

Atta Kojo (since deceased) now represented by Kojo Nyami  
and another - - - - - Appellants

v.

Chief Kweku Dadzie, Nkyidomhene of Breman (since  
deceased) now represented by Chief Kofi Ansah - - Respondent

FROM

THE WEST AFRICAN COURT OF APPEAL

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 3RD APRIL, 1951

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*Present at the Hearing:*

LORD SIMONDS  
LORD MORTON OF HENRYTON  
LORD RADCLIFFE  
LORD TUCKER

[*Delivered by* LORD TUCKER]

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On 10th February, 1939, Chief Kweku Dadzie, Nkyidomhene of Breman, for himself and on behalf of the Anona Stool and Family of Breman in Eguafu State instituted a suit by civil summons in the Native Tribunal of Eguafu State, Central Province, Gold Coast, against Atta Kojo of Essaman as defendant claiming 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 Eguafu State" the boundaries of which were described by reference to adjoining Stool lands, an account 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 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 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". On 14th March, 1939, on the application of the defendant his brother Kojo Apenya was joined as co-defendant.

Since the present appeal was entered the plaintiff and the first defendant have died and there have been substituted for them by Order in Council, Chief Kofi Ansah in place of the original plaintiff and Kojo Nyami in place of the original first defendant Atta Kojo.

The original parties are hereinafter referred to as plaintiff and first defendant respectively.

Before the Native Tribunal the plaintiff obtained the relief claimed in his summons. On appeal to the Provincial Commissioner of the Central Province of the Gold Coast Colony, the judgment of the Native Tribunal was reversed. The plaintiff appealed to the West African Court of Appeal who on 25th May, 1940, allowed the appeal and restored the judgment of the Native Tribunal so far as the declaration of title and injunction are concerned but omitted therefrom the order for the taking of an account as to which counsel for the plaintiff in the Court of Appeal had not pressed.

From this judgment the present appeal is brought by the defendants pursuant to leave granted by the West African Court of Appeal on 13th May, 1941.

On the hearing before their Lordships the appellant-defendants were represented by counsel. The respondent-plaintiff was not represented.

In paragraphs 2 and 3 of their written "Case" the appellants state, "The main question for decision in this appeal is whether the respondent who was the plaintiff in the case has established a title over certain land, superior to that of the first appellant, who has been long in possession by virtue of purchase by public auction. The land in dispute is cocoa farm land known as Warababa Cocoa Farm. The boundaries of the area were ascertained by inspection in the case, and the only dispute as to their position is whether they are or are not in what is known as the Eborhu land appertaining to the respondent's Stool".

This appears to be an accurate summary of the proceedings in the Courts below where neither of the parties seem to have concerned themselves with the precise language of the relief claimed in the summons or the scope of the injunction as granted which were the matters mainly dealt with in argument before the Board.

The plaintiff claimed that the land in question had been attached to the Stool of Breman from time immemorial and formed part of "Eborhu" land. The case for the defendants was that the land belonged to Opanyin Ekow Frow and Kwamina Nketria the ancestors of Kweku Mensah deceased who in turn succeeded thereto, and that they had acquired his interest therein by purchase at public auction held on 13th February, 1918, under a Writ of Fi.Fa. and evidenced by a Certificate of Purchase dated 29th April, 1918, which was produced at the trial. This document certified that Atta Kojo had 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 certain persons whose names are set out. The authenticity of this Certificate was not in dispute, but its effect depended upon the nature of the right title and interest of Kweku Mensah in the lands in question. This in turn depended upon questions of fact determined by the Native Tribunal in favour of the plaintiff. They accepted the plaintiff's evidence that the lands had always formed part of his Stool lands and that his predecessor Kwamina Assankuma had given permission to Kobina Essan the father of Kweku Mensah to farm on the land on condition of paying a yearly rent, and that this was the only right acquired by the defendants by the purchase at auction.

The Provincial Commissioner allowed the defendants' appeal on the ground that the judgment of the Native Tribunal gave rise to doubts as to whether its findings of fact were not perverted and erroneous and that in any event the plaintiff having slept on his rights for more than 8 years, the limit allowed by Native Customary law, his claim could not now be entertained.

The West African Court of Appeal pointed out that this was not an action to recover possession and that it was well established Native Law and Custom that rights of ownership are not extinguished by

lapse of time. They further considered that there being ample evidence to support the findings of fact of the Native Tribunal its judgment, modified as previously stated, should be restored.

Neither of the grounds on which the West African Court of Appeal allowed the plaintiff's appeal was seriously challenged before their Lordships, but it was said that a perusal of the evidence showed that the injunction as granted exceeded the relief to which the plaintiff was entitled and might be interpreted as interfering with rights of the defendants to allow sub-cultivators or licensees to farm lands within the area of the Wadababa Cocoa Farm, and to collect rents from such sub-cultivators or licensees.

No point of this kind was taken in the West African Court of Appeal and their Lordships do not feel they have sufficient material to justify any expression of opinion on their part on this aspect of the case.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed. There will be no order as to costs.

In the Privy Council

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ATTA KOJO (since deceased) NOW REPRESENTED BY KOJO NYAMI AND ANOTHER

vs.

CHIEF KWEEKU DADZIE, NKYIDOMHENE OF BREMAN (since deceased) NOW REPRESENTED BY CHIEF KOFI ANSAH

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DELIVERED BY LORD TUCKER