

**In the Privy Council.**

**ON APPEAL**  
*FROM THE COURT OF APPEAL FOR WESTERN AFRICA.*

UNIVERSITY OF LONDON  
W.C.T.  
9 - NOV 1956  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

BETWEEN

1. OPANIN ASONG KWASI
2. ODAME KWASI
3. OBESE KWASI (Defendants) - - - - - *Appellants*

AND

JOSEPH RICHARD OBUADABANG LARBI (Plaintiff) *Respondent.*

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# In the Privy Council.

## ON APPEAL

FROM THE COURT OF APPEAL FOR WESTERN AFRICA.

BETWEEN

1. OPANIN ASONG KWASI
2. ODAME KWASI
3. OBESE KWASI (Defendants)

*Appellants*

AND

10 JOSEPH RICHARD OBUADABANG LARBI (Plaintiff) *Respondent.*

# RECORD OF PROCEEDINGS

*In the  
Native  
Court  
" B " of  
Adonten.*

No. 1.

WRIT OF SUMMONS.

Suit No. 107/K/47-48.

CIVIL SUMMONS.

No. 1.  
Writ of  
Summons,  
9th October  
1947.

IN THE NATIVE COURT " B " OF ADONTEN, AKYEM ABUAKWA,  
GOLD COAST COLONY.

Between JOSEPH RICHARD OBUADABAN LARBI  
and KWASI PRINCE as joint successors to  
KWAKU ASAGYE late of Larteh Ahenease  
(Deceased)

20

- Plaintiffs

and

OPANYIN ASONG KWASI, ODAME and  
OBESE all of Mfrano Anum Apapam - - Defendants.

To Opanyin Asong Kwasi, Odame and Obese of Mfrano, Anum Apapam.

You are hereby commanded to attend this Native Court at 9.30 a.m.  
o'clock at Kukurantumi on the 27th day of October, 1947, to answer a suit  
by Plaintiffs against you.

The Plaintiffs' claim against the Defendants is for a declaration of  
30 title to All that piece or parcel of Land situate lying and being at Mfrano  
near Anum Apapam in the Akim Abuakwa District and bounded on the

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" B " of  
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one side by Abohemansu River, on one side by Adobensu Road to River Pimpong, on one side by Kwabena Donkor and others' properties and on another side by Mfrano River.

2. An Injunction to restrain the Defendants, their agents, servants and/or workmen from working or in any manner interfering with the said land pending the hearing and determination of this action.

No. 1.  
Writ of  
Summons,  
9th October  
1947,  
*continued.*

Dated at Kukurantumi the 9th day of October, 1947.

	£	s.	d.
Claim .. .. .			Land
Fees .. .. .	2	0	0 10
Service and mileage .. .. .	1	15	0

(Sgd.) ?

President of Native Court.

Witness to mark :

TAKE NOTICE that if you do not attend the Native Court may give Judgment in your absence.

No. 2.  
Arbitration  
Proceed-  
ings, 18th  
November  
1947.

**No. 2.**

**ARBITRATION PROCEEDINGS.**

**FINDINGS OF SPECIAL ARBITRATION**

20

held at Apapam in the land dispute between J. R. O. LARBI and OTHERS (Plaintiffs) and OPANYIN ASHONG KWASI and OTHERS (Defendants).

**INTRODUCTION**

**BACK GROUND OF THE ARBITRATION.**

Following a Writ of Summons issued to the Defendant in this suit in which the Plaintiffs claimed a " declaration of title to all that piece or parcel of land situate lying and being at Mfrano near Anum Apapam in the Akin Abuakwa District and bounded on the one side by Abohemansu River, on one side by Adobensu Road to River Pimpong, on one side by Kwabena Donkor and others' properties and on another side by Mfrano River and an Injunction to restrain the Defendants, their agents, servants and/or workmen from working or in any manner interfering with the said land pending hearing and determination of this action the said case came up for hearing in the Native Court " B " of Kukurantumi in the Akin Abuakwa District on the 27th October, 1947." At this hearing it was

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mutually agreed upon by both parties to submit the dispute to arbitration by a panel of Elders of Apapam and 5th November was fixed upon as the hearing date. The arbitration Court comprised of the following :—

*In the  
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- 10 Kwame Ayim (Stool Holder) President  
Opanyin Adu (Stool Holder)  
Opanyin Kwame ? ? ? (Stool Holder)  
Opanyin Aboagye (Stool Holder)  
Frank H. Asare  
Kofi Twum  
David Twum  
Henry Donkor  
Okyeame Ata  
Okyeame Prempeh  
Asafoakye Kwame Wiredu, Members.

No. 2.  
Arbitration  
Proceed-  
ings, 18th  
November  
1947,  
*continued.*

The sum of 5/- was paid by Opanin Adu as adjournment fee and the sum of 16/- was paid by each of the parties to signify their consent to refer the matter to the arbitrators.

#### PROCEEDINGS AT THE ARBITRATION COURT AT APAPAM.

20 In pursuance of the offer of the Elders of Apapam to withdraw the said action from the Native Court " B " of Kukurantumi for arbitration the case was duly called for hearing before the arbitrators listed above at Apegya Fori Fie on Wednesday 15th November, 1947, at which both parties were present.

30 Every effort was made by us the arbitrators to give each side the fullest opportunity to state its case thoroughly and to call in witnesses to support its contention. After carefully sifting the welter of submissions brought before the Tribunal the following facts stand out. According to Mr. J. R. O. Larbi, principal Plaintiff, Kwadjo Asagyi, the original owner of the land in dispute, was his uncle and on his demise was succeeded by him and Kwasi Prince jointly. In or about the year 1914 the said Kwadjo Asagyi his uncle and his company approached the then Odikro of Apapam, Kwame Mane, with a request to purchase a parcel of land near the Mfrano River. The Odikro and his Elders deputed Okyeame Yao Bosompem whose son Yao Frempong later deputised for him to accompany the Omanhene's messengers Okyeame Aninkora and Oheneba Kwabena Young to negotiate the sale which was only consummated in the payment by Kwadjo Asagyi and his company of the sum of £200 (Two hundred pounds) as well as other payments in accordance with native customary law and practice.

40 To clinch the deal the customary cutting of the " Guaha " was performed by Kwaku Ntow on behalf of the purchasers and Kwasi Donkor on behalf of the Odikro and his Elders of Apapam. This new property was exclusive of the £100 worth of land previously purchased at Akyenaa. Mr. Larbi stated that since the purchase of the land in 1914 no attempt was made to cultivate it until sometime in 1931 reports reached the company that it had been sold in two portions, one portion to Kwabena Kuma of Anum Apapam and another portion under dispute—to one

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*continued.*

Adjei of Anum Apapam, now deceased, and his company in which the Defendants were parties. Letters of protest against the purchase were sent to Kwabena Kuma and the Defendants, of the two only Kwabena Kuma replied and action was subsequently taken against him at the Supreme Court which the Plaintiffs won.

Mr. Larbi stated that several letters were written to the Defendants but were ignored every time. Two years ago when the Plaintiff threatened to take drastic measures against the continued encroachments on what was their bona fide property the Defendants reacted promptly for the first time by Opanyin Ashong Kwasi, the principal Defendant, sending 10 his two sons to plead for him with a bottle of schnapps to exercise patience and that he would come to see him for an amicable settlement of the matter. Since then Defendants had been employing delaying tactics to evade the issue and to prolong their unlawful tenure of the land which belonged to him by right of succession and his company. For the purpose of declaring the rightful title to the land he had instituted the present action.

Yao Frempong, witness for the Plaintiffs, in his evidence corroborated the statement of Mr. Larbi and added that after the lawful sale of the land to Kwadjo Asagyi, Kwame Amoako and others later sold the portion 20 under litigation to the Defendant. He said he remembered the Plaintiffs and sent repeated letters and messages warning them to quit but they gave no heed to the warnings. He recalled that on one occasion the late Adjei gave him 12/- to send to Mr. Larbi to appease his anger and to solicitate his patience until he came to see him. Since the demise of Adjei his children refused to see him.

When Opanyin Kwasi Ashong, the principal Defendant, was called to give his statement he told the arbitrators that the land in question was bought by his late father-in-law Agya Agyei at Odum Yao from Odikro Kwame Mane some 34 years ago. The land, he said, lay between Pimpong 30 and River Adamsu near Old Dobesu Road and extended to a patch of bamboos and was bounded on one side by the property of one Freeman of Larteh. The messengers deputed to sell the land were Kwame Amoako, Kwane Badu, Kofi Dabra and Kwabena Kumi. During the time of the sale they found planted "Ntome" trees leading to the river. Although the land was originally bargained for £100 they ultimately had to pay £138 because they had to pay the customary fee of £8 twine and a further £30 had to be paid in respect of a portion which was given to one Kwaku Anokye for cultivation which he recklessly sold. About 23 years ago they started cultivating the land. About 12 years later he received a letter 40 from Kwaku Ntow to the effect that Mr. Larbi and his company were claiming the whole land as theirs. He replied that the land was bought from Odikro Kwame Mane. The case eventually came up for hearing at the Supreme Court in which Lawyer Danquah held brief for his company. Since then nothing had been heard about the matter until five months ago Odame Kwasi and Obese came to him and told him that the land belonged to Mr. Larbi and his company which he stoutly disputed.

The first witness for the Defendants, Kwabena Kusi, now Odikro of Apapam, deposed that he was at a village some 24 years ago when he saw Kwame Badu, Kwane Amoako and Kofi Debra going to sell land 50

under the instructions of the then Odikro of Apapam, Kwame Mane. Although he was not officially deputed to take part in the sale he accompanied the party and a parcel was sold to Agya Adjei for £100 out of which £50 was actually paid on the spot to the messengers which they sent to the Odikro. He remembered they came across a footpath leading to the Mfrano River but he was then so young that he could not remember anything else as regards the sale or the boundaries.

*In the  
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No. 2.  
Arbitration  
Proceed-  
ings, 18th  
November  
1947,  
*continued.*

Freeman, the second witness for the Defendants, gave a highly conflicting evidence. In his first statement he roundly denied all knowledge of Kwaku Asagyi of Larteh. At one stage he said Kwaku Asagyi was not a member of his company at the time of purchasing the land from the Apapam stool and that he had no land in the locality under dispute and further that his property was the only land having boundary with the land under litigation. After very searching cross-examination by Mr. Larbi Mr. Freeman confessed he knew Kwaku Asagyi whom he actually accompanied in buying the land in question and that the late Kwaku Asagyi's property was the one having boundary with his and not the land under dispute.

#### VIEWING OF THE LAND UNDER DISPUTE.

20 After hearing all the relevant statements on both sides and their witnesses and thoroughly satisfying themselves through cross-examinations the Arbitrators decided to send messengers to view the land under dispute. Both parties were asked to pay an advance of £12 each which they paid. The following were appointed :—

Opanyin Kwame Ayim, President

Opanyin Yao Adu and

Mr. A. E. Gyanfi Amonoo who acted as recorder for the arbitrators.

30 The date for viewing the land was fixed for the 13th November and both parties were asked to meet the party at the spot which they all agreed to do.

The viewing party actually met both parties on the land but the Defendants refused to show their boundaries. The Plaintiffs, on the other hand, took the party to the land and showed them their boundaries. After viewing the land the party instructed both the Plaintiffs and the Defendants to appear before the arbitrators at Apapam on the 18th November for their verdict.

#### ARBITRATION DECISION.

40 At a sitting of the Arbitrators on Tuesday 18th November, although the Plaintiffs arrived in compliance with our instructions issued to both parties the Defendants absented themselves but sent a letter per one Kwaku Gyau signed by the principal Defendant Opanyin Ashong Kwasi intimating their decision to dissociate themselves from the arbitration and actually demanding immediate refund of the £12 advance willingly paid in respect of the viewing of the land. After a lengthy discussion in which the matter was considered from every angle we decided to break the last-minute deadlock created by the Defendants, brush aside their objections and to proceed with the case. During the deliberation one fact forcibly



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No. 2.  
Arbitration  
Proceed-  
ings, 18th  
November  
1947,  
*continued.*

struck the arbitrators and that was the flagrant omission of the Defendants to call into witness the principal member of the party who was alleged to have effected the sale of the land one Kwame Amoako now Gyasihene of Apapam. This omission struck us as suspicious move and we could not help having the impression that the whole story of the defence was deliberate and impudent fabrication. I, the President of the arbitration panel of Apapam do therefore declare that inasmuch as the persons who were alleged to have sold the land in question to the Defendants were irresponsible, unauthorised persons holding no position entitling them to sell land in accordance with native customary law and practice the said 10 sale should be nullified and the land given to the Plaintiffs who have fully satisfied us that it was part and parcel of the main original holding acquired by purchase in complete conformity with native customary usages appertaining to the sale of land in the year 1914 by the late Kwakjo Asagyi and his company.

Dated at Apapam in the Akim Abuakwa District on Tuesday 18th November, 1947.

(Mkd.) OPANYIN KWAMI AYIM,

President,  
Arbitration Panel of Apapam Elders. 20

(Sgd.) A. E. GYANFI AMONOO,  
Recorder and Witness to mark.

No. 3.  
Court  
Notes,  
9th August  
1948.

No. 3.  
COURT NOTES.

*CORAM* :—BAFUOR AFARI DARKO—President  
with E. A. KENA and ADONTENHENE  
KYEAME KOFI DARKO—Members.

**CLAIM :**

The Plaintiffs' claim against the Defendants is for a declaration of title to ALL THAT PIECE OR PARCEL OF LAND situate lying and being at 30 MFRANO near ANUM APAPAM in the Akim Abuakwa District and bounded on the one side by Abonemansu river, on one side by Adobensu Road to River Pimpong, on one side by Donkor and others' properties and on another side by Mfrano river.

2. AN INJUNCTION to restrain the Defendants their agents, servants and/or workmen from working or in any manner interfering with the said land pending the hearing and determination of this action.

Parties present, but 2nd Plaintiff not in Court.

Plea : 1st, 2nd and 3rd Defendants not liable respectively.

*By Court :*

40

It has been recalled to members that there is an Interim Injunction order over the land.

*By 1st Plaintiff :*

I have no objection to that order.

*By Defendant :*

No objection.

*By Court :*

Order to exist.

*By 1st Plaintiff :*

I have filed an application rather submission and want it to be read.  
1st Plaintiff's submission dated 17th April, 1948, read.

10 *By Court :*

Case stands adjourned to 10.8.48 at 9 a.m.

(Sgd.) AFARI DARKO,

President,  
Native Court.

Recorder

(Sgd.) E. DON GYIMAH,

Registrar.

9.8.48.

*In the  
Native  
Court  
" B " of  
Adonten.*

—  
No. 3.  
Court  
Notes,  
9th August  
1948,  
*continued.*

**No. 4.**

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**SUBMISSIONS by 1st Plaintiff.**

*CORAM* :—BAFUOR AFARI DARKO—President  
with E. A. KENA and ADONTENHENE  
KYEAME KOFI DARKO—Members.

No. 4.  
Submissions  
by 1st  
Plaintiff,  
10th  
August  
1948.

Parties present, but the 2nd Plaintiff not in Court.

*By the 1st Plaintiff :*

By my submission, as was read to this Court, and to both of us, I am asking the Court to refer to the Digest of the Supreme Court by Sir William Brandford Griffith, page 22, under the word *Native* : It is so stated as follows :—

30

“ The parties having consented to an arbitration the Court  
“ will enforce the award etc.”

That at the first time this Court took to determine the case, it was one Opanin Yaw Adu who applied on our behalf to withdraw this case for settlement. He did apply for such settlement on behalf of the Apapam Dikro. This Court then adjourned this case under Regulation 24 of the Native Courts (Colony) Procedure Regulations No. 10 of 1945.

*In the  
Native  
Court  
"B" of  
Adonten.*

No. 5.

**SUBMISSIONS by 1st Defendant.**

*By 1st Defendant :*

No. 5.  
Submissions  
by 1st  
Defendant,  
10th  
August  
1948.

By the submission of the 1st Plaintiff, I oppose to the submission because at the arbitration held at Apapam no record of proceedings was taken. I did not remain to hear the award of the arbitration. Although I made a statement. I re-claimed the £12 paid by me as inspection fee. Later, I brought the objection to the knowledge of the Court. Both parties' attentions were drawn to it and the case was listed for hearing which even 1st Plaintiff and ourselves called witnesses (summoned them) 10 yesterday. I therefore say I oppose the submission.

*Examined by Court to 1st Plaintiff :*

The arbitration was presided over by Opanin Ayim. It was one Amonoo who recorded the minutes of the arbitration.

*Examined by Court to 1st Defendant :*

When I was asked to pay the £12, it was my landlord Opanin Adu who advised me to pay. After payment, the arbitration decided to share the land between us. I therefore refused to accept the suggestion and wrote to the arbitration for refund of my money.

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No. 6.

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**COURT RULING.**

No. 6.  
Court  
Ruling,  
10th  
August  
1948.

*Ruling by the Court :*

This suit was commenced sometime in October, 1947. When the case was called for determination, one Opanin Yaw Adu on behalf of the Odikro of Apapam and his elders submitted to withdraw the case for settlement. The parties, but 2nd Plaintiff, who were present agreed and the case was adjourned upon their consent. The Elders of Apapam held arbitration over the case. After hearing parties, the arbitrators are said to have arrived at a conclusion to inspect the land in dispute. Parties were ordered to pay £12 each side. This was paid. Later 30 Defendants refused to attend the inspection nor to appear before the arbitrators for final decision. The 1st Plaintiff accordingly acted to the instructions of the arbitrators, led and showed out the land in claim which he claimed was alienated officially by the Stools of Apapam and Okyenhene Akyem Abuakwa.

This throws some material doubt as to why Defendants refused at the last hour to attend to show their land or to be present at the final result of the arbitration.

This Court after full hearing of the 1st Plaintiff's submissions and the reply by Defendants finds out that the award of that arbitration should be 40 accepted as judgment of this Court with costs to be taxed.

(Sgd.) AFARI DARKO,  
President Native Court.

Recorder,  
(Sgd.) E. DON GYIMA,  
Registrar,

10/8/48.

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**FOUNDATIONS OF APPEAL.**

**IN THE NATIVE APPEAL COURT OF AKYEM ABUAKWA,  
EASTERN PROVINCE OF THE GOLD COAST,  
KYEBI, 1948.**

*In the  
Native  
Appeal  
Court,  
Kibi.*

No. 7.  
Grounds of  
Appeal, 8th  
September  
1948.

IN THE MATTER OF :—

J. R. O. LARBI AND KWASI PRINCE,  
Joint successors of KWAKU ASAGYA  
(Deceased) . . . . . Plaintiffs-Respondents

10

and

OPANIN ASONG KWASI, ODAME  
KWASI AND OBESE KWASI . . . Defendants-Appellants.

**FOUNDATIONS OF APPEAL OF DEFENDANTS-APPELLANTS.**

1. That Judgment was against weight of evidence on record.
2. That Judgment was wrong in law and custom.
3. That Judgment was contrary to equity and good conscience.
4. That Judgment was otherwise erroneous.

Dated at Suhum in the Akyem Abuakwa State this 8th day of  
September, 1948.

20

(Mkd.) OPANIN ASONG KWASI,  
For and on behalf of myself and  
Co-Defendants-Appellants.

To The Registrar,  
Native Appeal Court,  
Akyem Abuakwa, Kyebi,

and to

The within-named Plaintiffs-Respondents  
J. R. O. Larbi and Kwasi Prince at Nsawam.

W/m. :

30 (Sgd.) E. A. PARRY,  
F.O.C.

COURT NOTES GRANTING LEAVE TO APPEAL.

In the  
Native  
Appeal  
Court,  
Kibi.

IN THE NATIVE APPEAL COURT held at Ofori Panin Fie on Thursday  
the 16th day of September, 1948.

No. 8.

Court  
Notes  
granting  
leave to  
appeal,  
16th  
September  
1948.

*CORAM* : KYIDONHEME BOADU MARFO . President  
OKYEAME KWADWO ADU . Member  
ODEHYE KWABENA GYIMAH . Member

No. 77/48.

J. R. O. LARBI and KWASI PRINCE . Plaintiffs-Respondents

*Versus*

10

ASONG KWASI and Others . Defendants-Appellants.

“ Motion on Notice by Opanin Asong Kwasi for himself and on behalf  
“ of the other Defendants-Appellants herein praying for an order granting  
“ leave to appeal herein as per grounds set forth in the Affidavit attached,  
“ and/or for such other order or orders as to this Honourable Native Court  
“ shall seem meet.”

Affidavit and Motion filed 8/9/48.

Defendants-Appellants move in terms of their Affidavit.

*Native Court :*

Granted as prayed for. Appeal to be heard on Thursday the 20  
23rd September, 1948 at 8 a.m.

(Intd.) B. M. KYIDOMHENE,  
President.

Recorded by

(Sgd.) E. A. BEMPONG

Registrar.



SUPPLEMENTARY GROUNDS OF APPEAL.

IN THE NATIVE APPEAL COURT AT AKYEM ABUAKWA, KYEBI.  
1948.

*In the  
Native  
Appeal  
Court,  
Kibi.*

IN THE MATTER OF :—

J. R. O. LARBI and KWASI PRINCE  
Joint successors of KWAKU ASAGYE  
(Deceased) . . . . . Plaintiffs-Respondents

and

10 OPANIN ASONG KWASI, ODAME  
KWASI and OBESE KWASI . . . Defendants-Appellants.

No. 9.  
Supple-  
mentary  
Grounds of  
Appeal,  
20th  
September  
1948.

SUPPLEMENTARY GROUNDS OF APPEAL OF THE  
DEFENDANTS-APPELLANTS HEREIN.

1. That there is no order of the Court below on Record to transmit by the Arbitrators to the Court below their findings in order to base its decision ruling or otherwise on such findings.

20 2. That it is sufficient on the face of the Record that Appellants flatly interrupted the successful sitting of the Arbitration which resulted in the refundment of the fee of £12 (Twelve Pounds) received by the Arbitrators to Appellants—which means that there was no arbitration—and therefore the lower Court was wrong in basing its decision on any such findings submitted to it by the Arbitrators.

3. That it is contrary to custom and repugnant in the eye of any Statutory that arbitration with any wide powers could enter its decision Ex-Parte and therefore in view of the fact that the arbitrators gave their decision ex-parte, their decision, if any, is null and void—and therefore the decision of the Court below is lacking.

Dated at Suhum this 20th day of September, 1948.

(Mkd.) OPANIN ASONG KWASI,

30 For and on behalf of self and my  
co-Defendants-Appellants.

The Registrar,  
Native Appeal Court, Kibi.

And to

J. R. O. LARBI and KWASI PRINCE,  
The above-named Plaintiffs-Respondents.

W/W to marks

(Sgd.) F. O. ODAME.

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## PLAINTIFFS' SUBMISSIONS.

*In the  
Native  
Appeal  
Court,  
Kibi.*

No. 10.  
Plaintiffs'  
Sub-  
missions,  
22nd  
September  
1948.

1. That the Defendants-Appellants have appealed against judgment, Order or Decision alleged to have been given by the Native Court " B " Kukurantumi on Monday the 9th August, 1948, which in fact and in truth there was no judgment, Order, or Decision given by the said Court on that date at all.

2. That the Defendants-Appellants should have appealed against judgment, order, or decision which was given by the Native Court " B " at Kukurantumi on Tuesday the 10th of August, 1948, and not as wrongly 10 appealed against herein.

3. That being so the appeal should be struck out without consideration on its merit. Vide page 12 of the Griffith's Digest.

4. That apart from the wrong date herein referred to, the appeal should have been made as an interlocutory under Section 130 of the Native Courts (Colony) Ordinance Regulations in order for the Defendants-Appellants to comply with subsection (3) of Section 52 of the Native Courts (Colony) Ordinance, 1944, and therefore the appeal under Section 117 of the Native Courts (Colony) Ordinance as perused by the Defendants-Appellants was wrong and bad in law. 20

5. That I refer the authorities as follows :—

Page 21 under the heading Arbitration and page 98 under heading Award both from Griffith's Digest of Reported Cases.

6. That in these circumstances, the appeal made by the Defendants-Appellants was not properly brought before this Native Appeal Court to be considered and entertained and therefore the appeal should be dismissed in favour of the Plaintiffs-Respondents herein with costs.

Dated at Nsawam this 22nd day of September, 1948.

(Sgd.) J. R. O. LARBI

on behalf of myself and the 30  
2nd Plaintiff-Respondent.

To The Registrar,  
Native Appeal Court,  
Kibi ; and

To the above-named Defendants-Appellants,  
Ashong Kwasi, Odame Kwasi and Obese Kwasi.

No. 11.  
COURT NOTES.

23.9.48

*CORAM* : KYIDOMHENE BOADU MARFO . President  
ODEHYE KWABENA GYIMAH . Member  
OKYEAME KWADWO ADU . . Member

*In the  
Native  
Appeal  
Court,  
Kibi.*

No. 11.  
Court  
Notes, 23rd  
September  
1948.

Parties in person.

An appeal from a decision delivered on the 10th August, 1948.

Record of appeal read and interpreted.

10 Appellants' and Respondents' Grounds of Appeal read and interpreted.

## DEFENDANTS-APPELLANTS' SUBMISSIONS :

Appellants did not speak in the Court at all, which is contrary to the procedure of the Court.

## PLAINTIFFS-RESPONDENTS' SUBMISSIONS :

The Appellants filed in a notice of Intention to Appeal against a wrong date, and therefore the appeal is wrong. The judgment in this particular case was given on Tuesday the 10th day of August, 1948, but not on Monday the 9th August, 1948.

20

No. 12.  
JUDGMENT.

No. 12.  
Judgment,  
23rd  
September  
1948.

## JUDGMENT :

This is an appeal from a decision delivered by the Adonten Native Court " B " at Kukurantumi on Tuesday the 10th August, 1948, for the Plaintiffs with costs to be taxed.

The Plaintiffs' claim is as follows :—

30

(1) The Plaintiffs' claim against the Defendants is for a declaration of title to all that piece or parcel of land situate, lying and being at Mfrano near Anum Apapam, in the Akim Abuakwa District and bounded on the one side by Abohemansu River, on one side by Adobensu Road to River Pimpong, on one side by Donkor and others' properties and on another side by Mfrano River.

(2) An Injunction to restrain the Defendants their agents, servants and/or workmen from working or in any manner interfering with the said land pending the hearing and determination of this action.



*In the  
Native  
Appeal  
Court,  
Kibi.*

The 1st Defendant for himself and on behalf of the 2nd and 3rd Defendants-Appellants contends that the lower Court delivered judgment on the findings of the Arbitration. He raised a rooted objection against it, in that he did not consent to the award of the arbitration.

No. 12.  
Judgment,  
23rd  
September  
1948,  
*continued.*

The 1st Plaintiff for himself and on behalf of the 2nd Plaintiff-Respondent maintains that when the case was first called up for hearing it was with the fullest consent of both parties that the case was transferred to an Arbitration. So far as the Defendants-Appellants have consented to the award of the arbitration, they cannot extricate themselves from the arbitration award. He added that after full deliberation on the 10 findings of the arbitration, the lower Court therefore gave judgment.

We have heard the grounds of appeal, and the arguments. The Plaintiffs-Respondents maintain that the Defendants-Appellants have appealed under a wrong date on which judgment was delivered. Also they affirm that the lower Court was right in accepting the award of the arbitration; and therefore the Appellants' objection to the award of the arbitration should be set aside. The Defendants-Appellants maintain that they appealed against a correct date on which judgment was given. We find that it was a clerical error when the Conditional Leave to Appeal was given; which has already been rectified. 20

We find that there were many irregularities in the lower Court in the procedure of the above case. Instead of to strike out the case for an arbitration, the Court rather adjourned it under Section 24 of the Native Courts (Procedure) Regulations No. 10 of 1945.

In the above circumstances, we find out that the Defendants-Appellants did not accept the award of the arbitration. In order to avoid misunderstanding and multiplicity of actions, the case should be sent to the lower Court for re-trial.

The appeal is allowed with no order as to costs, and the decision of the lower Court is set aside. 30

Court below to carry out.

(Sgd.) BOADU MAFO, KYIDOMHENE,

President.

Recorded by

(Sgd.) E. A. BEMPONG,

Registrar.

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**No. 13.**  
**FOUNDATIONS OF APPEAL.**

IN THE SUPREME COURT OF THE GOLD COAST.

Eastern Judicial Division.

Land Court—Accra.

A.D. 1948.

Between J. R. O. LARBI and KWASI Plaintiffs-Respondents-  
PRINCE . . . . . Appellants

and

10 OPANIN ASONG KWASI, ODAME Defendants-Appellants-  
KWASI and OBESE KWASI . Respondents.

FOUNDATIONS OF APPEAL.

1. That the appeal was not properly brought before the Native Appeal Court because there was no judgment, decision or order delivered or given by the Native Court Adonten Division Kukurantumi dated the 9th August, 1948.

2. That the Judgment herein being an Arbitration award there is no right of appeal; consequently, the Native Appeal Court was wrong in entertaining the appeal by the Respondents herein.

20 3. That the decision being an interlocutory order the Respondents should have appealed under Section 52 sub-section (3) of Native Courts Ordinance and Regulation 130 of the Native Courts (Colony) Procedure Regulations of 1945.

Dated at Accra, this 20th day of November, 1948.

(Sgd.) J. R. O. LARBI,

his  
Kwasi Prince X  
mark

Plaintiffs-Respondents-  
Appellants.

30

The Registrar,

Land Court, Accra : and

To the above-named Defendants-Appellants-Respondents  
Opanin Asong Kwasi, Odame Kwasi and Obese Kwasi,  
c/o Co-Operative Society, Suhum.

*In the  
Land  
Court,  
Accra.*

No. 13.  
Grounds of  
Appeal,  
20th  
November  
1948.

*In the  
Land  
Court,  
Accra.*

No. 14.

**SUPPLEMENTARY GROUNDS OF APPEAL.**

**IN THE SUPREME COURT OF THE GOLD COAST.**

Eastern Judicial Division,  
Land Court, Accra.

A.D. 1949.

No. 14.  
Supple-  
mentary  
Grounds of  
Appeal,  
27th May  
1949.

**JOSEPH RICHARD OBUADABANG** Plaintiffs-Respondents-  
**LARBI and KWASI PRINCE** . . . Appellants

versus

**OPANIN ASONG KWASI, ODAME** Defendants-Appellants- 10  
**KWASI and OBESE KWASI** . . . Respondents.

**SUPPLEMENTARY GROUNDS OF APPEAL.**

PLEASE TAKE NOTICE that at the hearing of this Appeal, the leave of the Court will be asked to add the following grounds of appeal to those already filed, that is to say :—

4. That paragraph 3 of the Order granting Conditional Leave to Appeal by the Native Appeal Court was not complied with by the Respondents herein, consequently the said appeal was not properly before the Native Appeal Court.

Dated at Accra, this 27th day of May, 1949.

20

(Sgd.) J. R. O. LARBI,

For himself and on behalf of  
the 2nd Plaintiff-Respondent-  
Appellant herein.

The Registrar,

Land Court, Accra : and

To the above-named Respondents,

1. Opanin Asong Kwasi of Suhum.
2. Odame Kwasi of Suhum, and
3. Obese Kwasi of Suhum.

30

Upon the 2nd day of June, 1949, at 8.30 a.m. three copies of this Supplementary Grounds of Appeal together with attached affidavits were served by me on Odame Kwasi, Obese Kwasi and Opanin Asong Kwasi personally at Accra.

(Sgd.) M. A. AFWIRENG,

Bailiff.

2/6/49.

**No. 15.**  
**COURT NOTES.**

*In the  
Land  
Court,  
Accra.*

10.6.49

Mr. Koi Larbi for Appellants.

Mr. Koranteng for Respondents.

*Mr. Larbi :*

Submits original record should be produced as it does not appear that all the submissions were recorded.

Refers to page 2. Submits appeal was not properly before the Native  
10 Appeal Court.

Refers to page 9 of record. Submits that the members of the Court that granted conditional leave to appeal as recorded were not those who actually granted it.

Submits that two sureties did not sign the bond as ordered by the Native Appeal Court. Submits that the original record should be produced.

*By the Court :*

I do not think that sufficient grounds have been shown to order the production of the original record.

*Mr. Larbi :*

20 Does not argue on other grounds.

---

**No. 16.**  
**JUDGMENT.**

No. 16.  
Judgment,  
10th June  
1949.

*By Court :*

Upon reading the record of appeal I am of the opinion that the Native Appeal Court was right in setting aside the judgment of the Native Court " B " of Kukurantumi. I think, however, that the case should be heard by the Native Appeal Court, Akyem Abuakwa. I therefore dismiss the appeal but vary the order made by the Native Appeal Court and order the case to be remitted to the Native Appeal Court for hearing as  
30 a substantive case and the Court to be constituted by a panel different from the one which heard the Appeal. Costs for Respondents assessed at £9 17s.

Mr. Koranteng submits that order appointing Receiver be discharged.

*By Court :*

As the case has been removed from the jurisdiction of the Native Court " B " Kukurantumi, the order made by it appointing Receiver and Manager ceases to have effect and it is discharged accordingly. Application for Receiver, if necessary to be made before the Native  
40 Appeal Court.

(Sgd.) S. O. QUASHIE-IDUN,  
Judge.

*In the  
West  
African  
Court of  
Appeal.*

No. 17.  
**GROUNDS OF APPEAL.**

**IN THE WEST AFRICAN COURT OF APPEAL.**

No. 17.  
 Grounds of  
 Appeal,  
 23rd August  
 1949.

Between **JOSEPH RICHARD OBUADABANG** .  
**LARBI and KWASI PRINCE** . Plaintiffs-Respondents-  
 Appellants-Appellants  
 and

**OPANIN ASONG KWASI, ODAME** Defendants-Appellants-  
**KWASI and OBESE KWASI** . Respondents-  
 Respondents. 10

The Appellants being dissatisfied with the judgment of the Land Court at Accra delivered on the 10th June, 1949, and having obtained final leave to appeal therefrom dated the 19th day of August, 1949, hereby appeal to the West African Court of Appeal upon the grounds hereinafter set forth.

**GROUNDS OF APPEAL**

1. That the learned Land Judge was wrong in law in remitting the case to Native Appeal Court, Akim Abuakwa, because that Court has no original jurisdiction.

2. That the Appeal was not properly before the Native Appeal 20 Court and this was disregarded by the learned Land Judge.

Dated this 23rd day of August, 1949.

(Sgd.) **A. OBUADABANG LARBI,**  
 Solicitor for Appellants.

Upon the 29th day of August, 1949, at 3.20 p.m. three (3) copies of this Grounds of Appeal were served by me upon Opanin Asong Kwasi, Odame Kwasi and Obese Kwasi the Defendants-Respondents herein personally at Kibi.

(Sgd.) **E. C. ANNOH,**

Bailiff.

30.8.49.

30

No. 18.  
COURT NOTES.

*In the  
West  
African  
Court of  
Appeal.*

1st June, 1950.

Koi Larbi for Appellants.

Akufo Addo for Respondents.

No. 18.  
Court  
Notes,  
1st June  
1950.

*Larbi* : No Grade A Court in Akyem Abuakwa (1945 Leg. p. 368). Only Appeal Court. The second Court B has jurisdiction throughout the State so if re-trial is necessary that Court or original trial Court (Adonten) would have jurisdiction, Section 3 Ordinance 22/1944 (p. 116 1944 Leg.).

10 Record page 14 line 25 Native Appeal Court remitted to lower Court, i.e., Adonten trial Court.

Page 17 Quashie-Idun ordered re-trial by Native Appeal Court which was wrong.

Because the Akyem Abuakwa was not constituted a Grade A (C/F Ahanta) but simply an Appeal Court.

Ground (2) p. Bond at p. signed by one Appellant only.

*By Court* : Objection was not raised before Native Appeal Court.

1 W.A.C.A., 1.

*Akufo Addo* :

20 Ground (1) answered by Section 50 Ordinance 22/1944 which empowers Land Court to remit back to Native Appeal Court for hearing *de novo*.

*Re* arbitration. No provision in Native Court Regulations for arbitration in matters submitted to the Court.

If it had been arbitrated on before the point could be taken C/F Supreme Court Rules Order 51.

The fact that inspection fee was returned to Respondents shows that proceedings were negotiation and not arbitration.

In absence of provision for arbitration Court should go by Native Law.

30 Akan customs not exactly same as Fanti in detail. Native Appeal Court, page 14, line 25, shows that Court considered that failure to agree made award invalid. Page 17 Larbi abandoned the Ground (2) re arbitration.

*Larbi* : Asks that there should be a re-trial as there had been an arbitration Section 50 Ordinance 22/1944. There can only be a reference back to a Native Appeal Court for trial *de novo* where such Court has original jurisdiction.

Appeal allowed.

40 *A. Addo* : As ground upon which appeal decided not raised by Appellant and not seriously argued before Quashie-Idun J.

*Larbi* : Leaves it to Court.

*Order* :

Appeal allowed Judgment of trial Court restored costs in Court below to Appellants. No Order for costs.

(Intd.) H.W.B.

*In the  
West  
African  
Court of  
Appeal.*

No. 19.  
JUDGMENT.

1st June, 1950.

No. 19.  
Judgment,  
1st June  
1950.

In the West African Court of Appeal, Gold Coast Session, held at Accra, on Thursday the 1st day of June, 1950. Before Their Honours Sir Henry William Butler Blackall, President; Allan Chalmers Smith, Acting Chief Justice, Gold Coast, and Arthur Werner Lewey, Justice of Appeal.

*Civil Appeal,*

No. 66/49. 10

JOSEPH RICHARD OBUADABANG  
LARBI AND KWASI PRINCE as joint  
successors to KWAKU ASAGYE late of  
Larteh Ahenease (Deceased) . . . Plaintiffs-Respondents-  
Appellants-Appellants.

*v.*

OPANIN ASONG KWASI, ODAME  
KWASI AND OBESE KWASI all of  
Mfrano Anum-Apapam . . . Defendants-Appellants-  
Respondents-  
Respondents. 20

Blackall, P. *Blackall, P.* : This is an appeal against the decision of Quashie-Idun, J., ordering a re-trial before a Native Appeal Court of Akim Abuakwa.

One of the grounds of appeal before the learned Judge was that there had been an arbitration and that the Native Appeal Court was therefore wrong in entertaining the appeal. The point does not however seem to have been argued before Quashie-Idun, J., and it is not included in the grounds of appeal before this Court. But as it appeared to us that the matter was of fundamental importance for the proper determination of the appeal we invited argument upon it as empowered to do under rule 32 of the West African Court of Appeal Rules of Court. 30

It appears from the record that during the proceedings in the Native Court " B " the case was adjourned, and the parties attended before what is described as arbitration panel of elders. The first question for this Court to decide is whether those proceedings amounted to an arbitration and whether the parties were bound by the award. As to this, a perusal of the proceedings satisfies me that this was not a mere negotiation for a settlement; it was a formal arbitration.

It was contended, however, by Mr. Akufo Addo for the Respondents that the award was not binding under native customary law because at a certain stage i.e. when the arbitrators went to inspect the land, the Defendants refused to point out their boundaries and withdrew from the proceedings. 40

Now the general principle governing arbitrations is well known, and it is set out *inter alia*, in the case of *Omanhene Kobina Foli* against *Ohene Obeng Akese* (1 W.A.C.A.). In that case Deane, C.J., said :—

“ . . . in submissions to arbitration the general rule is that as  
 “ the parties choose their own arbitrator to be the judge in the  
 “ disputes between them, they cannot when the award is good on  
 “ its face, object to his decision, either upon the law or the facts.”

*In the  
 West  
 African  
 Court of  
 Appeal.*

No. 19.  
 Judgment,  
 1st June  
 1950,  
*continued.*  
 Blackall, P.

I might also refer to the case of *Ekua Ayafie v. Kwamina Banyea* (Sarbah's Fanti Law Reports, 2nd Edition, at p. 38) where it was held  
 10 that where matters in difference between two parties are investigated at a meeting, and in accordance with customary law and general usage a decision is given, it is binding on the parties, and the Supreme Court will enforce such decision. In that case Bailey, C.J., said :—

“ . . . after the arbitration was concluded, Defendant objected  
 “ to the award, because it was against him. The Plaintiff, no doubt,  
 “ would have objected had the award been but this way.”

But notwithstanding that objection the Court held the award was a good one. Mr. Akufo Addo suggests that this case is distinguishable from the present one, because the Fanti law does not exactly agree in detail with  
 20 Akan law. That is no doubt true, but the general principles of native customary law are based on reason and good sense and it would take a lot to convince me that Akan customary law is so repugnant to good sense as to allow the losing party to reject the decision of arbitrators to whom he had previously agreed.

Let us see then whether there is any cogent evidence in support of Mr. Akufo Addo's submission. I first look at the decision of Native Court “B.” That Court had the arbitration award before it and was aware of the fact that the Defendants did not agree to it. But the Court nevertheless gave effect to the arbitration award. I infer from this that  
 30 that Court did not hold the view that Akan law differs from Fanti law in this respect. Mr. Akufo Addo, however, argues that we must look at the judgment of the Native Court of Appeal, which he submits is in his favour.

Now the *ratio decidendi* of that judgment seems to have been that they found there were many irregularities in the procedure of the lower Court, for although they did say that “in the above circumstances we find out that the Defendant-Appellants did not accept the award.” They proceeded, “in order to avoid misunderstanding and multiplicity of actions, the case should be sent to the lower Court for re-trial.” That judgment in my opinion should not be construed as meaning that the  
 40 Native Court of Appeal differed from the Native Court on the question of the binding validity of an arbitration award. In the result it seems to me that as there was a proper and valid arbitration both the learned Judge and the Native Appeal Court were wrong in ordering a re-trial and the award of the arbitrators should stand.

In view of the conclusion I have arrived at about this it is unnecessary to decide the other ground argued by Mr. Larbi. But as it raises an important issue it might be well to refer briefly to it. Mr. Larbi contends that under Section 3 of the Native Courts (Colony) Ordinance 1944 the



*In the  
West  
African  
Court of  
Appeal.*

No. 19.  
Judgment,  
1st June  
1950,  
*continued.*  
Blackall, P.

Governor-in-Council is not empowered to constitute an Appeal Court *ad hoc*. He must first constitute a Court which may be either Grade A, B, C or D, and having done that the Governor-in-Council may by the same or subsequent order authorise such Court to sit as a Native Appeal Court. If one turns to the Native Courts (Colony) (Constitution of Native Courts) No. 2 Order 1945 it will be found that all the Native Appeal Courts mentioned in the Order with one exception are graded, that is to say, they are constituted Courts of first instance and are described as e.g. "B and Native Appeal Court." The one exception is the Native Appeal Court of Akim Abuakwa which it is contended was not properly constituted. I am inclined to think that there is substance in that submission but as I have already said it is unnecessary for me definitely to decide it. 10

I think the appeal should be allowed.

Smith,  
Ag. C.J.

SMITH, Ag. C.J. : I agree with the learned President and I only wish to comment on one point—on the question as to whether under Akan Law an arbitration award to be binding on the parties must first be accepted by both sides. As pointed out by the learned President the Native trial Court thought that acceptance was not necessary and it gave judgment in terms of the arbitration award. 20

I do not construe the judgment of the Native Appeal Court as expressing a contrary opinion on this point, and I understand their judgment to mean that because the case in the trial Court was adjourned and not struck out when the matter was referred to the panel of Elders, the Appeal Court inferred from this that the reference was made in order that the Elders should negotiate a settlement and not that they should conduct an arbitration and make a binding award.

I agree that the judgment of the trial Court should be restored.

Lewey, J.A.

LEWEY, J.A. : I agree. I have only two points to which I wish briefly to refer. The judgment of the Native Appeal Court contains a reference to irregularities in the proceedings in the Native Court "B" in matters of procedure and goes on to say "instead of to strike out the case for an arbitration the Court rather adjourned it under Section 24 of the Native Courts (Procedure) Regulations No. 10 of 1945." This is a little obscure but it seems to me that the Appeal Court in fact accepted the validity of the proceedings, and confirmed that they were in the nature of an arbitration. They were, however, criticising the Native Court for merely adjourning the case instead of making an end of it in view of the arbitration proceedings. 30

The other matter to which I wish to refer is that part of the submission 40 of Mr. Akufo Addo where he referred to Section 50 of the Native Courts (Colony) Ordinance. He suggested that the section might be invoked to justify the action of the Land Court Judge in referring the case back to the Native Appeal Court for re-trial or re-hearing. But against that Mr. Larbi contended that a Native Appeal Court must be given an original jurisdiction before or when, it is authorised to sit as a Native Appeal Court and before Section 50 can apply. The question of the true interpretation of Section 50 in this respect is an interesting one. But it is

unnecessary to go into it in this case, which has been decided on another point. I mention it only because it was part of the submissions and has not I think, been referred to by the President or the Acting Chief Justice.

I agree that the appeal should be allowed.

*Counsel :*

Koi Larbi for the Appellants.

Akufo Addo for the Respondents.

*In the  
West  
African  
Court of  
Appeal.*

No. 19.  
Judgment,  
1st June  
1950,  
*continued.*  
Lewey, J.A.

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No. 20.

APPLICATION for final leave to appeal.

10 IN THE WEST AFRICAN COURT OF APPEAL  
(Before a single Judge thereof).

Victoriaborg, Accra.

A.D. 1950.

J. R. O. LARBI and KWASI PRINCE as joint  
successors to Kwaku Asagye late of Larteh  
Ahenease, deceased . . . . . Appellants

*versus*

OPANIN ASONG KWASI and Others . . . Respondents.

20 Application for an Order for Final Leave to Appeal to His Majesty in  
Council pursuant to the provisions of Articles 36 and 6 of the West African  
Appeal to Privy Council Orders in Council 1930 and 1934 and for an  
Order for the Appointment of Receiver and Manager herein pursuant to  
Article 7 of the Orders in Council aforesaid

30 TAKE NOTICE that this Court will be moved by Akufo Addo  
Esquire of Counsel for the Respondents herein and on their behalf on  
Monday the 9th day of October 1950 at 9 of the clock in the forenoon  
or so soon thereafter as Counsel may be heard for an Order for Final  
Leave to Appeal to the Privy Council from the judgment of this Court  
delivered on the 1st day of June, 1950, and for a further Order appointing  
Receiver and Manager to take charge of and manage the farms on the  
land in dispute and pay the proceeds therefrom into Court pending the  
hearing and determination of the appeal to the Privy Council and/or for  
any such further Order or Orders as to the Court may seem fit.

Dated at Kwakwaduum Chambers, Accra, this 21st day of September,  
1950.

(Sgd.) AKUFO ADDO,  
Solicitor for the Respondents.

The Acting Registrar,  
West African Court of Appeal,  
Accra ; and

40 J. R. O. Larbi of Nsawam ; and  
Kwasi Prince of Nsawam.

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No. 20.  
Application  
for final  
leave to  
appeal, 21st  
September  
1950.

Amended by Order of Mr. Justice COTSEY  
dated 2.10.50. Vol. 17 page 82.

*In the  
West  
African  
Court of  
Appeal.*

No. 21.  
Affidavit in  
support of  
application  
for final  
leave to  
appeal,  
22nd  
September  
1950.

No. 21.

**AFFIDAVIT in support of Application for final leave to appeal.**

**IN THE WEST AFRICAN COURT OF APPEAL**  
(Before a single Judge thereof).

Victoriaborg, Accra.

A.D. 1950.

J. R. O. LARBI and KWASI PRINCE . . . Appellants

*versus*

ASHONG KWASI and Others . . . Respondents.

Application for an Order for Final Leave to Appeal to His Majesty in 10  
Council pursuant to the provisions of Articles 36 and 6 of the West African  
Appeal to Privy Council Orders in Council 1930 and 1934 and for an  
Order for the Appointment of Receiver and Manager herein pursuant to  
Article 7 of the Orders in Council aforesaid

**AFFIDAVIT OF ASHONG KWASI IN SUPPORT THEREOF**

I, ASHONG KWASI of Anum Apapam make oath and say :—

1. I am one of the Respondents and would-be Appellants herein and I have the authority of the others to swear to this Affidavit on our joint behalf.

2. On the 1st day of June, 1950, judgment was given against us 20  
by the West African Court of Appeal.

3. On the 20th June, 1950, we obtained Conditional Leave to appeal  
from the said Judgment to the Privy Council.

4. The conditions imposed were as follows :—

(A) To deposit £500 (Five hundred pounds) or sign a Bond  
for £500 (Five hundred pounds) with two sureties to secure the  
payment of costs of Appeal.

(B) To deposit £25 (Twenty-five pounds) to cover the making  
and transmission of the Record of Appeal.

(C) To give Notice of Appeal to the Appellants herein. 30

(D) To fulfil the above conditions within three (3) months.

5. We have deposited £500 (Five hundred pounds) in Court and  
have fulfilled all other conditions within the time limited for the purpose.

6. This case started at the Adonten Native Court "B" at  
Kukurantumi which gave judgment against us.

7. On appeal to the Native Appeal Court of the Akyem Abuakwa  
State the judgment of the Adonten Native Court B was set aside and a  
rehearing *de novo* ordered.

8. On further Appeal to the Land Court, Accra, the judgment of  
the Native Appeal Court of Akyem Abuakwa was affirmed but varied by 40  
an Order that the re-hearing *de novo* should be by the Native Appeal Court  
of Akyem Abuakwa.

9. On still further Appeal to the West African Court of Appeal the judgments of the Land Court, Accra and of the Native Appeal Court were set aside and the judgment of the Adonten Native Court " B " restored and it is from this decision that we are appealing to the Privy Council.

*In the West African Court of Appeal.*

10. I and my people have settled on the land in dispute for 30 years within which period, to the knowledge of the Appellants, we have made extensive cocoa farms on the land and erected cottages all over the land and have actually made there our home.

No. 21. Affidavit in support of application for final leave to appeal, 22nd September 1950, *continued.*

10 11. During the pendency of the suit in the Courts below, Receivers and Managers were appointed to take charge of the farms on the land.

12. Although the second Order for the appointment of a Receiver and Manager made by the Land Court, Accra was not formally discharged upon the judgment of the West African Court of Appeal the Receiver and Manager appointed has ceased to function and the proceeds of the farms paid into Court have been paid out to the Appellants.

20 13. The Appellants have never cultivated a single farm on this land, and even if they were to succeed again in the Appeal to the Privy Council the custom of Akyem Abuakwa does not in the circumstances of this case allow the Appellants to eject us from the land and take over the farms which will still be in our possession upon payment to the Appellants of a certain proportion of the net annual yield.

14. In the circumstances it is desirable and in the interest of justice and to the advantage of all parties that the farms should continue to be in charge of a Receiver and Manager pending the determination of the Appeal by the Privy Council.

30 15. And I make this Affidavit in support of an application on our behalf for an Order granting Final Leave to appeal to the Privy Council and for a further Order appointing a Receiver and Manager to take charge of and manage the farms on the land pending the hearing and determination of the Appeal to the Privy Council.

SWORN at Accra this 22nd day of September, 1950, after the foregoing had been read over, interpreted and explained to the Deponent in the Twi Language by E. O. Glover of Accra when he seemed perfectly to understand the same before making his mark hereto.

ASBONG KWASI His x mark  
Witness to mark,  
(Sgd.) E. OHENE GLOVER.

40 Before me  
(Sgd.) E. OHENE GLOVER,  
Commissioner for Oaths.

*In the  
West  
African  
Court of  
Appeal.*

No. 22.  
Affidavit  
opposing  
grant of  
final leave  
to appeal,  
30th  
September  
1950.

No. 22.

**AFFIDAVIT opposing grant of final leave to appeal.**

**IN THE WEST AFRICAN COURT OF APPEAL**

**(BEFORE A SINGLE JUDGE THEREOF),  
VICTORIABORG, ACCRA. A.D. 1950.**

**J. R. O. LARBI AND KWASI PRINCE . Appellants**

*v.*

**ASHONG KWASI AND OTHERS . Respondents.**

**AFFIDAVIT OF JOSEPH RICHARD OBUADABANG LARBI.**

**I, JOSEPH RICHARD OBUADABANG LARBI of Nsawam, Merchant, 10  
make oath and say as follows :—**

1. That I have been served with copy of the Respondents' Motion Paper and an unsworn affidavit in support thereof for Final Leave to Appeal herein to Privy Council and for an order for appointment of a Receiver and Manager in respect of the farms on the land in dispute.

2. That on the 1st day of June, 1950, J. R. O. Larbi and Kwasi Prince in their representative capacities as Joint Successors to Kwaku Asagye late of Larteh Ahenease, deceased, obtained judgment in this Honourable Court against the applicants herein, but not in their personal capacities; consequently this application is not properly before this Honourable Court under this title herein. I respectfully crave leave of the Court to refer to the correct title of the suit in which judgment was given on the 1st day of June, 1950, viz. : " Joseph Richard Obuad-  
" abang Larbi and Kwasi Prince, as joint successors to Kwaku Asagye,  
" late of Larteh Ahenease, deceased—Plaintiffs-Respondents-Appellants-  
" Appellants *versus* Opanin Asong Kwasi, Odame Kwasi and Obese Kwasi,  
" all of Mfrano Anum-Apam, Defendants-Appellants-Respondents-  
" Respondents."

3. That since the said application is not properly before this Court, the applicants are not, in law, entitled to a grant of Final Leave to appeal or an order for appointment of a Receiver and Manager in respect of the farms on the land in dispute.

4. That, in the circumstances, I make this affidavit in opposition to the applicants' application herein.

Sworn at Accra this 30th day of Sep- } (Sgd.) J. R. O. LARBI,  
tember, 1950 } Deponent.

Before me,

(Sgd.) E. OHENE GLOVER,

Commissioner for Oaths.

No. 23.  
COURT NOTES.

*In the  
West  
African  
Court of  
Appeal.*

2nd October, 1950.

Mr. Akufo Addo for Defendants-Respondents-Applicants.

Mr. Whitaker for Plaintiff-Appellant J. R. O. Larbi.

No. 23.  
Court  
Notes, 2nd  
October  
1950.

Mr. Whitaker points out that the title of the suit is incorrectly set out in the Notice served on 1st Plaintiff. He does not appear for 2nd Plaintiff. 1st Plaintiff will oppose application for appointment of Receiver and Manager.

- 10 Mr. Akufo Addo applies for amendment of motion paper by amending the first name of the 1st Defendant from Ashong to Asong and by adding after the name of the 2nd Plaintiff the words " as joint successors to Kwaku Asagye late of Larteh Ahenease, deceased."

*By Court* : Application granted.

Mr. Akufo Addo states, 2nd Plaintiff not served.

Adjourned 9th October for fresh service.

(Sgd.) J. HENLEY COUSSEY,  
Judge.

*In the  
West  
African  
Court of  
Appeal.*

No. 24.

**AFFIDAVIT of Isaac Boafo.**

IN THE WEST AFRICAN COURT OF APPEAL.  
Victoriaborg, Accra.  
A.D. 1950.

No. 24.  
Affidavit  
of Isaac  
Boafo, 7th  
October  
1950.

Civil Appeal No. L59/1948.

JOSEPH RICHARD OBUADABANG  
LARBI and KWASI PRINCE as joint  
successors to KWAKU ASAGYE late of  
Larteh, Ahenease, deceased . . .

Plaintiffs-Respondents-  
Appellants-Appellants

10

*Versus*

OPANIN ASONG KWASI, ODAME  
KWASI and OBESE KWASI all of  
Mfrano Anum Apapam . . .

Defendants-Appellants-  
Respondents-Respondents.

**AFFIDAVIT OF ISAAC BOAFO.**

I, ISAAC BOAFO of Suhum make oath and say :—

1. On the 3rd of October 1950 upon the request of the Defendants-  
Respondents herein I was entrusted with papers filed herein by the 20  
Defendants-Respondents for service on Kwasi Prince one of the above-  
named Plaintiffs-Appellants whom the Court Bailiff had not been able to  
find.

2. I went to Nsawam to look for the said Kwasi Prince but I could  
not find him there.

3. I then went to Larteh the home town of the said Kwasi Prince  
and there I saw the aged aunt of the said Kwasi Prince who told me that  
the said Kwasi Prince died about five years ago.

4. Upon further enquiry I found that the man who has been put up  
by the first Appellant as Kwasi Prince throughout these proceedings is a 30  
man named Kwaku France.

5. When Mr. Tawia of the West African Court of Appeal handed over  
the papers to me for service upon the said Kwasi Prince he Mr. Tawia told  
me that the first Appellant J. R. O. Larbi had told him that the said Kwasi  
Prince had gone to Oda to see about some forest land which the two of  
them were arranging to purchase.

Sworn at Accra this 7th day of October, } (Sgd.) ISAAC BOAFO.  
1950

Before me,

(Sgd.) J. E. K. ATTRAM,

Commissioner for Oaths.

40

## COURT NOTES granting final leave to appeal.

*In the  
West  
African  
Court of  
Appeal.*

9th October, 1950.

Same Counsel.

Mr. Akufo Addo refers to affidavit filed alleging that 2nd Plaintiff-Respondent has been dead for some time.

Mr. Whitaker admits that 2nd Plaintiff-Respondent Kwasi Prince is dead, but cannot say when he died.

10 Mr. Whitaker applies adjournment of application as to appointment of Receiver to file affidavit in opposition.

The Court refuses application as Plaintiff-Respondent has had sufficient time to reply to applicants' affidavit.

Mr. Akufo Addo moves for final leave to appeal. All conditions have been observed. The Registrar confirms this.

20 *By Court*: Final leave to appeal granted. As to application for Receiver, Mr. Akufo Addo refers to affidavit of Asong Kwasi sworn to on the 22nd September. The Judgment is for declaration of title. Appellants are not ordered to give up possession, but throughout the litigation a Receiver has operated and we ask that he be re-appointed until the appeal to the Privy Council is determined. Price of cocoa high. All cocoa has been cultivated by Appellants.

Mr. Whitaker contra. I have not filed an affidavit and cannot therefore effectively oppose application, but I ask that a new Receiver be appointed.

*Mr. Akufo Addo*: The only objection the Respondents can have to former Receiver is that he was strict and correct.

*By Court*: It is in the interest of all the parties that a Receiver be appointed in respect of the profits of the land in dispute pending the determination of this appeal by the Privy Council.

30 Mr. Kenneth Obuba of Kyebi is hereby appointed Receiver and Manager of the land in dispute pending the determination of the appeal or further order at a remuneration of 5 per cent. on the nett profits.

(Sgd.) J. HENLEY COUSSEY,

Judge.

No. 25.  
Court  
Notes  
granting  
final leave  
to appeal,  
9th October  
1950.