

Nana Osei Assibey III, Kokofuhene substituted for

Nana Kofi Adu, Kokofuhene - - - - - *Appellant*

v.

Nana Kwasi Agyeman, Boagyaahene - - - - - *Respondent*

FROM

THE WEST AFRICAN COURT OF APPEAL

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 18TH NOVEMBER, 1952**

Present at the Hearing :

THE LORD CHANCELLOR
LORD MORTON OF HENRYTON
SIR LIONEL LEACH

[*Delivered by* SIR LIONEL LEACH]

This appeal arises out of a dispute over the ownership of lands situate within the Bekwai district of Ashanti. On the 19th August, 1946, the respondent, who is the Ohene of Boagyaa, Kumasi Division, instituted a suit in the Native Court of Asantehene (Grade A) against Nana Kofi Adu, the then holder of the Kokofu Stool, to establish his title to the lands. The summons issued was in these terms:—

“ Plaintiff sues the defendant herein for satisfactory and reasonable explanation as to why the latter’s Akwamuhene and subjects do pay tribute to the Boagyasa Stool as far back as the reign of the then Boagyaahene Nana Asamoah Kenin by virtue of the occupation on the Boagyaa Stool land known as ‘Dwoamin’, and now the defendant has ordered his subjects on the said land not to pay the tribute to the Boagyaa Stool.”

The plaintiff claimed that the lands had been given to his Stool by the Asantehene Nana Opoku Wari (their Lordships understand that this Chief reigned sometime before the year 1700), that he had been in undisturbed possession ever since and that he had been collecting cocoa and game tribute from the defendant’s subjects and other tenants who farmed within the area. The defendant denied the plaintiff’s title. He maintained that the lands had been given to his own Stool and that they still belonged to it.

There were two hearings by the Asantehene’s Court. At the first hearing there was a disagreement among the three Chiefs who composed the Court. The Chief who presided found for the defendant and the two other Chiefs for the plaintiff. The defendant appealed to the Chief Commissioner’s Court, which referred the case back for rehearing by a new panel of Chiefs. Among the reasons given for this course was that the viewer’s report made it clear that the definition of the lands in dispute was confused. The re-hearing commenced before three other Chiefs on the 1st December, 1947. In the meantime a proper plan of the area had been prepared as the result of a survey made under an order of the Court. On the 6th December, 1947, the newly-constituted Court delivered judgment. The three Chiefs were in agreement in holding that the lands belonged to the plaintiff’s Stool.

The defendant appealed to the Chief Commissioner's Court which, by a judgment dated the 2nd April, 1948, upheld the finding of the Asantehene's Court. The defendant then appealed to the West African Court of Appeal, but again unsuccessfully. This appeal was dismissed on the 28th January, 1949. The West African Court of Appeal gave the defendant leave to appeal to His Majesty in Council, but he was subsequently destooled, whereupon the appellant was elected Chief in his place. In due course the West African Court of Appeal substituted the name of the new Stool holder for that of the defendant and by an Order in Council dated the 30th January, 1952, the new Chief was brought on the record as the appellant in the appeal now before their Lordships.

The trial Court found that the plaintiff had in fact been in undisturbed possession of the lands for many years and that he had been collecting cocoa and game tribute from the defendant's subjects and other farming tenants. There was both oral and documentary evidence in support of this. In 1935 one Abroneh, a former Akwamuhene of Kokofu entered into an agreement in writing, whereby he undertook to pay to the plaintiff's Stool annually £35 as cocoa tribute in respect of the Dwoamin lands farmed by the defendant's subjects. This agreement was produced. The plaintiff also put in evidence a book of "Native Administration Receipts" which showed the grant of individual receipts to certain farmers of the Dwoamin village and an application made to the plaintiff's Stool by one Kwame Asare, a Kokofu subject living in the village, for the grant of a native physician's licence.

The Court refused to believe the defendant when he said that he was unaware that his subjects had been paying tribute to the plaintiff's Stool for many years. It also refused to believe him when he alleged that Abroneh (who was examined as a witness on behalf of the plaintiff) had executed the agreement for the payment of tribute to the plaintiff's Stool at a time when he was in rebellion against the defendant. It had been established that Abroneh's successor in the office had also paid the tribute to the plaintiff more than once. The defendant denied knowledge of Kwame Asare's application, but the Court considered that as it was presented at Kumasi and not at Kokofu the applicant must have known that the land belonged to the plaintiff. The trial Court concluded its judgment by saying that it considered that the plaintiff had proved his case beyond all reasonable doubt.

The judgment of the Chief Commissioner's Court was confined to the statement that it had read the record of the trial Court, together with the grounds of appeal and reply, and that it saw no ground for interference. The West African Court of Appeal dismissed the appeal made from the judgment of the Chief Commissioner's Court without making any observations, but the record shows that notes were made of the arguments and it must be presumed that the Court considered what was said.

The contentions advanced in support of the appeal to Her Majesty in Council are that the judgment of the Asantehene's Court was against the weight of evidence and that the West African Court of Appeal erred in not giving reasons for the dismissal of the appeal made to it by the defendant.

While their Lordships have not received much assistance from the Appellate Courts in West Africa, they have been taken through the whole of the record and are satisfied that there was ample evidence to justify the trial Court finding for the plaintiff. They are convinced that the case was carefully tried and that the judgment dealt fairly and adequately with the contentions raised by the parties. Moreover, the observations of Lord Atkin in delivering the judgment of the Board in *Abakah Nthah and Anguah Bennieh* (1931 A.C. 72) have direct bearing. That case also raised the question of ownership of land in West Africa. The Provincial Commissioner had set aside the decision of a Native Tribunal, constituted

under the Native Jurisdiction Ordinance, 1883, and the Supreme Court had concurred in his decision. The Board restored the finding of the Court of first instance. Lord Atkin said:—

“ By colonial legislation all suits relating to the ownership of land held under native tenure are placed within the exclusive original jurisdiction of native tribunals, unless satisfactory reason to the contrary is shown. It appears to their Lordships that decisions of the native tribunal on such matters which are peculiarly within their knowledge, arrived at after a fair hearing on relevant evidence, should not be disturbed without very clear proof that they are wrong, and their Lordships fail to find such proof in the present case.”

There is no indication in the present case of any error. The indication is all the other way and the judgment of the Asantehene's Court has been accepted by the two appellate Courts in West Africa.

The appellant's contention that the judgment of the West African Court of Appeal should be set aside because it has expressed no reasons for dismissing the appeal to it must also be rejected. The suggestion is that the Court disregarded Rule 16 of the Judicial Committee Rules, 1925, which reads as follows:—

“ The reasons given by the judge, or any of the judges, for or against any judgment pronounced in the course of the proceedings out of which the Appeal arises, shall by such judge or judges be communicated in writing to the Registrar and shall be included in the Record.”

The contention shows misconception of the rule. It does not say that the tribunal from whose decision the appeal to Her Majesty in Council arises shall give reasons. It merely enjoins that where reasons are given they shall be communicated to the Registrar. No reasons were given and therefore there was nothing to communicate.

Their Lordships will humbly advise Her Majesty that the appeal should be dismissed. The appellant must pay the costs.

In the Privy Council

NANA OSEI ASSIBEY III, KOKOFUHENE
SUBSTITUTED FOR NANA KOFI ADU,
KOKOFUHENE

v.

NANA KWASI AGYEMAN, BOAGYAHENE

DELIVERED BY SIR LIONEL LEACH

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