| 5. Joseph Kwadjo Danso                                       | His<br>X<br>Mark | " " " "                             |    |

(Sgd.) Alexander Kwasi Akuamoaa.



## Plaintiffs' Exhibit.

		Exhibits.
	<b>" C."—Note from David Yaw Akuamoah to Nana Kofi Baadu II.</b>	Plaintiffs' Exhibit.
Gold Coast Three pence Stamp Duties	3515/46 Marked 2 for identification in Nkansah and Others <i>v.</i> W. Kwasi and Others.  Intd. K.A. 13/9/46.	" C." Note from David Yaw Akuamoah to Nana Kofi Baadu II. 15th July, 1936.
10	Tendered by the Plaintiffs not objected to and marked Exhibit " C " in <i>re</i> Nkansah II and Others <i>v.</i> W. Kwasi and Others.	
	Intd. K.A. 18/9/46	

David Yaw Akuamoah owe the sum of Fourteen Pounds Seventeen Shillings Six Pence " £14. 17. 6d." to Nana Kofi Baadu II the Chief of Bokuruwah, being the accounts of cocoa and animal's arms which he has to pay to Chief.

The cocoa is the " abusa " and the amount of it is £13. 12. 6d.

The animals arms is £1. 5.

I have promised to pay it one month after Christmas.

20 Witness thereby :—

1. Yaw Kra
2. Kwame Sono
3. Theodore
4. Paul Y. Dade
5. Akwasie Afrim

Between  
David Y. Akuamoah  
and  
Nana K. Baadu II of  
Bokuruwah  
Assisted Yaw Anim his  
nephew.

Signed on the 15th July, 1936.

Wrt.

(Sgd.) M. Boateng Sampong,  
Free of Charge.

30

(T.P.)

In the Privy Council.

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

---

BETWEEN

BETWEEN

WUDANU KWASI, Acting Chief of Atipradaa, and  
MANKRADO KWASI ANSAH, Acting Chief  
of Wusuta (Defendants) . . . . . *Appellants*

AND

NANA OSEI TWUM, Ohene of Bukuruwa (sub-  
stituted for YAW NKANSAH II, Dsasehene of  
Bukuruwa-Kwahu) (Plaintiff) and NANA  
AKWAMOA AKYEAMPONG, Omanhene of  
Kwahu (Co-Plaintiff) . . . . . *Respondents.*

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RECORD OF PROCEEDINGS

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

SYDNEY REDFERN & CO.,  
1 Gray's Inn Square,  
Gray's Inn,  
London, W.C.1,  
*Solicitors for the Respondents.*

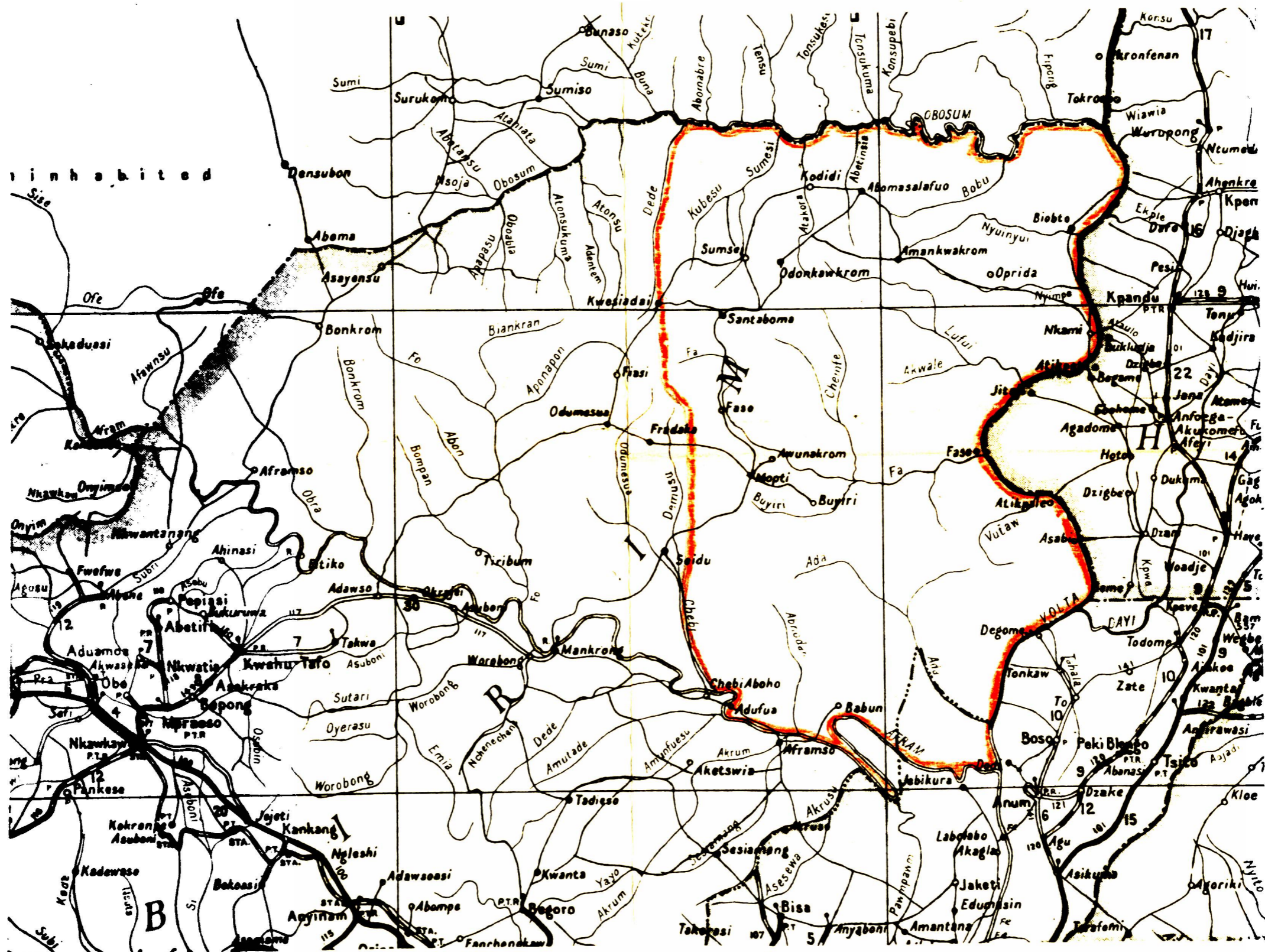
In the Privy Council No 20 of 1950.

On appeal from the West African Court  
of Appeal

Wudani Kwasi and another  
v.  
Nana Osei Twum and another

Extract from the Southern Sheet of the Road  
Map of the Gold Coast, referred to in  
paragraph 10 of the Case for the Appellants.

Scale: 1/014 inches to 8 miles



PRIVY COUNCIL APPEAL NO. 20 of 1950.

APPENDIX I to Appellants' Case

Places within the area edged red in exhibit 'A' which the Respondents claim in their oral evidence have been founded by them or by their permission

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<u>PLACE</u>	<u>LOCALITY (Section)</u>	<u>RECORD REFERENCE</u>
Asabi	G6	26, 30, 31, 65.
Nkami	D6	26, 31-32, 37, 38, 65-66
Amankwakrom	C4	26
Odonkorkrom (Donkorkrom)	C2	26, 27
Oprida	C5	26
Santaboma	D2	26, 27
Fenfaro	G6	26
Edukrom (Adukrom)	C2	27, 28, 29
Abomasalifu	B3	27
Esikesu	C2	27
Atipradaa	F5	27, 28, 37
Mpeasem	H5	31
Konforma	H5	31 (map Konforma)
Edjebeni	H5	31
Akolikope	H5	31, 36
Ewakope	H5	31 (map Awakope)
Ahupe	G5	31
Faso (Fasu)	E5	31, 65
Dadiase	C6	39

PRIVY COUNCIL APPEAL NO. 20 of 1950

APPENDIX II to Appellants' Case

Preliminary Note to Summary of Analysis  
of Exhibit 'A'.

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This Summary (and the Analysis upon which it has been based) covers all inhabited places shown upon Exhibit 'A', whether within or outside the red line. The squares or sections formed upon Exhibit 'A' by the lines of longitude and latitude which appear thereon at intervals of 5 minutes are identified by dividing them into ranges from North to South lettered A to I, each range being numbered from west to east 1 to 6. Each section is of an area of between 33 and 34 square miles.

Col. 1 indicates sections so numbered.

Col. 2 indicates those places which are outside the red line but without indicating whether they are inhabited by Kwahus, Ewes, Akims, Akwamus or any other distinct African tribe or sub-tribe. It is believed that substantially all places on the east bank of the Volta or further east are inhabited by Ewes or associated tribes, and all places to the west of the red line are inhabited by Kwahus or Akims.

Col. 3 headed "Kwahus; Not disputed (other than Nkwatias)" indicates that these places are within the red line and are shown in Exhibit 'A' as inhabited and claimed by Kwahus who are not Nkwatias and that the plan indicates that it is not disputed that the people inhabiting the respective places are Kwahus. There are also included in this column a certain number of places which are not shown upon Exhibit 'A' as inhabited and claimed by Kwahus, but which the Respondents' evidence claims are so (vide Appendix I). In some cases the right to inhabit is admitted by the Appellants with the proviso that the right was granted by Ewes. Kwahu places in ruins (see Col. 8) are also included in this column though uninhabited or unused.

Col. 4 headed "Ewes; Not disputed" indicates that these places are shown in Exhibit 'A' as within the red line and inhabited and claimed by Ewes (but not necessarily by the Appellants and their subjects, the Exhibit making no distinction between the Ewe sub-divisions) and that the

plan indicates that it is not disputed that the people occupying each of these places are Ewes. Places in ruins (see Col. 8), are also included in this column.

Col. 5 headed "Nkwatias; Disputed and not Disputed" indicates that these places are shown in Exhibit 'A' as within the red line and as inhabited and claimed by the Nkwatia sub-division of the Kwahus. It does not however indicate whether or not this claim is disputed by the parties to the action, whether Plaintiff or Defendant, but a separate analysis is provided, showing which are disputed by the Ewes according to Exhibit 'A'. Places in ruins (see Col. 8) are included in Col. 5.

Col. 6 headed "Not claimed" indicates (subject to the remarks in respect of Col. 3) that these places appear within the red line without an indication of the claims of the parties. These are mainly places which are printed upon the maps upon which the plan is based but it does not appear whether they had ceased to exist when the plan was prepared.

Col. 7 headed "In dispute" indicates places within the red line which were claimed by both sides as appertaining to them respectively. This includes places claimed by the Nkwatias. See observation under Col. 5.

Col. 8 headed "In ruins" indicates those places claimed by the respective parties as having been settled by them which are now in ruins. The figures are also included in Cols. 3, 4 and 5. A sub-analysis is supplied showing how Cols. 3, 4 and 5 are affected.

TABLE 1

SUMMARY OF ANALYSIS OF EXHIBIT A

Col.1 Section	2 Out- side	3 Kwahus Not dis- puted (other than Nkwatias)	4 Ewes Not dis- puted	5 Nkwatias Disputed and not Disputed	6 Not Claimed	7 In dis- pute  Including Nkwatias	8 In Ruins
A1	2	-	-	-	-	-	-
A2	-	2	-	-	-	-	-
A3	-	1	1	-	-	1	1
A4	2	-	-	-	1	1	1
A5	1	-	-	-	-	1	1
A6	2	1	-	-	2	-	-
B2	-	5	1	-	-	2	3
B3	-	8	-	-	1	1	2
B5	-	-	-	-	-	4	4
B6	4	4	3	-	1	-	3
C1	-	5	-	-	1	-	-
C2	-	15	8	-	-	1	3
C3	-	11	9	-	2	3	4
C4	-	1	1	-	-	-	-
C5	-	4	7	-	1	2	4
C6	2	-	22	-	2	3	9
D1	-	4	-	-	1	-	-
D2	-	7	6	5	1	2	6
D3	-	3	13	-	-	-	6
D4	-	-	3	-	-	-	1
D5	-	-	18	-	-	-	6
D6	8	4	9	-	-	1	2
E1	4	-	-	-	-	1	-
E2	-	-	-	6	1	-	1
E3	-	-	3	3	-	-	2
E4	-	-	14	-	1	-	1
E5	3	-	18	-	-	-	4
E6	6	-	-	-	-	-	-
F1	1	-	-	-	-	-	-
F2	-	-	-	1	-	-	-
F3	-	-	2	2	-	1	1
F4	-	-	8	1	-	-	1
F5	-	-	51	-	1	-	3
F6	4	3	7	-	1	-	1
G1	1	-	-	-	1	-	-
G4	-	-	1	-	-	-	-
G5	-	43	14	-	2	1	-
G6	-	24	1	-	-	-	-
C/F	40	145	220	18	20	25	70

Col.1 Section	2 Out- side	3 Kwahus Not dis- puted (other than Nkwatias)	4 Ewes Not dis- puted	5 Nkwatias Disputed and not Disputed	6 Not Claimed	7 In dis- pute  Including Nkwatias	8 In Ruins
B/P	40	145	220	18	20	25	70
H1	4	-	-	-	1	-	-
H2	-	2	-	-	1	-	-
H5	3	8	-	-	-	-	1
H6	3	-	-	-	-	-	-
I1	5	-	-	-	-	-	-
I2	7	2	-	-	2	-	-
I3	1	-	-	-	3	-	-
I4	1	-	-	-	-	-	-
I5	6	2	1	-	-	-	1
I6	13	-	-	-	-	-	-
Totals	83	159	221	18	27	25	72
Ruins	1	9	40	2	3	17	72
In Use	82	150	181	16	24	8	-

TABLE 2

	<u>ALL PLACES</u>	<u>RUINS</u>	<u>USED</u>
<u>Outside</u>	83	1	82
<hr/>			
<u>Inside</u>			
KWAHUS. Not disputed (excluding Nkwatias)	159	9	150
EWES. Not disputed	221	41	180
NKWATIAS. Disputed and undisputed	18	2	16
NOT CLAIMED.	27	3	24
IN DISPUTE. (including Nkwatias)	25	17	8
	<hr/>		
Totals (Inside)	450	72	378
	<hr/>		



TABLE 3

SUMMARY OF NKWATIA CLAIMS (in the area)

Section	Claimed	Disputed	Ruins	
D.2	5	-	1	1 of the 5 in ruins
E.2	6	-	1	1 in ruins
E.3	3	-	-	
F.2	1	-	-	
F.3	2	1	-	
F.4	1	-	-	
Totals	18	1	2	

18 places claimed of which 17 are not  
disputed but 2 are in ruins.

SUMMARY ANALYSIS OF PLACES SHOWN UPON EXHIBIT A  
AS IN THE AREA EDGED RED BUT IN RUINS

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Section	Kwahus (other than Nkwatias)	Ewes	Nkwatias	Not claimed	In dispute	Totals
A.3	-	1	-	-	-	1
A.4	-	-	-	-	1	1
A.5	-	-	-	-	1	1
B.2	1	-	-	-	2	3
B.3	-	-	-	1	1	2
B.5	-	-	-	-	4	4
B.6	1	2	-	-	-	3
C.2	2	-	-	-	1	3
C.3	1	-	-	-	3	4
C.5	-	3	-	1	-	4
C.6	-	6	-	-	3	9
D.1	-	-	-	-	-	0
D.2	1	2	1	1	1	6
D.3	1	5	-	-	-	6
D.4	-	1	-	-	-	1
D.5	-	6	-	-	-	6
D.6	1	1	-	-	-	2
E.2	-	-	1	-	-	1
E.3	-	2	-	-	-	2
E.4	-	1	-	-	-	1
E.5	-	4	-	-	-	4
F.3	-	1	-	-	-	1
F.4	-	1	-	-	-	1
F.5	-	3	-	-	-	3
F.6	-	1	-	-	-	1
G.5	-	-	-	-	-	0
G.6	-	-	-	-	-	0
H.5	1	-	-	-	-	1
I.5	-	1	-	-	-	1
<b>Totals</b>	<b>9</b>	<b>41</b>	<b>2</b>	<b>3</b>	<b>17</b>	<b>72</b>