

Nana Atta Karikari and Another - - - - - Appellants

v.

Nana Oware Agyekum II - - - - - Respondent

FROM

THE WEST AFRICAN COURT OF APPEAL

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL UPON A PETITION BY THE  
RESPONDENT FOR DISMISSAL OF APPEAL,  
DELIVERED THE 7TH JUNE, 1955

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*Present at the Hearing:*

LORD RADCLIFFE

LORD SOMERVELL OF HARROW

MR. L. M. D. DE SILVA

[*Delivered by* LORD SOMERVELL OF HARROW]

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This is a petition to dismiss this appeal on the ground that the leave granted by the West African Court of Appeal pursuant to Article 3 (a) of the West African (Appeal to Privy Council) Order in Council 1949-1950 was incompetent.

Article 3 is as follows:—

“ 3. Subject to the provisions of this Order, an appeal shall lie:—

(a) as of right, from any final judgment of the Court, where the matter in dispute on the appeal amounts to or is of the value of £500 sterling or upwards, or where the appeal involves directly or indirectly some claim or question to or respecting property or some civil right amounting to or of the said value or upwards; and

(b) at the discretion of the Court, from any other judgment of the Court, whether final or interlocutory, if, in the opinion of the Court, the question involved in the appeal is one which, by reason of its great general or public importance or otherwise, ought to be submitted to His Majesty in Council for decision.”

The petitioner as plaintiff in 1950 instituted proceedings for trespass and recovery of possession of certain lands. The plaintiff succeeded. The defendants appealed and the appeal was dismissed. The present question arises on taxation of costs. The petitioner submitted his bill of costs for taxation. Under the Gold Coast Courts Ordinance, section 13 and Order 7 of the 1st Schedule the Registrar acts as Taxing Master subject to review by the Court. The West African Court of Appeal Ordinance section 3 provides that an appeal to the Court of Appeal as to costs only shall not lie except by special leave.

The phrase “as to costs only” normally refers to the incidence of costs but it would seem to cover disputes as to quantum on taxation unless there is some special provision dealing with the latter.

This petition is concerned with two items of costs for a surveyor's fees and labourers' wages amounting in all to some £870 incurred in the preparation of a plan. There had been an order by consent for the preparation of a plan and the Taxing Officer took the view that having regard to the terms of that order a much smaller and less expensive plan was all for which the petitioners could claim. He reduced this sum to £9. The Judge upon review held that the Taxing Officer's discretion had not

been exercised improperly and he refused to interfere. The petitioner appealed to the Court of Appeal who allowed some £736 in respect of the two items of costs.

It was from this order that leave to appeal to the Privy Council was granted as of right under paragraph 3 (a) of the Order in Council. The first question is whether an appeal is within that paragraph when the matter in dispute is as to costs only.

This is an appeal as to quantum on taxation. If however such an appeal is within the paragraph it would seem impossible to contend that an appeal as to liability for the whole costs would not also be within it.

Appeals as to costs are in a special category. In 1835 Lord Brougham said, "The rule with respect to costs in this House as well as in the Privy Council and the Court of Chancery is that you cannot appeal for costs alone." (*Inglis v. Mansfield* 3 Cl. & Fin. 362).

In *Credit Foncier of Mauritius v. Paturau and others* (35 Law Times N.S. 869) Sir Barnes Peacock said "But appeals are not allowed to Her Majesty merely for the sake of costs." These statements require qualification. In a judgment of the Board delivered by Turner, L.J., in an appeal from the Court of Arches it is said that an appeal might lie if the discretion had not been fairly exercised or there had been mistake. In *Donald Campbell and Company v. Pollak* [1927] A.C. 732 the House of Lords decided that notwithstanding the general rule of practice of the House of Lords that no appeal lies for costs only, an appeal would be entertained if an error of law was alleged.

It is however sufficient for the question of construction that such appeals would only be entertained in very exceptional circumstances. It has long been held that costs cannot be added to the sum in dispute in the proceedings in order to make up the minimum sum in such a provision as is contained in Rule 3 (a). This is because costs although in dispute and finally dealt with in the judgment are outside the scope of the rule. The rule is one conferring an appeal as of right based on quantum. It cannot in their Lordships' opinion be construed as conferring such a right in cases where prima facie no appeal would be entertained whatever the amount in issue. Having regard to the general position of appeals on costs as stated above it is natural to construe the words "matter in dispute" as meaning matter in dispute in the proceedings other than costs.

Their Lordships are therefore of opinion that the West African Court of Appeal were wrong in treating the application as one falling under Rule 3 (a).

The procedure adopted by the petitioners is that stated to be correct in *Sauvageau v. Gauthier* L.R. 5 P.C. 494. In that case the question was also whether the appeal was within the words of a provision similar to paragraph 3 (a). The appeal came on and the respondent took as a preliminary objection the point that the case did not fall within the provision dealing with appeals as of right under which leave had been granted. In the course of the judgment Sir James Colville said:—"the proper course, when such a question as this arises, is to come here by petition as early as possible, and before the cases are lodged, and the expense of preparing those cases is incurred, in order to bring the point before their Lordships and to get the appeal dismissed. It is then open to their Lordships to recommend Her Majesty either to dismiss the appeal, in which case the parties are not put to the expense of preparing for the hearing: or to grant special leave to appeal."

It seems clear to their Lordships that in theory at any rate appeals as to the incidence and quantum of costs might come within the provisions of paragraph 3 (b), or be the subject of special leave by the Board. Their Lordships are clear that in the present case there are no facts which would justify the granting of special leave.

For the above reasons their Lordships will humbly advise Her Majesty that the appeal be dismissed. The respondents to the petition must pay the costs of the present hearing and of the appeal.



**In the Privy Council**

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**NANA ATTA KARIKARI AND ANOTHER**

**v.**

**NANA OWARE AGYEKUM II**

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**DELIVERED BY  
LORD SOMERVELL OF HARROW**