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12, 11, 1939

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In the Privy Council.

No. 61 of 1941.

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

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN

ATTA KOJO AND KOJO APPEANYA ... (*Defendants*) *Appellants*

AND

CHIEF KWEKU DADZIE, Nkyidomhene of
Bremang, for himself and on behalf of the
Anona Stool and Family of Bremang in
Eguafo State (*Plaintiff*) *Respondent.*

RECORD OF PROCEEDINGS.

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INSTITUTE OF ADVANCED
LEGAL STUDIES,
25, RUSSELL SQUARE,
LONDON,
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Description of Document.	Date.
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Bond for Costs on Appeal	8th March 1941
Justification of Sureties	8th March 1941
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In the Privy Council.

No. 61 of 1941.

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

BETWEEN

ATTA KOJO AND KOJO APPEANYA ... (*Defendants*) *Appellants*

AND

CHIEF KWEKU DADZIE, Nkyidomhene of
Bremang, for himself and on behalf of the
Anona Stool and Family of Bremang in
Eguafo State (*Plaintiff*) *Respondent.*

RECORD OF PROCEEDINGS.

No. 1.

Civil Summons.

No. 22/39.

In the
Eguafo
Native
Tribunal.

IN THE NATIVE TRIBUNAL OF EGUAFO STATE, CENTRAL PROVINCE, GOLD
COAST.

No. 1.
Civil
Summons,
10th
February,
1939.

Between—CHIEF KWEKU DADZIE, Nkyidomhene of Breman,
for himself and on behalf of the Anona Stool and
Family of Breman in Eguafo State *Plaintiff*
and

20 ATTA KOJO of Essaman *Defendant*

KOJO APENYA of Essaman *Co-Defendant.*

To Atta Kojo of Essaman :

You are hereby commanded to attend this Tribunal at Eguafo on
Tuesday the 21st day of February, 1939, at 8.30 o'clock a.m. to answer a
suit by Chief Kweku Dadzie of Breman against you.

In the
Eguafo
Native
Tribunal.

No. 1.
Civil
Summons,
10th
February,
1939—
continued.

The Plaintiff as Nkyidomhene of Breman for himself and on behalf of the Anona Stool and Family of Breman in Eguafo State claims for a Declaration of Title to all that piece or parcel of land attached to the Stool of the said Anona Family of Breman and commonly known as and called "Eborhu" in Eguafo State and bounded on the North by Wassaw Stool Land; on the South by Brenu-Akyinm Stool Land and Dabri Village belonging to Chief Abaka; on the East by Breman Stool Land and on the West by Besease Stool Land; and that an account may be taken of all rents due and owing by the Defendant in respect of "Warababa" Cocoa Farm formerly the property of Kweku Mensah deceased, and now owned 10 by the Defendant on "Eborhu" Land, and also all rents collected by the said Defendant Atta Kojo from other tenants on the said "Eborhu" Land from 1918 to date of Judgment herein and payments by the Defendant to the Plaintiff of any sum or sums found due upon taking such accounts the said land being the property of the Plaintiff's Stool and Family.

And for an injunction restraining the said Atta Kojo the Defendant herein his agents or servants from collecting any more rents from tenants occupying the said land.

Issued at Eguafo the 10th day of February, 1939.

Sum claimed	...	...	...	...	...	£— . — .	20
Tribunal fee	...	...	...	...	...	1. 5. —	
Mileage and Service	...	...	...	...	...	— 6. —	
Adasuum	...	...	...	...	...	— 5. —	
Total	...	...	...	...	...	<u>£1.16. 0.</u>	

His
Marked Kojo Aidoo X
Mark.

Signature or Mark of Omanhene.

Witness to mark :—

(Sgd.) J. N. AIKINS,
Registrar,
N. T. Eguafo,

10/2/39.

30

Upon the 11th day of February, 1939, this summons was served by me on Atta Kojo. This I did by serving a copy of the above summons on the said Defendant personally at Essaman.

(Sgd.) ISAAC B. EFFRIM,
Officer of Tribunal.

No. 2.
Court Notes.

In the
Eguafo
Native
Tribunal.

IN THE TRIBUNAL OF THE PARAMOUNT CHIEF, EGUAFO STATE, CENTRAL PROVINCE, GOLD COAST COLONY.

No. 2.
Court
Notes, 22nd
February
and 14th
March,
1939.

Held at Eguafo on Tuesday the 21st day of February, 1939.

Present :—

10	Regent Kojo Aidoo, President	Tufuhene Kewsi Ackon, Councillor
	Chief Kofi Mensah, Councillor	Kojo Nyamikye, Head Linguist
	Elder Kobina Yaful, do.	Kojo Atta, Linguist
	Elder Kweku Amissa, do.	Kwesi Nyami, Linguist.

Suit No. 22/39.

CHIEF KWEKU DADZIE, Nkyidomhene of Breman, for
himself and on behalf of Anona Stool and Family of
Breman, Eguafo State *Plaintiff*

vs.

ATTA KOJO of Essaman *Defendant.*

CLAIM :—

(Set out as in Summons above.)

Plaintiff present.

20 Defendant present.

The Defendant Atta Kojo told the Tribunal that he should be allowed three weeks to subpoena his witnesses in this case.

By the Tribunal : Application granted.

Case adjourned till Tuesday the 14th day of March, 1939. Defendant to pay costs of Plaintiff's to-day's attendance in any event.

Costs assessed at £2.

(Sgd.) J. N. AIKINS,
Registrar.
21/2/39.

30 Held at Eguafo on Tuesday the 14th day of March, 1939.

The Defendant Atta Kojo told the Tribunal that he should be allowed one week so as to be able to get all his witnesses.

By the Tribunal : Defendant's application for one week adjournment cannot be granted. The Defendant applied for an adjournment for three weeks on the 21st day of February, 1939, and his application was granted to get all his witnesses in this case.

(Sgd.) J. N. AIKINS,
Registrar.

In the
Eguafo
Native
Tribunal.

No. 2.
Court
Notes, 22nd
February
and 14th
March,
1939—
continued.

The Defendant Atta Kojo asked leave of the Tribunal that his brother Kojo Apenya who is interested in the case should be allowed to become a co-Defendant in this case.

By the Tribunal: Application granted. Kojo Apenya is now joined as co-Defendant in this case.

(Sgd.) J. N. AIKINS,
Registrar.

No. 3.
Plaintiff's
Evidence.
Chief
Kweku
Dadzie,
Plaintiff,
14th-21st
May, 1939.
Examina-
tion.

No. 3.

Chief Kweku Dadzie, Plaintiff.

Plea: Both Defendants pleaded not liable.

10

PLAINTIFF'S EVIDENCE.

Plaintiff Chief KWEKU DADZIE, s.a.r.b., states:

I am Kweku Dadzie, Ohene of Breman and Nkyidomhene of Eguafo State. I live at Breman. I am the owner of "Eborhu" land being the property of my ancestors attached to the Stool of Anona Family of Breman. I am the present occupant of the said Anona Stool of Breman. The "Eborhu" Land is bounded on the South by Brenu Akyinm, on the West by Besease Stool land; on the North by Darpah (my witness in this case) and Wassaw Stool land; on the East by Breman Stool land. I had a dispute with the first Defendant's (Atta Kojo) brother Kwamina Twintoh in respect of the land in question and judgment was given against him on my behalf. During the litigation the first Defendant Atta Kojo, and one Kweku Prah, who is my witness in this case came and told me that he knew that his brother Kwamina Twintoh, was not having any land there, therefore I should give him (Atta Kojo) some portion of "Eborhu" land to cultivate on. I granted his request and told him to pay £3. 7. 0. as rum. He paid £1. 7. 0. and asked for three weeks time to pay the balance of £2. When the time elapsed for payment I sent Kweku Prah to call on him for the balance of £2 and he (1st Defendant) failed to pay the said amount. It is about five years now. One Kobina Esson the father of late Kweku Mensah came to my late ancestor Chief Kobina Assankumah and asked for a portion of Eborhu land to cultivate on. He was granted a portion of the "Eborhu" land. He the late Kweku Mensah's father made a village on Eborhu land and named it "Warababa" village. He was told to pay £1. 16. 0. yearly. He paid the said yearly rent of £1. 16. 0. up to the time of his death. Kobina Esson was succeeded by one Kwesi Assafuah, he litigated with me about the Eborhu land and judgment was given against him. He also paid the rents up to the time of his death. He was succeeded

by Kwami Baidu. Late Kweku Mensah made a cocoa farm on "Eborhu" land under Ebusa system. Kweku Mensah's cocoa farm was sold at a public auction and bought by the first defendant Atta Kojo. I called upon the first defendant Atta Kojo to pay the "Ebusa" and he refused to do it. When I called upon Kwami Baidu to pay his yearly rent as it was being paid by his ancestor Kwesi Assafuah, he refused to pay it and replied that Atta Kojo had bought the land and therefore he was paying his rent to him.

My action is for the Declaration of the Title of all the land and for an injunction restraining the Defendants from collecting more rents from tenants occupying the said land.

Cross-examined by Defendant: Cross-examined by Defendant Atta Kojo for himself and on behalf of the second Defendant Kojo Apenya.

I know "Warababa" village was founded by permission of my late ancestor Chief Kobina Assankunah. It was late Opanyin Kobina Esson who founded the village and named it "Warababa." Yes, you Atta Kojo came for a portion of "Eborhu" land to cultivate on it and I charged you £3. 7. 0. as yearly rent of which you paid £1. 7. 0. and refused to pay the balance of £2. No, it was not the portion I gave to late Assafuah that I gave to you Atta Kojo to cultivate foodstuff on it. It was about five years since Kwami Baidu refused to pay his rents. Assafuah died about nine years ago. Yes, late Assafuah made an agreement with me and I have got a copy. No, when you Atta Kojo came to me to ask for a portion on "Eborhu" land to cultivate on it, I did not make any agreement with you. You told me that you were going and come back after you had paid £1. 7. 0. and you failed to come to me again. Yes, you are on the said "Eborhu" land and you now claim it to be yours. When I called for any tenant on the land to pay his rent to me he tells me that you are the owners of the said Eborhu land. Yes, when Kweku Mensah was alive he was paying rents as well as his late father. No you have not paid any rent to me since late Kweku Mensah's cocoa farm got into your possession about 21 years ago. The reason why you do not pay your rents and claiming the land too to be yours hence this my action. If you had paid your rents I would not have taken action against you. No, I have not had any dispute with you about the said land. I had a dispute with you about late Kweku Mensah's cocoa farm. No, Kweku Mensah's cocoa farm only was sold at a public auction and not the land. Late Kweku Mensah was paying £1. 16. 0. as yearly rents. When Kweku Mensah's cocoa farm came into your possession you have not paid any rent to me. When I called upon you Atta Kojo to come to me in respect of this cocoa farm you refused to do so. No, when you Atta Kojo paid £1. 7. 0. to me I did not give you any receipt.

Case adjourned to 2 p.m.

(Sgd.) J. N. AIKINS,
Registrar.

In the
Eguafo
Native
Tribunal.

No. 3.
Plaintiff's
Evidence.
Chief
Kweku
Dadzie,
Plaintiff,
14th-21st
May, 1939.
Examina-
tion—
continued.
Cross-
examina-

In the
Eguafo
Native
Tribunal.

2 p.m. Case resumed.

Same Councillors present.

No. 3.
Plaintiff's
Evidence.
Chief
Kweku
Dadzie,
Plaintiff,
14th-21st
May, 1939.
Cross-
examina-
tion by the
Court.

Cross-examined by the Court : Yes, I am the owner of the said " Eborhu " land in question. The land is attached to the Stool of Breman. The said land came to be in possession of my ancestors from time immemorial. My great grand ancestors were from Eguafo. My ancestors gave part of Eborhu land to Kobina Esson who founded the village " Warababa." Yes, when Kobina Esson came to ask for permission to farm on the " Eborhu " land he provided a bottle of gin. Yes, when Kobina Esson was going to plant cocoa on the land he reported it to my ancestors. Yes, 10 when he, Kobina Esson, gave a portion to Kweku Mensah he reported same to them before allowing him to make the cocoa farm on the land. Yes, there are many tenants occupying several portions of " Eborhu " land on which " Warababa " village is built. Yes, one Kwesi Awotwi has a village near Warababa on " Eborhu " land and called Bimpong. Kwesi Awotwi is a native of Mpeasam in the Eguafo State. He is my witness in this case and he came to prove that his portion was granted him by my ancestors. Yes, one Kojo Kuma too has a village on the said " Eborhu " land and it is called " Ebedenegya." Yes, most of my witnesses are tenants on the said " Eborhu " land. Yes, all tenants on " Eborhu " 20 land pay yearly rents to me. No, the people on Warababa have not paid their rents since Atta Kojo told them that he was the owner of the said land, that when I called upon anybody to pay his rent he did not pay it. Yes, the people of " Warababa " were paying rents before.

Case adjourned till Tuesday the 21st day of March, 1939.

(Sgd.) J. N. AIKINS,
Registrar.

Held at Eguafo on Tuesday the 21st of March, 1939.

Same Councillors present.

Parties present.

30

KWEKU DADZIE, Plaintiff, still on his oath :

Plaintiff asked permission for the Tribunal to produce the Promissory Note made by one Kwesi Assafuah and others in support of his claim.

Exhibit " A. " * Exhibit Record of Appeal, page 164, tendered in evidence marked " A " and accepted.

* Note :—No Record of Appeal, nor any page 164 of any Record of Appeal, marked as having been accepted in evidence in the Native Tribunal, has been transmitted to His Majesty in Council. Plaintiff alleges that in the Native Tribunal he put in the documents marked " A," " B," " C " and " D," printed on pages 43 to 52 of this Record (see his affidavit, page 24 of this 40 Record, paragraph 3), but Defendant Atta Kojo denies this (see his affidavit, page 25 of the present Record, paragraph 2 and see also page 30, line 33).

No. 4.

Kobina Abaka, 1st Witness.

In the
Eguafo
Native
Tribunal.

KOBINA ABAKA, 1st Witness for Plaintiff, s.a.r.b., states :

I am Kobina Abaka II, Ohene of Bronyi Bima and Brenu Akyinm. I am living at Elmina. I know the Plaintiff Ohene Kweku Dadzie and the Defendants also.

No. 4.
Plaintiff's
Evidence.
Kobina
Abaka,
1st Witness,
21st March,
1939.
Examina-
tion.

Examined by Plaintiff: I know that I am having a land boundary with you in respect of "Obohu" land in which there is a village known as and called "Warababa" village. During the dispute between
10 Brenu-Akyinm and Anpenyi it was found out that I was having a boundary with you. I know that the First Defendant, Atto Kojo, lives at "Warababa" village, but I do not know that he was having any land there.

Cross-examined by Defendant ATTA KOJO: I am the Odzikro of Brenu Akyinm. It was my great grandfather Ekow Mensah and Brompong Kobina Abaka who founded the town. I have heard of Opanyin Kwesi Tandoh. I have heard that Kwesi Tandoh's ancestors have occupied a land near "Warababa" village, but I do not know how they got to be there. I know one Kojo Ampessa. He is under me. I am the owner of
20 the land occupied by Kojo Ampessa on the left. I know there is a village on the other side known as and called Wadababa. Ampessa and others pay yearly tribute to me. Ampessa had paid £5 to me recently. I do not know that "Wadababa" people are there for Ohene Kweku Dadzie.

Cross-
examina-
tion.

Examined by Tribunal: I know that I am having a land boundary with the Ohene Kweku Dadzie, Plaintiff. I know positively well that I am not having any land boundary with the Defendants.

Examina-
tion by
Court.

No. 5.

Kwesi Buama, 2nd Witness.

No. 5.
Kwesi
Buama,
2nd
Witness,
21st March,
1939.
Examina-
tion.

KWESI BUAMA, 2nd Witness for Plaintiff, s.a.r.b., states :

I am Kwesi Buama II, Ohene of Bisasi in the British Komenda State. I live at Bisasi. I know the Plaintiff Ohene Kweku Dadzie of Breman. I do not know the Defendants.

Examined by Plaintiff: I know that you are the owner of Ebohu land on which there is a village known as and called as "Wadababa" village. I know that I am having a land boundary with you. I know that I am not having any land boundary with the Defendants. They are not having any land.

In the
Eguafo
Native
Tribunal.

No. 5.
Plaintiff's
Evidence.
Kwesi
Buama,
2nd
21st March,
1939.
Cross-
examina-
tion.

No. 6.
J. B.
Darpah,
3rd
Witness,
21st March,
1939.
Examina-
tion.

Cross-
examina-
tion.

Examina-
tion by
Court.

Cross-examined by 2nd Defendant, KOJO APENYA: I have heard that there is a village called "Wadababa." I do not know the place. I do not know anything about the village, but I know very well that the Plaintiff, Ohene Kweku Dadzie, is the owner of "Eborhu" land on which there is a village known as Wadababa village. I do not know the boundary between the Plaintiff (Ohene Kweku Dadzie) and Brenu-Akyinm, but I know that I am having a land boundary with Ohene of Brenu-Akyinm.

Examined by Tribunal: I am having a land boundary with Ohene Kweku Dadzie (Plaintiff), Brenu-Akyinm and Agona. I am not having any land boundary with the Defendants.

10

No. 6.

J. B. Darpah, 3rd Witness.

J. B. DARPAH, 3rd Witness for Plaintiff, Sworn on Bible, states :

Examined by Plaintiff: I am Joseph Benjamin Darpah. I am a farmer and Odzikro of Dwabo village. I live at Dwabo alias New Jerusalem. I know "Eborhu" land. I know that you are the owner of Eborhu land. I know Atta Kojo is not the owner of Eborhu land.

Cross-examined by 2nd Defendant, KOJO APENYA: I do not know the late Kweku Mensah was having any cocoa farm on "Eborhu" land. If anybody wanted to cultivate on the land he asked permission from the Plaintiff.

Examined by Tribunal: I know that the Plaintiff is having a land boundary with Brenu Akyinm, Bisasi and Dabri villages. I am not having any land boundary with the Defendants. I know "Eborhu" land. "Warababa" village is built on Eborhu land.

Case adjourned to 2 p.m.

(Sgd.) J. N. AIKINS,
Registrar.

No. 7.
Kweku
Prah,
4th
Witness,
21st March,
1939.
Examina-
tion.

No. 7.

Kweku Prah, 4th Witness.

30

2 p.m.

Case resumed. Parties present. Same Councillors present.

KWEKU PRAH, 4th Witness for Plaintiff, s.a.r.b., states :

Evidence of:

I am Kweku Prah, Odzikro of Nsafudu. I live at Nsafudu. I know the Plaintiff Ohene Kweku Dadzie and the First Defendant. I do not know the second Defendant.

Examined by Plaintiff. OHENE KWEEKU DADZIE: I remember five years ago the first Defendant came to me to come to you to ask for a portion of land near Wadababa village on Eborhu land to farm on it. When we came to you you agreed that the first Defendant should farm on your land with the Defendant's brother, Amuatsin. You charged them yearly rent of £3. 7. 0. a year as a rent. They agreed. The Defendant, Atta Kojo, paid £1. 7. 0. and asked for three weeks time to pay the balance of £2. When the time elapsed for the payment I sent to Atta Kojo (first Defendant) to come and pay for it. He sent his nephew Atta Kobina that he would come and pay the balance of £2 of which he (the first Defendant) failed. It was through me that the first Defendant Atta Kojo got into Wadababa village on "Eborhu" land.

In the Eguafu Native Tribunal.
No. 7.
Plaintiff's Evidence.
Kweku Prah,
4th Witness,
21st March, 1939—
continued.

Cross-examined by 1st Defendant, ATTA KOJO: Yes, I was myself who went with you to the Plaintiff (Ohene Kweku Dadzie) to allow you to cultivate or farm on Eborhu land. I was present when all the arrangements about farming on Eborhu land were made. The Plaintiff allowed you to farm on the land and to become a caretaker of "Wadababa" village. I have seen some people making an arrangement in respect of land before.

Cross-examination.

20 As you failed to come after you had paid the 27/- on account, the boundaries of the land were not shown to you. I do not know whether you are still on "Eborhu" land. I do not know anything about Assafuah's case. There was no Promissory Note made when we went to Ohene Kweku Dadzie to allow you some portion on Eborhu land near Wadababa village to cultivate on. I have not given any evidence in this case before this Tribunal before.

Examined by Tribunal: I know of "Eborhu" land. I know the Plaintiff is the owner of "Eborhu" land. I know Wadababa village. The village is on "Eborhu" land.

Examination by Court.

30 Case for the Plaintiff or Prosecution closed.
Case for the Defendants opens.

No. 8.

Kojo Apenya, 2nd Defendant.

DEFENDANTS' EVIDENCE.

KOJO APENYA, 2nd Defendant, s.a.r.b.

For himself and on behalf of the first Defendant states:—

I am Kojo Apenya. I am a carpenter. I live at Assamang. We had lived in Wadababa village for about 40 years. The following Elders who were having lands there are as follows:—Late Opanyin Kwamina Nketsia and late Ekow Frow. They were the ancestors of late Kweku

No. 8.
Defendants' Evidence.
Kojo Apenya,
2nd Defendant,
21st March, 1939.

Examination.

No. 8.
Defendants
Evidence.

Kojo
Apenya,
2nd
Defendant,
21st March,
1939.

Examina-
tion—
continued.

Exhibit
"D."

Mensah. Kweku Mensah was the successor of Opanyin Kwamina Nketsia and Ekow Frow. We went to late Kweku Mensah to allow us to farm on a portion of the land. We were asked to pay yearly rent of 5/- plus a bottle of gin. About 21 years ago late Kweku Mensah had a case with the then Ohene Kwesi Tandoh II of Essamang in the Edina State. Judgment was given against Kweku Mensah at the Commissioner Central Province Court. A Writ of Fieri Facias was issued against the properties of late Kweku Mensah. A bell was rung by a Sheriff's Officer and many people went to Wadababa Land to buy Kweku Mensah's land. The Plaintiff Ohene Kweku Dadzie too was there. We bought the land for £30. 0. 0. We paid for it. The Officer told us to go to his office to get a Certificate of Purchase. This is the Certificate of Purchase. Exhibit "D" tendered in evidence and accepted. About 10 years ago I got the mind of engaging a surveyor to make a plan of the land for me. When the surveyor came on the land to survey the land, the Plaintiff went and swore an oath upon him to stop the work. He (Plaintiff) took action against us for trespass before this Tribunal. Judgment was given against us. We appealed to the Commissioner Central Province Court and the judgment of the Native Tribunal of Eguafo was upheld. We appealed to the West African Court of Appeal and the judgments of the lower Courts were reversed. We are not the founders of Wadababa village. It is not true that it was Kobina Esson who founded Wadababa village as stated by the Plaintiff in his evidence. The village was founded before the birth of Kobina Esson's mother. It is an old village. Kobina Esson founded a village near Wadababa village and the village is now in ruins. I can point out the spot at present. It is not true that Kobina Esson got a portion of the land from late Kweku Mensah from the Plaintiff to farm on it as stated by the Plaintiff. Kweku Mensah's elders were the owners of Wadababa land. Atta Kojo did not go to the Plaintiff to ask him to give him some portion of his land to cultivate or farm on it as he stated. If Atta Kojo had gone to the Plaintiff for a portion of his land he would have made a written agreement with him as he Plaintiff did with Assafuah. We are certain that we have not gone to the Plaintiff to allow us to farm on his land. We bought the land. We are occupying at present, being the property of late Kweku Mensah sold at a public auction. We are having a boundary with Brenu Akyinm.

Cross-
examina-
tion.

Cross-examined by Plaintiff OHENE KWEKU DADZIE: Kweku Mensah was a native of Assmang. Kweku Mensah's elders were from Ampenyi. I cannot tell how Ampenyi people came to be at Ampenyi. It was Nana Kwegya who founded Wadababa village. Opanyin Kwegya was from Elmina. Kwamina Twinto is the present successor of Opanyin Kwegya. Kwamina Twinto is my relative. We are of the same family. No, you have not had a dispute with Kwamina Twinto before in respect of "Eborhu" land and judgment was given against him. We are not living at Wadababa for Kwamina Twinto. We came to know from late Kweku Mensah when he was alive that it was his ancestors who own the land.

When the land was being sold you came and bid for it. Kweku Mensah did not show us the boundaries of his land. Many people were there when the land was being sold. We did not buy farms only but we bought the land together with farms thereon. The Ohene of Assamang, the Odzikro of Dwaba and you were there when the land was being sold at a public auction. We do not know the Ohene of Bisasi and we are not having any boundary with him. I know Nana Abaka the Ohene of Brenu Akyinm. I do not know the Odzikro of Dwabo. There many people living in Wadababa village. They are there for us. They pay yearly rent to us.

- 10 *Examined by Tribunal:* No, we did not buy the whole "Eborhu" land. We did not buy Wadababa village together with the land. The village (Wadababa) is not our property as we did not buy it. The land was the property of the Ohene of Assamang before Ekow Frow and others cut down the forest.

In the Eguafu Native Tribunal.
No. 8.
Defendants' Evidence.
Kojo Apenya, 2nd Defendant, 21st March, 1939—
continued.
Examination by Court.

No. 9.

Kweku Baidu, 1st Witness.

KWEKU BAIDU, 1st Witness for Defendants, s.a.r.b., states:

- I am Kweku Baidu. I am a linguist to the Ohene of Brenu Akyinm. I live at Brenu Akyinm. I know that Brenu Akyinm is having a land boundary with Kwamina Trinto. The line between us is Dwabo path road. One Kweku Mensah too was having a boundary with us at that side.
- 20

Examined by Defendant ATTA KOJO: Kwamina Nketsia and Ekow Frow were the ancestors of late Kweku Mensah. Kweku Mensah has right to sell his ancestors' land to pay his debt. We are not having any boundary line with the Ohene of Breman.

- Cross-examined by Plaintiff CHIEF KWEKU DADZIE:* I cannot point out the boundary between Eguafu and Brenu Akyinm. We are having a land boundary with the Defendants and not with you the Plaintiff. Nana Abaka II is not residing at Brenu Akyinm at present and therefore I am not his linguist. No, I cannot give the history of the land of Brompon Abaka, and of Brompon Ekow Mensah. During the Ampenyi and Brenu Akyinm land dispute the Omanhene of Eguafu was a witness in the case. We did not make any statement during the dispute that we were having a land boundary with Eguafu. We are having a land boundary with Benyardsi, Dampoasi, Besasi, and Nsadwidu. We are having another boundary with Dwabo on the same line. I cannot tell whether the Defendants and their people are on Wadababa village for
- 30

No. 9.
Kweku Baidu, 1st Witness, 21st March, 1939.
Examination.

Cross-examination.

Omanhene of Eguafu or not. I know Nana Abaka II Ohene of Brenu Akyinm. I cannot tell how Atta Kojo came to be on Wadababa village.
Examined by Tribunal: I cannot tell how the ancestors of late Kweku Mensah came to Wadababa village. Nana Abaka II is the present successor of Brompon Abaka and Ekow Mensah. Their lands are in his lands. He knows all the boundaries of the land attached to his Stool. If Nana Abaka II, Plaintiff's first witness, had made statement as to the boundaries of his land then he was telling the truth. If Nana Abaka II had made a statement on oath that he is having a boundary with the Plaintiff Kweku Dadzie then he is telling the truth.

10

No. 10.

Kwesi Fori, 2nd Witness.

KWESI FORI, 2nd Witness for Defendants, s.a.r.b., states:

I am Kwesi Fori. I am a farmer. I live at Assmang.

Examined by Defendant ARTA KOJO: I knew the late Kweku Mensah. I know he was having a land at or near Wadababa village. I remember about 30 years ago we used to ask permission from him (Kweku Mensah) to farm on it. He gave us a portion of his land to farm on it. I was a tenant to the said Kweku Mensah of which I paid yearly rent of 5/6d. and a bottle gin. I remember about 13 years ago when I went to him to give me another portion of his land to cultivate he told me that Atta Kojo (first Defendant) had bought his land at a public auction and that I should go to see him to give me a portion to cultivate or farm on it. I went to Atta Kojo and he gave me a portion. I am now a tenant to you (Defendants). I pay yearly rent of 5/6d. to the Defendants. I remember when Kweku Mensah was alive he told me that the land belongs to his ancestors Ekow Frow and Kwamina Nketsia. Kweku Mensah has right to sell his ancestor's land to pay his debt.

20

Cross-examined by Plaintiff: I live partly at Wadababa and partly at Assamang. I cannot tell the history of Wadababa village.

30

Examined by Tribunal: I was a tenant to Kweku Mensah when he was alive and now I am a tenant to the Defendants.

Case adjourned till Tuesday the 24th day of March, 1939, for the inspection of the land in question.

Witness to mark:

(Sgd.) J. N. ATKINS,
Registrar.

(Sgd.) Kojo Aidoo,
Regent. His
X
Mark.

21/3/39.

No. 11.

Inspection Report.

In the
Eguafo
Native
Tribunal.

IN THE TRIBUNAL OF THE PARAMOUNT CHIEF OF EGUAFO STATE, CENTRAL PROVINCE, GOLD COAST COLONY.

No. 11.
Inspection
Report,
24th March,
1939.

Held at Wadababa village on Friday the 24th day of March, 1939.

Same Councillors present.

INSPECTION REPORT.

At Wadababa village the Plaintiff Chief Kweku Dadzie claims the land upon which the village is built as his land and part of "Eborhu" land.

The Defendants state that the land upon which the village is built does not belong to them. About 20 yards from Wadababa village the Tribunal passed through another village known as and called Bebianhia, the Caretaker of which is Kofi Minanu stated that the land upon which his village is built is called "Eborhu" land and it belongs to the Plaintiff Chief Kweku Dadzie and he is a tenant to him.

From Bebianiha village the Tribunal proceeded to the North-eastern direction for about a mile, we came to a steep hill covered with cocoa on the summit of which stands an Odum tree which tree is claimed by Atta Kojo to be on the boundary of the land he bought. He also claims that the path we have been walking (Dwabo road) is his boundary line with the Ohene of Brenu Akyinm. The Plaintiff denies this and states that the Defendants are not having any land there. That Defendant Atta Kojo bought only one cocoa farm on the land the property of late Kweku Mensah who was a tenant to him (Plaintiff).

Witness OHENE KOBINA ABAKA II, Ohene of Brenu Akyinm states his boundary line with the Plaintiff is about $\frac{1}{4}$ of a mile on the left is "Eborhu" land, the property of the Plaintiff.

Defendants' witness KWEKU BAIDU states that the path road is the boundary line between Brenu Akyinm and Atta Kojo. That the land on the left side with cocoa farm thereon belongs to one Ampesa and he Ampesa inherited the land from his ancestors.

The Plaintiff denies this and states that Ampesa is not having any land there. That Ampesa is a tenant to Nana Abaka II, Ohene of Brenu Akyinm.

Following the path we next came to a vegetable farm planted by one Kojo Nyami claimed by Defendant Atta Kojo to have been planted with his permission.

Thence along the path to a Wawa tree. From this boundary runs in a straight to Abetsin or (Abe tsintsin) tall palm tree through a village called New Jerusalem.

In the
Eguafo
Native
Tribunal.

No. 11.
Inspection
Report,
24th March,
1939—
continued.

Witness Joseph Benjamin Darpah denies this and states that the Defendant Atta Kojo has no land there. That his village had been built over five years ago. That the land upon which his village is built belongs to the Plaintiff and the Ohene of Agona.

From the Abetsin (or Abe tenten) Atta Kojo states his boundary goes on to a tree on an ant hill and from thence to a proprow tree.

From this proprow tree Atta Kojo claims that his boundary runs to an Epu tree thence to the Odum tree mentioned at the beginning of the inspection.

There are many cocoa and foodstuff farms within the boundary claimed by Atta Kojo and he states that all the farms were made by his permission and the owners of the said farms are his tenants.

There is a big cocoa farm and Atta Kojo states that he bought the farm together with the land.

The Plaintiff denies this and states that the cocoa farm only was sold being the property of late Kweku Mensah, and not the land. Kweku Mensah paid tribute for the land on which the cocoa was planted when he was alive.

(Mkd.) Kojo Aidoo, His
X
Mark. 20
Regent,
Eguafo State.

Witness to mark :—

(Sgd.) J. N. AIKINS,
Registrar, N.T. Eguafo.

24.3.39.

No. 12.
Judgment,
29th March,
1939.

No. 12.
Judgment.

IN THE TRIBUNAL OF THE PARAMOUNT CHIEF, EGUAFO STATE, CENTRAL PROVINCE, GOLD COAST COLONY.

Held at Eguafo on Wednesday the 29th day of March, 1939. 30

Same Councillors present.

Parties present.

JUDGMENT.

This is a case in which the Plaintiff, as Nkyidomhene of Breman (Eguafo State) for himself and on behalf of the Anona Stool of Breman, claims from the Defendant for a Declaration of Title to all that piece or parcel of land commonly known as and called 'Eborhu' in Eguafo State and bounded on the North by Wassaw Stool lands, on the South

“ by Brenu Akyinm Stool land and Dabiri village belonging to Chief Abaka,
 “ on the East by Breman Stool land and on the West by Besase Stool land
 “ and that an account be taken of all rents due and owing by the Defendant
 “ in respect of ‘ Warababa ’ cocoa farm formerly the property of Kweku
 “ Mensah, deceased, and now owned by the Defendant on ‘ Eborhu ’ land ;
 “ and also rents collected by the said Defendant Atta Kojo from other
 “ tenants on ‘ Eborhu ’ land from 1918 to date of judgment herein and
 “ payment of any sum or sums found due upon taking such accounts the
 “ said land being the property of the Plaintiff’s Stool Family.

In the
 Eguafu
 Native
 Tribunal.

No. 12.
 Judgment,
 29th March,
 1939—
continued.

10 “ And for an injunction restraining the said Atta Kojo Defendant
 “ herein his agents or servants from collecting any more rents from tenants
 “ occupying the said land.”

At the beginning of the hearing of the case Atta Kojo asked leave of
 the Tribunal for one Kojo Appeanyi whom it was alleged to be interested
 in the case to be joined as a co-Defendant.

The interest of Kojo Appeanya was not specifically stated, however,
 his application was granted and Kojo Appeanya was accordingly joined by
 order of the Tribunal as a co-Defendant in the case.

20 The Plaintiff’s case is that the land in question has been attached to
 the Stool of Breman from time immemorial.

The case for the defence is that the land originally belonged to one
 Kweku Mensah but was sold at a public auction in 1918 and bought by the
 Defendant Atta Kojo, and that the Defendant Atta Kojo holds a Certificate
 of Purchase thereof. That he has ever since been in possession of the
 land and had given portions thereof to other people to cultivate. It is
 alleged by the Plaintiff and not denied by the Defendants, that the land
 was owned by the Stool of Breman, now occupied by the Plaintiff and
 Kweku Mensah was a tenant to the Plaintiff.

30 The defence is based entirely on the sale of the land by the Court
 under a Writ of *Fieri Facias*, and on the Certificate of Purchase issued by
 the Court to Defendant Atta Kojo. The Certificate of Purchase was put
 in evidence, accepted and marked “ D.”

40 It reads :—“ This is to certify that Atta Kojo has been declared the
 “ Purchaser of the right title and interest of Kweku Mensah in the messuages
 “ lands and tenements hereinafter mentioned, that is to say : All that
 “ Plaintiff’s land called ‘ Wadababa ’ situate and being at Assamang or
 “ thereabouts in the District of Elmina bounded by or Abutting the lands
 “ of the following persons :—Garboh, Kobina Esson and Ohene Kwesi
 “ Tandoh sold by Public Auction under Writ of Fi. Fa. No. 5/16 in the above
 “ named case on the 13th day of February, 1918, for the sum of £30 which
 “ said messuages, lands and tenements were sold in execution of a Decree
 “ in above suit by order of this Court dated 13th day of February, 1918.
 “ Dated at Cape Coast the 29th day of April, 1918.”

“ (Sgd.) G. W. CATLEY,
 “ District Commissioner.”

In the
Eguafo
Native
Tribunal.

No. 12.
Judgment,
29th March,
1939—
continued.

The Plaintiff stated in his evidence that Kobina Esson father of Kweku Mensah was given permission to farm on the land by his (Plaintiff's) predecessor Kwamina Assankuma on condition that he should pay yearly rent, and in the event of his death his heirs would have the obligation and rights.

The Plaintiff states that the first Defendant Atta Kojo went to him for permission to farm on "Eborhu" land and that his application was granted on condition that he paid the sum of £3. 7. 0. of which he (the first Defendant) paid on account the sum of £1. 7. 0. and failed to pay the balance of £2.

10

For the Defence the Defendant states that the land belongs to Opanyin Ekow Frow and Kwamina Nketsia the ancestors of the late Kweku Mensah, which is not corroborated by any evidence to show how Kweku Mensah's ancestors came to own the land.

The Tribunal having gone through the case finds that the land belongs to the Stool occupied by the Plaintiff and Kweku Mensah only had permission to farm on it so long as he paid regularly the yearly rent. It proved that this is the only right he had on the land and it therefor follows that the Defendants should do the same.

The Tribunal finds that the said "Eborhu" land belongs to the Plaintiff and judgment is declared accordingly. With regard to the rendering of account in respect of the proceeds realised from the other tenants on "Wadababa" village on "Eborhu" land the Tribunal orders that within three weeks from date of judgment Defendants shall render the account and submit same through the Tribunal. The Defendants are also restrained from collecting any more rents from the tenants occupying the said "Eborhu" land.

Costs of Plaintiff to be taxed.

(Marked) Kojo Aidoo,
Regent,
Eguafo State.

His
X
Mark.

30

Witness to mark:—

(Sgd.) J. N. AIKINS,
Registrar,
Native Tribunal of Eguafo.

29.3.39.

No. 13.

Grounds of Appeal.

In the
Provincial
Commissioner's
Court.

IN THE PROVINCIAL COMMISSIONER'S COURT, CENTRAL PROVINCE, CAPE
COAST.

No. 13.
Grounds of
Appeal,
5th June,
1939.

5

(Title.)

FOUNDATIONS OF APPEAL.

1. Judgment is erroneous in Law in that on the showing of the Plaintiff-Respondent himself the Defendants are not accountable to him in any way.

2. Because the Defendants have been in long undisturbed possession
10 of the land in dispute without acknowledgement to the Plaintiff and/or any other person.

3. Because the Defendants are the rightful owners of the land in dispute herein.

4. Because the Native Tribunal of Eguafu which determined the above case was biased by reason of interest in favour of the Plaintiff-Respondent.

5. Because the proceedings are irregular.

6. Because the judgment is against the weight of evidence and is also contrary to Natural Justice.

20 7. Because the Plaintiff-Respondent did not prove his claim.

Dated at Cape Coast this 5th day of June, 1939.

His
X
Mark.

For himself and other Defendant-Appellant.

The Registrar, Provincial Commissioner's Court, Cape Coast.

And to the above named Plaintiff-Respondent, Chief Kweku Dadzie of Breman or his Agent or Attorney.

Witness to mark :

30 (Sgd.) S. A. YANNEY,
Clerk to Barrister Benjamin,
C.C.

Submissions of Counsel.

25th September, 1939.

No. 14.
Submissions
of Counsel,
Benjamin
for
Defendants-
Appellants,
25th
September,
1939 ;
Brew for
Plaintiff-
Respon-
dent, 25th
September,
1939.
Benjamin
for
Defendants.

IN THE PROVINCIAL COMMISSIONER'S COURT, CAPE COAST, CENTRAL
PROVINCE, GOLD COAST.

CORAM : His Worship T. R. O. MANGIN, Esquire, Deputy Commissioner,
Central Province.

(Title.)

Mr. BENJAMIN for Defendant-Appellant.

Mr. BREW for Plaintiff-Respondent.

10

Appeal from Native Tribunal of Eguafu. Judgment pages 14-16 of
Record. Asks leave to add 2 additional grounds of appeal.

(A) Because the Native Tribunal based their findings on an erroneous
view of the evidence.

(B) Because the Plaintiff's claim is *bad* by the Real Property
Limitation Act of 1833.

[sic]

Mr. Brew raises no objection. (A) becomes 8 and (B) becomes 9.

8. Refers to judgment page 15. Submits that these statements are
not a true interpretation of the facts before them. Refers to page 9
evidence by Defendant. That the land belonged to Kweku Mensah's family 20
and not to the Plaintiff. Therefore it was wrong for the Tribunal to say
that it is not denied by Defendant that the land belonged to the Stool of
Breman. Therefore judgment cannot stand. That the judgment says
that the defence is based entirely on the Certificate of Purchase. That
the evidence shows that this is not so. Page 10. That the title was
derived from Kweku Mensah's family. Therefore Tribunal took a wrong
view of the evidence. Therefore claim of Defendant is not based on
Certificate of Purchase alone. That having taken wrong view of evidence
the Tribunal's conclusions must be wrong. Refers to judgment page 16.
" For the defence the Defendant states that the land belongs to Opanyin 30
" Ekow Frow, etc." That this is not true. Page 11. Evidence of
Defendant's 1st witness and so it is untrue to say that there is no
corroboration. Page 12. Evidence that Kweku Mensah owned the land.
That there is corroboration. That they have not reviewed the facts as
shown in the evidence before them. 2 and 9 together : Refers to Certificate
of Purchase dated 1918, 21 years ago. No Inter-pleader by the Plaintiff
in this suit at the time of the Fi. Fa. and subsequent auction of the land
in dispute. Page 11. Plaintiff himself bid for the land at the auction.
Page 5. Shews that the Plaintiff was aware of the sale. Submits that it is
now too late for Plaintiff to lay claim to the land. Page 9. 2nd Defendant. 40
" We have lived for 40 years." Corroboration on page 12. Quotes *Kojo*

Nkum vs. Kwame Etsiaku, Full Court 1922, page 5. That in this case the Defendants have incurred pecuniary responsibilities on the land and have improved the land all to the knowledge of the Plaintiff. Refers to page 8. Plaintiff's statement admits knowledge of Defendant buying the land 21 years ago.

In the Provincial Commissioner's Court.

Aba Dainsuah and others vs. George Gladstone Cole, Full Court, 1923-25, page 135 to 141. Statute of Limitation applies when title has been followed by English Law and Law of Limitation says that after 20 years no action can be taken for recovery of land. Land was purchased under Government and Certificate of Title issued by Government and so by English Law. Plaintiff's claim is therefore *bad*.

No. 14. Submissions of Counsel, Benjamin for Defendants-Appellants, 25th September, 1939; Brew for Plaintiff-Respondent, 25th September, 1939.

Ground 3 is the natural consequence of the Certificate of Title.

Ground 4.—Abandoned.

Ground 1.—Judgment erroneous in Law, etc.

That there has never been any agreement between the parties as to rent, *vide* page 5, line 23. Therefore there can be no action for account. It should have been for trespass. On this ground the action for accounts should not have been entertained by Tribunal.

Ground 5.—Irregular proceedings.

At viewing of land Tribunal takes evidence from a man Kofi Nyami which is not on oath and he was not called to give evidence properly. Throughout inspection Tribunal took cognisance of evidence not on oath.

Benjamin for Defendants—*continued*.

Ground 6 refers to Judgment. No evidence to support that finding. Therefore Judgment should be set aside.

Counsel for Respondent :

Ground 6 submits there is sufficient evidence for the Tribunal to come to the conclusion they did. They could determine facts by general demeanour as well as and in conjunction with evidence paragraph by paragraph. Refers to Gold Coast Law Reports, 1926-1929, pages 239-240. *Emmanuel Asare Akoto Ababio IV vs. Honourable E. Mate Kole*. Volume II, W.A.C.A., page 374, *Martin Nortei Codjoe vs. Emmanuel Kwatchey*. Appeal Court not to disturb finding of facts unless perversion of justice.

Ward Brew for Plaintiff

Ground 5.—Page 13, Inspection done by same Councillors as sat on the case. Not deputed to someone else. Defendants admit that Warababa village does not belong to them. That viewing of the land in *locus in quo* affords strong evidence by actual facts being pointed out to Tribunal.

Ground 1.—Submits that, *vide* pages 4 and 5, there is evidence of agreement and actual money of £1. 7/- having been paid by Defendants to Plaintiff. Page 5, Kweku Mensah's farm only not the land. That the Certificate of Purchase applies only to the farm.

W.A.C.A., Volume III, page 241, *Kwame Adu vs. Kwesi Kuma*. The Certificate of Title does not confer ownership of land. Law Reports, 1926-29, page 126. Certificate of Purchase merely record of part of proceedings and not exclusive evidence of title. Page 12 of Record, lines 8 to 10.

In the
Provincial
Commissioner's
Court.

No. 14.
Submissions
of Counsel,
Benjamin
for
Defendants-
Appellants,
25th
September,
1939 ;
Brew for
Plaintiff-
Respon-
dent, 25th
September,
1939.

Ward Brew
for Plaintiff
—continued.

Defendant's witness, *vide* now page 7. All Plaintiff's witnesses gave evidence as to boundaries.

On a point raised by Court, Counsel points out that the other rents claimed are outside the farm purchased by Defendant on Eborhu land. Submits that the Court can come to a conclusion similar to the Tribunal, but on different grounds should the Court consider a mis-statement has been made in the Judgment of the Tribunal. Submits that Ebusa is the account and Plaintiff entitled to account.

That undisturbed possession does not apply as they are the same cocoa trees as were bought by Defendants. 10

Stresses again importance of inspection of land by the Tribunal.

Counsel for Appellant: Tribunal deductions are from incorrect statement of facts, therefore facts have been perverted. That the payments made do not relate to the present claim. That Plaintiff never took steps to have the Fi. Fa. examined to give evidence as to whether it was land or just the farm and the Certificate of Purchase says "land" and must be accepted as such.

Adjourned till tomorrow.

(Sgd.) T. R. O. MANGIN,
Deputy Commissioner, C.P. 20

Tuesday, the 26th day of September, 1939.

Judgment delivered this 26th day of September, 1939, *vide* Judgment Book, Volume 3, pages 283-4.

The Appeal is allowed and the Judgment of the Tribunal is reversed, costs being awarded to the Appellant.

(Sgd.) T. R. O. MANGIN,
Deputy Commissioner,
Central Province.

No. 15.
Judgment,
26th
September,
1939.

No. 15.

Judgment. 30

IN THE PROVINCIAL COMMISSIONER'S COURT, CAPE COAST, CENTRAL PROVINCE, GOLD COAST.

Tuesday, the 26th day of September, 1939.

CORAM: His Worship T. R. O. MANGIN, Esquire,
Deputy Commissioner, Central Province.

(Title.)

JUDGMENT.

This is an Appeal from the Native Tribunal of Eguafu and the claim before it was as follows:—

"The Plaintiff as Nkyidomhene of Breman for himself and on behalf 40
"of the Anona Stool and Family of Breman in Eguafu State claims for

“ a declaration of title to all that piece or parcel of land attached to the
 “ Stool of the said Anona Family of Beman and commonly known as
 “ and called ‘ Eborhu ’ in Eguafu State and bounded on the North by
 “ Wassaw Stool Land ; on the South by Brenu Akyinm Stool Land and
 “ Dabiri village belonging to Chief Abaka ; on the East by Beman Stool
 “ land and on the West by Bescase Stool land ; and that an account may
 “ be taken of all rents due and owing by the Defendant in respect of
 “ ‘ Warababa ’ Cocoa Farm formerly the property of Kweku Mensah
 “ deceased and now owned by the Defendant on ‘ Eborhu ’ Land, also all
 10 “ rents collected by the said Defendant Atta Kojo from other tenants on
 “ the said ‘ Eborhu ’ land from 1918 to date of judgment herein and
 “ payment by the Defendant to the Plaintiff of any sum or sums found
 “ due upon taking such accounts the said land being the property of the
 “ Plaintiff’s Stool and Family.

In the
Provincial
Commissioner’s
Court.

—
No. 15.
Judgment,
26th
September,
1939—
continued.

“ And for an injunction restraining the said Atta Kojo the Defendant
 “ herein his agents or servants from collecting any more rents from tenants
 “ occupying the said land.”

The facts are briefly as follows: The Defendant-Appellant in the
 year 1918 purchased at Public Auction a piece of land which was being
 20 sold as the result of a Writ of Fi. Fa. issuing from the Courts for which
 he paid £30, the land in question having been, prior to this sale, the
 property of one Kweku Mensah. The purchaser, that is to say, the
 Defendant-Appellant, then obtained from the Court a Certificate of
 Purchase for the land a description of which is set out in the Certificate
 and which is called “ Warababa ” which was tendered and accepted by
 the Tribunal in evidence. The date of the sale was the 13th February, 1918.

On the 10th of February, 1939, which is 21 years less three days after
 the purchase the Plaintiff-Respondent makes this present claim in the
 Eguafu Tribunal and bases his claim on the fact that Kweku Mensah when
 30 he owned the land called “ Warababa ” Land held it as a tenant to his
 Stool paying so much a year for the privilege of farming on it and that
 the present Defendant-Appellant having purchased it can only hold it
 under the same terms. The Tribunal found that Kweku Mensah did
 only hold Warababa land in this capacity though I would mention that in
 more than one instance, as pointed out by learned Counsel for the
 Appellant, the Tribunal has made erroneous statements in its judgment
 as to the evidence which was given before it which gives grave rise to a
 doubt as to whether the Tribunal’s findings of fact are not perverted,
 erroneous interpretation of and faulty deduction from the evidence
 40 before it.

However, assuming for the moment that the Tribunal’s finding of
 facts are right let us examine whether the conclusions arrived at from
 such facts are equitable and legal.

Now there is no doubt whatsoever and there is evidence to show that
 the auction of this land was no hole and corner affair, but truly public and
 that the Plaintiff-Respondent was fully cognisant of it and possibly as
 stated by one witness he actually bought it himself.

In the
Provincial
Commissioner's
Court.

No. 15.
Judgment,
26th
September,
1939—
continued.

It seems very strange to me why if he believed himself then on behalf of the Anona Stool and Family of Breman in the Eguafu State as now stated in the Summons to have full title to this land he did not enter an interpleader against the sale, but we have no record of his doing so or even registering a complaint. All that we are told is that he told the Defendant to pay him rents and the Defendant refused.

One would imagine that having missed his opportunity of establishing his title by way of interpleader he might have proceeded to action for trespass against the Defendant. But no he does nothing till 21 years after he sues the Defendant for rents to which the Defendant has never agreed. He does this I would add after the Defendant has no doubt improved the value of the land and has pecuniary interest in it. So even if the facts with regard to the ownership by Kweku Mensah as found by the Tribunal were right, which I more than doubt, no normally fair minded person could possibly say that the conclusions drawn by the Tribunal are fair and just in upholding the Plaintiff's attempt to disturb the Defendant's possession after sleeping on his so-called rights for 21 years and furthermore as the Defendant came into possession by means of a legal process of English Law the Statute of Limitation operates and so the Tribunal had no legal right to entertain the Plaintiff's claim.

The Appeal therefore succeeds and the Judgment of the Tribunal is reversed costs being awarded to the Appellant.

(Sgd.) T. R. O. MANGIN,
Deputy Commissioner,
Central Province.

Counsel :—Mr. W. WARD BREW for Plaintiff-Respondent.

Mr. C. F. HAYFRON-BENJAMIN for Defendant-Appellant.

No. 16.
Certificate
of
Judgment,
26th
September,
1939.

No. 16.
Certificate of Judgment.

IN THE PROVINCIAL COMMISSIONER'S COURT, CAPE COAST, CENTRAL PROVINCE, GOLD COAST.

(L.S.)
(Sgd.) T. R. O. MANGIN,
Deputy Commissioner, C.P.

(Title.)

I HEREBY CERTIFY that the Judgment of this Court in the above-named Appeal from the Native Tribunal of Eguafu in the Cape Coast District, Central Province, Gold Coast, was that the Appeal be allowed with costs to the Appellant.

GIVEN UNDER my hand and the Seal of the Court of the Provincial Commissioner, Cape Coast, this 26th day of September, 1939.

(Sgd.) SAM YARNEY,
Registrar.

No. 17.

Motion Paper for Review of Judgment.

IN THE PROVINCIAL COMMISSIONER'S COURT OF THE GOLD COAST, CENTRAL
PROVINCE, CAPE COAST.

Land Suit No. L.C. 12/1939.

*(Title.)***MOTION FOR REVIEW.**

10 Motion on Notice for Review of Judgment of this Honourable Court delivered in the above-named Appeal by His Worship T. R. O. Mangin, Esquire, Deputy Commissioner, Central Province, on the 26th day of September, 1939, on the ground of omission of documentary evidence produced before the Native Tribunal of Eguafo and which was intended to form part of Plaintiff-Respondent's case in the Record of Appeal; and for such other and further relief as this Honourable Court may seem fit to grant in the premises.

Court to be moved on Saturday the 7th day of October, 1939, at 8.30 o'clock in the fore-noon or so soon thereafter as Counsel for Plaintiff-Respondent can be heard.

Dated at Cape Coast this 27th day of September, 1939.

20

(Sgd.) W. WARD BREW,
Solicitor for Plaintiff-Respondent.

The Registrar, Provincial Commissioner's Court, Cape Coast.

And to the above-named Defendants-Appellants, ATTA KOJO and KOJO APPEANYA of Essaman or their Solicitor or Agent.

No. 18.

Affidavit of Chief Kweku Dadzie in support of Motion for Review of Judgment.

IN THE PROVINCIAL COMMISSIONER'S COURT OF THE GOLD COAST, CENTRAL
PROVINCE, CAPE COAST.

Land Suit No. L.C. 12/1939.

(Title.)

30

I, KWEKU DADZIE, Chief of Breman in Eguafo State, now temporarily residing in Cape Coast, the Plaintiff-Respondent in the above-named Appeal, make oath and say as follows:—

1.—That the above Appeal was heard on the 25th day of September, 1939, and Judgment delivered on 26th September, 1939.

In the
Provincial
Commis-
sioner's
Court.

No. 17.
Motion
Paper for
Review of
Judgment,
26th
September,
1939.

No. 18.
Affidavit of
Chief
Kweku
Dadzie in
support of
Motion for
Review of
Judgment,
28th
September,
1939.

In the Provincial Commissioner's Court.

No. 18. Affidavit of Chief Kweku Dadzie in support of Motion for Review of Judgment, 28th September, 1939—continued.

2.—That no fresh evidence was adduced by either party at the hearing of the said Appeal.

3.—That at the hearing of the suit at the Native Tribunal of Eguafo, I produced and showed to the Tribunal Registrar, copies of the Judgments of the Native Tribunal of Eguafo dated 16th July, 1934, Provincial Commissioner's Court dated 31st October, 1935, West African Court of Appeal dated 19th December, 1936; and also copy of decision on Motion in the case of *Atta Kojo (Essamang)* (Plaintiff) vs. *Chief Kweku Dadzie (Bremam)* (Defendant) dated 7th October, 1938, which are hereto annexed and marked "A," "B," "C" and "D" respectively and which were inadvertently omitted in the present proceedings. I crave leave of this Honourable Court to refer to the Record of Appeal in the former case between the parties. 10

4.—That the property in dispute is the same that has been the subject of litigation for the last twelve (12) years or more.

5.—That at the hearing in the Native Tribunal of Eguafo, the previous judgments regarding the subject matter of the suit between the parties and their predecessors were brought to the notice of the Tribunal Councillors.

6.—That I desire that the documentary evidence mentioned in paragraph three (3) of this Affidavit should form part of the Record of Appeal. 20

7.—I make this Affidavit in support of application for Review of Judgment of this Honourable Court delivered by His Worship T. R. O. Mangin, Esquire, Deputy Commissioner, Central Province, on the 26th day of September, 1939, on the ground of omission of documentary evidence produced before the Native Tribunal of Eguafo and which was intended to form part of Plaintiff-Respondent's case in the Record of Appeal; and for such other and further relief as this Honourable Court may seem fit to grant in the premises. 30

Sworn by the said Kweku Dadzie at Cape Coast this 28th day of September, 1939, after the contents hereof had been duly read over and interpreted to him in the Fanti language by Samuel Albert Davidson of Cape Coast first sworn duly to interpret the same to him who seemed perfectly to understand the same and made his mark thereto in my presence.

Kweku Dadzie His X Mark.

Before me, (Sgd.) SAM YARNEY, Commissioner for Oaths, (Registrar, P.C.'s Court).

Interpreter and witness to mark: (Sgd.) S. A. DAVIDSON, Cape Coast. 40

No. 19.
Affidavit of Atta Kojo in opposition.

In the
Provincial
Commissioner's
Court.

IN THE PROVINCIAL COMMISSIONER'S COURT, CENTRAL PROVINCE, CAPE
COAST.

Land Suit No. L.C. 12/1939.

(Title.)

No. 19.
Affidavit of
Atta Kojo
in opposi-
tion, 3rd
October,
1939.

I, ATTA KOJO of Essaman in the Elmina District of the Central Province of the Gold Coast temporarily at Cape Coast, Farmer, make oath and say as follows:—

1.—That I am one of the Defendants-Appellants herein and am
10 authorised by my Co-Defendant Kojo Appeanya to act for him in the proceedings herein.

2.—That the allegations in paragraph 3 of the Affidavit of Chief Kweku Dadzie are untrue and incorrect, and I deny that the Plaintiff at the trial did produce and show to the Tribunal of Eguafu copies of the Judgment of the Native Tribunal of Eguafu dated the 16th of July, 1934, the Provincial Commissioner's Court, dated the 31st October, 1935, and the West African Court of Appeal dated the 19th December, 1936, and also copy of decision on Motion in the case of *Atta Kojo (Essamang)*, Plaintiff, versus *Chief Kweku Dadzie (Bremam)*, Defendant, dated the 7th of October, 1935.

20 3.—That the Judgments of the Native Tribunal of Eguafu dated the 16th July, 1934, and the Provincial Commissioner's Court dated the 31st of October, 1935, were all set aside by the Judgment of the West African Court of Appeal dated the 19th of December, 1936, and the said Judgments are of no force and effect.

4.—That the facts found by the Native Tribunal of Eguafu dated the 16th of July, 1934, are inaccurate and untrue, and that there has not been a litigation in respect of the subject matter of the present suit for the past twelve (12) years or more.

30 5.—That under the circumstances I swear to this Affidavit in opposition to the application of Plaintiff-Respondent herein.

Sworn at Cape Coast, this 3rd day of October, 1939, this Affidavit having been first read over and interpreted to him in the Fanti language by Stephen A. Yanney of Cape Coast when he seemed perfectly to understand the same and made his mark thereto in the presence of—

His
X
Mark.

Before me,

(Sgd.) SAM YARNEY,

Commissioner for Oaths,

(Registrar, P.C.'s Court).

40

Witness to mark and Interpreter:—

(Sgd.) S. A. YANNEY,

*Law Clerk to Barrister Benjamin,
Cape Coast.*

In the
Provincial
Commissioner's
Court.

No. 20.
Arguments
on Motion
for Review
and Court
Notes
admitting
Review,
27th
October,
1939.

No. 20.

Arguments on Motion for Review and Court Notes admitting Review.

IN THE PROVINCIAL COMMISSIONER'S COURT, CAPE COAST, CENTRAL PROVINCE, GOLD COAST.

Friday, the 27th day of October, 1939.

CORAM : His Worship T. R. O. MANGIN, Esquire, Deputy Commissioner,
Central Province.

(Title.)

Mr. WARD BREW for Mover.

Mr. BENJAMIN for Opposer.

10

Mover : That there was an omission of a document in the proceedings.
Reads affidavit.

Opposer : That only can be reviewed if fresh evidence is to be produced which has been discovered which could not with reasonable diligence have been discovered before trial. Page 350, Odger's Ninth Edition. Submits that the documents in question could have been produced on Appeal Trial. That the Motion should be refused.

Ruling : It certainly would appear to be careless that certain documents were not produced at the Appeal and no doubt strictly this Court would be within its rights in refusing to review; but as the main function of a Court is to dispense justice it will waive any shortcomings and will agree to listen to fresh arguments on certain documents for the purpose of review and therefore accedes to the motion for review. 20

No. 21.
Submissions
of Counsel
on hearing
of Review,
Ward Brew
for Mover,
Benjamin
for Opposer,
27th
October,
1939.

Ward Drew
for Mover
(Plaintiff).

No. 21.

Submissions of Counsel on hearing of Review.

Mover : Refers to judgment of this Court, 26th September, 1939, particularly to writ. The Warababa land is only a small portion of the Ebuhu lands and that it is only the small portion called Warababa which is alleged to have been bought by Defendants. The West African Court of Appeal only set aside a claim for trespass. That Atta Kojo took a summons against Kojo Dadzie which this Court transferred to the Eguafu Tribunal. 30

Document "D" attached to Motion. Refers to Judd's judgment of 31st October, 1935, on the same land and reads it. That the land was inspected by Mr. Judd and he discovered what was Warababa land. Stresses that the Defendant only purchased the rights of the land with the

conditions attached thereto, namely, that he held them as a tenant to the Stool. Quotes page 320 of Laws of British India. Merely buying rights and title of the original owner. Cases have been cited on this. Refers to page 101 of Record. That he found that Atta Kojo begged Plaintiff-Respondent for the land. Submits that this is borne out in Appeal Case before this Court now. Refers to page 10 of Appeal Record: "We
 10 "are not the founders of 'Warababa' village." That Respondent has been continuously fighting for this land. That therefore it was incorrect in this Court's judgment to say that the Respondent had slept on his
 10 rights. Refers to judgment of West African Court of Appeal which finds that no action lay for trespass and grants the Appeal. That the Appeal in this case was granted for technical reasons and did not altogether contradict Mr. Judd's judgment. That the Certificate of Purchase is vague and land should be viewed. That it is not undisturbed possession and that therefore Statute of Limitation does not apply. That it is a land held under Native Tenure and English Law does not apply. Page 13 of Redwar's. That Appeanya has never stated his interest in this land.

Opposer: Submits that first evidence must be admissible. All so far as is inadmissible except "C" and "D." Judgment of West African
 20 Court of Appeal and "D" ruling of this Court on a Motion. "A" and "B" are inadmissible in that both have been reversed by the judgment of West African Court of Appeal. Refers to page 50 of Record, Exhibit "C"—"It is quite clear, etc., to end."

Namely, that the case before the Court was not one of ownership, but of trespass which was misconceived. The West African Court of Appeal did not vary the judgment, but cancelled it. That therefore the findings of Mr. Judd are not admissible or to be taken into account. Refers to Exhibit "A." "The Tribunal finds that the Certificate of Purchase was false," yet this was upheld by Mr. Judd. That therefore all Mr. Judd's
 30 findings cannot be discussed in this review. That the West African Court of Appeal, if anything, is on the side of this Court's judgment. In West African Court of Appeal judgment it says Atta Kojo relied on his purchase at auction. It does not upset this fact. That *Asiedu vs. Dadzie (Sarbah)*, pages 174-179. Page 177 relevant passage. That 8 years debars from suing. No action was brought for 9 years. That Native Statute of Limitation is more strict than English one. That the question of whether Appeanya was or was not properly joined cannot be raised now as it was not raised in the original appeal. That whether Statute of Limitation
 40 applies or not the judgment of this Court finds that Tribunal made erroneous statements and came to faulty deductions. Submits that former judgment be upheld.

Mover: Submits that Exhibits "A" and "B" are admissible to show that there has been previous litigation. Exhibit "C" judgment of West African Court of Appeal. Atta Kojo relied on Certificate of Purchase. That Warababa is not the same as Ebuhi. The judgment of West African Court of Appeal is not conclusive. Page 31 of Griffith's Digest, *Kwasi vs.*

In the
 Provincial
 Commis-
 sioner's
 Court.

No. 21.
 Submissions
 of Counsel
 on hearing
 of Review,
 Ward Brew
 for Mover,
 Benjamin
 for Opposer,
 27th
 October,
 1939.

Ward Brew
 for Mover
 (Plaintiff)—
continued.

Benjamin
 for
 Opposer
 (Defen-
 dants).

Nsafo. Page 154 of the same book "English Decisions." *Kojo Nkum vs. Kwame Ntiaku.* Full Court judgment March, 1922. Page 5, last paragraph. That *Asiedu vs. Dadzie* is of different circumstances. That Respondent is not estopped from bringing this case.

Adjourned for judgment.

(Sgd.) T. R. O. MANGIN,
Deputy Commissioner, C.P.

Judgment on review delivered this 28th day of October, 1939, *vide* Judgment Book, Volume 3, pages 295-297.

The previous judgment dated the 26th day of September, 1939, with 10 the exception of the variation mentioned in the present judgment stands, and the Plaintiff-Respondent will pay the costs of this Review which are to be taxed.

(Sgd.) T. R. O. MANGIN,
Deputy Commissioner, Central Province.

Judgment on Review.

IN THE PROVINCIAL COMMISSIONER'S COURT, CAPE COAST, CENTRAL PROVINCE, GOLD COAST.

Saturday, the 28th day of October, 1939. 20

CORAM: His Worship T. R. O. MANGIN, Esquire, Deputy Commissioner, Central Province.

(Title.)

JUDGMENT.

This is a Motion made by Plaintiff-Respondent for a Review of Judgment given against him by a Judgment delivered in this Court on the 26th September, 1939, in an Appeal from a Judgment of the Eguafo Tribunal.

To support this Motion learned Counsel for the Plaintiff-Respondent 30 submits that certain documents relevant to the case were not brought to the notice of the Court at the hearing of the Appeal and that their omission seriously affects the aspect of the case. The documents referred to are:—

"A."—A judgment of the Eguafo Tribunal in a case where the present Plaintiff-Respondent took an action against the present Defendant-Appellant for trespass on the same land as is involved in the present suit. This was in the year 1934.

"B."—An Appeal Judgment from "A" delivered by the Acting Deputy Provincial Commissioner in which he upholds the Tribunal's decision that trespass has been committed. This was in the year 40 1935.

"C."—An Appeal Judgment from "B" delivered by the West African

Court of Appeal in 1936 in which that Court allows the Appeal and says that no trespass has been committed.

“ D. ”—A Ruling by this Court that the Tribunal of Eguafu has jurisdiction over the land in dispute.

In the
Provincial
Commis-
sioner's
Court.

10 Counsel for Opposer Defendant-Appellant submits that according to Odger's Ninth Edition, page 350, a review can only be granted if fresh evidence is to be produced which has subsequently been discovered and could not with reasonable diligence have been discovered before the original trial and submits that all the above mentioned documents could have been produced.

No. 22.
Judgment
on Review,
28th
October,
1939—
continued.

I entirely agree with the opposing Counsel on this and it is certainly most odd that such documents should have been omitted, but in the interests of justice one cannot be too meticulous over such matters, and so I decide to grant the Motion and proceed with the review.

After arguing the various points on the documents above enumerated by the learned Counsel for Plaintiff-Respondent, the learned Counsel for Defendant-Appellant submits that Documents “ A ” and “ B ” are inadmissible in that they are both judgments which have been reversed by the West African Court of Appeal in “ C. ”

20 I entirely agree with this view and this Court must take great care not to be misled and confused by outside dicta not relevant to the Appeal which is before it. “ A, ” “ B ” and “ C ” are all judgments relating to a claim for damages for trespass by Plaintiff - Respondent against Defendant-Appellant and “ C ” is the final dictum by the West African Court of Appeal on the matter, namely, that no trespass was committed. That and that only is all that this Court can take notice of in these documents except that their production is evidence which was not forthcoming at the original hearing that there had been previous litigation over this land.

30 “ D ” merely records the facts that the Eguafu Tribunal has jurisdiction to try the case and its production has no significance.

The following points have been raised in this review :—

(1) That Plaintiff-Respondent has not slept on his rights as stated in my Judgment of the 26th September, 1939, as fresh evidence has now been brought to light as to previous litigation.

This is true and my judgment of the 26th September, 1939, is therefore varied to the extent that the following sentence is to be deleted :—

40 “ One would imagine that having missed his opportunity of establishing his title by way of interpleader he might have proceeded to action for trespass against the Defendant. But no, he does nothing till 21 years after he sues the Defendant for rents to which the Defendant has never agreed, ”

and in place thereof the following sentence is to be inserted :—

“ It is now apparent that the Plaintiff has made certain endeavours to establish title to the land in dispute and took an action for trespass against the Defendant which action failed before

In the
Provincial
Commissioner's
Court.

No. 22.
Judgment
on Review,
28th
October,
1939—
continued.

“ the West African Court of Appeal and having failed in this is now
“ trying to establish his right by suing the Defendant for rents on the
“ land to which the Defendant never agreed.”

(2) That Wadababa land and Ebuhu land are not one and the same
and that this Court should now order a survey to be made.

As said above, there has been previous litigation on this land and I am quite certain that there is no doubt whatsoever in the minds of the Plaintiff and the Defendant and the Tribunal which originally heard the case as to the confines and extent of the land in dispute. On the last case I notice that the West African Court of Appeal saw no cause or reason to order a survey plan to be made in the matter before it on this same land and if they are of that opinion I can find no justification for putting the parties to the unnecessary expense of having a survey carried out. 10

(3) That the Certificate of Purchase produced by the Defendant-Appellant only confers on him tenantry rights to the land in question.

My examination of the record when first hearing the Appeal led me to say in my judgment that the Tribunal had made erroneous statements in its judgment as to the evidence before it which led to perverted findings of fact, and, as nothing has been brought to alter my decision in that matter, to that statement I strictly adhere. 20

(4) The final point is my reference in my judgment to the employment of the Statute of Limitation by English Law. In view of the previous judgment now brought to my notice this possibly does not now apply according to English Law, but I would point out that according to Sarbah eight years is the limit of time imposed in Native Custom and the Plaintiff-Respondent certainly waited twelve years before doing anything and so the same principle applies.

To sum up, it is my belief that the Plaintiff-Respondent is endeavouring to use the Courts in every conceivable manner to try and recover to his Stool certain land which was legally alienated twenty-one years ago and which no doubt has now become profitable. I do not believe that the documents now produced were unwittingly omitted, I believe that they were omitted because the Plaintiff-Respondent knew that the only one that matters records his final failure to secure the land and that it was only when he failed again in this Court that they were produced in an endeavour to divert the Court's mind from the real issues of the Appeal before it.

My previous judgment with the exception of the variation above mentioned therefore stands, and the Plaintiff-Respondent will pay the costs of this review which are to be taxed. 40

(Sgd.) T. R. O. MANGIN,
Deputy Commissioner, Central Province.

Counsel :—

Mr. W. WARD BREW for Plaintiff-Respondent.

Mr. C. F. HAYFRON-BENJAMIN for Defendants-Appellants.

No. 23.

Certificate of Judgment on Review.

(Title.)

In the
Provincial
Commissioner's
Court.

No. 23.
Certificate
of
Judgment
on Review,
28th
October,
1939.

I HEREBY CERTIFY that the Judgment of this Court on the Review which was granted upon application by the Plaintiff-Respondent herein was that the previous Judgment dated the 26th day of September, 1939, with the exception of the variation mentioned in the present judgment, should stand and the Plaintiff-Respondent pay the costs of this Review which should be taxed.

10 Given under my hand and the Seal of the Court of the Provincial Commissioner, Cape Coast, this 28th day of October, 1939.

(Sgd.) SAM YARNEY,
Registrar.

No. 24.

Grounds of Appeal.

In the
West
African
Court of
Appeal.

No. 24.
Grounds
of Appeal,
22nd
December,
1939.

IN THE WEST AFRICAN COURT OF APPEAL, VICTORIABORG, ACCRA.

Between—CHIEF KWEKU DADZIE, Nkyidomhene of Breman
for himself and on behalf of the Anona Stool Family
of Breman, Eguafu State *Appellant*

20 and
ATTA KOJO and KOJO APPEANYA *Respondents.*

The Appellant, being dissatisfied with the Judgment of the Provincial Commissioner's Court at Cape Coast, delivered on the 28th day of October, 1939, herein, and having obtained Final Leave to Appeal therefrom, dated the 16th day of December, 1939, hereby appeals to the West African Court of Appeal upon the grounds hereinafter set forth.

GROUNDS OF APPEAL.

1. Because the Court was wrong in holding that the Plaintiff-Appellant is not entitled to the Declaration sought for herein, and that the claim is
30 barred under Native Customary Law or the English Law of Limitation by long possession and acquiescence.

2. Because in all the previous proceedings between the parties herein, it was established that one Kweku Mensah referred to in the Certificate of Purchase which is relied upon by the Defendants-Respondents, was a tenant of the Plaintiff-Appellant of portion of the land, owned by him as ancestral

In the
West
African
Court of
Appeal.

No. 24.
Grounds
of Appeal,
22nd
December,
1939—
continued.

property, and that the first Defendant-Respondent had only bought the said Kweku Mensah's right of tenancy to the land which he then occupied by permission of the Plaintiff-Appellant's predecessor, and that therefore the Defendants-Respondents are estopped from denying that the Plaintiff is owner of the land and therefore entitled to the Declaration and Relief set forth in the claim herein.

3. Because the second Defendant-Respondent was wrongly joined as a party to the proceedings in that there was no evidence whatever on the Record to show that the second Defendant-Respondent had any title or interest in the land Eborhu and Warababa, since the first Defendant-Respondent claimed title under a Certificate of Purchase referred to in all the proceedings. 10

4. Because the Court failed to give due consideration to the documentary evidence which were tendered by the Plaintiff-Appellant on review of the previous Judgment of the 26th September, 1939, by the Court.

5.—Because the Court was wrong in reversing the Judgment of the Native Tribunal of Eguafu on question of fact since the Court did not take any evidence at the Appeal before it; (also made no inspection) and had no plan of the area in dispute before it, shewing the relative positions of the land which the Plaintiff-Appellant described as "Eborhu" land and Defendants-Respondents as "Warababa" land; the description of land alleged to have been bought by first Defendant-Respondent in the Certificate of Purchase relied upon by the first Defendant-Respondent being vague, indefinite and uncertain. 20

6. Because the Judgment is against the weight of evidence.

7. Because the Judgment is contrary to Native Law and Custom.

8. Because the Judgment is contrary to Law, Equity and good conscience.

9. Because the Judgment is otherwise erroneous.

Dated at Cape Coast this 22nd day of December, 1939.

His
X
Mark.

30

For himself and on behalf of the Anona Stool
Family of Breman.

Witness to mark :—

(Sgd.) J. I. AIKINS,
Law Clerk, Barrister-Abadoo, Jnr.,
Cape Coast.

I, Joseph Isaac Aikins, of Cape Coast do hereby certify that this Appeal 40 has been read over and explained by me in the Fanti language to the Appellant herein named who is personally known to me, and that the Appellant declared in my presence and hearing that he understood the

foregoing and in my presence he affixed his mark to this Appeal this 22nd day of December, 1939.

(Sgd.) J. I. AIKINS,
Clerk to Barrister Abadoo, Jnr.

The Registrar, West African Court of Appeal, Accra.

And to the above-named Defendants-Respondents, Atta Kojo and Kojo Appeanya, all of Essaman.

Upon the 23rd day of December, 1939, I served a copy of these Grounds of Appeal on Atta Kojo personally at Warababa Village.

10

(Sgd.) J. G. DADZIE,
Bailiff,
P.C.'s Court.

Upon the 2nd day of January, 1940, this Grounds of Appeal was served by me on Kojo Appeanya, Respondent. This I did by serving a copy of the above Grounds of Appeal on the said Kojo Appeanya personally at Dunkwa.

(Sgd.) J. E. ACQUAY,
Bailiff.

No. 25.

Court Notes as to Plan of land in dispute.

20

27th May, 1940.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at VICTORIABORG, ACCRA, on Monday, the 27th day of May, 1940, before Their Honours Sir DONALD KINGDON, C.J., Nigeria (President), Sir PHILIP BERTIE PETRIDES, C.J., Gold Coast, and GRAHAM PAUL, C.J., Sierra Leone.

CHIEF KWEKU DADZIE, Nkyidomhene of Breman for himself and on behalf of the Anona Stool and Family of Breman in Eguafo State *Appellant*

30

vs.

ATTA KOJO and KOJO APPEANYA *Respondents.*

Appeal from Judgment of Court of Provincial Commissioner, Central Province, dated 28th October, 1939.

W. WARD BREW for Appellant (with him D. M. ABADOO).

C. F. H. BENJAMIN for Respondents.

WARD BREW for Appellant raises preliminary question :—

See Grounds of Appeal, page 31. Ground 5, page 32. Compare page 27, line 13. There is no plan and will save parties trouble if a plan is made and put before the Court. Compare page 78.

In the West African Court of Appeal.

No. 24. Grounds of Appeal, 22nd December, 1939—
continued.

No. 25. Court Notes as to Plan of land in dispute, 27th May, 1940.

In the
West
African
Court of
Appeal.

BENJAMIN : We rely upon a Certificate of Purchase and throughout there is no suggestion of the necessity for a plan until the review. Certificate of Purchase is quoted at page 15. The matter is in the hands of the Court.

W. BREW in reply :—

No. 25.
Court Notes
as to Plan
of land in
dispute,
27th May,
1940—
continued.

See page 13. The Provincial Commissioner did not appreciate that there are two Wadababas. Eborhu is a very big area and different places in it are called Wadababa.

DECISION :

On what is before it at present the Court sees no reason to order a plan. If in the course of the hearing the necessity appears, the appropriate order 10 will be made.

Grounds 7, 8 and 9 of the Grounds of Appeal are struck out.

Hearing adjourned till later.

(Sgd.) DONALD KINGDON,
President.

27th May, 1940.

No. 26.
Arguments
of Counsel,
Ward Brew
for
Appellant,
28th May,
1940 ;
Benjamin
for
Respon-
dents,
28th May,
1940.

No. 26.

Arguments of Counsel.

28th May, 1940.

In the WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at VICTORIABORG, ACCRA, on Tuesday, the 28th day of May, 1940, before 20 Their Honours Sir DONALD KINGDON, C.J., Nigeria (President), Sir PHILIP BERTIE PETRIDES, C.J., Gold Coast, and GRAHAM PAUL, C.J., Sierra Leone.

(16) 14/40.

Civil Appeal.

CHIEF KWEKU DADZIE, Nkyidomhene of Breman for himself
and on behalf of the Anona Stool and Family of Breman
in Eguafu State *Plaintiff-Respondent-Appellant*

ATTA KOJO and KOJO APPEANYA *v.* *Defendants-Appellants-Respondents.*

Ward Brew
for Plaintiff.

WARD BREW for Appellant.

30

Writ is at page 1. Grounds of Appeal page 31.

Grounds 1 and 2 together.—Judgment of Native Tribunal, page 14. Eborhu land is a large tract and the Defendants say they purchased cocoa land on it from one Kweku Mensah under a sale by the Court and they rely upon a Certificate of Title. The Certificate of Title has no plan. Exhibit " A " at page 42. Kwesie Asafuah swears an affidavit. It shows

he was our former tenant on Eborhu land. This was put in in the Tribunal. At page 7, lines 8 and 9 Eborhu or Obohu land is mentioned also Warababa Village. At page 7, lines 33 and 34 also page 8, lines 24 and 25. Inspection Report page 13. See Certificate of Title Exhibit "D." (See pages 15 and 41.) Atta Kojo did not give evidence in the Tribunal. Kojo Appeanya did. He was joined at page 4. His interest was never disclosed. Provincial Commissioner's judgment is at pages 20 to 22 and Review at pages 28 to 30. It is against that that we are appealing. On review Provincial Commissioner amended practically the whole of his judgment. 10 Defendants relied upon the Certificate of Purchase. In Tribunal Judgment page 15, lines 21 to 32. (Benjamin does not agree with "not denied.")

As regards tenancy :

(In answer to Court) : I do not wish to argue as to accounts. I do not press our claim for accounts. I press for the injunction.

BENJAMIN for Respondents :

I have three lines of defence :—

First : The question of long undisturbed possession. The Defendant bought the land and the cocoa farm—bought it outright as per Certificate of Purchase. He bought with knowledge of Plaintiff.

20 *Secondly* : Defendant set up a title as against Plaintiff of the man from whom he purchased. See pages 9 to 12. At page 15 the Tribunal was wrong in saying it was not denied by Defendants, etc. Tribunal is also wrong in lines 29 to 31 of page 15. Defendant relies not only on purchase, but on good title of Defendant. Hence Commissioner said Tribunal started with wrong premises and so came to wrong finding of fact. On those two errors alone Provincial Commissioner could have referred case to Tribunal for re-hearing. Instead of doing that—with a desire to avoid multiplicity he found that Plaintiffs could not succeed because they had slept on their rights for twenty-one years and Defendants had been collecting rents.

30 *Assraidu v. Dazie* : Sarbah (Customary Law), page 174 at 177 2nd Edition.

It was for Plaintiff to call witnesses to prove that Kweku Mensah was his tenant. I submit Commissioner was correct.
WARD BREW not called upon.

(A short adjournment.)

Judgment delivered.

(Sgd.) DONALD KINGDON,
President.

28th May, 1940.

In the
West
African
Court of
Appeal.
—
No. 26.
Arguments
of Counsel,
Ward Brew
for
Appellant,
28th May,
1940 ;
Benjamin
for Respon-
dents,
28th May,
1940.
Ward Brew
for Plaintiff
—continued.

Benjamin
for Defen-
dants.

In the
West
African
Court of
Appeal.

No. 27.

Judgment.

(Title.)

No. 27.
Judgment,
28th May,
1940.

JUDGMENT.

The Plaintiff claimed a declaration of title to the land known as Eborhu, an account of rents received by Defendants in respect of parts of the land and an injunction to prevent the Defendants collecting any more rents. The Native Tribunal of the Eguafu State, in which the suit was brought, found in Plaintiff's favour and gave him all he asked. The Plaintiff did not seek to recover possession of the land in occupation of 10 first Defendant.

On Appeal to the Court of the Provincial Commissioner, Central Province, the Provincial Commissioner reversed the Tribunal's decision. The main ground for his decision was that the first Defendant bought the land under a Fi. Fa. sale and got a Certificate of Purchase. But actually all that the first Defendant bought was Kweku Mensah's right, title and interest in the land. What Kweku Mensah's right, title and interest was is a question of fact and the Native Tribunal found as a fact that his right, title and interest were that of a tenant only. There was abundant evidence to support that finding of fact and we see no reason to disturb it. The 20 Tribunal also found as a fact that "Eborhu land belongs to the Plaintiff." This finding also is fully supported by the evidence.

The other point upon which the Provincial Commissioner based his decision was that the Plaintiff waited twelve years before doing anything to establish his right. If this were an action to recover possession, this matter of "sleeping on his rights" might have to be carefully considered, but it is well established Native Law and Custom that rights of ownership are not extinguished by lapse of time, and consequently the Plaintiff has not lost his right to the declaration he seeks.

Plaintiff's Counsel in this Court does not press that part of the claim 30 which asks for an account of rents.

The Appeal is allowed and the judgment of the Provincial Commissioner's Court, including the order as to costs, is set aside and it is ordered that, if any costs have been paid by the Appellant to the Respondents under that judgment, they shall be refunded. The judgment of the Tribunal of the Paramount Chief of the Eguafu State is restored, except that part thereof which orders the Defendants to render an account.

The Appellant is awarded costs in this Court assessed at £34. 5. 3., but inasmuch as the judgment of the Tribunal has been varied in the manner

indicated each party will bear his own costs in the Provincial Commissioner's Court.

(Sgd.) DONALD KINGDON, *President.*

(Sgd.) PHILIP B. PETRIDES,
Chief Justice, Gold Coast.

(Sgd.) G. GRAHAM PAUL,
Chief Justice, Sierra Leone.

28th May, 1940.

Counsel :—

Mr. W. WARD BREW for Appellant.

10 Mr. C. F. H. BENJAMIN for Respondents.

In the
West
African
Court of
Appeal.

No. 27.
Judgment,
28th May,
1940—
continued.

No. 28.

Affidavit of Kojo Appeanya in support of Motion for Conditional Leave to Appeal to the Privy Council.

In the WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, ACCRA.
(*Title.*)

I, KOJO APPEANYA, Carpenter of Elmina, now temporarily in Accra, hereby make oath and say :—

1.—That I am the second Defendant-Respondent herein and have the authority of the first Defendant-Respondent Atta Kojo to depose to
20 the facts set out herein on our joint behalf.

2.—That Judgment of the West African Court of Appeal was delivered against us, the Defendants-Respondents herein, on or about the 28th day of May, 1940.

3.—That being aggrieved by and dissatisfied with the said judgment, we are desirous of appealing therefrom to His Majesty's Judicial Committee of the Privy Council.

4.—That we have caused Notice of our intention to Appeal to the Privy Council to be served through the Court on the Plaintiff-Appellant herein, after filing the original of such Notice in Court.

30 5.—That since my brother Atta Kojo and I bought the land, the subject-matter of the dispute herein, over twenty-one (21) years ago, we have improved it and have made extensive cocoa farms thereon, and our licencees have similarly made cocoa farms, yam, cassava, and other farms thereon, valuing over Two thousand pounds (£2,000).

6.—That the value of the said land has thereby been enhanced and we estimate its worth now to be over Five hundred pounds (£500).

No. 28.
Affidavit of
Kojo
Appeanya
in support
of Motion
for
Conditional
Leave to
Appeal,
18th June,
1940.

In the
West
African
Court of
Appeal.

No. 28.
Affidavit of
Kojo
Appeanya
in support
of Motion
for
Conditional
Leave to
Appeal,
18th June,
1940—
continued.

7.—That I make this affidavit in support of Motion on our joint behalf for Conditional Leave to Appeal to His Majesty's Judicial Committee of the Privy Council, England.

Sworn at Accra this 18th day of June, 1940, after the foregoing had been read over, interpreted and explained to the Deponent in Fanti language by Richard Yaw Okyiri when he seemed perfectly to understand the same before making his mark in my presence.

Kojo Appeanya

His
X
Mark.

Before me,

(Sgd.) ROBERT A. BANNERMAN,
Commissioner for Oaths.

10

Interpreter and witness to mark :—

(Sgd.) R. Y. OKYIRI,
Supreme Court Clerk.

No. 29.
Court Notes
granting
Conditional
Leave to
Appeal,
19th
November,
1940.

No. 29.

Court Notes granting Conditional Leave to Appeal.

19th November, 1940.

In the WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at VICTORIABORG, ACCRA, on Tuesday, the 19th day of November, 1940, before Their Honours Sir DONALD KINGDON, C.J., Nigeria (President), Sir PHILIP BERTIE PETRIDES, C.J., Gold Coast, and GEORGE GRAHAM PAUL, C.J., Sierra Leone.

Civil Motion.

CHIEF KWEKU DADZIE, Nkyidomhene of Breman, for himself and on behalf of the Anona Stool and Family of Breman in Eguafu State ... *Plaintiff-Respondent-Appellant-Respondent*

v.

ATTA KOJO and KOJO APPEANYA ... *Defendants-Appellants-Respondents-Appellants.* 30

Application for Conditional Leave to Appeal to the Privy Council.

C. F. H. BENJAMIN to move on Notice on behalf of Atta Kojo and Kojo Appeanya.

No appearance by or for Chief Kweku Dadzie.

Certificate of service upon him before this Court.

BENJAMIN :

I move under Rule 3 (a) of the Rules governing Appeals in terms of the Motion Paper. In 1918 land worth £30. Since then many cocoa farms made on land and present value is over £2,000.

ORDER :

Conditional Leave to Appeal to the Privy Council is granted subject to the following conditions :—

- 10 (a) The Appellants within three months to give security with two sureties to the satisfaction of the Court in the sum of £500 for the due prosecution of the Appeal and the payment of all such costs as may become payable to the Respondent in the event of the Appellants not obtaining an order granting them final leave to Appeal or of the Appeal being dismissed for non-prosecution or of His Majesty in Council ordering the Appellants to pay the Respondent costs of the Appeal. The question of the sufficiency of the security is to be decided by a single Judge of the Court upon Motion by the Appellants due notice thereof being given
- 20 to the Respondent.
- (b) The Appellants to deposit in Court within three months the sum of £50 towards the cost of preparing the record.
- (c) The Appellants within three months to give notice to the Respondent.

(Sgd.) DONALD KINGDON,
President.

19th November, 1940.

In the
West
African
Court of
Appeal.

No. 29.
Court Notes
granting
Conditional
Leave to
Appeal,
19th
November,
1940—
continued.

In the
West
African
Court of
Appeal.

No. 30.

Court Notes granting Final Leave to Appeal.

No. 30.
Court Notes
granting
Final
Leave to
Appeal,
13th May,
1941.

In the WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at VICTORIABORG, ACCRA, on Tuesday, the 13th day of May, 1941, before Their Honours Sir DONALD KINGDON, C.J., Nigeria (President), Sir PHILIP BERTIE PETRIDES, C.J., Gold Coast, and GEORGE GRAHAM PAUL, C.J., Sierra Leone.

Civil Motion.

CHIEF KWEKU DADZIE, Nkyidomhene of Breman, for himself and on behalf of the Anona Stool and Family of Breman in Eguafu State ... *Plaintiff-Appellant-Respondent*

10

v.

ATTA KOJO and KOJO APPEANYA *Defendants-Respondents-Appellants.*

C. F. H. BENJAMIN to move for Final Leave to Appeal to the Privy Council on Notice.

N. A. OLLENNU for Respondent opposes.

BENJAMIN : We have complied with all the conditions. A single Judge approved the sureties, and there has been no Appeal against his decision.

OLLENNU : We submit that the sureties who were accepted by the single Judge were not worth the sum of £500 required by the conditions. Even though single Judge was satisfied, we submit that this Court has the power to vary or discharge or reverse the decision and that this is a case where this Court should exercise that power. Judge took evidence. See evidence of Sam and his Affidavit. Evidence shows he is not worth £500. Respondent stands to lose if he is accepted. See evidence of Mensah and his affidavit. I submit that land bought for £60 with a swish building thereon cannot be worth £300. I agree other conditions are complete.

20

BENJAMIN not called upon.

ORDER :

There is nothing before the Court to justify a variation of the decision of the single Judge to accept the sureties offered. Final leave granted as prayed. The Appellants are awarded 3 guineas costs upon this application. 13th May, 1941.

(Sgd.) DONALD KINGDON,
President.

EXHIBITS.

Exhibit "D."—Certificate of Purchase by Attah Kojoe.

EXHIBIT "D."

Tendered in evidence *in re Ohene Kweku Dadzie v. Atta Kojoe and Kojoe Appeanya*, marked "D" and accepted.

(Sgd.) J. N. AIKINS,
N.T., Eguafu.
21/3/39.

Exhibits.
In the
Eguafu
Native
Tribunal.

Defendants'
Exhibit.
"D."

Certificate
of Purchase
by Attah
Kojoe,
29th April,
1908.

No. 48.

10

CERTIFICATE OF PURCHASE OF LANDS.

In the SUPREME COURT OF THE GOLD COAST COLONY, CENTRAL PROVINCE,
CAPE COAST.

A.D. 1908.

Suit No. 5/16.

Between—KWEKU MENSAH Plaintiff
and
KWESIE TANDOH Defendant.

This is to certify that Attah Kojoe has been declared the Purchaser of the right, title and interest of Kweku Mensah in the messuages lands and 20 tenements hereinafter mentioned, that is to say :

All that Plaintiff's land called Wadababa situate and being at Essaman or thereabouts in the District of Elmina bounded by or abutting the lands of the following persons, namely, Garboh, Kobina Esuon, and Ohene Kwesie Tandoh sold by Public Auction under Writ of Fi. Fa. No. 5/16 in the above case on the 13th day of February, 1918, for the sum of £30. 0. 0. which said messuages lands and tenements were sold in execution of a decree in the above Suit by Order of this Court, dated the 13th day of February, 1908.

Dated at C. Coast the 29th day of April, 1908.

30

(Sgd.) G. W. CALLEY,
District Commissioner.

Exhibits.

Exhibit "A."—Document signed by Kwesi Asafuah and 3 Others.

In the
Eguafo
Native
Tribunal.

EXHIBIT "A."

Marked "A" for identification in *Dadzie v. Atta & Or.*

Plaintiff's
Exhibit
"A."
Document
signed by
Kwesi
Asafuah
and
3 others,
26th March,
1928.

(Intd.) J. E. K. B.,
Regr., C.C.P.'s Ct.
6/9/35.

Exhibit "A" put in by Plff.-Respt. in *Dadzie v. Kojo & Or.*

(Intd.) J. E. K. B.
Regr., C.C.P.'s Ct.
7/9/35. 10

Stamped
One
Shilling.

sic.

I, KWESIE ASAFUAH of Asamang village presently residing at Warababa, known as Warababa land, make oath and say as follows :—

1.—That I have occupied on the above land which belongs to Chief Kweku Dadzie's ancessiaries actual property of Breman, *via* Eguafo.

2.—In the event of cultivating on the above land or having been allowed any of my families to act the same.

3.—I am to celebrate on the stool every current year at Breman with the following articles—cash ten shillings 10/- one bottle whisky eight yams and one sheep.

4.—This document is made in the presence of Nana Abutaikyi II 20
Omanhene of Eguafo, and his Councillors, namely, Kojo Aidoo, Kojo Nyamikyeh, Kwesie Akromah, Kobina Asanhumah, Kweku Emissah, Kwamina Tetteh, Kwesi Awortwi, Kobina Agyelfah, Kofi Mensah and Kojo Abban.

Dated at Eguafo this 26th day of March, 1928.

	Their	
Kwesi Asafuah	X	
Ekra Kwesie	X	
Kweku Attah	X	
Kofie Enim	X	
	Marks.	30

Witness : His
Kwamina Koom X
Mark.

W. & W. to marks :—

(Sgd.) J. C. DADZIE,
Gratis.

Documents exhibited to the affidavit of Plaintiff, sworn 28th September, 1939.
(Item No. 18 in Record, p. 23.)

Exhibits.

Exhibit "A."—Judgment of Eguafu Native Tribunal.

This is the copy of Judgment of the Native Tribunal of Eguafu, dated the 16th day of July, 1934, marked "A" referred to in the affidavit of Kweku Dadzie sworn before me this 28th day of September, 1939.

(Sgd.) SAM YARNEY,
Commissioner for Oaths
(Registrar, P.C.'s Court).

Documents
exhibited to
Affidavit of
Plaintiff,
sworn 28th
September,
1939.
(Item No. 18
in Record,
p. 23.)

10 KWEKU DADZIE, Nkyidomhene of Breman, for and on
behalf of the Anona Stool and Family of Breman ... Plaintiff
vs.
ATTA KOJO and KOJO APPEANYA ... Defendants.

Plaintiff's
Exhibit
"A."

Judgment
of Eguafu
Native
Tribunal,
16th July,
1934.

JUDGMENT.

Plaintiff herein brought this case against the Defendant for £25 damages for trespass committed by Defendants and their people on Plaintiff's land known and called "Ebuhu" which Warababa village presently stands. The trespass complained that Defendants being unlawfully entry on the said land with one Mr. Essien a surveyor from Sekondi for the purpose of making a survey thereof. Both parties with their witnesses appeared at the hearing. Defendants never deny with Plaintiff witnesses, and documents of evidence adduced, and Defendants are only claiming a portion of Plaintiff's land which was sold to them by late Ohene Kwesie Donkoh of Essaman when he had a case with one Kweku Mensah also of Essaman: as his father acquired the said portion from Plaintiffs' ancestors to cultivate thereon. The Tribunal doubted the purchase by Defendants and evidence (and evidence) and their Certificate of Purchase. Because Atta Kojo was spokesman (Linguist) during the trial of the case *Kwesie Donkoh* and *Kweku Mensah*, and how shall the properties of Defendant late Kweku Mensah will be sold to Atta Kojo and nobody else from Essaman or anyone in the village. Therefore, Tribunal finds that the selling of late Kweku Mensah's properties was not true, or false.

Another point of view Atta Kojo was unable of saying something to Tribunal or produce his "Certificate of Purchase" when Plaintiff sworn two oaths on the Defendants at Warababa village restraining them not to go on his land in dispute he Defendant Atta Kojo pleaded guilty and he paid the oath fee, and costs with the case, since 7th April, 1928.

Also Plaintiff had litigated with late Kwesie Assaifuah of Essaman on the same land you Defendants never say or raised any objection to the claimed of the said portion.

More also Plaintiff sued the true or real uncle of Defendants on the same land in dispute also they did nothing at the litigation whilst the said Certificate of Purchase in the possession of Defendants.

Exhibits.
Documents
exhibited to
Affidavit of
Plaintiff,
sworn 28th
September,
1939.
(Item No.18
in Record,
P. 23.)
Plaintiff's
Exhibit
" A."
Judgment
of Eguafu
Native
Tribunal,
16th July,
1934—
continued.

Again Atta Kojo has resold the portion to late Krabah the mother or sister of Defendants and why she Krabah never employed a surveyor to survey the portion but Defendants. So, therefore, the Tribunal were doubted of the whole evidence of Defendants that they had no land at Ebuhu also the selling was wrongfully sold by Kwesie Donkoh to the family. And that judgment is for the Plaintiff with costs and £8 damages awarded. Defendants and people may remove from the land after 5 months. Failing the plantation, etc., etc., shall be forfeit by Plaintiff.

(Sgd.) ABUTAKEYI II,
Omanhene. 10

(Sgd.) FRANCIS K. SARPEY-BENTUM,
Recorder.
16.7.34.

Plaintiff's
Exhibit
" B."
Judgment
of Mr. L. W.
Judd
(Provincial
Commis-
sioner's
Court), 31st
October,
1935.

Exhibit " B."—Judgment of Mr. L. W. Judd (Provincial Commissioner's Court).

This is the copy of Judgment of the Provincial Commissioner's Court, dated 31st October, 1935, marked " B" referred to in the Affidavit of Kweku Dadzie sworn before me this 28th day of September, 1939.

(Sgd.) SAM YARNEY,
*Commissioner for Oaths
(Registrar, P.C.'s Court.)* 20

In the PROVINCIAL COMMISSIONER'S COURT, CENTRAL PROVINCE OF THE GOLD COAST, CAPE COAST, AT WINNEBA.

Thursday, the 31st day of October, 1935.

CORAM : L. W. JUDD, Esq., Ag. Deputy Commr., C.P.

KWEKU DADZIE, Nkyidomhene of Breman for and on behalf
of the Anona Stool Family *Plaintiff-Respondent*

vs.

- 1. ATTA KOJO
- 2. KOJO APPEANYA *Defendants-Appellants.*

For Notes of arguments by Counsel for both parties in the case see pages 315-319 of Appeal Record Book, Volume XXI. 30

JUDGMENT by Mr. JUDD, Ag. Dep. C.C.P.

This is an Appeal from the Tribunal of the Paramount Chief of the Eguafu State.

The Writ of Summons reads as follows :—

"The Plaintiff as Nykidomhene of Breman, claims on behalf of the " Anona Stool and Family of Breman the sum of £25. 0. 0. damages for

“trespass committed on Plaintiff’s land attached to the Stool of the said Anona Family and commonly known as and called Abohu situate within the territory or State of Eguafu which the said land Defendant and his people have named ‘Warababa.’

“The trespass complained of being the unlawful entry of the said land by Defendant and people with one Essuman, a surveyor, from Sekondi for the purpose of making a survey thereof.”

At the beginning of the hearing before the Tribunal, Atta Kojo the first Defendant-Appellant asked leave of the Tribunal to allow one Kojo Appenya “Who is interested in the case” to be joined as Co-Defendant. The interest of Kojo Appenya is not stated, but it was he who gave evidence for the defence before the Tribunal and he also moved this Court for leave to appeal.

The Plaintiff’s case is that the land in question is land which has been attached to his Stool for generations and that the 1st Defendant and others have trespassed upon it. The case for the defence is that the land on which the surveyor entered belonged to one Kweku Mensah and was bought by Atta Kojo at a sale by auction in 1918 held under a Writ of Fi. Fa. and that he (Atta Kojo) holds a Certificate of Purchase in respect of the land he bought and has been in possession since the sale.

The Tribunal found that “the selling of late Mensah’s properties was not true,” and gave judgment for the Plaintiff-Respondent for £8 damages and costs and ordered that the Defendants should quit the land in 5 months. When the Appeal first came on for hearing certain doubts were cast on the Record in the Tribunal and it was decided to re-hear the whole evidence in the case. This has now been done at length and both parties have had the advantage of having Counsel to conduct their case for them.

It is alleged by Plaintiff-Respondent and not denied by the Defendant-Appellant that the land was originally owned by the Stool now occupied by the Plaintiff-Respondent.

The Defence however is based entirely on the sale of the land by the Court under a Writ and on the Certificate of Purchase issued by the Court to Atta Kojo.

The Certificate of Purchase was put in evidence as Exhibit “C” and reads:—

“This is to certify that Atta Kojo has been declared the purchaser of the right, title and interest of Kweku Mensah in the messuages lands and tenements hereinafter mentioned, that is to say:

“All that Plaintiff’s land called Wadababa situate and being at Essaman or thereabouts in the district of Elmina bounded by or abutting the lands of the following persons, namely, Garbah Kobina Esuon, and Ohene Kwesi Tandoh, sold by Public Auction under a Writ of Fi. Fa. No. 5/16 in the above-named case on the 13th day

Exhibits.

Documents exhibited to Affidavit of Plaintiff, sworn 28th September, 1939.

(Item No. 18 in Record, p. 23.)

Plaintiff’s Exhibit “B.”

Judgment of Mr. L. W. Judd (Provincial Commissioner’s Court), 31st October, 1935—
continued.

Exhibits.

Documents
exhibited to
Affidavit of
Plaintiff,
sworn 23th
September,
1939.
(Item No. 18
in Record,
p. 23.)

“ of February, 1918, for the sum of £30 which said messuages lands
“ and tenements were sold in execution of a Decree in the above suit
“ by order of this Court dated 13th day of February, 1918.

“ Dated at Cape Coast the 29th day of April, 1918.”

The Certificate is signed by G. W. Catley, District Commissioner. The authenticity of this document was at first disputed by the Plaintiff-Respondent, but after Counsel for defence had made exhaustive search he was able to prove that the document was authentic and issued by the Court of the District Commissioner, Cape Coast.

Plaintiff's
Exhibit
“ B.”
Judgment
of Mr. L. W.
Judd
(Provincial
Commis-
sioner's
Court), 31st
October,
1935—
continued.

By this sale Atta Kojo has bought the right, title and interest of 10
Kewku Mensah in the land described. The Plaintiff-Respondent states in
his evidence that Kweku Mensah was given permission to farm on the land
by his (Plaintiff-Respondent's) predecessor Kwamina Asankuma on
condition that he paid a share of the debts and went on to say that in
the event of his death his heir would have the same obligations and the
same rights.

The witness Kwasi Tano, who farms land adjacent to that farmed by
the late Kweku Mensah said that Kweku Mensah did not own the land ;
but that he did not know how Kweku Mensah came to farm on it. The
witness Kwabina Eson *alias* Kwabina Panin, a son of Kweku Mensah, who 20
used to work with his father on the land stated that his father told him
that his father had obtained permission to farm from Asankuma, the
Plaintiff-Respondent's ancestor and that the land belonged to Kweku
Dadzie, the Plaintiff-Respondent.

The witness Kobina Eshon, another son of Kweku Mensah stated
that the land belonged to the Plaintiff-Respondent and not to Kweku
Mensah who merely had permission to farm on it. For the defence, the
Defendant-Appellant stated that he did not know how Kweku Mensah
came to farm the land and throughout the case for the defence no effort
has been made to rebut the evidence referred to above or to prove that 30
Kweku Mensah owned the land on which he farmed and I consider it
proved that the land belongs to the Stool occupied by the Plaintiff-
Respondent and that Kweku Mensah had the right to farm on it so long
as he paid the calls made upon him by the Plaintiff-Respondent.

I consider it proved that this was the only right he had and it therefore
follows that this is the only right which the Defendant-Appellant has
bought.

Learned Counsel for Appellant made a most able speech on behalf of
his client and made the utmost of his case. He first argued that there
was a strong presumption that the sale was in order. I have already said 40
that it was proved that the sale was in order. He next argued that the
sale conveyed the rights of occupancy, possession and usage and that the
Defendant-Appellant has been in possession physical as well as legal since

1918 and has committed acts of ownership with the knowledge of the Plaintiff-Respondent. Exhibits.

I have already dealt with the rights conveyed by the sale and need say no more on this. We next come to the contention that Atta Kojo has been in possession, physical as well as legal since 1918. Is this contention correct? I consider it proved that the land now in dispute was included in the cases the Plaintiff-Respondent brought against Asafua and Twintoh. There is the evidence of Kwesi Tano that he harvested the cocoa for 8 years until the events which led to this action. There is the admission that
 10 Atta Kojo was fined for violating an oath sworn on him not to enter the land. There is evidence that Atta Kojo went to the Plaintiff-Respondent and begged to be allowed the use of the land. This evidence does not bear out the contention that he has been in undisturbed possession since 1918. To rebut this evidence there is the evidence of Atta Kojo himself and his witness Kwao Akonua. As regards the former his evidence was contradictory on some points and given in a most unsatisfactory manner and I should hesitate to place any reliance on anything he said which was not strongly corroborated. The same applies though in a lesser degree to his witness Kwao Akonua.

20 Learned Counsel next argued that Plaintiff-Respondent was estopped from bringing this action as he had stood by all these years.

It has not been proved that he has stood by. To the contrary it has been proved that he has been continuously fighting for his rights over this land.

The contention that Defendant-Appellant has been in undisturbed possession since he bought the land cannot be upheld.

His third point is that the Defendant-Appellant has not been a party or privy to any of the previous actions and that there has been no previous action about the land in dispute. I have already said that it has been
 30 proved that there have been two previous actions over this land. To one at least of these he was privy since he gave evidence in the case. It has been proved that Kweku Mensah was a tenant to Plaintiff-Respondent. Defendant-Appellant bought that right of tenancy with its obligations. He has repudiated the obligations and thereby forfeits his tenancy.

The Appeal is dismissed with costs to be taxed.

(Sgd.) L. W. JUDD,
 Acting Deputy Commissioner, C.P.

Documents exhibited to Affidavit of Plaintiff, sworn 28th September, 1939.

(Item No. 18 in Record, p. 23.)

Plaintiff's Exhibit "B."

Judgment of Mr. L. W. Judd (Provincial Commissioner's Court), 31st October, 1935—
continued.

Exhibits.

Documents
exhibited to
Affidavit of
Plaintiff,
sworn 28th
September,
1939.
(Item No. 18
in Record,
p. 23.)

Plaintiff's
Exhibit
"C."

Judgment
of West
African
Court of
Appeal,
19th
December,
1936.

Exhibit "C."—Judgment of West African Court of Appeal.

"C."

This is the copy of Judgment of the West African Court of Appeal dated 19th December, 1936, marked "C" referred to in the affidavit of Kweku Dadzie, sworn before me this 28th day of September, 1939.

(Sgd.) SAM YARNEY,
Commissioner for Oaths,
(Registrar, P.C.'s Court).

19th December, 1936.

In the WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at 10
VICTORIABORG, ACCRA, on Saturday, the 19th day of December, 1936,
before Their Honours Sir DONALD KINGDON, C.J., Nigeria (President),
Sir PHILIP BERTIE PETRIDES, C.J., Gold Coast, and Sir ARTHUR
FREDERICK CLARENCE WEBBER, C.J., Sierra Leone.

CHIEF KWEKU DADZIE, Nkyidomhene of Breman for and on
behalf of the Anona Stool and Family of Breman

Plaintiff-Respondent

vs.

ATTA KOJO and KOJO APPENYA *Defendants-Appellants.*

JUDGMENT.

20

The Plaintiff-Respondent sued the Defendant Atta Kojo in the Native Tribunal of Eguafu claiming £25 damages for trespass to a certain piece of land. The body of the writ of summons in that action is in the following terms:—

"The Plaintiff as Nkyidomhene of Breman, claims on behalf of
"the Anona Stool and family of Breman the Sum of £25 damages for
"trespass committed on Plaintiff land attached to the Stool of the said
"Anona Family and commonly known as and called 'Obuhu' situate
"within the territory or state of Eguafu which the said land Defendant
"and his people have named 'Waradababa.' 30

"The trespass complained of being the unlawfully entry of the
"said land by Defendant and people with one Essien a Surveyor
"from Sekondi, for the purpose of making a survey thereof."

For no apparent reason the second Defendant was joined as a co-Defendant.

The Defendant Atta Kojo claimed that he was entitled to possession of the land on which he is alleged to have trespassed on the ground that he had bought the land at a sale by auction in 1918 held under a Writ of Fi. Fa. and had obtained a Certificate of Purchase in respect thereof.

The Tribunal was not satisfied with the evidence of Atta Kojo as to this sale and gave judgment for the Plaintiff for £8 damages and costs and ordered the Defendants and their people to remove from the land after 5 months, failing which the plantations were to become forfeited to the Plaintiff.

Exhibits.
Documents
exhibited to
Affidavit of
Plaintiff,
sworn 28th
September,
1939.
(Item No. 18
in Record,
p. 23.)

- 10 The Defendants appealed to the Court of the District Commissioner, Central Province, who by consent of Counsel to the parties re-heard the whole evidence because doubts had been cast on the Record in the lower Court. At the re-trial the Certificate of Purchase was put in evidence. The District Commissioner, Central Province, in his judgment said: "The Certificate is signed by G. W. Catley, District Commissioner. The authenticity of this document was at first disputed by the Plaintiff-Respondent, but after Counsel for defence had made exhaustive search he was able to prove that the document was authentic and issued by the Court of the District Commissioner, Cape Coast." Later he said: "I consider it proved that the land belongs to the Stool occupied by the Plaintiff-Respondent and that Kweku Mensah had the right to farm on it so long as he paid the calls made upon him by the Plaintiff-Respondent. I consider it proved that this was the only right he had and it therefore follows that this is the only right which the Defendant-Appellant has bought."

Plaintiff's
Exhibit
"C."
Judgment
of West
African
Court of
Appeal,
19th
December,
1936—
continued.

The District Commissioner, Central Province, concluded his judgment with the following words:—

- 30 "It has been proved that Kweku Mensah was a tenant to Plaintiff-Respondent. Defendant-Appellant bought that right of tenancy with its obligations. He has repudiated the obligations and thereby forfeits his tenancy.

"The Appeal is dismissed with costs to be taxed."

- 40 That the Defendants were in possession of the land at the time of the alleged trespass is clear from the judgment of the Tribunal which gave them five months to reap their crops and remove from the land. It does not appear that the Plaintiff denies that the first Defendant was in possession or entitled to be in possession of the land, for in his evidence he states that Defendant and 2 others came and asked to be allowed to remain on the land and that he consented on each of them promising to pay him £3. 7. 0. He says, however, that £1. 7. 0. only was paid on account and that two months after the meeting at which this arrangement was made he heard that a surveyor had been sent to survey the land. It is the visit of this surveyor which is alleged to be the act of trespass complained of.

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 Plaintiff,
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 Plaintiff's
 Exhibit
 "C."
 Judgment
 of West
 African
 Court of
 Appeal,
 19th
 December,
 1936—
continued.

The trespass alleged is not a serious one for it is clear that the surveyor left the land directly the Plaintiff sent his linguist and 2 other men to swear the Omanhene's oath on him to leave the land.

Although the Commissioner, Central Province, has stated in his judgment that the Defendant has repudiated the obligations of the tenancy we can find no evidence that such was the case and Counsel for Respondent has been unable to refer us to any such repudiation.

It is quite clear that the first Defendant was on the Plaintiff's own showing on the land in question at the time of the alleged trespass with the knowledge and permission of the Plaintiff. That being so it is quite obvious that the action for trespass was misconceived and that that action did not lie merely because the Defendant invited a surveyor to come on to his premises. 10

We allow the Appeal with costs and reverse the judgments of the Courts below. We assess the costs in this Court at £33. 10. 3.

The Respondent must pay the Defendants' taxed costs in the two Courts below.

(Sgd). P. B. PETRIDES,
Chief Justice, Gold Coast.

(Sgd). DONALD KINGDON, 20
President.

(Sgd). A. WEBBER,
Chief Justice, Sierra Leone.

19th December, 1936.

Exhibit "D."—Ruling of Mr. T. R. O. Mangin (Provincial Commissioner's Court). Exhibits.

"D."

This is the copy of decision dated 7th October, 1938, marked "D" referred to in the affidavit of Kweku Dadzie sworn before me this 28th day of September, 1939.

(Sgd.) SAM. YARNEY,
Commissioner for Oaths
(Registrar, P.C.'s Court).

Documents exhibited to Affidavit of Plaintiff, sworn 28th September, 1939. (Item No. 18 in Record, p. 23.)

10 In the PROVINCIAL COMMISSIONER'S COURT, CAPE COAST, CENTRAL PROVINCE, GOLD COAST.

Friday, the 7th day of October, 1938.

CORAM: His Worship the Honourable T. R. O. MANGIN,
Ag. Commissioner, C.P.

ATTA KOJO (Essamang) Plaintiff
vs.
CHIEF KWEKU DADZIE (Breman) Defendant.

Plaintiff's Exhibit "D." Ruling of Mr. T. R. O. Mangin (Provincial Commissioner's Court), 7th October, 1938.

Mr. ABADOO for Mover.
Mr. BENJAMIN for Opposer.

20 *Mover*: Under Section 75 (a) and Section 48 of N.A.O. (2) (c). That the land Wadababa which is in dispute is within Eguafo State. That there have been previous proceedings between the same parties relating to the same land which came before this Court on Appeal from Eguafo and subsequently to the West African Court of Appeal on 19th December, 1936. That there has been no opposition filed by the Plaintiff denying the facts as stated by the Applicant. That in another case in relation to Wadababa land the question of jurisdiction was argued at some length before Mr. Fieldgate (reads Mr. Fieldgate's ruling), March, 1930. In 1937 another action was instituted by the present Defendant against the present Plaintiff on the same land. The case was subsequently tried by the Eguafo Tribunal, and on Appeal this Court confirmed the judgment and it was appealed to 30 the West African Court of Appeal who reversed the judgment but throughout the question of jurisdiction was never raised. That the present claim deals with cocoa on this land and that it is therefore within the jurisdiction of Eguafo State.

Opposer: That if there is any doubt as to jurisdiction the case should be transferred to the Divisional Court. That the judgment of Mr. Fieldgate and the Native Tribunal was set aside by the West African Court of Appeal and the parties were placed in their original position. That therefore the

Exhibits.
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 Documents
 exhibited to
 Affidavit of
 Plaintiff,
 sworn 28th
 September,
 1939.
 (Item No. 18
 in Record,
 p. 23.)
 —
 Plaintiff's
 Exhibit.
 "D."
 Ruling of
 Mr. T. R. O.
 Mangin
 (Provincial
 Commis-
 sioner's
 Court), 7th
 October,
 1938—
continued.

Court cannot take notice of Mover's submission on this point. That a case has been before the Elmina Tribunal which should raise a doubt in this Court as to jurisdiction between Elmina and Eguafu. That the case before the West African Court of Appeal was for trespass and the West African Court of Appeal did not say that it was within anybody's jurisdiction in particular, it merely dealt with the transfer. That a Certificate of Purchase is within the West African Court of Appeal record shewing that Wadababa is within Essaman which is shown in the Chiefs List to be in the Elmina State. The Certificate of Purchase is signed by the District Commissioner. That proximity does not confer jurisdiction. That the land is within Elmina State, but that if the Court is in doubt it should be transferred to the Divisional Court. 10

Mover : That the Opposer's client is bound by the judgment of the West African Court of Appeal. That the Certificate of purchase is misleading as it arose out of a purchase by sale under auction as the purchaser comes from Essaman or thereabouts.

Judgment on Motion : The Counsel for Mover asks that a case pending before the Elmina Tribunal be stopped and be transferred to the Eguafu Tribunal and bases his application on various previous actions and rulings to support the fact that Wadababa land is within the jurisdiction of Eguafu. 20

Counsel for Opposer submits that if there is a doubt as to the jurisdiction in the Court the case should be transferred to the Divisional Court, and to support the possibility of doubt refers to page 167 of the West African Court of Appeal Record in the case of *Chief Kweku Dadzie vs. Atta Kojo and Kojo Appenya* upon which page is set out a Certificate of Purchase stating "Wadababa" situate and being at Essaman or thereabouts." Now it is perfectly clear that Wadababa is not situate at Essaman though if a radius of about 10 miles is drawn from Wadababa it might include Essaman and the District Commissioner who signed the Certificate may possibly have extended his description of "thereabouts," to include 10 miles. It is quite clear that there is no doubt as to jurisdiction and equally clear to this Court that Wadababa is within the Eguafu State and the Court therefore orders that the case be stopped in the Elmina Tribunal and be transferred to the Eguafu Tribunal for hearing and determination. 30

(Sgd.) T. R. O. MANGIN,
Ag. Commissioner, C.P.

In the Privy Council.

No. 61 of 1941.

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

BETWEEN

ATTA KOJO and KOJO APPEANYA
(Defendants) Appellants

AND

CHIEF KWEKU DADZIE, Nkyidomhene
of Bremang, for himself and on behalf
of the Anona Stool and Family of
Bremang in Eguafo State
(Plaintiff) Respondent.

RECORD OF PROCEEDINGS.

A. L. BRYDEN & CO.,
4 The Sanctuary,
Westminster, S.W.1,
Solicitors for the Appellants.