

28, 1957

No. 32 of 1952.

# In the Privy Council.

## ON APPEAL

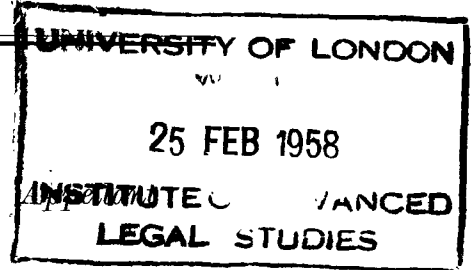
FROM THE WEST AFRICAN COURT OF APPEAL (GOLD COAST  
SESSION, ACCRA).

BETWEEN

CHIEF KOFI FORFIE, ODIKRO OF MARBAN  
(Defendant)

AND

10 BARIMA KWABENA SEIFAH, KENYASEHENE  
(Plaintiff) Respondent.



19781

## Case for the Respondent.

RECORD.

1. This is an appeal from a judgment, dated the 28th June, 1951, pp. 20-23.  
of the West African Court of Appeal (Verity, Ag. P., Lewey, J.A., and  
Morgan, J.), setting aside as nullities two purported judgments, dated  
the 10th May, 1949, and the 29th June, 1949, respectively, of the Chief pp. 5-7, 12.  
Commissioner's Court of Ashanti, allowing an appeal from a judgment, p. 5.  
dated the 14th February, 1949, of the Asantehene's "A" Court, allowing  
an appeal from a judgment, dated the 13th December, 1947, of the pp. 3-4.  
20 Asantehene's "B" Court, dismissing an action brought originally by  
Chief Kofi Poku (hereinafter called "the original Plaintiff") a predecessor  
in title of the Respondent against the predecessor in title of the Appellant  
to recover certain land known as the Ahafo Marban land.

2. The following are the legislative provisions relevant to this  
appeal :—

INTERPRETATION ORDINANCE (LAWS OF THE GOLD COAST), 1936,  
CAP. 1).

\* \* \* \* \*

30 16. Where any ordinance, or any notice, order, warrant,  
scheme, or letters patent, made, granted, or issued under a power  
conferred by any ordinance, or by any competent authority, is  
expressed to come into operation on a particular day, the same shall  
be construed as coming into operation on the expiration of the  
previous day.

\* \* \* \* \*

## COURTS ORDINANCE (LAWS OF THE GOLD COAST, 1936, CAP. 4).

## PART E.—ASHANTI CHIEF COMMISSIONER'S COURT.

## 60. Interpretation :—

“ Chief Commissioner ” means in this Part the officer appointed as Chief Commissioner of Ashanti.

61. (1) There shall be established in Ashanti a Court to be called the Chief Commissioner's Court which shall have the jurisdiction conferred by this Ordinance.

(2) The Chief Commissioner's Court shall be presided over by the Chief Commissioner or by some person lawfully appointed under section 63 and its sittings may be held at any place within Ashanti.

\* \* \* \* \*

63. The Governor may at any time by order under his hand appoint a fit and proper person to preside over the Chief Commissioner's Court and such person shall have and may exercise during the period of such appointment and subject to the terms thereof all the judicial powers and jurisdiction for the time being vested in the Chief Commissioner.

\* \* \* \* \*

## PART M.—RULES AND ORDERS OF COURT.

106. The provisions contained in the Second and Third Schedules shall in respect of the matters to which they extend regulate the proceedings in the Supreme Court and so far as is practicable and local circumstances permit in Courts other than the Supreme Court, but such provisions may be amended, altered, added to, or revoked, by the same authority by which new Rules of Court may be made (as provided in section 107), and in the same manner.

\* \* \* \* \*

## THIRD SCHEDULE. (Section 106.)

## CIVIL PROCEDURE.

\* \* \* \* \*

## ORDER 41.

*Review.*

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1. Any Judge, Magistrate, or other judicial officer, may, upon such grounds as he shall consider sufficient, review any judgment or decision given by him (except where either party shall have obtained leave to appeal, or a reference shall have been made upon a special case, and such appeal or reference is not withdrawn), and upon such review it shall be lawful for him to open and re-hear the case wholly or in part, and to take fresh evidence, and to reverse, vary, or confirm his previous judgment or decision, or to order a non-suit.

2. Any application for review of judgment must be made not later than fourteen days after such judgment. After the expiration of fourteen days an application for review shall not be admitted, except by special leave of the Court, on such terms as seem just.

3. The application shall not of itself operate as a stay of execution unless the Court so orders, and such order may be made upon such terms as to security for performance of the judgment or otherwise as the Court may consider necessary. Any money in Court in the suit shall be retained to abide the result of the motion or the further order of the Court.

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\* \* \* \* \*

3. On the 6th October, 1936, the original Plaintiff issued a civil summons in the Asantehene's " B " Court, claiming that the predecessor in title of the Appellant show reason why he, Chief Kofi Poku, should not recover the Ahafo Marban land by virtue of the restoration of the Ashanti Confederacy of Chiefs. This summons was amended, in details not material to this appeal, pursuant to an order made by the Court on the 11th November, 1947.

pp. 1-2.

pp. 2-3.

4. On the 13th December, 1947, the Asantehene's " B " Court gave judgment for the Appellant. Final leave to appeal to the Asantehene's " A " Court was granted to Nana Owusu Agyeman III (hereinafter called " the original Respondent ") the successor in title of the original Plaintiff on the 8th January, 1948. On the 14th February, 1949, the Asantehene's " A " Court gave judgment allowing the appeal.

pp. 3-4.

p. 4, lines 10-35.

p. 5, lines 1-21.

5. The Appellant then appealed to the Chief Commissioner's Court of Ashanti. Mr. A. C. Spooner was at that time presiding over the Chief Commissioner's Court, by virtue of the Chief Commissioner's Court Order (No. 2), 1948, made under the Courts Ordinance, s. 63. (This Order, together with subsequent Orders hereinafter mentioned, is set out in the Appendix to this Case.) Mr. Spooner heard the appeal on the 22nd April, 1949.

p. 21, lines 14-17.

6. On the 10th May, 1949, was made the Chief Commissioner's Court Order, 1949 (see Appendix), rescinding the Chief Commissioner's Court Order (No. 2), 1948, and appointing Mr. D. M. Allen to preside over the Chief Commissioner's Court. This Order was expressed to take effect from its date. Consequently, under the Interpretation Ordinance, s. 16, Mr. Spooner's authority to preside over the Chief Commissioner's Court came to an end on the expiration of the 9th May, 1949. Nevertheless, on the 10th May, 1949, Mr. Spooner purported to preside over the Court and to give judgment reversing the judgment of the Asantehene's " A " Court and allowing the Appellant's appeal.

pp. 6-7.

7. On the 27th May, 1949, Mr. D. M. Allen, presiding over the Chief Commissioner's Court, granted to the original Respondent leave to appeal to the West African Court of Appeal, subject to certain conditions. The original Respondent gave notice of appeal on the 28th May, 1949.

pp. 7-8.

pp. 8-9.

8. On the 21st June, 1949, was made the Chief Commissioner's Court Order (No. 2), 1949 (see Appendix), appointing Mr. Spooner to preside over the Chief Commissioner's Court from the 23rd June to the 30th June, 1949. On the 23rd June, 1949, a hearing notice was issued, summoning the parties to attend the Court on the 29th June for a review of the purported judgment delivered on the 10th May, 1949. The original Respondent filed submissions, dated the 28th June, that the Court had no power under O. 41 r. 1 to conduct any review, because he had been granted leave to appeal on the 27th May, all the conditions had been fulfilled, and his application for final leave to appeal had been filed and was due to be heard on the 1st July. 10

9. Mr. Spooner purported to preside over the Chief Commissioner's Court on the 29th June, 1949. He said the case was for review on the motion of the Court, because he had had no jurisdiction on the 10th May. His jurisdiction, he said, had been reinstated by the Chief Commissioner's Court Order (No. 2), 1949, so he was reviewing the judgment under O. 41 r. 1. Considering the original Respondent's submissions, he held that, since final leave to appeal had not been granted, he had power to review. He then read over again the purported judgment which he had delivered on the 10th May. 20

10. The original Respondent's application for final leave to appeal to the West African Court of Appeal from the purported judgment of the 10th May, 1949, came before Mr. D. M. Allen in the Chief Commissioner's Court on the 1st July, 1949. The application was then adjourned to the 15th July, on which date Mr. Allen granted final leave to appeal.

11. On the 16th July, 1949, was made the Chief Commissioner's Court Order (No. 3), 1949 (see Appendix), appointing Mr. Spooner to preside over the Chief Commissioner's Court and rescinding the Chief Commissioner's Court Order, 1949.

12. The original Respondent's grounds of appeal against the purported judgment of the 10th May, 1949, were dated the 18th July, 1949. They were that Mr. Spooner's authority to preside over the Chief Commissioner's Court had been rescinded by the Chief Commissioner's Court Order, 1949, so that the judgment of the 10th May, 1949, having been given by Mr. Spooner after his powers had been so rescinded, was a complete nullity. 30

13. The original Respondent applied to the Chief Commissioner's Court for leave to appeal to the West African Court of Appeal from the purported judgment of the 29th June, 1949. Mr. Spooner granted leave to appeal on the 22nd July, 1949, subject to certain conditions, and final leave to appeal on the 12th August, 1949. The grounds of appeal were— 40

p. 15.  
p. 16.  
pp. 17-18.

(1) that the Chief Commissioner's Court had had no jurisdiction to review the judgment of the 10th May, 1949, because leave to appeal from that judgment had been obtained before the purported review took place ;

(II) that the judgment of the Chief Commissioner's Court was inconsistent with the evidence and against the weight of the evidence.

14. The appeal came before Verity, Ag. P., Lewey, J.A., and Morgan, J., on the 22nd June, 1951. Counsel for the Appellant conceded that Mr. Spooner's first judgment was a nullity, and there had been no power to review. Judgment was given on the 28th June. Morgan, J., having set out the history of the proceedings, said the grounds of appeal against the judgment of the 10th May, 1949, were well founded.
- 10 Mr. Spooner's authority to exercise judicial powers had been rescinded with effect from the 9th May, 1949, so the judgment of the 10th May was a nullity. It followed that the judgment of the 29th June, 1949, was also a nullity. Verity, Ag. P., and Lewey, J.A., concurred.

pp. 18-20.  
p. 20, lines 1-3.

pp. 21-23.  
p. 23, lines 5-6.

p. 23, lines 7-12.

p. 23, lines 15-17.  
p. 23, lines 19-24.

15. On the 5th October, 1951, the original Respondent abdicated and the Respondent Barima Kwabena Seifah was subsequently installed as Kenyasehene. On the 18th June, 1957, the Solicitors for the Appellant lodged a Petition of Revivor with the Privy Council and on the 24th June, 1957, an Order was made by Her Majesty in Council directing that the Respondent be substituted in the Appeal for the original Respondent.

- 20 16. The Appellant conceded in the West African Court of Appeal that the purported judgment of the 10th May, 1949, was a nullity. This concession, in the Respondent's submission, was rightly made. Mr. Spooner was not the Chief Commissioner, so at the material time his authority to sit in the Chief Commissioner's Court depended solely on the Chief Commissioner's Court Order (No. 2), 1948. By the combined operation of the Chief Commissioner's Court Order, 1949, and the Interpretation Ordinance, s. 16, Mr. Spooner's authority to sit in the Court came to an end at the expiration of the 9th May, 1949. Consequently, any action which he purported to take as judge of the Court on the 10th May, 1949, produced no legal effect. The Respondent respectfully submits that it follows from this that the purported review of the 29th June, 1949, was also a nullity. The judgment of the 10th May, being a nullity, could not by a mere process of review be turned into something of legal force. A review of a nullity cannot amount to more than a nullity itself.
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p. 20, lines 1-2.

17. The Respondent respectfully submits that the proceedings of the 29th June, 1949, were a nullity for the further reason that the Chief Commissioner's Court Order (No. 2), 1949, was *ultra vires* of the Governor, and Mr. Spooner had no authority to sit in the Chief Commissioner's Court on the 29th June. The power of the Governor under the Courts Ordinance, s. 63, was to appoint someone "to preside" over the Chief Commissioner's Court. Since it is not possible for two people to preside at the same time over the same court, there was no power under s. 63 to appoint two persons simultaneously. Both when the Chief Commissioner's Court Order (No. 2), 1949, was made and when it was expressed to take effect, Mr. Allen was authorised by the Chief Commissioner's Court Order, 1949, to preside over the Court. The former Order, since it did not rescind the latter Order, purported to appoint Mr. Spooner to preside simultaneously with Mr. Allen, and therefore was *ultra vires*.
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p. 19, line 38 ;  
p. 20, line 3.

18. Alternatively, the Respondent respectfully submits that the purported review of the 29th June, 1949, was a nullity because it was not authorised by the Rules of Court contained in the third schedule to the Courts Ordinance. This point also was conceded by the Appellant in the West African Court of Appeal. It rests on the following grounds :—

(I) Power to review can be derived only from O. 41. O. 41 only empowers the Court to review on the application of a party, whereas in this case neither party made such application, but Mr. Spooner purported to review of his own motion.

(II) Under O. 41, power to review a judgment is lost once leave 10 to appeal from that judgment is obtained. The Respondent obtained leave to appeal from the judgment of the 10th May, subject to certain conditions, on the 27th May, 1949. In the Respondent's submission this leave, rather than the final leave subsequently granted, is the leave to which O. 41 refers, since the grant of final leave follows automatically when the conditions have been fulfilled. Consequently, if the Chief Commissioner's Court ever had power to review the judgment of the 10th May, 1949, that power was lost on the 27th May, 1949.

(III) O. 41 occurs in the part of the Rules which applies only 20 to trials. The Rules deal with appeals separately, in O. 52. The power to review, therefore, belongs in each case only to the court of first instance, and the Chief Commissioner's Court could never have had any power to review a judgment given by it in this case.

19. The Respondent respectfully submits that the judgment of the West African Court of Appeal was right and ought to be affirmed, and this appeal ought to be dismissed, for the following (amongst other)

## REASONS

- (1) BECAUSE Mr. A. C. Spooner was not authorised to sit in the Chief Commissioner's Court of Ashanti on 30 the 10th May, 1949, and the judgment which he purported to give on that day was a nullity.
- (2) BECAUSE the purported review of that judgment on the 29th June, 1949, was also a nullity.
- (3) BECAUSE the Chief Commissioner's Court Order (No. 2), 1949, was *ultra vires*.
- (4) BECAUSE the Chief Commissioner's Court never had power to review its purported judgment of the 10th May, 1949.
- (5) BECAUSE such power, if the Chief Commissioner's 40 Court ever had it, was lost on the 27th May, 1949.

J. G. LE QUESNE.

## APPENDIX.

Extracted from Supplements to the Gold Coast Gazette for the first half-year, 1948, page 487.

## GOLD COAST.

THE COURTS ORDINANCE (CAP. 4).

No. 84 of 1948.

## ORDER

(under section 63 of the Ordinance).

THE CHIEF COMMISSIONER'S COURT ORDER (No. 2), 1948.

10 IN exercise of the powers conferred upon him by section 63 of the Ordinance, His Excellency the Governor has been pleased to order as follows :—

1. This Order may be cited as the Chief Commissioner's Court Order (No. 2), 1948, and shall take effect from the date hereof.

Short title and commencement.

2. ARTHUR CASSWELL SPOONER, Esquire, Senior District Commissioner, is hereby appointed to preside over the Chief Commissioner's Court and to exercise all the judicial powers and jurisdiction for the time being vested in the Chief Commissioner.

Appointment of Officer to preside over Court.

3. The Chief Commissioner's Court Order, 1948, is hereby rescinded.

Rescission of No. 3 of 1948.

By His Excellency's Command,

20

ROBERT SCOTT,  
Colonial Secretary.

Accra.

1st June, 1948.

Extracted from Supplements to the Gold Coast Gazette for the first half-year, 1949, page 231.

ASHANTI.

THE COURTS ORDINANCE (CAP. 4).

No. 32 of 1949.

ORDER

made under section 63 of the Ordinance.

THE CHIEF COMMISSIONER'S COURT ORDER, 1949.

IN exercise of the powers conferred upon the Governor by section 63 of the Ordinance it is hereby ordered as follows :— 10

Short title and commencement.

1. This Order may be cited as the Chief Commissioner's Court Order, 1949, and shall take effect from the date hereof.

Appointment of Officer to preside over Court.

2. DAVID MOOR ALLEN, Esquire, District Commissioner, is hereby appointed to preside over the Chief Commissioner's Court and to exercise all the judicial powers and jurisdiction for the time being vested in the Chief Commissioner.

Rescission of No. 84 of 1948.

3. The Chief Commissioner's Court Order (No. 2), 1948, is hereby rescinded.

By His Excellency's Command,  
(Sgd.) R. H. SALOWAY, 20  
Acting Colonial Secretary.

Accra.

10th May, 1949.



Extracted from Gold Coast Rules Regulations Orders &c., 1949 and 1950, p. 397.

ASHANTI.

No. 42 of 1949.  
21st June, 1949.

ORDER

made under section 63 of the Courts Ordinance (Cap. 4).

1. This Order may be cited as the Chief Commissioner's Court Order (No. 2), 1949. Title.

10      2. ARTHUR CASSWELL SPOONER, Senior District Commissioner, is hereby appointed as from the 23rd day of June, 1949, to the 30th day of June, 1949, both days inclusive, to preside over the Chief Commissioner's Court and to exercise all the judicial powers and jurisdiction for the time being vested in the Chief Commissioner. Appointment of  
Officer to preside  
over Court.

Extracted from Gold Coast Rules Regulations Orders &c., 1949 and  
1950, p. 402.

ASHANTI.

No. 55 of 1949.  
16th July, 1949.

ORDER

made under section 63 of the Courts Ordinance (Cap. 4).

Short title and  
commencement.

1. This Order may be cited as the Chief Commissioner's Court Order  
(No. 3), 1949.

Appointment of  
Officer to preside  
over Court.

2. ARTHUR CASSWELL SPOONER, Senior District Commissioner, 10  
is hereby appointed to preside over the Chief Commissioner's Court and  
to exercise all the judicial powers and jurisdiction for the time being  
vested in the Chief Commissioner.

Rescission of  
No. 32 of 1949.

3. The Chief Commissioner's Court Order, 1949, is hereby rescinded.

**In the Privy Council.**

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**ON APPEAL**  
*from the West African Court of Appeal.*

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BETWEEN

**CHIEF KOFI FORFIE,**  
**ODIKRO OF MARBAN**  
(Defendant) . . . *Appellant*

AND

**BARIMA KWABENA**  
**SEIFAH, KENYASE-**  
**HENE** (Plaintiff) *Respondent.*

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**Case for the Respondent.**

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**WATERHOUSE & CO.,**  
1 New Court,  
Lincoln's Inn,  
London, W.C.2,  
*Solicitors for the Respondent.*