

~~GH3.G.4~~

Judgment
25, 1956

No. 42 of 1954.

In the Privy Council.

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

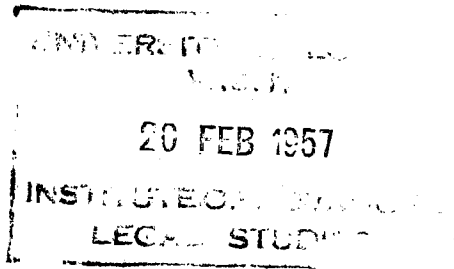
BETWEEN

TECHIMANHENE (Defendant) *Appellant*

AND

WENCHIHENE (Plaintiff) *Respondent.*

RECORD OF PROCEEDINGS



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In the Privy Council.

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

46033

BETWEEN

TECHIMANHENE (Defendant) *Appellant*

AND

WENCHIHENE (Plaintiff) *Respondent.***RECORD OF PROCEEDINGS****INDEX OF REFERENCE**

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In the Privy Council.

ON APPEAL

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

BETWEEN

TECHIMANHENE (Defendant) *Appellant*

AND

WENCHIHENE (Plaintiff) *Respondent.*

10 RECORD OF PROCEEDINGS

No. 1.

CIVIL SUMMONS.

IN THE ASANTEHENE'S COURT "A."

WENCHIHENE Plaintiff

v.

TECHIMANHENE Defendant.

To : Techimanhene of Techiman.

YOU ARE HEREBY COMMANDED to attend this Court at Kumasi on the 22nd day of September, 1947, at 9 o'clock a.m. to answer a suit
20 against you by Plaintiff.

The Plaintiff's claim is for declaration of title to that portion of land lying and situate West of a straight line drawn from Wenchi Bonso (The "Wenchi Hole") southwards to meet the river Tano, such that it crosses Road A.38 at a point 14.3 miles from the Techiman cross-roads.

*In the
Asante-
hene's "A"
Court.*

No. 1.
Civil
Summons,
22nd
August
1947,

*In the
Asante-
hene's "A"
Court.*
—
No. 1.
Civil
Summons,
22nd
August
1947,
continued.

Issued at Kumasi, Ashanti, on this 22nd day of August, 1947.

Sum claimed : A declaration of title.

	£	s.	d.
Summons Fee	1	0	0
Adasuum	0	0	0
Service	0	1	0
Mileage Fee	0	0	0
Postage & Pounding	0	0	7
Total	£1	1	7

(Sgd.) O. Y. AKOTO, 10
President.

Witness to Signature :

(Sgd.) JNO. W. POKU,
Registrar.

TAKE NOTICE if you do not attend the Court may give judgment in your absence.

(A) State Plaintiff's claim clearly.

*In the
Chief Com-
missioner's
Court.*
—

No. 2.

ORDER to Transfer by Assistant Chief Commissioner.

No. 2.
Order to
Transfer by
Assistant
Chief Com-
missioner,
29th
December
1947.

IN THE CHIEF COMMISSIONER'S COURT OF ASHANTI, KUMASI. 20

IN THE MATTER of :

WENCHIHENE Plaintiff

v.

TECHIMANHENE Defendant.

(Sgd.) W. H. BEETON,
Asst. Chief Commissioner.

WHEREAS the above mentioned matter is now pending before the Asantehene's "A" Court in which the claim is for

" A declaration of title to that portion of land lying and situate
" West of a straight line drawn from Wenchi Bonso, (The Wenchi 30
" Hole) Southwards to meet the River Tano such that it crosses
" Road A38 at a point 14.3 miles from the Techiman Cross Roads."

AND WHEREAS the said portion of land above described is covered by an executive validated decision under Cap. 120 of the Laws of the Gold Coast, section 3 (3) of which is not enforceable in a Native Court :

AND WHEREAS it has been considered desirable to transfer the whole of the said matter to the Court of the Chief Commissioner of Ashanti :

In the Chief Commissioner's Court.

NOW, by virtue of section 22 (1) (e) of Cap. 80, Native Courts (Ashanti) Ordinance, I DO HEREBY ORDER that the hearing or further hearing of the above cause be stopped and that the whole cause be transferred from the said Court " A " of Asantehene to the Court of the Chief Commissioner of Ashanti, to be by the latter dealt with according to law :

No. 2.
Order to Transfer by Assistant Chief Commissioner, 29th December 1947, continued.

10 IT IS HEREBY FURTHER ORDERED that the process and the proceedings and attested copies of all entries in the books of the Asantehene's " A " Court be transmitted by the Chief Registrar of the Asantehene's Courts to the Registrar of the Chief Commissioner's Court, Kumasi, and that costs are to abide final hearing.

Given under my hand at Kumasi this 29th day of December, 1947.

(Sgd.) REYNOLDS B. KWAKWA,

Registrar,

Chief Commissioner's Court.

No. 3.

COURT NOTES on Applications by Techimanhene for Adjournment.

20 IN THE CHIEF COMMISSIONER'S COURT held at Kumasi on Monday the 10th day of January, 1949, before His Worship A. C. SPOONER, Esq., Senior District Commissioner, appointed to preside over the Chief Commissioner's Court.

No. 3. Court Notes on applications by Techimanhene for adjournment, 10th January and 7th February 1949.

WENCHIHENE Plaintiff

v.

TECHIMANHENE Defendant.

30 CLAIM : Plaintiff's claim is for declaration of title to that portion of land lying and situate West of a straight line drawn from Wenchi Bonso (The " Wenchi Hole ") southwards to meet the river Tano, such that it crosses Road A38 at a point 14.3 miles from the Techiman cross-roads.

Case transferred by Order of the Assistant Chief Commissioner dated 29th December, 1947 from the Asantehene's Court " A " to the Chief Commissioner's Court.

Plaintiff represented by Safohene Yaw Ameyaw. Letter dated 10.1.49, purporting to be signed by Wenchihene produced (p. 69 on Court File).

Defendant not present, letter dated the 8th of January, 1949, asking for an adjournment produced by one Yaw Nwinim.

*In the
Chief Commissioner's
Court.*

No. 3.

Court
Notes on
applica-
tions by
Techiman-
hene for
adjourn-
ment, 10th
January
and 7th
February
1949,
continued.

Plaintiff's representative opposes adjournment. He further states he has no application to make as regards the sitting of the Court.

It is desirable that Tekyiman be represented and I am prepared to allow time for the financial side to be worked out.

Adjourned to February 7th at 9 a.m. Kumasi.

(Sgd.) A. C. SPOONER.

IN THE CHIEF COMMISSIONER'S COURT held at Kumasi on Monday the 7th day of February 1949, before His Worship A. C. SPOONER Esquire, Senior District Commissioner, appointed to preside over the Chief Commissioner's Court.

10

WENCHIHENE Plaintiff

v.

TECHIMANHENE Defendant.

Wenchihene represented by Safohene Yaw Ameyaw.

Techimanhene not present but letter produced by Kofi Mununfi asking for further adjournment as it is stated that financial provision had not been made.

Financial provision was approved on 2.2.49.

Further adjournment refused.

PLAINTIFF'S EVIDENCE.

20

No. 4.

SAFOHENE YAW AMEYAW.

*Plaintiff's
Evidence.*

No. 4.

Safohene
Yaw
Ameyaw,
7th
February
1949.
Examina-
tion.

Plaintiff—Safohene Yaw Ameyaw s.a.r.b.

My name is Yaw Ameyaw a Safohene of Wenchi. This is my authority to appear for Wenchihene. I wish to put it in evidence. Accepted and marked "A." The Wenchi came from a hole. The Techimans now claim that they own that hole. Between 48 and 49 years ago a court judgment was given. I tender in evidence the decision of Capt. T. Pamplin Green validated by the Chief Commissioner Sir John Maxwell 3rd of October 1929. This is certified true copy and I tender it in evidence (Accepted and marked "B"). Capt. Green when he gave the judgment cut a line from the Wenchi hole to the junction of the rivers Tano and Nsuta. After the line was cut there was no trouble. Later a road was built between Sunyani and Tekyiman. The Wenchis built their bit and the Tekyimans their bit. Some two years ago the Wenchis found the Tekyimans had trespassed.

30

Wenchihene notified Tekyiman stating that as they were brothers he wished that no trouble should arise. No return message was received by Wenchihene so Wenchihene then wrote to Tekyimanhene. Tekyiman then wrote saying this piece of land was his. The Wenchihene went to the D.C. and said he would take action. The D.C. dissuaded him and

suggested that £75 be deposited by both and that a surveyor be employed to demarcate the line. Wenchihene deposited £75 with the D.C. Three months later we learnt from the D.C. that Tekyimanhene had also deposited £75. The D.C. then wrote a letter to both of us asking if our boundary on the Sunyani Tekyiman Road was at a point 14.3 miles from Tekyiman cross roads. This is the letter (Accepted and marked "C"). Wenchihene agreed but Tekyiman did not. In a letter dated the 13th June 1947 the D.C. notified us that Tekyiman would not agree to the cutting of the boundary. This is Wenchihene's letter of agreement dated 19.5.47. (Tendered and accepted, marked "D.") As a result action was instituted in the Asantehene's "A" Court. The case was transferred to this Court. In this Court moreover an injunction order restraining the parties was given to prevent entry on the land. In spite of this order the Tekyiman people are still farming on the land in defiance of this order. This is my case. I want the Tekyimanhene to show why he has trespassed the boundary already cut by Government. This is my case.

*In the
Chief Commissioner's
Court.*

*Plaintiff's
Evidence.*

*No. 4.
Safohene
Yaw
Ameyaw,
7th
February
1949.
Examina-
tion,
continued.*

Court—

Q. Is it then only the piece between Wenchihene hole to the lorry road which is concerned ?

*Cross-
examina-
tion by
Court.*

20 A. No from Wenchihene hole to the junction of the Tano and Nsuta river.

Q. Are there any pillars or marks on the land ?

A. No, nor is it possible to trace any of the marks on the trees. The line was laid many years ago.

Q. How big, how wide across is the Wenchihene hole ?

A. It covers an area as big as the compound of this office.

Q. The boundary goes right up to the edge of the Wenchihene hole ?

A. No it would be a distance of about from here to the Judge's bungalow. There is the source of the river Ayasu and that is where the line passes.

30 Q. How many witnesses have you ?

A. One Yaw Badu and the other Kobina Nkama. They will prove that there has been trespass.

Q. What do you want the Court to do ?

A. We want a Court order that a line be cut in accordance with Exhibit "B."

Q. If you show the surveyor where the line goes I suppose Tekyiman would show a different line ?

A. I can't say.

40 Q. If the Court made an order that a plan be prepared by a licensed surveyor showing the line which you claim to be an interpretation of the Pamplin Green judgment could you pay for it. You would probably need not less than £600.

A. We could pay.

In the
Chief Com-
missioner's
Court.

Plaintiff's
Evidence.

No. 5.
Court
Notes
ordering
plan to be
prepared by
Plaintiff,
7th
February
1949.

No. 5.

COURT NOTES ordering plan to be prepared by Plaintiff.

Court—

Adjourned to the 6th May 1949. The Plaintiff to produce before Court a plan prepared by a qualified surveyor showing the boundary laid down in Exhibit " B " as he, the Plaintiff, interprets it.

(Sgd.) A. C. SPOONER.

No. 6.
Court
Notes,
5th
August
1949.

No. 6.

COURT NOTES.

IN THE CHIEF COMMISSIONER'S COURT held at Kumasi on Friday 10 the 5th day of August, 1949, before His Worship A. C. SPOONER Esquire, Acting Assistant Chief Commissioner, appointed to preside over the Chief Commissioner's Court.

WENCHIHENE

vs.

TECHIMANHENE.

Mr. Asafu-Adjaye for Wenchihene.

Okyeame Kwabena Boabae in person.

Techimanhene represented by Yaw Nwinim, Nifahene of Techiman.

Mr. Asafu-Adjaye states that he and Mr. Mead have been instructed 20 to represent Wenchihene.

In support of his appearance Mr. Asafu-Adjaye quotes Cap. 8 Sec. 66 ss. 2 and refers to the precedent set in the case *Banka v. Mwonam*.

Mr. Asafu-Adjaye with the permission of Court outlines the points he will raise on adjournment which the Techimanhene's representative requests.

The points are as follows :—

(1) The claim is for a declaration of title to a portion of land and it relates to the boundary of that land. An executive decision by the C. C. A. has already been made and if in the hearing of the 30 case a doubt arises as to the correct interpretation of that decision it is submitted that this Court should cause the boundary concerned

to be fixed to the best of its ability guided by the previous executive decision in accordance with Sec. 3 ss. 3 of Cap. 120. This will mean that an application will be made to amend the Court order given on 7th of February 1949, so that the Court may appoint a surveyor to cut a line in accordance with the validated decision of Pamplin Green.

*In the
Chief Commissioner's
Court.*

*Plaintiff's
Evidence.*

Court—

Adjourned to 3rd of September for mention.

(Sgd.) A. C. SPOONER.

No. 6.
Court
Notes,
5th
August
1949,
continued.

10

No. 7.

COURT NOTES.

IN THE CHIEF COMMISSIONER'S COURT held at Kumasi on Friday the 3rd day of September 1949 before His Worship A. C. SPOONER Esquire, Senior District Commissioner, appointed to preside over the Chief Commissioner's Court.

No. 7.
Court
Notes,
3rd
September
1949.

WENCHIHENE

vs.

TECHIMANHENE.

Mr. Asafu-Adjaye for Wenchihene present and Mr. Mead not present.

20 Mr. C. Benjamin for Techimanhene represented Mr. H. Benjamin.

Mr. Asafu-Adjaye states that it is not now his intention to ask that the original order be rescinded as his clients have now had the plan prepared. Only partial demarcation has been carried out.

Adjourned to 28th of October, 1949.

(Sgd.) A. C. SPOONER.

COURT NOTES.

*In the
Chief Com-
missioner's
Court.*

*Plaintiff's
Evidence.*

No. 8.
Court
Notes,
28th
October
1949.

IN THE CHIEF COMMISSIONER'S COURT held at Kumasi on Friday the 28th day of October, 1949, before His Worship A. C. RUSSELL, Esquire, Administrative Officer, appointed to preside over the Chief Commissioner's Court.

WENCHIHENE

vs.

TECHIMANHENE.

Mr. Mead for Plaintiff.

10

Mr. Benjamin for Defendant, appearing on behalf of his brother.

Mr. Mead argues :

[sic]

The *appeal* is not properly before this Court.

The Order was made in the Chief Commissioner's Court, by the Assistant Chief Commissioner. It should have been made by the Chief Commissioner in his administrative, not judicial capacity and further there is no provision for the Assistant Chief Commissioner to act for the Chief Commissioner.

Mr. Benjamin agrees that the power of transfer is personal to the Chief Commissioner, not to his Court.

20

By Court—

I agree with the submissions of Counsel. There is therefore no action before this Court on which I can adjudicate.

No order as to costs.

(Intd.) A. C. R.

No. 9.

ORDER of Transfer to Chief Commissioner's Court.

*In the
Asante-
hene's "A"
Court.*

Before—

HIS HONOUR MAJOR C. O. BUTLER, C.M.G., E.D., Chief Commissioner.

File Crt. 63/47.

IN THE MATTER of :

WENCHIHENE Plaintiff

v.

TECHIMANHENE Defendant.

No. 9.
Order of
Transfer to
Chief
Commis-
sioner's
Court,
11th
November
1949.

10 WHEREAS the above-mentioned matter is now pending before the Asantehene's "A" Court in which the claim is for

"A declaration of title to that portion of land lying and situate West of a straight line drawn from Wenchi Bonso, (The Wenchi Hole) southwards to meet the River Tano such that it crosses Road A38 at a point 14.3 miles from the Techiman Cross Roads."

AND WHEREAS the said portion of land above described is covered by an executive validated decision under Cap. 120 of the Laws of the Gold Coast, section 3 (3) of which is not enforceable in a Native Court :

20 AND WHEREAS it has been considered desirable to transfer the whole of the said matter to the Court of the Chief Commissioner of Ashanti :

NOW, by virtue of section 22 (1) (e) of Cap. 80, Native Courts (Ashanti) Ordinance, I DO HEREBY ORDER that the hearing or further hearing of the above cause be stopped and that the whole cause be transferred from the said Court "A" of Asantehene to the Court of the Chief Commissioner of Ashanti, to be by the latter dealt with according to law :

30 IT IS HEREBY FURTHER ORDERED that the process and the proceedings and attested copies of all entries in the books of the Asantehene's "A" Court be transmitted by the Chief Registrar of the Asantehene's Courts to the Registrar of the Chief Commissioner's Court, Kumasi, and that costs are to abide final hearing.

Dated at Kumasi this 11th day of November, 1949.

(Sgd.) C. O. BUTLER,
Chief Commissioner.

*In the
Supreme
Court of
the Gold
Coast (Land
Court).*

No. 10.
Court Notes
ordering
Pleadings,
20th
November
1950.

No. 10.
COURT NOTES ordering Pleadings.

IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI,
at the Court held at Kumasi on Monday the 20th day of November,
1950, before His Honour Mr. Justice LINGLEY, Ag. J.

LC. 63/47.

WENCHIHENE
vs.
TECHIMANHENE.

Mead for Plaintiff.

10

Defendants not represented.

Pleadings ordered—21 days for Statement of Claim : 14 days for
defence : 7 days for reply if necessary.

Copy of order to be served on Defendants.

10th February, for mention.

(Intd.) L. C. L.
Ag. J.

No. 11.
Statement
of Claim,
11th
December
1950.

No. 11.
STATEMENT OF CLAIM.

Transferred from the Asantehene's Court " A " Kumasi.

20

IN THE SUPREME COURT OF THE GOLD COAST LAND COURT
ASHANTI KUMASI.

WENCHIHENE Plaintiff

v.

TECHIMANHENE Defendant.

STATEMENT OF CLAIM.

1. The Plaintiff herein is suing for and on behalf of and with the
authority of the Stool of Wenchi and the Defendant herein is sued as the
representative of the Stool of Techiman.

2. By an Executive Decision dated the 5th February 1899 and 30
approved by Sir Donald Stewart on the 19th December 1904 and further
approved by Sir F. C. Fuller Chief Commissioner of Ashanti on the
12th August 1905 and recorded in Volume 1 of the Boundary Book at
page 2 the boundary line between the lands of the Plaintiff Stool and the
Defendant Stool were therein defined as being :

“ On the East commencing at the junction of the new boundary
“ Wanki and Wam with the Tano River to a point where a straight

“ line drawn from the funnel shaped hole where the Wankis are
“ stated to have come from to its junction with the Tano River
“ from this point follows the straight line to the Hole and from
“ there to the head of the River Ayasu. The Ayasu River to its
“ junction with the Subin River. This boundary to leave the
“ hill on which the above hole is situated on the Wenchi side of the
“ boundary.”

*In the
Supreme
Court of
the Gold
Coast (Land
Court).*

No. 11.
Statement
of Claim,
11th
December
1950,
continued.

3. The said decision was validated by the provisions of the Boundary,
Land, Tribute, and Fishery Disputes (Executive Decisions Validation)
10 Ordinance Chapter 120.

4. The Defendant Stool has committed acts of trespass on the
Plaintiff Stool’s land by its subjects farming thereon.

5. The Plaintiff claims for and on behalf of the Stool of Wenchi
to establish title to the land situate and being to the West of the boundary
line as described in paragraph 2 hereof and for the said boundary to be
fixed in accordance with the provisions of Section 3 (3) of the said Boundary,
Land, Tribute, and Fishery Disputes (Executive Decisions Validation)
Ordinance Chapter 120.

Dated at Kumasi this eleventh day of December 1950.

20

(Sgd.) J. J. PEELE & CO.,
Plaintiff’s Solicitors.

To the Registrar, Divisional Court, Kumasi,
and
To the above-named Defendant Techimanhene, Techiman.

No. 12.
STATEMENT OF DEFENCE.

No. 12.
Statement
of Defence,
15th
February
1951.

IN THE SUPREME COURT OF THE GOLD COAST LAND COURT,
ASHANTI KUMASI.

30

WENCHIHENE Plaintiff
v.
TECHIMANHENE Defendant.

STATEMENT OF DEFENCE.

1. Defendant pleads to the Jurisdiction of this Honourable Court
to entertain this Suit it being one relating to the ownership, possession or
occupation of land held under Native tenure.

*In the
Supreme
Court of
the Gold
Coast (Land
Court).*

*No. 12.
Statement
of Defence,
15th
February
1951,
continued.*

2. Defendant denies paragraphs 2 and 3 of the Statement of Claim herein and avers that in respect to the land subject of dispute herein there is in existence a prior Executive Decision given in his favour which will be produced at the trial.

3. Defendant denies the trespass alleged in paragraph 4 of the Statement of Claim filed herein.

4. Defendant avers that Plaintiff is not entitled to the Relief he seeks from this Honourable Court, i.e. a declaration of title and the fixing of boundary as indicated in paragraph 5 of the Statement of Claim herein.

Dated at Kumasi, this 15th day of February, 1951.

10

(Sgd.) C. F. H. BENJAMIN,
Solicitor for Defendant herein.

To the Registrar, Land Court, Kumasi, Ashanti,
and
To the Wenchihene, Plaintiff herein Wenchi, Ashanti District.

*No. 13.
Court
Notes,
20th April
1951.*

**No. 13.
COURT NOTES.**

IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI,
at the Land Court held at Kumasi on Monday the 20th day of April,
1951, before QUASHIE-IDUN, J.

20

WENCHIHENE
v.
TECHIMANHENE

Mr. Mead for Plaintiff.

Defendant absent—sent a letter to say he is ill.

Nana Kofi Owusu Toasehene—Assessor.

By Court—Adjourned to 10.5.51.

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

No. 14.

AMENDMENT to Statement of Defence.

IN THE SUPREME COURT OF THE GOLD COAST LAND COURT,
ASHANTI, KUMASI.

In the
Supreme
Court of
the Gold
Coast (Land
Court).

WENCHIHENE Plaintiff

v.

TECHIMANHENE Defendant.

No. 14.
Amend-
ment to
Statement
of Defence,
4th May
1951.

AMENDED STATEMENT OF DEFENCE.

5. The Defendant denies paragraphs 2 and 3 of the Plaintiff's
10 Statement of Claim herein and avers that the boundary stated therein
was not finally demarcated and *in* inconclusive. [sic]

6. That the Defendant according to the findings of Mr. Hull Travelling
Commissioner to the Colonial Secretary made in February 1897 Wankyi
with its villages was adjudged to be the subjects of Tekyiman and the
lands . . . attached to the Stool of Tekyiman occupied by the Defendant.

Dated at Kumasi this 4th day of May, 1951.

(Sgd.) C. F. H. BENJAMIN,
Solicitor for Defendant herein.

To the Registrar, Land Court, Kumasi, and to the above named Plaintiff
20 Wenchihene, his Agent or Solicitor.

No. 15.

COURT NOTES.

IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI,
at the Land Court held at Kumasi on Thursday the 10th day of
May, 1951, before QUASHIE-IDUN, J.

No. 15.
Court
Notes,
10th May
1951.

WENCHIHENE

v.

TECHIMANHENE.

Mr. Mead and Mr. Siriboe for Plaintiff.

30 Mr. Benjamin for Defendant.

By Court—

The claim being one for fixing of Boundary under Cap. 120 I have
decided to try it without an Assessor.

*In the
Supreme
Court of
the Gold
Coast (Land
Court).*

No. 15.
Court Notes
10th May
1951,
continued.

Mr. Benjamin produces a certificate signed by Dr. Amarin stating that Defendant is ill and must be *is* [*sic*] bed for at least 14 days. He therefore applies for adjournment.

Mr. Mead objects to the adjournment on the ground that the Defendant is sued in a representative capacity. It is the Techiman Stool which is sued and the Defendant ought to have sent a representative to represent the Stool.

By Court—

I agree that Defendant can *sent* [*sic*] some of his elders to represent him.

Case is adjourned to 23.5.51 at 2.30 p.m.

10

Costs for Plaintiff assessed at £17 12/—.

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

*Plaintiff's
Evidence.*

No. 16.
Julius
Cobla
Wemegah,
23rd May
1951.
Examina-
tion.

PLAINTIFF'S EVIDENCE.

No. 16.

JULIUS COBLA WEMEGAH.

IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI,
at the Land Court held at Kumasi on Wednesday the 23rd day of
May, 1951, before QUASHIE-IDUN, J.

WENCHIHENE

v.

TECHIMANHENE.

20

Mr. Mead with Mr. Asafu-Adjaye for the Plaintiff.

Mr. Benjamin for Defendant.

Mr. Mead relies upon statement of claim as opening.

JULIUS COBLA WEMEGAH s.o.b. in English :

I am Registrar of the Chief Commissioner's Office and Custodian of the Boundary Books. The document now shown to me bears my signature. It is certified copy of a Boundary Decision between Wenchi and Techiman—tendered in evidence not objected to and marked "A".

Cross-
examina-
tion.

Cross-examined by Mr. Benjamin :

30

The Boundary Book is available and could be produced. I cannot identify the signatures of the two letters shown to me by Counsel for Defendant.

No. 17.

EDWARD SAMPSON ANOFF.

EDWARD SAMPSON ANOFF : s.o.b. in English :

I am a Licensed Surveyor and I live at Nsawam. I was instructed by the Plaintiff to prepare a survey in connection with the boundary between Wenchi and Techiman. I prepared a survey in accordance with Exhibit "A." From that survey I prepared a plan. It is signed by me. Tendered in evidence—not objected to and marked "B." The Boundary runs from the source of the Ayasu stream southwardly on a straight line until it reaches the River Tano. Northwardly the boundary follows the Ayasu stream up to the confluence of the Subin River. I took in account the note on the copy of the Executive Decision as to the direction of the compass. The plan is the correct interpretation of the Executive Decision. Owing to the movement of the earth there is a slight variation eastwardly in Magnetic bearings.

I took into account the magnetic variation since 1895 up to the time of the survey. The calculations were checked by the Provincial Surveyor. The funnel shaped Hole is shown on the plan. The respective lands are marked on the plan.

20 *Cross-examined by Mr. Benjamin* :

Note witness is shown a document and is asked whether the description stated therein are in accordance with the plan. Witness answers that the descriptions are in accordance with the plan.

Mr. Benjamin—Tenders in evidence documents.

Mr. Asafu-Adjaye states he objects to the admission of that document, on the ground that it does not comply with sections 3 and 4 of Cap. 120. There is nothing to indicate under what circumstances the document was made.

30 *Mr. Benjamin* states that the document is not necessarily a copy from the Boundary Book.

By Court : At this stage I do not admit the document as evidence. Document marked for identification as (one).

Re-examined : I have plotted on a Topographical Survey Sheet the boundaries which are shown as Exhibit "B." Tendered in evidence not objected to and marked "C."

Case for Plaintiff closed.

*In the
Supreme
Court of
the Gold
Coast (Land
Court).*

*Plaintiff's
Evidence.*

No. 17.
Edward
Sampson
Anoff,
23rd May
1951.
Examina-
tion.

Cross-
examina-
tion.

Re-exami-
nation.

DEFENDANT'S EVIDENCE.

No. 18.

JULIUS COBLA WEMEGAH.

*In the
Supreme
Court of
the Gold
Coast (Land
Court).*

*Defendant's
Evidence.*

No. 18.
Julius
Cobla
Wemegah,
23rd and
26th May
1951.
Examina-
tion.

Defence :

Mr. Benjamin calls Julius Cobla Wemegah still on oath.

I am the custodian of the Boundary Book. I cannot produce the Boundary Book in order to prove any document when permission has not been sought from the Chief Commissioner under section 6 of Cap. 120.

Mr. Benjamin applies for an adjournment in order to comply with the provisions of sections 4 and 6 of Cap. 120. 10

Mr. Asafu-Adjaye states no objection if the case can be continued on Friday the 25/5/51 at 2.30 p.m.

Costs for the Plaintiff in any event.

(Sgd.) S. O. QUASHIE-IDUN.

JULIUS COBLA WEMEGAH still on oath :

Examined by Mr. Benjamin :

I said I was custodian of the Boundary Book in the Chief Commissioner's Office. I produce a certified true copy of an Executive Decision from the Boundary Book. Identification (one) tendered in evidence not objected to and marked (one). 20

Ex. " 1 ".

I also produce another copy of Executive Decision from the Boundary Book certified by me. Tendered in evidence not objected to and marked (two).

Ex. " 2 ".

I produce another copy of Executive Decision from the Boundary Book signed by Mr. Maxwell not objected to and marked (three).

Ex. " 3 ".

Cross-
examina-
tion.

Cross-examined by Mr. Mead : None.

No. 19.
Joseph
Bernard
Beryeh,
26th May
1951.
Examina-
tion.

No. 19.

JOSEPH BERNARD BERYEH.

JOSEPH BERNARD BERYEH : s.o.B. in English :

I am Chief Clerk Chief Commissioner's Court. I identify the signature of one D. A. Quamin Sarpong a Second Division Clerk employed in the Chief Commissioner's Office. He is now dead. I also identify my signature on a paper. *Mr. Mead* does not object to letter of the 3rd January 1946 signed by Sarpong. Marked (4). 30

Ex. " 4 ".

Mr. Mead also does not object to letter of the 17th February 1947 signed by witness marked (5).

Ex. " 5 ".

Cross-
examina-
tion.

Cross-examined by Mr. Mead—None.

No. 20.

FRANK HERMAN SHANG SIMPSON.

FRANK HERMAN SHANG SIMPSON : s.o.B. in English :

I am a licensed Surveyor and I live at Accra. I have in my hand Exhibit " C " the Topographical Sheet looking at Exhibit (one) at the bottom of Exhibit (one) it is stated that a road commenced in February 1916 now passes over the boundary and connects Wenchi and Contragern (Sunyani). Looking at Exhibit " C " and comparing the boundary with the particulars in Exhibit (one)—I say that they agree.

10 *Cross-examined by Mr. Mead*—None.

Case of defence closed.

No. 21.

ADDRESSES of Counsel.

Mr. Benjamin Addresses Court—

The Plaintiff relies on Executive Decision marked in the Boundary Book and dated—1899.

Submits the Executive Decision given in Exhibit (one) is not conclusive. Refers to Exhibit (3). Admits that the description of the boundary in Exhibit (one) is the same as in Exhibit " A."

20 *Mr. Mead*—Plaintiff relies upon Exhibit " A " as containing the correct boundary between Plaintiff and Defendant stools. It is agreed by Defendant's witness Mr. Simpson that the Plaintiff's surveyor's interpretation of land description as shown in Exhibit " B " and " C " is correct. The evidence that the Defendant has produced relates to subsequent dispute between the Plaintiff and Defendant as to where the boundary settled actually lies. In Exhibit (3) it is clear that the then Chief Commissioner despite the opposition of the Defendant's stool confirmed for the second time the decision made in February 1899. Submits that the decision in Exhibit " A " and adopted by Exhibit " B "

30 should be approved by this Court and boundaries fixed accordingly.

Judgment reserved to 29/5/51.

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

*In the
Supreme
Court of
the Gold
Coast (Land
Court).*

*Defendant's
Evidence.*

No. 20.
Frank
Herman
Shang
Simpson,
26th May
1951.
Examina-
tion.

Cross-
examina-
tion.

No. 21.
Addresses
of Counsel,
26th May,
1951.

In the Supreme Court of the Gold Coast (Land Court).

No. 22.
Court Notes on Judgment, 29th May 1951.

No. 22.

COURT NOTES on Judgment.

IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI, at the Land Court held at Kumasi on Tuesday the 29th day of May, 1951, before QUASHIE-IDUN, J.

WENCHIHENE

vs.

TECHIMANHENE.

Mr. Mead for Plaintiff.

Mr. Tamakloe represents Mr. Benjamin for Defendant.

10

By Court—

Written Judgment read.

Judgment for Plaintiff: order that boundary between the parties be fixed.

Costs to be taxed and to include Counsel's fees for 100 guineas. Plaintiff also to have costs of preparation of plan ordered by the Chief Commissioner's Court.

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

No. 23.
Judgment, 29th May 1951.

No. 23.

JUDGMENT.

20

IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI. At the Land Court held at Kumasi on Tuesday the 29th day of May, 1951, before QUASHIE-IDUN, J.

Suit No. 63/1947.

WENCHIHENE Plaintiff

v.

TECHIMANHENE Defendant.

JUDGMENT.

The Plaintiff's claim in his Statement of Claim reads as follows :—

“ The Plaintiff claims for and on behalf of the Stool of Wenchi 30
“ to establish title to the land situate and being to the West of the
“ boundary line as described in paragraph 2 hereof and for the said
“ boundary to be fixed in accordance with the provisions of
“ Section 3 (3) of the said Boundary, Land, Tribute and Fishery
“ Disputes (Executive Decision Validation) Ordinance Cap. 120.”

On the 19th December, 1904, Sir Donald Stewart, Chief Commissioner of Ashanti, approved of a boundary between the lands of Wenchi and Techiman made by Captain T. Paplin Green as an Executive Decision. On the 12 of August, 1905, the Executive Decision of Captain Green was further approved by Sir Francis Fuller, the Chief Commissioner of Ashanti. This Executive Decision was recorded in the Boundary Book under the Boundary, Land, Tribute and Fishery Dispute (Executive Decision Validation) (Ashanti) Ordinance Cap. 120. It appears from the evidence that after the demarcation of the boundary, a dispute arose between the
 10 respective chiefs and the matter was drastically dealt with by the Authorities and the same recorded in the Boundary Book a copy of which is Exhibit 3 tendered by the Defendant. The Plaintiff's claim is to have the boundary line as demarcated in the Executive Decision fixed by the Court in accordance with the provisions of Cap. 120.

*In the
 Supreme
 Court of
 the Gold
 Coast (Land
 Court).*

—
 No. 23.
 Judgment,
 29th May
 1951,
continued.

The Plaintiff has caused a plan to be made which has been accepted in evidence as Exhibit " B." The Surveyor who made the plan has given evidence before me and I am satisfied that the plan conforms with the Executive Decision relied upon by the Plaintiff. It is contended on behalf
 20 of the Defendant that the Executive Decision is not conclusive as a quarrel arose over the boundary. According to Exhibit 3, to which I have already referred, it appears that the Wenchis while cutting the boundary by virtue of the Executive Decision went off the line of demarcation and a serious riot would have taken place. This in my view can neither nullify or modify the legal effect of the Executive Decision. A licensed Surveyor who was called as a witness by the Defendant has testified before me that the particulars of the boundary in Exhibit " 1 " which is a copy of the Executive Decision and signed by Sir John Maxwell, Chief Commissioner of Ashanti, agree with the Topographical Sheet on which the Plaintiff's Surveyor has shown the boundary between the parties.

30 I am satisfied that the boundary demarcated in 1899 and validated in 1904 and 1905 has not been altered, and that the Plaintiff has proved his case and is therefore entitled to judgment.

I order the boundary between the parties to be fixed and to conform with the boundary as indicated in the Plan Exhibit " B " as follows :—

From the source of the Ayasu Stream southwestly on to a straight line until it reaches the River Tano. Northeastly the boundary follows the Ayasu Stream up to the confluence of the Subin River.

40 Judgment is entered for the Plaintiff accordingly with costs to be taxed and to include Counsel's costs of 100 guineas. Plaintiff also to have the cost of the preparation of his plan ordered by the Chief Commissioner's Court.

(Sgd.) S. O. QUASHIE-IDUN,
 Judge.

NOTICE and Grounds of Appeal.

*In the
West
African
Court of
Appeal.*

IN THE WEST AFRICAN COURT OF APPEAL.

NOTICE OF APPEAL (Rule 12).

No. 24.
Notice and
Grounds of
Appeal,
17th July
1951.

IN THE MATTER of—

WENCHIHENE Plaintiff-Respondent

v.

TECHIMANHENE Defendant-Appellant.

PLEASE TAKE NOTICE that the Defendant being dissatisfied with the decision of the Land Court held at Kumasi contained in the Judgment of the said Land Court dated the 29th day of May, 1951 doth hereby appeal to the West African Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the Appeal seek the relief set out in paragraph 4. 10

AND THE APPELLANT further states that the names and addresses of the persons directly affected by the appeal are those set out in paragraph 5.

2. The Appeal is against the whole decision.

3. *Grounds of Appeal.*

(1) Because the judgment is against the weight of the evidence before the Court. 20

(2) Because the boundary relied upon by the Plaintiff in his statement of claim before the Court is not a final one and consequently inconclusive.

(3) Because the Court wrongly construed the effect of executive decision and other evidence tendered at the trial which clearly prove that the executive decision relied upon by Plaintiff-Respondent is not final nor conclusive.

(4) Because the Court wrongly construed the effect of the plans tendered in evidence at the trial. 30

4. Relief sought is that the judgment of the Court below should be set aside and judgment entered in favour of the Appellant.

5. Persons directly affected by the Appeal.
Wenchihene, Wenchi Ashanti.

Dated at Kumasi this 17th July, 1951.

(Sgd.) C. F. H. BENJAMIN,
Solicitor for Defendant-Appellant.



No. 25.

ADDITIONAL Grounds of Appeal.

IN THE WEST AFRICAN COURT OF APPEAL.
Gold Coast Session.

VICTORIABORG—ACCRA.

Suit No. 63/1947.

*In the
West
African
Court of
Appeal.*

No. 25.
Additional
Grounds of
Appeal,
22nd June
1953.

Between TECHIMANHENE Appellant
and
WENCHIHENE Respondent.

10 PLEASE TAKE NOTICE that at the hearing of the above Appeal the Appellant will ask the leave of this Honourable Court to add the following Grounds of Appeal to those already filed :—

1. Because the Plans " B " and " C " tendered in evidence do not conform with the Boundary as laid down in Exhibits " A " and " 1," and the Court was wrong in deciding that they did.

2. Because the Plans Exhibits " B " and " C " were wrongly admitted in evidence, seeing that they were originally ordered by a Court which had no jurisdiction in the matter.

20 3. Because the Plan " B " on which the learned trial Judge placed great reliance was one-sided.

4. Because the trial was unsatisfactory.

5. Because the Plan Exhibit " B " does not show the true state of affairs, as the Surveyor on the ground did not clear and survey the whole line from the Funnel Shape Hole to the Tano River.

Dated at Cape Coast this 22nd day of June, 1953.

(Sgd.) C. F. H. BENJAMIN,
Solicitor for Appellant.

30 To the Registrar,
West African Court of Appeal,
Accra :
and
To the Respondent herein
Wenchihene, Wenchi.

No. 26.

NOTICE of Motion by Defendant for an Order of the Court directing Plan to be prepared.

*In the
West
African
Court of
Appeal.*

IN THE WEST AFRICAN COURT OF APPEAL
GOLD COAST SESSION
ACCRA.

Suit No. 63/1947.

No. 26.
Notice of
Motion by
Defendant
for an
Order of
the Court
directing
Plan to be
prepared,
22nd
June 1953.

Between TECHIMANHENE Appellant
and
WENCHIHENE Respondent.

MOTION ON NOTICE.

10

PLEASE TAKE NOTICE that this Honourable Court will be moved on the Monday 14 day of December 1953, at 9 a.m. or so soon thereafter as the Gold Coast Session Appeals can be reached and Counsel heard, for an Order of this Honourable Court directing a Plan of the area claimed by the Appellant herein in accordance with the interpretation of Exhibits "A" and "1" and the same be used at the hearing of the Appeal herein or alternatively for the Court to order the appointment of a Surveyor to produce a Plan and for the parties to appear on the land stating what they each claim in accordance with their interpretation of the exhibits concerned.

20

Dated this 22nd day of June, 1953.

(Sgd.) C. F. H. BENJAMIN,
Solicitor for Appellant,
Scos Chambers,
Cape Coast.

To the Registrar, West African Court of Appeal, Accra, and to the Respondent herein Nana Wenchihene, Wenchi.



No. 27.

AFFIDAVIT of Nana Akumfi Ameyaw III, in support of No. 26.

IN THE WEST AFRICAN COURT OF APPEAL.
GOLD COAST SESSION.

ACCRA.

Suit No. 63/1947.

Between TECHIMANHENE Appellant
and
WENCHIHENE Respondent.

*In the
West
African
Court of
Appeal.*

No. 27.
Affidavit
of Nana
Akumfi
Ameyaw
III, in
support of
No. 26,
22nd July
1953,

10 I, NANA AKUMFI AMEYAW III, Omanhene of Techiman, in the Brong State of the Gold Coast, make Oath and say as follows :—

1. That I am the Appellant in the above-named Suit.

2. That the Claim as set out in the Writ of Summons herein is as follows :—

“ A declaration of title to that portion of land lying and situate west of a straight line drawn from Wenchi Bonso (the Wenchi Hole) southwards to meet the River Tano such that it crosses Road A38 to a point 14.3 miles from the Techiman Cross Roads.”

3. That the above case originated in the Ashantihene’s “ A ” Court by a Civil Summons, on the 22nd day of August, 1947.

4. That on the 29th day of December, 1947, the Assistant Chief Commissioner made an Order transferring the case to the Chief Commissioner’s Court.

5. That in pursuance of the said Order, there were proceedings on the 10th January, 7th February, 6th May, 5th August and 3rd September, 1949, in the Chief Commissioner’s Court where oral evidence was adduced and exhibits were put in evidence. During these proceedings the Court had ordered the Plaintiff to produce a Plan which had been done by Edward T. Anoff who dated it 2nd September, 1949.

30 6. That on the 28th October, 1949, Counsel for both parties submitted that the case was not properly before the Court as the Order for transfer should have been made by the Chief Commissioner in his administrative, not Judicial capacity ; and further, there is no provision for the Assistant Commissioner to act for the Chief Commissioner ; the power of transfer being personal to the Chief Commissioner, not to his Court.

7. That the Administrative Officer, who had been appointed to preside over the Chief Commissioner’s Court, on that date, agreed with the submissions and stated there was no action before the Court on which he could adjudicate.

40 8. That on the 11th November, 1949, the Chief Commissioner made an Order transferring the case from the Asantehene’s “ A ” Court by virtue of Section 22 (1) (e) of Chapter 80, Native Courts (Ashanti) Ordinance.

*In the
West
African
Court of
Appeal.*

No. 27.
Affidavit
of Nana
Akumfi
Ameyaw
III, in
support of
No. 26,
22nd July
1953,
continued.

9. That the Statement of Claim dated 11th December, 1950, incorporated the important paragraph in Exhibit "A"; stated that the decision of 1899 had been approved as stated by the said Exhibit "A"; and asked for the boundary to be fixed in accordance with the provision of Section 3 (3) of the Boundary, Land, Tribute, and Fishery Disputes (Executive Decisions Validation) Ordinance, Chapter 120. It did not incorporate the marginal statement "*In a S.S.E. direction on a compass line of 195 degrees.*" Nor did it incorporate the words of Exhibit "1"—"*a Prismatic compass bearing of 195 degrees from Wenchi Hole to the Tano River.*"

10

10. That the Registrar of the Chief Commissioner's Office and the Custodian of the Boundary Books was examined by Counsel for both parties and as a result Exhibits "A", "1", "2" and "3" were admitted in evidence. As a result of J. B. Beryeh's evidence Exhibits "4" and "5" were admitted.

11. That E. T. Anoff, who prepared the Plan on the instructions of the Plaintiff, was examined and his Plan was admitted in evidence as Exhibit "B". His Topographical Survey Sheet was admitted in evidence as Exhibit "C."

12. That the Supreme Court has had before it Plan "B" (incorporating Plan "C"). The Plaintiff was ordered by the Assistant Commissioner to get this Plan made in order to explain his case. It turned out that the transfer to the Chief Commissioner's Court by him and all that was done by reason of that transfer, was null and void. At a later stage the Chief Commissioner made a valid transfer to his Court, but in that transfer nothing was done to validate the prior illegal transfer.

13. That the case ultimately came before the Supreme Court and there the document was admitted in evidence as "B" and "C".

14. That the Tano River is located on Plan "B" and also on Plan "C". But where is the Boundary between Wanki and Wam with the Tano River remains to be determined?

15. That much depends on this as showing where the "*straight line drawn from the Funnel shaped hole*" has its bearing.

16. That the marginal words "*S.S.E. direction on a compass line of 195 degrees*" apparently applies to the angle of this straight line. In Exhibit "1" the words are "*a Prismatic Compass bearing of 195 degrees from the Wenchi Hole to the Tano River.*"

17. That there is no justification for the Plaintiff starting or ending point of the straight line at the Junction of the Tano and the Nsuta Rivers in the invalid proceedings and as shown in Plan "C".

40

18. That I am credibly advised that the straight line in Plan "C" apparently starts from the funnel shaped hole whereas in Plan "B" it starts at some distance to the east of it.

[sic] 19. That Exhibits "A" speaks about "*the straight line to the hole.*" Exhibit "1" says "*The Ayesu River from its source. A line from the*

source of Ayesu to the Wenchi Hole (a distance of only a few hundred yards).” Then come the words already mentioned “a Prismatic compass bearing of 195 degrees from the hole to the Tano River.”

In the West African Court of Appeal.

20. That this shows that the straight line begins or ends at the Wenchi Hole and not as shown in Plan “ B ” which takes away more of Techiman Land than is shown in Plan “ C ”.

No. 27. Affidavit of Nana Akumfi Ameyaw III, in

21. That I am credibly advised that Plans Exhibits “ B ” and “ C ” were wrongly admitted in evidence as they were originally ordered by a Court which had no jurisdiction in the matter.

support of No. 26, 22nd July 1953, continued.

10 22. That I am further advised that the Plan Exhibit “ B ” is one-sided.

23. That the Plan “ B ” does not state the true state of affairs as the Surveyor on the ground did not clear and survey the whole line from the funnel shaped hole to the said Tano River.

24. That I am advised by Counsel and I verily believe the same to be true that it is eminently desirable to make a Plan of my own showing the area claimed by me in terms of my interpretation of Exhibits “ A ” and “ C ”.

20 25. That in the circumstances I swear to this Affidavit in support of my application for an Order of this Honourable Court directing a Plan of the area claimed by me in accordance with the interpretation of Exhibits “ A ” and “ 1 ” and the same to be used at the hearing of the Appeal herein or alternatively for the Court to order the appointment of a Surveyor to produce a Plan and for the parties to appear on the land stating what they each claim in accordance with their interpretation of the exhibits concerned.

30 Sworn at Accra this 22nd day of July 1953, this Affidavit having been first read over and interpreted to the deponent herein by John Houry Grabl of Cape Coast in the Fanti Language and he seemed perfectly to understand its purport before touching pen and making his mark

AKUMFI AMEYAW III His X mark.

Before Me (Sgd.) DUGBARTEY NARNOR, Commissioner for Oaths.

*In the
West
African
Court of
Appeal.*

No. 28.
Notice of
Preliminary
Objection,
22nd
January
1954.

No. 28.

NOTICE of Preliminary Objection.

**IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST
SESSION, ACCRA.**

WENCHIHENE Plaintiff-Respondent
v.
TECHIMANHENE Defendant-Appellant.

TAKE NOTICE that the Plaintiff-Respondent herein named intends, at the hearing of the Appeal, to rely upon the following preliminary objection, Notice whereof is hereby given you : 10

AND TAKE NOTICE that the grounds of the said objection are as follows :—

1. That the decision in the suit was under section 3 sub-section 3 of Cap. 120.
2. That by section 3 (3) of Cap. 120 no appeal shall lie from a decision of the Supreme Court from such a decision.

The Appellant therefore has no right of Appeal.

Dated at La Chambers, Accra, this 22nd day of January, 1954.

(Sgd.) N. A. OLLENNU,
Solicitor for Plaintiff-Respondent. 20

The Registrar,
West African Court of Appeal,
Accra.
And to
The Defendant-Appellant,
Techimanhene,
Techiman.



No. 29.
COURT NOTES of Argument.

27th January, 1954.

*In the
West
African
Court of
Appeal.*

IN THE WEST AFRICAN COURT OF APPEAL, Gold Coast Session :
Coram FOSTER SUTTON, P., COUSSEY, J.A., & WINDSOR-AUBREY, J.
30 of 1953.

No. 29.
Court Notes
of
Argument,
27th and
28th
January
1954.

WENCHIHENE Plaintiff-Respondent

v.

TECHIMANHENE Defendant-Appellant.

10 Mr. Benjamin for Appellant.

Mr. Ollennu for Respondent with him Mr. Mead.

Ollennu :

Preliminary objection—decision appealed against was given under section 3 (3) of Cap. 120—and there is no appeal therefrom.

Each based his claim upon a validated decision—Executive Decision. Case was started before Native Court—as soon as it became clear that it involved an interpretation of an Executive Decision the case was transferred—pages 2 and 8 of record.

Benjamin :

20 Submits there has been no Judgment on claim in Writ—merely an interpretation of an Executive Decision. Whole case was transferred to Land Court to be dealt with—Submits this is not an appeal against a decision of interpretation—an Executive Decision.

Ollennu :

Agrees that any appeal which does not call into question boundary fixed by Court below is in order.

We rule that Benjamin is entitled to proceed with his appeal in so far as it does not involve calling into question boundary as fixed by Court below.

30 Adjourned to 28 : 1 : 54.

27 : 1 : 54.

(Intd.) S.F.S., P.

28.1.54.

Benjamin—

Statement of Claim not supported by Writ—clear departure.

Court below should have fixed the boundary and then sent case back to Native Court to determine title.

*In the
West
African
Court of
Appeal.*

No. 29.
Court Notes
of
Argument,
27th and
28th
January
1954,
continued.

Complains that Court made no declaration of title—Agrees all that Court did was to fix the boundary—Title and boundary were in issue.

Agrees that Judgment only fixes the boundary.

I complain that the boundary line fixed by the Court on the face of it has no connection with the claim.

Note—Chief Commissioner made the order transferring the whole cause to the Court of the Chief Commissioner Ashanti on the 11.11.49. This he had the power to do under the original Section 22 (1) (e) of Cap. 80 which was not amended by 37 of 1949 until 28.12.49—when Ordinance No. 37 of 1949 came into force. 10

Now argues 2nd ground of appeal.

We do not call upon Ollennu.

No. 30.
Judgment,
28th
January
1954.

**No. 30.
JUDGMENT.**

This appears to us to be an attempt to call in question the boundary fixed by the Court below under Section 3 (3) of Chapter 120—which expressly provides that there shall be no appeal from any such decision. If on the other hand the appellant's complaint is that no Judgment for a declaration of title has been given in favour of the Plaintiff/Respondent, as to which we express no opinion, this affords him no ground of appeal. 20

Appeal dismissed with costs fixed at £18 : 2 : 0.

(Sgd.) S. FOSTER SUTTON, P.
,, J. HENLEY COUSSEY, J.A.
,, H. M. W. AUBREY, J.

28 : 1 : 54.

COURT NOTES granting Final Leave to Appeal to Privy Council.

14th June, 1954.

IN THE WEST AFRICAN COURT OF APPEAL, Gold Coast Session.
Coram FOSTER SUTTON, P., SMITH, C.J., Sierra Leone, and
COUSSEY, J.A.

Civil Motion
No. 37 of 1954.

WENCHIHENE

v.

TECHIMANHENE.

10

MOTION on notice for an Order for final leave to appeal to the Privy Council.

Mr. Benjamin for Defendant-Appellant.

Mr. Bossman (holding Ollennu's brief) for Respondent.

Benjamin—Moves.

Bossman—We do not oppose.

Order in terms of motion—Costs in cause.

(Sgd.) S. FOSTER SUTTON, P.

20 14 : 6 : 54.

*In the
West
African
Court of
Appeal.*

No. 31.
Court Notes
granting
Final Leave
to Appeal
to Privy
Council,
14th June
1954.

*Plaintiff's
Exhibit.*

" A "
Boundary
Decision
between
Wenchi-
Techiman,
5th
February
1899.

EXHIBITS.

Plaintiff's Exhibits.

" A."—**BOUNDARY Decision between Wenchi-Techiman.**

(Copied from page 2 Vol. 1 of the Boundary Book)

Reference Ashanti M.P.

No. 732/05, 821/05 & 897/05.

BOUNDARIES BETWEEN WANKI AND TECHIMAN.

By Captain T. Pamplin Green approved
Sir Donald Stewart.

(in a S.S.E.
direction
on a
compass
line of 195
degrees)

On the East commencing at the junction of the new boundary between 10
Wanki and Wam with the Tano River to a point where a straight line
drawn from the funnel shaped hole where the Wankis are stated to have
come from to its junction with the Tano River from this point follows
the straight line to the hole and from there to the head of the River Ayasu.
The Ayasu River to its junction with the Subin River.

This boundary to leave the hill on which the above hole is situated
on the Wanki side of the Boundary.

I hereby certify that the above is a true copy of the Executive decision
made by Captain T. Pamplin Green on the 5th day of February 1899,
and approved by Sir Donald Stewart on the 19th day of December, 1904, 20
and further approved by Sir F. C. Fuller, C.C.A., on 12th August, 1905.

Dated at Kumasi this 3rd day of October, 1929.

(Sgd.) JOHN MAXWELL,
Chief Commissioner Ashanti.

I hereby certify that the foregoing is a true copy of an executive
decision given confirmed or approved by the Chief Commissioner and
officially recorded in the Boundary Book.

(Sgd.) J. K. WEMEGAH,
Registrar and Custodian of the
Boundary Book. 30

Defendant's Exhibit.

"1."—EXECUTIVE Decision No. 3.

Boundaries : Wenchi.

No. 3 *Wenchi*

Boundaries : *On the North* the Ayesu and Subin (?) River
 The boundary will eventually require amplication :—
On the West with Nsokor (Jaman)
The Tain River.

10 *On the South* with Odumase and Chirah
 (1) With Odumase—the Bisi—R.—

This river also forms the boundary between Odumase and Chirah and the point on the Bisi R. where Chirah Wenchi meet and the Bisi R. forms the Odumase—Wenchi boundary has not been fixed :—

(2) Except a palm tree about 2½ miles from Chirah, on the Chirah Wenchi road, marked as the Boundary on that road by the late Sir Donald Stewart no continuous boundary between Wenchi and the Wam settlement of Chirah has even been fixed :—

On the East with Tekiman.
 The Ayesu river from its source.

20 A line from the source of Ayesu to the Wenchi Hole (a distance of only a few hundred yards).

A Prismatic compass bearing of 195° from the Wenchi hole to the Tano River :—

This boundary was fixed by Sir D. Stewart and afterwards formed the subject of fierce dispute between Wenchi and Tekiman :—

The 195° line was cut by Mr. Fell in 1905 to within a few miles of the Tano R. No further dispute having arisen in connection with it, it has not since been visited :—

30 A road commenced in Feb. 1916 now passes over this boundary and connects Wenchi with Contragern, (Sunyani).

I hereby certify that the above is a true copy of Executive decision made in the Boundary.

(Sgd.) JOHN MAXWELL,
 Chief Commissioner Ashanti.

[sic]

I hereby certify that the foregoing is a true copy of an Executive decision given and confirmed or approved by the Chief Commissioner and officially recorded in the Boundary Book.

(Sgd.) J. K. WEMEGAH,
 Registrar and Custodian of
 the Boundary Book.

*Defendant's
Exhibit.*

" 2 "

Executive Decision
No. 3.
Boundaries:
Techiman.

No. 3.

Boundaries.

Defendant's Exhibit
" 2."—EXECUTIVE Decision No. 3.
Boundaries : Techiman.

TEKIMAN.

On the North with Nkoranza :—

Except for points on the Nchirra-Kintampo road and the Tuobodom-Kintampo road to which it has been customary to clean the roads no continuous boundary between these tribes has as yet been fixed :— 10

On the East with Nkoranza :

Except for the point where the Efi River crosses the Nkoranza-Forikrum road no continuous boundary has as yet been fixed.

On the South East with Offinso :

Except for the point between the villages of Effraujia (Offinsu) and Tanosu (Tekiman) to which it has been customary to clean the road no continuous boundary has been fixed.

*On the South with Nkwanta (?) and
The Tano River—*

On the West with Wenchi

Vide Wenchi—Eastern Boundary :—

20

I hereby certify that the above is a true copy of Executive Decision
[sic] made in the Boundary.

(Sgd.) JOHN MAXWELL,
Chief Commissioner Ashanti.

I hereby certify that the foregoing is a true copy of an Executive Decision given and confirmed or approved by the Chief Commissioner and officially recorded in the Boundary Book.

(Sgd.) J. K. WEMEGAH,
Registrar and Custodian of the
Boundary Book. 30

Defendant's Exhibit
"3."—EXECUTIVE Decision No. 4.
Important Palavers.

Defendant's Exhibit.

" 3 "

Executive
Decision
No. 4.
Important
Palavers.

No. 4.

Important Palavers.

Since 1905 :

TEKIMAN.

10 **WENCHI** In connection with the delimitation of the boundary fixed by Sir D. Stewart Wench and Tekiman on 1904 armed and made hostile demonstrations—Both Chiefs were fined £25.0.0 and their people dispersed—Tekiman strongly opposed the Boundary and in spite of protests the Chief Commissioner in 1905 decided to uphold the decision of his predecessor—Tekiman then outwardly agreed to it and Captain Denny in 1905 cut a short part of the line *leaving* the Wench to finish it—They *of course* went off the line into Tekiman territory and more disputes arose—The Omanhin of Tekiman was ordered to withdraw his people across this line—he agreed but secretly sent instructions to the Chief of Krobo to cross it and seize all the rubber he could—he was fined £100 by the Commissioner and refused to pay—he was then sent Coomassie as a prisoner and fined £200 the Omanhin being detained till the fine was paid. Troops were sent to Tekiman and in 1905 the boundary was recut to within a few miles of the Tano by Mr. Fell and the palaver dropped.

20 This boundary as shewn in Fuller sketch is impossible. (Intd.)

I hereby certify that the above is a true copy of Executive Decision made in the Boundary.

[sic]

(Sgd.) JOHN MAXWELL,
Chief Commissioner, Ashanti.

30 I hereby certify that the foregoing is a true copy of an Executive Decision given and confirmed or approved by the Chief Commissioner and officially recorded in the Boundary Book.

(Sgd.) J. K. WEMEGAH,
Registrar and Custodian of the
Boundary Book.

Defendant's Exhibits.

" 4 "
 Letter
 No.11/2/43,
 3rd January
 1946.

Received :
 5.1.46.

Defendant's Exhibit
" 4."—LETTER No. 11/2/43.

No. 11/2/43.

District Commissioner's Office,
Wenchi,
Ashanti,
3rd January, 1946.

TECHIMAN-WENCHI BOUNDARY.

My Good Friend,

10

I have spoken to you both about this boundary and I agree to arbitrate. I attach a draft form which you will have to sign before I agree to undertake it. Please discuss it with your Council and let me know if you agree : if you both do I will have a fair copy made out and have it signed before me.

I am,
Your Good Friend,
(Sgd.) D. A. QUAMIN SARPONG
for District Commissioner
(his draft). 20

The Techimanhene.
ACR/KAM.

" 5 "
 Letter
 No.272/16/
 32, 17th
 February
 1947.

Received :
 18/2/47.

Defendant's Exhibit
" 5."—LETTER No. 272/16/32.

No. 272/16/32.

District Commissioner's Office,
Wenchi,
Ashanti.
17 February, 1947. 30

WENCHI-TECHIMAN BOUNDARY.

My Good Friend,

It is suggested that an arbitration be held to decide finally exactly where the boundary between Wenchi and Techiman should be cut.

2. The membership of the Arbitration is not yet decided, but there will probably be five members like this :—

- (1) District Commissioner.
- (2) Independent Chief.
- (3) Member of Survey Department.
- (4) Member chosen by Techimanhene.
- (5) Member chosen by Wenchiene.

40

3. Before we proceed any further, however, I must ask you whether you are prepared to accept such arbitration, and if you do so agree to give me a written assurance that you agree to accept the findings of the arbitration as final.

Defendant's Exhibit.
" 5 "

4. The decision of the Arbitration will be by a majority vote.

Letter
No.272/16/
32, 17th
February
1947,
continued.

5. Please treat this matter as very urgent and let me have your reply as soon as possible.

I am,
Your Good Friend,
(Sgd.) ?
Acting District Commissioner.

10

The Techimanhene,
Techiman.

In the Privy Council.

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

BETWEEN

TECHIMANHENE (Defendant) *Appellant*

AND

WENCHIHENE (Plaintiff) *Respondent.*

RECORD OF PROCEEDINGS

A. L. BRYDEN & WILLIAMS,
53 VICTORIA STREET,
LONDON, S.W.1,
Solicitors for the Appellant.

T. L. WILSON & CO.,
6 WESTMINSTER PALACE GARDENS,
LONDON, S.W.1,
Solicitors for the Respondent.