

28, 1957

No. 32 of 1952.

In the Privy Council.

ON APPEAL

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

UNIVERSITY OF LONDON
W.C. 1

25 FEB 1958

INSTITUTE OF FINANCED
LEGAL STUDIES

19783

BETWEEN

CHIEF KOFI FORFIE, ODIKRO OF MARBAN
(Defendant)

Appellant

and

10 NANA OWUSU AGYEMAN III, Kenyasehene
(Plaintiff)

Respondent.

Case for the Appellant.

RECORD.

1. This is an appeal from a judgment of the West African Court of Appeal pronounced on the 28th June 1951, which set aside as nullities two judgments given by Mr. A. C. Spooner in the Chief Commissioner's Court of Ashanti on the 10th May 1949 and the 29th June 1949 respectively. The judgments were in identical words but the second purported to be a review of the first.

p. 20.

p. 5 & p. 11.

20 The questions arising in this appeal depend upon the construction of certain Orders and certain Rules of Court which are hereinafter referred to and copies of which will be lodged before the hearing of the appeal. No questions arise in the present appeal as to the merits of the land dispute with which the proceedings are concerned.

THE PROCEEDINGS.

2. On the 6th October 1936 Chief Kofi Poku, who was the then Kenyasehene, instituted a suit against Chief Kwaku Wusu, the predecessor of the present Appellant, in the Kumasi Divisional Native Court "B" calling upon the Defendant to show cause why the Plaintiff should not recover the Ahafo Maban land by virtue of confederacy.

p. 1.

30 3. Thereafter the present Respondent (hereinafter referred to as "the Plaintiff") succeeded the said Chief Kofi Poku and carried on the suit against the present Appellant (hereinafter referred to as "the Defendant") who had succeeded the said Chief Kwaku Wusu. Upon the 11th November 1947 the Plaintiff amended the claim in the suit (by leave)

p. 2, ll. 20-30.

p. 3.

by calling upon the Defendant to show cause why the Plaintiff, representing the Kenyase Stool of Kumasi, should not recover the Ahafo Marban land, which Plaintiff alleged had been his Stool land from time immemorial, by virtue of the restoration of the Confederacy.

pp. 3 & 4.

4. On the 13th December 1947 the " B " Court gave judgment for the Defendant with costs. The Plaintiff then appealed to the Asantehene's Court, who on the 14th February 1949 allowed the appeal with costs. From this decision the Defendant appealed to the Chief Commissioner's Court where Mr. Spooner, the Acting Assistant Chief Commissioner, upon the 10th May 1949, gave judgment allowing the appeal with costs. 10
Mr. Spooner had been appointed to preside over the Chief Commissioner's Court by the Chief Commissioner's Court Order (No. 2) 1948 (Order No. 84 of 1948).

p. 5.

pp. 5-7.

5. By the Chief Commissioner's Court Order 1949 (Order No. 32 of 1949) dated the said 10th May 1949 and taking effect from the date thereof Mr. Allen was appointed to preside over the Chief Commissioner's Court and the Chief Commissioner's Court Order (No. 2) 1948 was thereby rescinded.

p. 7.

On the 27th May 1949 Mr. Allen in the Chief Commissioner's Court granted the Plaintiff conditional leave to appeal to the West African 20
Court of Appeal from the said Judgment of the 10th May 1949.

6. By the Chief Commissioner's Court Order (No. 2) 1949 (Order No. 42 of 1949) dated the 21st June 1949 Mr. Spooner was appointed as from the 23rd June 1949 to the 30th June 1949 both days inclusive to preside over the Chief Commissioner's Court.

pp. 11 & 12.

On the 29th June 1949 Mr. Spooner in the Chief Commissioner's Court of his own motion purported to review (under Order 41 in the Third Schedule to the Courts Ordinance) his said judgment of the 10th May 1949 by redelivering verbatim the said judgment of the 10th May 1949.

p. 13.

7. On the 15th July 1949 Mr. Allen sitting in the Chief Commissioner's 30
Court granted to the Plaintiff final leave to appeal to the West African Court of Appeal against the said judgment of the 10th May 1949.

8. By the Chief Commissioner's Court Order (No. 3) 1949 (Order No. 55 of 1949) dated the 16th July 1949, Mr. Spooner was appointed to preside over the Chief Commissioner's Court and the said Chief Commissioner's Court Order 1949 was thereby rescinded.

p. 15.

p. 16.

On the 22nd July 1949 Mr. Spooner sitting in the Chief Commissioner's Court granted to the Plaintiff Conditional Leave to appeal to the West African Court of Appeal against the said judgment of the 29th June 1949 and on the 12th August 1949 granted him final leave. 40

9. The grounds of appeal against Mr. Spooner's judgment of the 10th May 1949 were that, on that date, his judicial powers had been

rescinded by Order No. 32 of 1949, so that the judgment was a nullity. p. 14.
 There were no grounds of appeal upon the merits. The grounds of appeal p. 17.
 against Mr. Spooner's judgment of the 29th June 1949 were as follows :—

(1) That there was no power to review the judgment of the 10th May 1949 after (conditional) leave to appeal against such judgment had been given on the 27th May 1949 even though final leave to appeal had not been granted on the 29th June 1949.

(2) That the judgment was inconsistent with the evidence.

(3) That the judgment was against the weight of the evidence.

10 10. Upon the appeals both coming before the West African Court of Appeal on the 22nd June 1951 only grounds of appeal going to Mr. Spooner's jurisdiction were argued, with the additional contention that the Rules of Court did not authorise review upon the Motion of the Court without an application for review by a party. pp. 18-20.
p. 19, ll. 23-27.

During the course of the hearing the Court of Appeal raised the question whether Order 42 of 1949 was *ultra vires* if it purported to appoint Mr. Spooner to exercise jurisdiction "while another person still exercising it," whereupon Plaintiff's Counsel argued that Mr. Spooner could not be appointed until Mr. Allen's appointment was rescinded. p. 20, l. 6.
p. 20, ll. 11-13.

20 11. The Court of Appeal was of opinion :—

(1) that, by s. 16 of the Interpretation Ordinance, Order No. 32 of 1949 dated 10th May 1949 became effective as from 9th May 1949 so that Mr. Spooner had no authority on the 10th May 1949 to deliver judgment and that his judgment of that date was therefore a nullity ; p. 21, ll. 25-32.
p. 23, ll. 7-14.

(2) that the judgment on review of the 29th June 1949, by reason of the judgment of the 10th May 1949 being a nullity, was also a nullity. p. 23, ll. 15-18.

30 The Court of Appeal did not express any opinion on the questions whether conditional leave to appeal against a judgment prevents review of that judgment or whether the Court can review of its own motion.

APPELLANT'S SUBMISSIONS.

40 The Appellant respectfully submits that the Court of Appeal was in error in holding that, having regard to Order 32 of 1949 and s. 16 of the Interpretation Ordinance, Mr. Spooner's authority to exercise judicial functions under Order No. 84 of 1948 ended on the 9th May 1949, Order 32 of 1949 being expressed to take effect from the date thereof and such date being the 10th May 1949 and not being expressed to come into operation on the 10th May 1949. It is submitted therefore that the 10th May 1949 was excluded from the operation of Order 32 of 1949 and that such Order came into force upon the first instant of the next day, the 11th May 1949, and that consequently the judgment of the 10th May 1949 was valid.

If however such judgment was a nullity, the Appellant respectfully agrees with the Court of Appeal that it could not be reviewed. But in that case, the Appellant respectfully submits that the judgment of the 29th June 1949, though expressed to be by way of review, was in effect an original judgment and not a review of that which did not exist as a judgment and was incapable of review. The substance of the matter must be considered and Mr. Spooner upon the 29th June 1949 pronounced a judgment which, if he had no jurisdiction to pronounce on the 10th May 1949, he had jurisdiction to pronounce upon the 29th June 1949.

p. 24.

12. On the 25th October 1951, the West African Court of Appeal 10 granted the Defendant final leave to appeal to Her Majesty in Council.

13. The Defendant-Appellant humbly submits that this appeal should be allowed with costs and that the judgment of the Court of Appeal of the 28th June 1951 should be reversed and the judgment of Mr. Spooner in the Chief Commissioner's Court of Ashanti of the 10th May 1949 (or alternatively that of the 29th June 1949) should be restored for the following (among other)

REASONS

- (1) BECAUSE Mr. Spooner had jurisdiction upon the 10th May 1949 to pronounce the judgment of that date. 20
- (2) BECAUSE Mr. Spooner, if he had not jurisdiction upon the 10th May 1949 to pronounce the judgment of that date, had jurisdiction upon the 29th June 1949 to pronounce judgment upon the appeal and the judgment he then pronounced was valid and effective as the judgment in the appeal.

HECTOR HUGHES.

T. B. W. RAMSAY.

In the Privy Council.

ON APPEAL
from the West African Court of Appeal
(Gold Coast Session—Accra).

BETWEEN
CHIEF KOFI FORFIE,
ODIKRO OF MARBAN
(Defendant) . . . *Appellant*
AND
NANA OWUSU AGYEMAN III,
Kenyasehene (Plaintiff) . . . *Respondent*

Case for the Appellant.

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