

# In the Privy Council.

## ON APPEAL

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

37735

BETWEEN

CHIEF KWAME ASANTE, Tredenehene, for and on behalf of his Stool (Defendant)

AND

10 CHIEF KWAME TAWIA, for and on behalf of the ASAFU (otherwise Akwamu) Stool of Kumasi (substituted for Chief ASAFU BOAKYI II, Akwamuhene) (Plaintiff)

UNIVERSITY OF LONDON  
Appellant  
W.C.1.  
24 FEB 1955  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
Respondent.

## Case for the Appellant.

RECORD.

1. This is an appeal from a judgment of the West African Court of Appeal delivered on the 22nd November, 1940, dismissing the appeal of the Defendant-Appellant from a judgment of the Chief Commissioner's Court, Ashanti, dated the 14th November, 1939, which dismissed an appeal from a judgment of the Asantehene's " A " Court, dated the 16th December, 1937, and which dismissed an appeal from a judgment of the Asantehene's Divisional (" B ") Court dated the 1st July, 1937. p. 59. p. 46. p. 31. p. 25.

2. The present Plaintiff-Respondent was substituted for the original Plaintiff-Respondent on the 26th September, 1939. p. 38.

3. The West African Court of Appeal granted conditional leave to appeal to His Majesty in Council on the 13th May, 1941, but, owing to serious illness, the Defendant-Appellant was unable to comply with the conditions. p. 60, l. 25.

An Order in Council, dated the 22nd October, 1942, granted special leave to appeal. p. 60.

30 4. The West African Court of Appeal rejected a plea to the jurisdiction of the trial Court, which plea had been first raised before them, and also rejected the appeal on the merits. p. 59.

The plea to the jurisdiction of the trial Court arose as follows :—

The suit is a dispute concerning the ownership of land in the Kumasi State (or Division) of Ashanti which dispute by local Ordinance was properly and solely cognisable by a Native Court, the Asantehene's Divisional Court, a Court of the " B " grade, which Court is hereinafter referred to as " the ' B ' Court." This Court was constituted under the Native Courts (Ashanti) Ordinance 1935 (Chapter 80, Laws of the Gold Coast, 1936 Revision) which came into force on the 31st January, 1935. By Section 3 of this Ordinance the Governor of the Gold Coast is authorised 10 to establish by Order Native Courts, every such Order to specify the persons who are to constitute the respective Courts from among the persons or classes of persons specified in Section 4 of the Ordinance. This power was exercised with regard to (inter alia) the Kumasi State or Division by the Confederacy Native Courts Order 1935. The effect as to the Kumasi Division is, it is submitted, clearly to constitute the Asantehene, as Kumasihene or head of the Kumasi State, the regular President of the " B " Court, the other members being restricted to the persons holding, in the Kumasi Division, the offices specified in the 4th Schedule to the 20 Order.

pp. 1 & 25.

The Court was, in fact, constituted by (and described in the Record as constituted by) the Adontehene as President, the Toasehene, the Dadiasuabahene, and the Hiahene, together with the Kyeame (Speaker or " Linguist ").

Of these, only the Adontehene is qualified under the said 4th Schedule, and, as the prescribed minimum number of judges is three, he could not alone constitute a Court.

It is, therefore, submitted that the proceedings before this alleged Court were coram non iudice and a nullity. It is further submitted that 30 this objection could be taken at any stage and it was one that the Court of Appeal was bound to take notice of.

The parties were illiterates and no Counsel had appeared on either side in the Courts below the West African Court of Appeal, Counsel being prohibited in the Native Courts and only permitted by special leave in the Chief Commissioner's Court, the immediate Court from which the appeal had been brought to the West African Court of Appeal.

5. The Plaintiff was the Akwamuhene of Kumasi, one of the principal chiefs of the State of Kumasi, the premier State of the Ashanti Confederacy. The Defendant was and is the Chief of Tredah, a village in the South of 40 the Kumasi State, and of lower rank than the Plaintiff.

p. 2.

The claim in the suit was that the Plaintiff, as the Akwamuhene of Kumasi, was the owner of all the lands at Tredah and Winisu occupied by the Defendant and his people, which the Defendant denied, alleging that the land in question had been presented to his ancestor, Nuben Sra, by a former Asantehene, Osei Tutu, for service in war.

The area in question is a large one, some 10 miles or perhaps more long and averaging some 4 miles wide or thereabouts, and is of considerable value in itself and priceless to the Defendant-Appellant and his people, being their home and living space.

6. It was common ground that Nuben Sra and his people were not Ashantis but Denchera (Denkyira) people who had fled from their tyrannical King, Ntim Jakari, in the latter part of the 17th century and had joined themselves to the Ashantis. Denchera, lying to the south of the Ashanti lands between them and the sea, was at that time the most powerful state in the Gold Coast and at enmity with the Ashantis, who were a divided people. They were, however, about this time, united by a great ruler, the aforesaid Osei Tutu, King of Kumasi or Kumasihene, who confederated the other Ashanti states under himself as the first Asantehene and defeated the Denchera people at the Battle of Feyeasi (an event of importance in Ashanti history equal to the Battle of Hastings in English History). Thereby the Ashantis established a dominance in the Gold Coast and surrounding regions which lasted until their defeat in 1874 by Sir Garnet Wolseley. It is the case of the Defendant-Appellant that his ancestor Nuben Sra fought in the battle of Feyeasi under the Asantehene's principal commander (the Krontihene) and for his services was granted by Osei Tutu, after the battle, the land he and his people now occupy. It is common ground that his ancestor and his people and their successors have occupied it without the payment of tribute thereafter for a period of some two hundred years, right into the present century, which it is submitted is sufficient in the circumstances to displace the Plaintiff-Respondent's claim, and the Defendant-Appellant says that in fact he has never paid land tribute to anybody up to the present time. It is also common ground that the Defendant-Appellant, since the date of the Battle of Feyeasi, has always been attached to the division of the politico-military organisation of Kumasi, of which the Krontihene is the head, and is still so attached. But the Defendant-Appellant does not hold his land of either the Krontihene or the Plaintiff-Respondent, who as the Akwamuhene, is the confrere of the Krontihene and second in command to him, but by immediate donation of the Asantehene by way of usufructuary gift as their home and living space. No claim was made that the position was otherwise until after the British deported the then Asantehene, Prempeh I, in 1896, and completed the dissolution of the Ashanti Confederacy, which had begun after the capture of Kumasi by Sir Garnet Wolseley in 1874, and annexed Ashanti in 1901 when, owing to the removal of the pivotal authority of the Asantehene, great confusion as to the native rights ensued in Ashanti, which the British authority, with slight knowledge of native affairs, had to cope with as best they could.

p. 3, ll. 18-21.  
p. 16, ll. 19-26.

p. 3, ll. 36-39.

p. 17, l. 10-p. 18, l. 16.  
p. 21, l. 41-p. 22, l. 16.  
p. 40, ll. 1-7.

p. 70, l. 32 & l. 38.  
p. 21, l. 26.  
cf. p. 68, l. 22.

p. 3, l. 39.

e.g., p. 18, l. 13.

p. 18, ll. 17-32.

p. 2 to 24.

p. 25, l. 35.

p. 25.

7. Traditional evidence was adduced on both sides in the " B " Court, and was largely in agreement, but that Court, after stating the claim and defence as set out in paragraph 5 of this case and noting correctly that the Defendant-Appellant's evidence was that it was after the Battle of Feyeasi that the Asantehene had settled the Defendant-Appellant upon the land in question, decided, it said, to attach more importance to documents adduced in evidence which had come into existence since the British occupation, the earliest being dated 1907, and which were

pp. 72, 63, 69.  
pp. 75, 77, 78,  
79, 67.  
p. 25.

marked (Plaintiff's) A, B, C : (Defendant's) D, E, F, G, and H. After considering these the Court gave judgment for the Plaintiff-Respondent, it is submitted, erroneously, as appears from the examination of the Exhibits made in paragraphs 11 to 14 inclusive of this case.

8. The Defendant-Appellant appealed to the Native Appeal Court, the Asantehene's Court (a Court of the " A " grade and hereinafter called " the ' A ' Court ").

p. 31.

The " A " Court, having had read the grounds of appeal and the proceedings, including the above-mentioned exhibits, upheld the decision of the " B " Court in a short judgment, giving no reasons save one. It is submitted that, as the one reason given is a gross blunder, from which it is clear that they totally mistook the Defendant-Appellant's case, they either cannot have understood what was read to them or it must have been read erroneously. For the reason they give is that the Defendant-Appellant's story was incredible and his claim groundless because the Defendant-Appellant had contended before the " B " Court that the land was granted to him long before the Denchera War, whereas (they said) the land did not come under the sway of the Asantehene until after the conquest of Denchera. 10

p. 25.

9. The Defendant-Appellant then appealed to the Chief Commissioner's Court of Ashanti, held before Mr. Bewes, Acting Assistant Chief Commissioner, who, after hearing the parties in person both as to the traditional history and the documents, dismissed the appeal. His judgment is mainly a summary and discussion of the various Exhibits in chronological order and he concludes as follows :— 20

p. 46.

p. 49, l. 12.

" I am of opinion that the sequence of events tend to show that the Appellant did at one time agree that he and his people were in the position of ' strangers ' on this land and nothing has been brought to show that his position has been anything different. I am considerably impressed by the historical evidence that, at the time the Appellant alleges he was given the land, it was in occupation by Ntim Jakari and was not Ashanti land until after the defeat of Ntim Jakari." 30

In this latter statement the Court appears blindly to have followed the error of the " A " Court already adverted to. The alleged agreement of the Defendant-Appellant that he and his people were in the position of strangers is based on an Exhibit marked " A," which, for the reason given in paragraph 13 hereof, it is submitted was inadmissible and further its authenticity is denied. The statement that nothing had been brought to show that the Defendant-Appellant's position had ever been anything but that of " strangers " (i.e. persons liable to pay tribute to the actual land owning Stool) is inconsistent with the admitted fact that the Defendant-Appellant and his people occupied the land for over 200 years without paying tribute to anyone, and it is also (as appears in paragraph 14 hereof) contrary to a previous judgment of the Chief Commissioner's Court and to an executive decision of a former Chief Commissioner, which executive decision by local ordinance has the force of a judgment in rem. The judgment is otherwise materially erroneous as a detailed examination of it shows. 40

p. 72.

p. 75, ll. 28-34.  
p. 77, ll. 16-21.

10. The Defendant-Appellant then appealed to the West African Court of Appeal, when his Counsel raised the question of jurisdiction before referred to, which was rejected, it is submitted erroneously. On the merits the West African Court of Appeal gave general approval of the decisions of all the Courts below, which, it is submitted, have already been shown to be based, as to the " A " Court and the Chief Commissioner's Court, on obvious errors. Apart from such general approval, they express particular concurrence with a finding of the " B " Court that the Exhibit marked " C " operated as res judicata and was effective to bar the Defendant-Appellant's contentions.

11. Exhibit " C " contains the proceedings in an action taken in 1914 by the Plaintiff-Respondent against the Defendant-Appellant claiming £25 damages from the Defendant-Appellant for refusing to give to the Plaintiff-Respondent a share of rubber tapped on the land in dispute. The Plaintiff-Respondent relied upon an unidentified " judgment " of the Chief Commissioner (which may have been Exhibit " B " in paragraph 14 hereof referred to, though this is not a judgment and does not relate to the Defendant-Appellant's lands).

He admitted that the Defendant-Appellant had been on the lands " all the time " and had never paid him any tribute.

Upon this evidence the District Commissioner gave judgment for the Defendant-Appellant on the 11th February, 1914.

But the Exhibit records that on the 7th May, 1914, the proceedings were reviewed at the request of the Plaintiff-Respondent; that evidence of an alleged judgment of the Chief Commissioner's Court in favour of the Plaintiff-Respondent (of which the date and other particulars do not appear) was produced and marked " A "; and that thereupon the judgment of the 11th February, 1914, was reversed and judgment given for the Plaintiff-Respondent for 20s. It does not appear what the last-mentioned judgment of the Chief Commissioner's Court actually was and the Defendant-Appellant is ignorant of what it may be. In any case the Defendant-Appellant was not summoned to the review and was not present thereat and the record does not record either his summoning or his presence.

12. The Defendant-Appellant submits that in any event this judgment upon review was without jurisdiction and ought not to be admitted as evidence of title. The District Commissioner's Court at this time was an inferior Court of Record and its civil jurisdiction was regulated by Ashanti Ordinance No. 4 of 1907 and limited (so far as material) to (1) personal suits in which the debt, damage or demand did not exceed £50, and (2) suits relating to the ownership or possession of land not exceeding £50 in value. The Defendant-Appellant therefore submits that, though the Court had prima facie jurisdiction to entertain the claim for £25 damages, yet immediately it became clear that the real question in the suit was the ownership of the land, then, unless it also appeared that the value of the land did not exceed £50, the Court ceased to have jurisdiction. The

Defendant-Appellant relies upon *Tinniswood v. Pattison* (1846) 3 C.B. 243 ; *Mountray v. Collier* (1853) 1 E. & B. 630 ; *Smith v. Smith* (1925) 2 K.B. 144 ; and other like cases.

Objection is also taken to the judgment on review on the ground that under the Rules of Court special leave to admit a review shewing special grounds was a condition precedent to a review and had not been obtained, as well as on the ground that the Defendant-Appellant had no opportunity of being heard and was not heard. It is humbly submitted that the West African Court of Appeal were in error in especially founding their own judgment upon this decision. 10

13. The Plaintiff-Respondent had relied in the " B " Court and the other Courts below upon two other documents, Exhibits " A " and " B." Exhibit " A " is an alleged agreement dated the 28th July, 1914, for the division of the produce of the land and certain Court fees between the Plaintiff-Respondent and the Defendant-Appellant, the Krontihene sharing in the Court fees. The witness called to prove this agreement, however, deposed that it was not the document he alleged that he had witnessed. It is submitted, therefore, that it was unproved, and must be disregarded.

p. 72.

p. 14, l. 15.

p. 63.

p. 63, ll. 17-18.

Exhibit " B " records a dispute between the Plaintiff-Respondent and the Krontihene as to the lands upon which are situated the villages of Womasi and Gheki (Jachi). The Defendant-Appellant was not a party to this dispute, which did not concern him, as these villages are not on his land. It was dealt with by the then Chief Commissioner of Ashanti out of Court in his capacity as an executive officer. The executive decision of the Chief Commissioner was in favour of the Plaintiff-Respondent, but, as the dispute did not concern his land, the Defendant-Appellant submits that this decision is irrelevant. 20

14. The Exhibits put in by the Defendant-Appellant showed that the Chief Commissioner in 1917, both by a judgment of his Court (Exhibit " D ") and an executive decision (Exhibit " E ") had adjudged and decided that the twelve Tredeh villages built upon the disputed area, and covering with their farms the greater part of such area, were upon lands which was then common to Tredeh and to Peki, the neighbour of Tredeh upon the south and he adjudged and decided respectively that " the inhabitants should remain in undisputed possession thereof and of all their plantations " without the payment of tribute. By the judgment and the executive decision provision was made for determining the boundary between the Defendant-Appellant's lands and those of the Peki people, which was thereafter done. 30

p. 75.  
p. 77.

p. 77.

p. 76.

Such executive decision is by the Boundary, Lands, Tribute and Fishery Disputes (Executive Decisions Validation) Ordinance of Ashanti (Chapter 120 in the 1936 Revision of the Laws of the Gold Coast) given the effect of a judgment in rem and is good against all the world except the Crown, as has been held to be its effect by the West African Court of Appeal. The Defendant-Appellant submits that it is therefore conclusively binding upon the Plaintiff-Respondent. Another of the Defendant-Appellant's exhibits (Exhibit " F ") proved acts of possession in that in 1923 and 1932 he had let off parts of the land to tenants and exacted rents. 40

pp. 78, 83, 84.

15. The Defendant-Appellant humbly submits that the said judgment of the West African Court of Appeal in affirming the judgments of the Courts below is erroneous and should be reversed for the following, among other,

### REASONS

- (1) BECAUSE the proceedings before the " B " Court were coram non iudice and a nullity ;
- (2) BECAUSE objection to the said proceedings could be raised at any stage ;
- 10 (3) BECAUSE objection was rightly raised in the West African Court of Appeal where Counsel appeared for the first time ;
- (4) BECAUSE the Defendant-Appellant, his people, and their predecessors, have been in occupation of the land for 200 years without payment of tribute to anybody ;
- (5) BECAUSE although the Defendant-Appellant is attached to the division of the politico-military organisation of Kumasi, of which the Krontihene is the head, he does not hold his land under the Krontihene ;
- 20 (6) BECAUSE he does not hold his land from the Plaintiff-Respondent who is second-in-command to the said Krontihene ;
- (7) BECAUSE the Defendant-Appellant holds his land by the immediate donation of the Asantehene by way of usufructuary gift as the home and living space of himself and the people of his Stool ;
- (8) BECAUSE Court " B " rightly stated that the Defendant-Appellant claimed that such donation had been made after the Battle of Feyeasi ;
- 30 (9) BECAUSE Court " A " and the Chief Commissioner's Court were wrong in stating that the Defendant-Appellant claimed that such donation had been made before the Battle of Feyeasi ;
- (10) BECAUSE Court " B " did not attach sufficient importance to the traditional evidence of the Appellant's title and, in attaching more importance to the exhibited documents, which had come into existence since the British occupation, misconceived the force and effect of some of such documents ;
- 40 (11) BECAUSE in his evidence in Exhibit " C " the Plaintiff-Respondent admitted that the Defendant-Appellant had been living on the land all the time without paying him any tribute, and the judgment of the District Commissioner was rightly given on these facts in favour of the Defendant-Appellant on the 11th February, 1914 ;

- (12) BECAUSE the said judgment was wrongly reversed on a review on the 7th May, 1914, the Defendant-Appellant not being summoned to, or appearing at, the said review ;
- (13) BECAUSE the said judgment on review was without jurisdiction and should not have been admitted as evidence of title ;
- (14) BECAUSE the jurisdiction of the District Commissioner's Court in 1914 was regulated by Ashanti Ordinance No. 4 of 1907 and was limited, inter alia, 10 to the ownership or possession of land not exceeding £50 in value ;
- (15) BECAUSE, although the claim in the said suit was for £25 damages, the real claim was one of ownership ;
- (16) BECAUSE under the Rules of Court special leave to admit a review shewing special grounds was a condition precedent to a review and this had not been obtained ;
- (17) BECAUSE Exhibit " A," an alleged agreement, dated the 28th July, 1914, for the division of produce of the land and certain Court fees, was rightly deposed to 20 by the witness, called to prove it, as not the document which he had witnessed and so was unproved and should be disregarded ;
- (18) BECAUSE the Defendant-Appellant rightly stated that the true document, which had not been produced, dealt with some of his people who had been farming on Plaintiff-Respondent's land, and not on his own land ;
- (19) BECAUSE Exhibit " B," an executive decision of the 19th April, 1907, and a dispute between the Plaintiff-Respondent and the Krontihene, where the Defendant- 30 Appellant was not a party, did not concern his land and so was irrelevant ;
- (20) BECAUSE the Exhibits of the Defendant-Appellant, especially " D " and " E " taken with his 200 years occupation, completely established his title to the land ;
- (21) BECAUSE the West African Court of Appeal was wrong in giving general approval of the decisions of all the Courts below and in expressing particular concurrence with the finding of the " B " Court that 40 Exhibit " C " operated as res judicata.

T. B. W. RAMSAY.



Appeal No. 24 of 1944.

In the Privy Council.

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**ON APPEAL**

*from the West African Court of Appeal  
(Gold Coast Session).*

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BETWEEN

**CHIEF KWAME ASANTE, Tredene for and .**  
on behalf of his Stool (Defendant) *Appellant*

AND

**CHIEF KWAME TAWIA, for and on behalf**  
of the Asafu (otherwise Akwamu) Stool  
of Kumasi (substituted for Chief Asafu  
Boakyi II, Akwamuhene) (Plaintiff) *Respondent.*

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**Case for the Appellant.**

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