

Privy Council Appeal No. 67 of 1921.

Ex-Omanhene Ofori Kuma II and others - - - - *Appellants*

v.

Acting Omanhene Yao Boafo IV - - - - *Respondent*

FROM

THE SUPREME COURT OF THE GOLD COAST COLONY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 18TH JULY, 1922.

Present at the Hearing :

VISCOUNT HALDANE.

LORD PARMOOR.

LORD TREVETHIN.

[*Delivered by* LORD PARMOOR.]

This is an appeal from a judgment of the Supreme Court of the Gold Coast Colony, affirming a judgment of Mr. Justice Porter, delivered in the Divisional Court. At a meeting held on the 2nd March, 1920, between the Commissioner for the Eastern Provinces, and the Secretary for Native Affairs, it was decided that the re-election of the principal appellant as Omanhene of the Oman of Aqwapem was not complete, according to native customs, and that the Government could not recognise its validity, and that it was desirable that the attitude of the Government should be known, and that, as matters then stood, the proper course was to seek the remedy, which the law allowed, by bringing an action in the High Court. In these circumstances an action was brought by the respondent who claimed on behalf of himself, and the Oman of Aqwapem, the delivery to him of certain Aqwapem paraphernalia, as set out in the particulars annexed to the writ, and valued at £17,515. The appellant Ofori Kuma II was the principal defendant in the action. The other defendants were added at the trial as persons in actual possession of one or other item of the paraphernalia claimed.

In the case of one of the defendants in the action, Kwaku Ayaben, the appeal to the Supreme Court was allowed, and no question now arises.

A large number of issues were raised, both in the Divisional Court and in the Supreme Court. In the appeal to their Lordships three questions were raised for decision. They may be summarised as follows :—

- (1) Did the appellant, Ofori Kuma II, who was duly appointed Omanhene of Aqwapem, on or about the 16th May, 1915, resign that office in June, 1919 ?
- (2) If the resignation of Ofori Kuma II in June, 1919, was effective, was he duly re-appointed Omanhene of Aqwapem in accordance with native custom on or about the 16th December, 1919 ?
- (3) If the resignation did take effect, and there has been no re-appointment, is the respondent entitled to claim, as trustee or guardian, the Aqwapem paraphernalia set out in the particulars, until a new Omanhene has been duly appointed in accordance with native custom ? In connection with this issue, the question is raised whether the Stool claimed as part of the Aqwapem paraphernalia is the Stool of the Omanhene of Aqwapem, or whether it is the Stool of the Asona family, of which family Ofori Kuma II is a member.

Evidence was given at the trial, both oral and documentary. The oral evidence is in many respects unsatisfactory ; but, by consent, a Report by Mr. Robertson, the Secretary for Native Affairs, made on the 13th September, 1907, and a second Report made by Mr. Crowther, Secretary for Native Affairs, made in October, 1915, were admitted as evidence. It would have been difficult, apart from these Reports, to form any conclusion on the issues raised as to native customs, and their Lordships have been much assisted by their admission as evidence.

To understand the contentions put forward by the parties it is first necessary to consider shortly the origin and constitution of the State of Aqwapem, and the circumstances which have given rise to the present litigation.

The Oman of Aqwapem consists of three divisions—the Adonten (centre), the Nifa (right), and the Benkum (left). The origin of this organisation, and of the formation of the State of Aqwapem, is attributed to the wars which led to the overthrow of the Akwamu dynasty about 1733 A.D. The Akwamus, a Twi tribe, who had been rulers of a part of Akim, Accra, and the tribes in the Aqwapem district, were defeated about that time by a combination of the latter with the powerful people of Akyem, and driven across the Volta. The Cherepong and Guan tribes of Aqwapem determined to form a combined State under Akyem protection. They asked Sefori, the victorious Akyem General, to be their Omanhene. He accepted the offer, arranged the new

State in accordance with the Twi military principles, his own people forming the van or "Adonten," the Cherepongs the right wing, and the Guans the left. At the present time the Oman of Aqwapem comprises (1) the Adonten chiefs, including the first, second and third Adontenhene, and three Odikros or lesser chiefs; (2) the Nifa chiefs, comprising the Nifahene and six Odikros; (3) the Benkum chiefs, comprising the Benkumhene and six Odikros. The three Adontenhene, in order of authority, are first, the Adontenhene of Akropong, second, the Adontenhene of Amanakrom, and thirdly the Adontenhene of Aburi. One of the questions involved in the appeal is whether the concurrence or approval of the Adontenhene of Aburi and of the Nifahene and Benkumhene is required by native custom in the election of the Omanhene of Aqwapem.

The first Omanhene belonged to the Asona family, one of the families or tribes into which all Twi-speaking people are divided, and this family is regarded as the family from which normally the Omanhene is selected. Amongst the Twi tribes membership of a family is reckoned through the mother, and the position of the head woman of the family is one of great importance. There is a dispute as to the person who is entitled to be regarded as the head woman. She is variously designated in the evidence as the Aberewatia, the Queen Mother, the Stool Mother, the Elder Woman and the Ohenmea: but both parties are agreed that it is an essential step towards the election of the Omanhene that the nomination should be made by the Aberewatia. In 1907 the chiefs of Aqwapem met on the 29th July, and purported to de-stool the then Omanhene Akuffo. The validity of the de-stoolment was disputed, and the Governor of the Gold Coast Colony appointed W. C. F. Robertson, Secretary of Native Affairs, a Commissioner, to inquire whether the de-stoolment of Akuffo had been carried out in accordance with native custom. The Commissioner reported that Akuffo had been de-stooled according to native custom, and subsequently Owusu Ansa was elected and enstooled as Omanhene of Aqwapem. After Owusu Ansa's death in 1914 the principal appellant was elected and enstooled as Omanhene of Aqwapem. His election and enstoolation were confirmed by the Government in February, 1915. At the same date the Government confirmed the election and enstoolation of the respondent, as Mankralo, and first Adonthene of Aqwapem. In 1915 charges were made against the principal appellant by the Benkumhene and Nifahene. The Secretary for Native Affairs, Mr. Crowther, inquired into these charges, and so far as is relevant to questions raised in this appeal, the evidence given before him, and his Report thereon, confirm the Report of Mr. Robertson, and the evidence given before Mr. Robertson. A further inquiry was held by Mr. Ross, the then acting Secretary for Native Affairs, from the 4th to 12th July, 1918. This Report was not produced in evidence, but it appears that Mr. Ross declared

in his report that the principal appellant had been properly destooled according to native custom on or about the 28th November, 1918. In July, 1919, the acting Governor gave his decision in writing, which was so far in favour of the principal appellant, that he stated, holding a different opinion from Mr. Ross, that he was not satisfied that the de-stoolment of the appellant had been conducted in accordance with native custom, and that he was therefore unable to confirm it. At the same time, however, the acting Governor accepted the resignation of the principal appellant, contained in a letter of the 12th June, 1919. In this letter the principal appellant applied to the acting Governor that his Excellency would be so gracious as to allow him to resign the Stool, and he added, "I proceed to hand my resignation to the Stool-Mother, and the senior Adonthene to-day, together with all the Stool properties attached thereto." Their Lordships cannot doubt that the resignation of the principal appellant became effective on its acceptance by the acting Governor, and that the principal appellant cannot claim to be Omanhene of Aqwapem unless he can show that since the date of his resignation he has been duly reappointed in accordance with native custom.

The oral evidence adduced before the trial Judge, and the Report of Mr. Robertson, show what, according to native custom, the procedure should be in connection with the election of an Omanhene of Aqwapem. The initiative rests with the representatives of the Adonten, who meet with the Elders of Akropong, the Jasifo, Ankobeas Stoolbearers, etc. (usually called by the generic name Jasifo), and inform the Royal Family of Asona, through its male official Elder, that they desire to know whom the family gives to them as their Ohene. The Elder conveys this message to the Aberewatia who, after formal consultation with the Elders of the Family, gives him the man selected, whom he in turn introduces to the assembled Chiefs and Elders. The selected person has, in the first instance, to be approved by the Household attached to the Stool, and the Elders of Akropong. In the event of their disapproval it is necessary for the family to give someone other than the man suggested. In addition, it is necessary to secure the approval of the Adonten, after which he is shown to the divisions of the Nifa and Benkum as the Omanhene elect. The disapproval of the Nifa and Benkum would necessitate reconsideration, as it would mean disintegration of the State, but Mr. Robertson states that this is unlikely to occur. The Oman as such is not concerned with the instoolation, or placing on the Stool, which follows later. The allegation made on behalf of the respondent is that the appellant failed to comply with the native custom in three particulars. It is alleged that Akua Oye, by whom he was selected, was not at the time the Aberewatia; that the third Adontenhene (of Aburi) and the Benkumhene and Nifahene were not present at the meeting, and that neither the Adonthene of Aburi nor the Benkumhene

and Nifahene have ever approved of the re-election of the principal appellant as Omanhene.

Whether Akua Oye was the Aberewatia is a question of fact. Mr. Robertson, after a local inquiry, reported that Akua Oye did hold the office of Aberewatia. After hearing her evidence, and that of the rival claimant, Akua Aso, Mr. Robertson reports that Akua Oye was admittedly entitled to the post by birth, and that though she was a Christian, and had declined on that account to perform the funeral customs, she did in fact appoint Akuffo as Omanhene in 1895, and apparently appointed Owusa Ansa to the Omanhene Stool in 1907. He also found that she appointed Ofori Kuma in 1914 to the Omanhene Stool, and asserted her position as Elder of the Family by taking proceedings for wrongful disposition of the Stool property, and by deposing Akuffo in 1907, and demanding the Stool from him. The trial Judge did not think it necessary to decide this issue, finding that on other grounds the election was invalid; but in the Supreme Court the Chief Justice and Mr. Justice Logan, relying on the evidence given by Ekua Oye at the inquiry before Mr. Robertson, that there is a Stool of the Mother of all the Women, and that anyone who occupies that Stool is the Elder of the Family, and that Ekua Aso is on that Stool now, have expressed the contrary view that the Aberewatia at the time of the alleged re-election was Ekua Aso, and not Ekua Oye. Their Lordships do not think it is necessary to decide this issue, finding that on other grounds the principal appellant has not been elected Omanhene in accordance with native customs. It is admitted that the third Adontenhene (of Aburi) was not present, and that the approval of the Nifahene and the Benkumhene has not been obtained. The importance of obtaining this consent is explained in the Report of Mr. Robertson, who states that their disapproval would mean the disintegration of the State. Their Lordships, therefore, find that at the material date the principal appellant had not been re-elected to the office of Omanhene of Aqwapem.

The last matter to be determined is whether the respondent is entitled to claim on behalf of the Oman of Aqwapem possession of the Stool and paraphernalia during the interval between the resignation of the appellant and the appointment of his successor. This issue mainly depends on the question whether the Stool and paraphernalia are the property of the Omanhene of Aqwapem for the time being or of the Asona family. The counsel for the appellants supplied to their Lordships a list of the passages in the evidence and Reports on which he relied in support of the contention that the Stool and paraphernalia, of which the respondent claims possession, are the property of the Asona family. Their Lordships have carefully considered the passages to which they have been referred. It would be impossible, within the limits of this judgment, to refer to all these passages; but special weight was attached to two of them. One of these

shows that in 1906 the then Aberewatia, Ekua Oye, succeeded in an action against the ex-Omanhene Akuffo for the recovery of certain Stool lands, and the second gives an account of the meeting at Akropong on the 20th November, 1909, before Captain Taplin, the District Commissioner, in the presence of the Adonthene of Akropong, the respondent, and Elders. At this meeting the chief linguist to Ekua Oye states, "I know all about the Stool property. I am not responsible for it all. When the late Omanhene was de-stooled the Ohemia, Yao Boafo (the respondent) and his Elders took charge of the Stool property. They still have it." In answer to the Commissioner the witness adds that the Ohemia is responsible for handing over the Stool property to a new Omanhene. On the other hand no claim appears to be made that the Stool and paraphernalia were Asona property, and it is on more than one occasion referred to as being the property of the Oman of Aqwapem by the principal appellant, who is now seeking to retain possession, not as a member of the Asona family, or on behalf of the Adonten of Akropong, but as Omanhene of Aqwapem, on the ground that he has not resigned or that if he has resigned he has been duly re-elected in accordance with native custom. Moreover, in October, 1907, Offei Kwasi, the acting Omanhene of Aqwapem, brought an action against Akuffo, then ex-Omanhene of Aqwapem, claiming a declaration that certain articles therein mentioned, being some of the articles claimed in the present action, belong to the Stool of the Omanhene of Aqwapem. The application for the summons in this action was signed by the principal appellant, who took an active part against Akuffo, and during the hearing of the action made a statement that the articles in question were paraphernalia of the Aqwapem Stool. Offei Kwasi succeeded in establishing his right as the then acting Omanhene of Aqwapem, holding the same office as that in respect of which the respondent is now claiming. Under these circumstances their Lordships are of opinion that the Courts below have rightly held that the Stool and paraphernalia now claimed are the Stool and paraphernalia of the Oman of Aqwapem, and that the respondent as acting Omanhene of Aqwapem is entitled to the custody of and to claim on behalf of himself and the Oman of Aqwapem delivery to him of the paraphernalia mentioned in the particulars annexed to the writ and valued at £17,515. Their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.



In the Privy Council.



EX-OMANHENE OFORI KUMA II AND OTHERS

vs.

ACTING OMANHENE YAO BOAFO IV.



DELIVERED BY LORD PARMOOR.

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