

Privy Council Appeal No. 138 of 1923.

G. C. Hutchful and others - - - - - *Appellants*

v.

The African and Colonial Company, Limited - - - - - *Respondents*

FROM

THE SUPREME COURT OF THE GOLD COAST COLONY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL DELIVERED THE 2ND DECEMBER, 1924.

Present at the Hearing :

LORD SUMNER.

LORD WRENBURY.

LORD CARSON.

[*Delivered by* LORD SUMNER.]

In this case their Lordships are of opinion that it was entirely for the trial Judge to form his own estimate of the credibility of the witnesses called by the family claimants to this property. As was assumed in the Courts below and admitted in argument at their Lordships' Bar, Claud Ennin had such possession of the house and such *prima facie* title to the land under the lease and the conveyance, as satisfied the burden of proof in the first instance and threw upon the claimants the burden of showing, as against the judgment creditors, that the real ownership was in the family, so that the judgment creditors could not seize the house and land in execution.

Their Lordships are unable to think that the trial Judge misdirected himself in any way with regard to the evidence, which it was material for him to consider. True, he does not mention that the second document, in making a reference to the parcel dealt with by the first document, calls it Ennin family land. True, also, that he does not refer to the fact that three witnesses, one of whom was apparently disinterested, said that

Maria Hewton made a journey to Secondee in order to interview Chief Anaissie, at which interview she made some arrangement. Her account of this arrangement, however, was not in conformity with the statement made in the contemporary documents which were before him.

Their Lordships do not think that the learned Judge in any way misunderstood the gist of the evidence or the rules by which he ought to be guided. They consider that he took a fair view of the evidence before him and that his conclusion is properly expressed, when he says, in terms of the ordinance, that the plaintiffs, that is, the family, "have failed to satisfy the Court that the property in question is family property."

The Full Court of three Judges was entirely of the same opinion. They held that the question was for him, that he approached it in the proper way and that they could not interfere. Clearly they thought that they would have arrived at the same conclusion themselves. The circumstances were such as to require a clear case to be proved, in view of the circumstance that the documents, which were taken by Claud Ennin, were taken in his name at the request of Maria Hewton. Moreover, Claud Ennin, who knew the truth, was apparently in Court and was not called. It may be that his self-interest made it unlikely that he would have told the truth; but at any rate his evidence was not taken.

Their Lordships think that no question of law arises in this case, and they will humbly advise His Majesty that this appeal should be dismissed with costs.

4

In the Privy Council.

G. C. HUTCHFUL AND OTHERS

vs.

THE AFRICAN AND COLONIAL COMPANY,
LIMITED.

DELIVERED BY LORD SUMNER.

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