

Judgment
28, 1957

~~GHS. G. 4~~

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) . . . *Appellant*

AND

NANA OWUSU AGYEMAN III, Kenyasehene (Plaintiff) . . . *Respondent*

RECORD OF PROCEEDINGS

A. L. BRYDEN & WILLIAMS,
53 VICTORIA STREET,
LONDON, S.W.1,
Solicitors for the Appellant.

WATERHOUSE & CO.,
1 NEW COURT,
CAREY STREET,
LONDON, W.C.2,
Solicitors for the Respondent.

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*

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
<i>IN THE ASANTEHENE'S "B1" COURT</i>			
1	Civil Summons	6th October 1936 ..	1
2	Court Notes on Application for Amendment of Summons ..	11th November 1947	2
3	Judgment (Extract)	13th December 1947	3
4	Court Notes granting Final Leave to Appeal to Asantehene's "A" Court	8th January 1948 ..	4
<i>IN THE ASANTEHENE'S "A" COURT</i>			
5	Judgment (Extract)	14th February 1949 ..	5
<i>IN THE CHIEF COMMISSIONER'S COURT</i>			
6	Judgment	10th May 1949 ..	5
7	Court Notes granting Conditional Leave to Appeal against Judgment of 10th May 1949	27th May 1949 ..	7
8	Notice of Appeal against Judgment of 10th May 1949 ..	28th May 1949 ..	8

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ii

NO.	INSTITUTE OF ADVANCED LEGAL STUDIES DESCRIPTION OF DOCUMENT	DATE	PAGE
9	Submissions by Plaintiff-Appellant	28th June 1949 ..	9
10	Court Notes on reviewing Judgment of 10th May 1949 and Judgment	29th June 1949 ..	11
11	Court Notes granting Final Leave to Appeal against Judgment of the 10th May 1949	1st and 15th July 1949	12
<i>IN THE WEST AFRICAN COURT OF APPEAL</i>			
12	Grounds of Appeal against Judgment of 10th May 1949 ..	18th July 1949 ..	14
<i>IN THE CHIEF COMMISSIONER'S COURT</i>			
13	Court Notes granting Conditional Leave to Appeal against Judgment of 29th June 1949	22nd July 1949 ..	15
14	Court Notes granting Final Leave to Appeal against Judgment of 29th June 1949	12th August 1949 ..	16
<i>IN THE WEST AFRICAN COURT OF APPEAL</i>			
15	Grounds of Appeal against Judgment of 29th June 1949 ..	17th August 1949 ..	17
16	Court Notes of Arguments	22nd June 1951 ..	18
17	Judgment	28th June 1951 ..	20
18	Court Notes of Judgment	28th June 1951 ..	23
19	Court Notes granting Final Leave to Appeal to Her Majesty in Council	25th October 1951 ..	24

LIST OF DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL BUT NOT PRINTED

DESCRIPTION OF DOCUMENT	DATE
<i>IN THE KUMASI DIVISIONAL NATIVE COURT "B"</i>	
Application for a Writ of Civil Summons	5th October 1936
Court Notes on Adjournment	30th September 1947
Court Notes on Adjournment	21st October 1947
Plaintiff's Evidence (7 witnesses)	3rd to 8th November 1947

DESCRIPTION OF DOCUMENT	DATE
Application for amendment of Writ of Summons	10th November 1947
Defendant's Protest to Application	11th November 1947
Defendant's Evidence (5 witnesses)	{11th, 13th and 24th (November 1947
Application by Yaa Marnu, Obaapanin of Akwasiase to be made Co-defendant	24th November 1947
Court Notes on Application for Joinder	24th November 1947
Judgment (Extracts so far as not printed)	13th December 1947
Plaintiff's Application for Conditional Leave to Appeal	13th December 1947
Court Notes granting Conditional Leave	15th December 1947
Notice of Appeal	17th December 1947
Application for Final Leave	6th January 1948
<i>IN THE ASANTEHENE'S " A " COURT</i>	
Order by the Asantehene's " A1 " Court transferring this case to " A2 " Court	27th January 1949
Court Notes including Submissions by the Appellant and Submissions by Respondent	1st, 10th and 14th February 1949
Examination of the Parties by Court and Views of Members of Court	14th February 1949
Judgment (Extract so far as not printed)	14th February 1949
<i>IN THE CHIEF COMMISSIONER'S COURT</i>	
Court Notes granting Conditional Leave to Appeal	18th February 1949
Appeal Notice	19th February 1949
Motion on Notice for a Grant of Final Leave and for an Injunction	25th February 1949
Grounds of Appeal	1st March 1949
Supplementary Grounds of Appeal	14th April 1949
Reply to Grounds of Appeal	20th April 1949
Reply to Supplementary Grounds of Appeal	22nd April 1949
Submissions	22nd April 1949
Power of Attorney by Plaintiff-Appellant to Mr. D. C. Antoh	28th June 1949

DESCRIPTION OF DOCUMENT	DATE
Reviewed Judgment	29th June 1949
Appeal Notice	23rd July 1949
<i>IN THE WEST AFRICAN COURT OF APPEAL</i>	
Notice of Intention to appeal to Privy Council	2nd July 1951
Motion for Conditional Leave to Appeal to Privy Council	2nd July 1951
Affidavit of Kofi Forfie supporting Motion for Conditional Leave to Appeal to Privy Council	3rd July 1951
Court Notes of Adjournment	31st July 1951
Court Notes granting Conditional Leave to Appeal to Privy Council	17th August 1951
Notice of Appeal	31st August 1951
Motion for Final Leave to Appeal to Privy Council	11th October 1951
Affidavit of Chief Kofi Forfie supporting Motion for Final Leave to Appeal to Privy Council	11th October 1951
<i>Exhibits</i>	
<i>IN THE ASANTEHENE'S "B1" COURT</i>	
" A "—Certified copy of Extract from the Asantehene's Office Registration Book	8th March 1935
" B "—Certified Copy of Decision given in land dispute between Kwasiasi-Acherensua	9th December 1913
" C "—Certified Copy of Evidence given in the C.C.A.'s Court by witness—Yaw Benyardi in an Appeal Case— <i>Kwaku Ketekyi v. Osei Yaw</i> together with the Decision of the Court	29th January 1923
" D "—Certified Copy of Judgment delivered in case the <i>Stool of Oyoko etc. v. Obaapanin Yaa Mainoo and Others</i>	26th November 1940
" E "—Certified Copy of Extract of an Enquiry held on the 8th December 1913 at Kwesiase by the C.C.A.	9th December 1913
" F "—Certified Copy of Letter dated 4th August 1947 addressed to Otumfuo the Asantehene by Odikro Kofi Forfie of Mabang	4th August 1947
" G "—Certified Copy of Letter dated 19th August 1947 from Nana Kwesi Ansu to the President, Native Court of Kumasi Divisional Grade " B "	19th August 1947
" H "—Certified Copy of Extract from the Evidence given in the Asantehene's Divisional Native Court, held on the 3rd of October 1935, by Plaintiff's witness—Akwaboahene Kwaku Baah	3rd October 1935

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*

10 RECORD OF PROCEEDINGS

No. 1.
CIVIL SUMMONS.

IN THE KUMASI DIVISIONAL NATIVE COURT " B. "

CHIEF KOFI POKU Plaintiff

v.

CHIEF KWAKU WUSU Defendant.

To : Chief Kwaku Wusu, of Kumasi.

YOU ARE HEREBY commanded in the name of Asantehene to appear before this Court at Kumasi on Wednesday the 21st day of 20 October, 1936, at 8 o'clock a.m. to answer a suit against you by Plaintiff.

The Plaintiff claims

(A) Defendant to assign his reason why Plaintiff should not recover the Ahafo Maban land by virtue of Confederacy.

*In the
Asantehene's
" B1 "
Court
—
No. 1.
Civil
Summons,
6th October
1936.*

*In the
Asantehene's
" B1 "Court.
No. 1.
Civil
Summons,
6th October
1936,
continued.*

Issued at Kumasi on the 6th day of October, 1936.

Sum claimed :	..	..	..	£-	To assign reason
Summons fee :	..	..	..	£1. -.	-.
Adasuum	..	..	..	-.	-.
Service	..	..	..	-.	1. -.
Abena	..	..	..	-.	-.
Clerk & Linguist fees	..	..	..	-.	-.
Mileage fees	..	..	..	-.	-.
				<u>£1. 1. -.</u>	

CHIEF KWAME AMANKWATIA, V. his 10

Mark of President. X

mark

Witness.

Witness to Signature or Marks :

(Sgd.) WILLIAM PREMPEH,

for Signature of Court Registrar.

TAKE NOTICE : If you do not attend the Court may give judgment in your absence.

(A) State Plaintiff's claim clearly.

No. 2.
Court
Notes on
Application
for
Amend-
ment of
Summons,
11th
November
1947.

No. 2.

20

COURT NOTES on Application for Amendment of Summons.

IN THE ASANTEHENE'S DIVISIONAL COURT " B1 " held at Kumasi on Tuesday, November 11, 1947, before NANA KYIDOMHENE OSEI YAW—President, NANA AMAKOMHENE KWAKU ATTAH and KYEAME BAFUO AKOTO.

NANA OWUSU AGYEMAN, succ. to late KOFI POKU
(deceased)

V.

ODIKRO KOFI FORFIE, succ. to late KWAKU WUSU

From

Folio 336.

Parties present.

30

NOTE : The Plaintiff files on 10/11/47 an application to amend his claim to read as follows :—

“ Defendant to appear and assign reason why Plaintiff representing the Kenyase Stool of Kumasi should not recover the Ahafo Marban land which is his stool land from time immemorial by virtue of the restoration of the Confederacy.”

The Defendant files a written opposition on 11/11/47, to the amendment being accepted, since it will prejudice his defence.

Court :

10 The Defendant’s opposition is disallowed, since the amendment does not alter the issue in any mood but merely adds ingredients which to the Plaintiff are essential in effect. Amendment therefore accepted accordingly.

In the Asantehene’s “ B1 ” Court.
No. 2.
Court
Notes on Application for Amendment of Summons, 11th November 1947, continued.

No. 3.
JUDGMENT (Extract).

IN THE ASANTEHENE’S DIVISIONAL COURT “ B1 ” held at Kumasi on Saturday, December 13, 1947, before NANA KYIDOMHENE OSEI YAW, NANA AMAKOMHENE KWAKU ATTA and KYEAME OSEI AKOTO.

No. 3.
Judgment (Extract), 13th December 1947.

20 NANA OWUSU AGYEMAN, succ. to the late Kofi Poku (Kenyasehene) (deceased) versus ODIKRO KOFI FORFIE, succ. to the late KWAKU WUSU (MARBAN DIKRO) (deceased) Parties present. } From Folio 61.

JUDGMENT (Extract)—

In this case, the Plaintiff’s claim is :—

30 “ Defendant to appear and assign reasons why Plaintiff representing the Kenyase stool in Kumasi should not recover the Ahafo Marban land which is his stool land from time immemorial and by virtue of the Confederacy.”

The evidence on each side has been patiently heard, and carefully scrutinised and the Court has come to the following conclusions :—

* * * * *

In view of these reasons, and upon the weight of evidence, on holding that the Plaintiff has deliberately failed to discharge the burden of proof, which was his duty to do so, this Court gives judgment (without prejudice

*In the
Asantehene's
" B1 "Court*

whatsoever, to any claim that the Obaapanin of Akwasiasi—Yaah Manu—who claims to have certain interest in this land may hereafter advance) in favour of the Defendant with costs to be taxed.

No. 3.
Judgment
(Extract),
13th
December
1947,
continued.

(Sgd.) OSEI YAW,
President.

Recorder :

(Sgd.) J. S. AHENKORA,
Registrar.
13.12.47.

No. 4.
Court
Notes
granting
Final
Leave to
Appeal to
the Asante-
hene's
" A "
Court,
8th
January
1948.

No. 4.

10

COURT NOTES granting Final Leave to Appeal to the Asantehene's " A " Court.

IN THE ASANTEHENE'S DIVISIONAL COURT " B1 " held at Kumasi on Thursday, January 8, before NANA OYOKOHENE KOJO AGYEKUM, President, NANA TOASEHENE KOFI OWUSU and KYEAME KWAMI BUABENG.

NANA OWUSU AGYEMAN III, succ. to late
Chief KOFI POKU Plaintiff-Appellant

v.

ODIKRO KOFI FORFIE, succ. to the late
ODIKRO KWAKU WUSU Defendant-Respondent. 20

ISSUE : Application for final leave to appeal from the judgment of this Court dated the 13th day of December, 1947.

Application filed on 6/1/48.

Applicant present in person.

By Court :

The Registrar reports that all conditions imposed have been fulfilled within the prescribed period.

Final leave to appeal is therefore granted.

NANA KOJO AGYEKUM, his
P. X 30
mark

Recorder :

(Sgd.) J. S. AHENKORA,
Registrar.
8.1.48.

No. 5.
JUDGMENT (Extract).

*In the
Asantehene's
"A"
Court.*

IN THE ASANTEHENE'S "A2" COURT held at Kumasi on Monday 14th February, 1949, before NANA AGYEI TWUM II—AKWAMUHENE NANA OFORI KHAN II—SAAMANGHENE NANA KWASI BRENTUO IV—MANWEREHENE.

No. 5.
Judgment
(Extract),
14th
February
1949.

NANA OWUSU AGYEMAN III (succ. of late
CHIEF KOFI POKU) KENYASEHENE . Plaintiff-Appellant

v.

10 NANA KOFI FORFIE (succ. of CHIEF
KWAKU WUSU) MARBANG DIKRO . Defendant-Respondent.

JUDGMENT :

In view of the views expressed by members of the Court, the appeal is allowed with costs to be paid by Respondent to Appellant.

(Sgd.) K. A. TWUM II,
Akwamuhene,
Pres.

Recorder & W/ Signature :

20 (Sgd.) ENOCH A. KYEREMATEN,
Registrar.
14/2/49.

No. 6.
JUDGMENT.

*In the
Chief
Commissioner's
Court.*

IN THE CHIEF COMMISSIONER'S COURT, held at Kumasi on Tuesday the 10th day of May, 1949, before His Worship A. C. SPOONER, Esquire, Ag. Asst. Chief Commissioner appointed to preside over the Chief Commissioner's Court.

No. 6.
Judgment,
10th May
1949.

CHIEF KOFI POKU succeeded by NANA OWUSU
AGYEMAN III KENYASEHENE (Plaintiff-Appellant) Respondent

30 *versus*

ODIKRO KWAKU WUSU succeeded by CHIEF KOFI
FORFIE, Odikro of Marban
(Defendant-Respondent) Appellant.

Parties in person :

JUDGMENT.

*In the
Chief
Commissioner's
Court.*

No. 6.

Judgment,
10th May
1949,
continued.

The Kenyasehene, the Plaintiff before the Court of first instance, in making his claim calls upon the Odikro of Marban to "assign his reason why Ahafo Maban land should not be recovered by Plaintiff by virtue of the confederacy."

The Kenyasehene is a Kumasi chief whose stool has a long history of close association with the Asantehene. The Odikro of Maban is of Denkyira origin and he serves the Asantehene through the Dadiesuabahene.

Briefly the Plaintiff claims that his ancestor Nana Fredua obtained the Maban Ahafo land from the then Asantehene Nana Opoku Ware. 10 He claims that his Kenyase people, who are the descendants of a woman called Abena Pimmah have been in the village of Maban ever since and have acknowledged his, Kenyasehene's rights over the land by paying tribute. Plaintiff maintains that this was the position up to the time of the "disintegration." The time of the "disintegration" is not a particular date but it would be between 1896 and 1900. He claims that his rights and the rights of his subjects were at some time during this period taken away and he now claims that the status quo *ante* be restored by reason of the restoration of the Confederacy in 1935.

The Defendant, the Odikro of Maban, whose position as Odikro and 20 caretaker of the land has been recognised for many years, also claims ownership on a historical basis. He claims that his ancestor Agyei Frimpong who was of Denkyria stock had settled in Ashanti and was placed to serve the Asantehene through the Dadiesuabahene. He claims that his ancestor obtained the land from Bomaahene a sub chief of Dormaa and that the then Asantehene was informed. The then Asantehene was the same Nana Opoku Ware from whom the Kenyasehene says he obtained the land.

Okoku Ware became Asantehene in 1731 and he remained on the stool eleven years. The difficulty of obtaining a true picture in regard to the 30 historical background is demonstrated by the correction in his own evidence made by the Asantehene's linguist Okyeame Adubofuor the most experienced in history of those who have given evidence.

The "A" Court reversed the "B" Court judgment solely on the basis of the historical background in regard to original acquisition of the land as they the "A" Court interpreted it. They held the view:—

"Not only has Respondent failed to establish facts about how he came to live in Ashanti but he has also failed to establish facts about how he acquired the Marban Lands in accordance with native customary procedure." 40

In my opinion this was the wrong approach and the "A" Court were incorrect in not accepting the "B" Court's attitude which was that Plaintiff could not hope to succeed unless he could show he had been dispossessed.

In regard to how and when he the Kenyasehene lost his alleged rights there is very little evidence and this is contested and inadequate while there is evidence that the Odikro has taken frequent action in matters relating to the land without any query or interference from the Kenyasehene's subjects in the village or the Kenyasehene himself.

*In the
Chief
Commissioner's
Court.*

I can not see that the Kenyasehene has established a case that would enable him to recover as a result of the restoration of the Confederacy land which was effectively in his possession prior to the disintegration.

No. 6.
Judgment,
10th May
1949,
continued.

The judgment of the "A" Court is therefore reversed and the appeal
10 is allowed with costs.

(Sgd.) A. C. SPOONER,
Ag. Asst. Chief Commissioner.

No. 7.

**COURT NOTES granting Conditional Leave to Appeal against Judgment
of 10th May 1949.**

IN THE CHIEF COMMISSIONER'S COURT held at Kumasi on Friday the 27th day of May 1949 before His Worship D. M. ALLEN Esquire, Ag. Senior District Commissioner, appointed to preside over the Chief Commissioner's Court.

No. 7.
Court
Notes
granting
Conditional
Leave to
Appeal
against
Judgment
of 10th
May 1949,
27th May
1949.

20 CHIEF KOFI POKU, succeeded by NANA OWUSU
AGYEMAN III, Kenyasehene
Plaintiff-Appellant-
Respondent-Appellant

versus

ODIKRO KWAKU WUSU succeeded by CHIEF KOFI
FORFIE, Odikro of Marban
Defendant-Respondent-Appellant-Respondent.

30 MOTION ON NOTICE by Nana Owusu Agyeman III—Kenyasehene, Plaintiff/Appellant/Respondent/Appellant herein praying for Conditional Leave to appeal from the Judgment of the Chief Commissioner's Court of Ashanti, delivered against him on the 10th day of May, 1949, to the West African Court of Appeal, Gold Coast Session, Accra, and for stay of execution regarding the Respondent's costs and for further Order of the Court restraining the Defendant or his Proxy from taking withdrawal of £284 cocoa tribute collected on the disputed land and now on deposit at the Asantehene's Treasury pending the result of this appeal in purview of facts enumerated in the affidavit supporting this Motion.

Motion with affidavit in support filed on 17/5/49.

Mover represented by D. C. Antoh.

Opposer also in person.

40 Affidavit in opposition filed on 19/5/49.

*In the
Chief
Commissioner's
Court.*

Leave to appeal is hereby granted subject to the fulfilment of the following conditions :—

1. Appellant to give Notice to the Respondent and all parties directly affected by this appeal through this Court.

2. To deposit into this Court the sum of £25 towards the cost of making up and transmission of the record of appeal from this Court to the Court of Appeal.

3. To deposit into this Court the sum of £50 towards the costs of this appeal or to enter into a bond with two justified sureties each in like amount in lieu thereof. 10

4. To fulfil the above conditions within one calendar month from date hereof.

No. 7.
Court
Notes
granting
Conditional
Leave to
Appeal
against
Judgment
of 10th
May 1949,
27th May
1949,
continued.

Stay of Execution granted as follows :—

1. The costs which are to be deposited by the Plaintiff-Appellant-Respondent-Appellant in this Court are not to be withdrawn.

2. Cocoa tribute to the value of £284 collected from the land in dispute and now on deposit at the Asantehene's Treasury not to be withdrawn.

Costs are to be taxed on the 31st May—after taxation they must be 20 deposited with this Court within one month.

(Sgd.) D. M. ALLEN.

No. 8.
Notice of
Appeal
against
Judgment
of 10th
May 1949,
28th May
1949.

No. 8.

NOTICE OF APPEAL against Judgment of 10th May 1949.

**THE CHIEF COMMISSIONER'S COURT OF ASHANTI—KUMASI,
IN THE MATTER of :—**

CHIEF KOFI POKU succeeded by NANA
OWUSU AGYEMAN III (Kenyasehene) . Plaintiff-Appellant-
Respondent-Appellant

versus

ODIKRO KWAKU WUSU succeeded by
CHIEF KOFI FORFIE (Odikro of Marban) Defendant-Respondent-
Appellant-Respondent.

30

NOTICE OF APPEAL.

PLEASE TAKE NOTICE that the Plaintiff Appellant Respondent Appellant herein having been aggrieved by and dissatisfied with the Judgment entered against him by the Chief Commissioner's Court of Ashanti on the 10th day of May, 1949, in the above mentioned suit, intends to appeal and hereby appeals therefrom to the West African Court of Appeal, Gold Coast Sessions, Accra ; wherefore Conditional Leave to Appeal was on Friday, the 27th day of May, 1949, granted him by the Chief Commissioner's Court of Ashanti, and Notice of the said Appeal is hereby
10 given to you this day.

Dated at Kumasi, this 28th day of May, 1949.

(Sgd.) OWUSU AGYEMAN III,
Kenyasehene,

Plaintiff-Appellant-Respondent-Appellant.

The Registrar,

Chief Commissioner's Court,
Ashanti—Kumasi.

And copy for service on the Defendant-Respondent-Appellant-Respondent herein at Kumasi.

*In the
Chief
Commissioner's
Court.*

No. 8.
Notice of
Appeal
against
Judgment
of 10th
May 1949,
28th May
1949,
continued.

20

No. 9.

SUBMISSIONS by Plaintiff-Appellant.

THE CHIEF COMMISSIONER'S COURT OF ASHANTI—KUMASI.

IN THE MATTER of :

CHIEF KOFI POKU succeeded by NANA
OWUSU AGYEMAN III, Kenyasehene .

Plaintiff-Appellant-
Respondent-Appellant

versus

ODIKRO KWAKU WUSU succeeded by
CHIEF KOFI FORFIE, Odikro of Marban

Defendant-Respondent-
Appellant-Respondent.

30

SUBMISSIONS.

I, OWUSU AGYEMAN III—Kenyasehene desire to make these Submissions respecting a Hearing Notice which has been served on me for the Review of the above appeal and to aver that in view of the following legal reasons, the Chief Commissioner's Court of Ashanti could not review its Judgment or decision given in the above appeal case on the 10th day of May 1949.

No. 9.
Submissions
by
Plaintiff-
Appellant,
28th June
1949.

*In the
Chief
Commissioner's
Court.*

No. 9.
Submissions
by
Plaintiff-
Appellant,
28th June
1949,
continued.

1. That the Judgment of this case was delivered on the 10th day of May, 1949, in favour of the Defendant herein with costs.

2. That since I was dissatisfied with this Judgment, I applied for and was granted Leave to Appeal on the 27th day of May, 1949, and Conditions of Appeal having *being* completed, Final Leave to Appeal has been filed and scheduled for the 1st July, 1949.

3. That while my Motion for Final Leave to Appeal is yet to be heard by the Chief Commissioner's Court of Ashanti, a Hearing Notice dated the 23rd June, 1949, has been served on me to attend the Chief Commissioner's Court on the 29th June, 1949, for the Review of the case. 10

4. That I am legally advised that under Rule 1 of Order 41 of the Courts Ordinance Cap. 4, no Judge, Magistrate or other Judicial Officer shall have power to review any Judgment or decision given by him when one party to the suit *had obtained Leave to Appeal against such Judgment or decision*. In this case, Leave to Appeal had already been granted me by the Chief Commissioner's Court of Ashanti on the 27th day of May, 1949, and Conditions already fulfilled and since I have not withdrawn my Appeal nor do I intend to do so, Rule I of Order 41 of the Courts Ordinance Cap 4 has operated as a bar for this Court to review its previous Judgment or decision. 20

5. Under these circumstances, I submit that this Court has no legal right or Jurisdiction to review its Judgment dated the 10th May, 1949, and I accordingly oppose or object to any Review of this case.

Dated at Kumasi, this 28th day of June, 1949.

(Sgd.) OWUSU AGYEMAN III,

Plaintiff-Appellant-
Respondent-Appellant
herein.

The Registrar,

Chief Commissioner's Court,
Kumasi, Ashanti.

30

And copy for service on the Defendant-Respondent-Appellant-Respondent herein at Kumasi.

No. 10.

COURT NOTES on Reviewing Judgment of 10th May 1949, and Judgment.

IN THE CHIEF COMMISSIONER'S COURT held at Kumasi on Wednesday the 29th June, 1949, before His Worship A. C. SPOONER, Esquire, Ag. Asst. Chief Commissioner, appointed to preside over the Chief Commissioner's Court.

CHIEF KOFI POKU, succeeded by NANA OWUSU
AGYEMAN III KENYASEHENE Plaintiff-Appellant—Respondent

versus

10 ODIKRO KWAKU WUSU, succeeded by CHIEF KOFI
FORFIE ODIKRO OF MARBAN

Defendant-Respondent—Appellant.

Kenyasehene represented by Mr. D. C. Antoh who asks that his written authority be accepted. No objection raised by Marban Odikro.

Marban Odikro in person.

Court :

This case is for review on the motion of this Court for the following reasons :—

(1) Judgment was delivered 10.5.49.

20 (2) Order No. 32 of 1949 published in Gazette No. 41 of 14.5.49 appointed Mr. Allen to sit on the Chief Commissioner's Court and rescinded Order No. 84 of 1948.

(3) This Order was signed by the Acting Colonial Secretary on 10.5.49 whereas it was requested that the order be made on 16.5.49 vide C.C.A.'s letter No. 0768/24 (2) of 3.5.49.

30 (4) Mr. A. C. Spooner therefore had no jurisdiction on 10.5.49 but as jurisdiction is now reinstated by virtue of Order No. 42 of 1949 published in Gazette No. 55 of 25.6.49 the parties are called to enable this Court to review the judgment delivered without jurisdiction.

(5) The authority for review is Schedule 3 Order 41 Rule 1 of Cap. 4.

Submissions by Kenyasehene filed 29.6.49, copy served on Marban Odikro. Kenyasehene's representative states he has no verbal submissions to add.

Submission of Marban :

I see no reason why the judgment should not be reviewed.

*In the
Chief
Commissioner's
Court.*

No. 10.
Court
Notes on
reviewing
Judgment
of 10th
May 1949
and
Judgment,
29th June
1949.

*In the
Chief
Commissioner's
Court.*

Court :

Considering the submissions :—

In view of the fact that *Final* leave to appeal has not been granted I hold that I have the power to review.

The judgment delivered on 10th of May 1949 in this case is hereby reviewed to read as follows :—

JUDGMENT :

(This Judgment is identical with the Judgment delivered the 10th May 1949.)

No. 10.
Court
Notes on
reviewing
Judgment
of 10th
May 1949
and
Judgment,
29th June
1949,
continued.

No. 11.

COURT NOTES granting Final Leave to Appeal to the West African Court of Appeal against 10
Judgment of the 10th May 1949.

IN THE CHIEF COMMISSIONER'S COURT held at Kumasi on Friday the 1st July 1949 before His Worship D. M. ALLEN, Esquire, Ag. Senior District Commissioner appointed to preside over the Chief Commissioner's Court.

CHIEF KOFI POKU succeeded by NANA
OWUSU AGYEMAN III, Kenyasehene . Plaintiff-Appellant-
Respondent-Appellant.

versus

ODIKRO KWAKU WUSU, succeeded by 20
CHIEF KOFI FORFIE (Odikro of Marban) Defendant-Respondent.
Appellant-Respondent.

MOTION *ex parte* by Nana Owusu Agyeman III—Kenyasehene Plaintiff-Appellant-Respondent-Appellant herein praying for grant of Final Leave to Appeal from the judgment of the Chief Commissioner's Court of Ashanti, given against him on the 10th day of May, 1949, to the West African Court of Appeal, Gold Coast Session, Accra, in purview of facts enumerated in the Affidavit supporting this Motion.

Motion with affidavit in support filed on 23/6/49.

Mover—present.

By Court :

The Registrar informs Court that the conditions imposed on the applicant have all been fulfilled within the prescribed period. In view of the fact that the judgment against which the Plaintiff-Appellant-Respondent-Appellant is appealing has been reviewed, motion for final leave to appeal against the reviewed judgment is adjourned until July 15th. The Defendant-Respondent-Appellant-Respondent is to be notified of this Order.

*In the
Chief
Commissioner's
Court.*

No. 11.
Court
Notes
granting
Final
Leave to
Appeal
to the
West
African
Court of
Appeal
against
Judgment
of the
10th May [sic]
1949,
1st and
15th July
1949,
continued.

10

(Sgd.) D. M. ALLEN.

Certified True Copy.

(Sgd.) J. A. ADUSEI,

Registrar,
Chief Commissioner's Court,
Ashanti.

Upon the 5th day of July 1949 a copy of this Order was served by *my* upon Chief Kofi Forfie personally at Kumasi.

(Sgd.) I. K. ESSEL,

Bailiff.

15th July, 1949.

20

MOTION *ex parte* by Nana Owusu Agyeman III—Kenyasehene Plaintiff-Appellant-Respondent-Appellant herein praying for grant of Final Leave to Appeal from the Judgment of the Chief Commissioner's Court of Ashanti, given against him on the 10th day of May, 1949, to the West African Court of Appeal, Gold Coast Session, Accra, in purview of facts enumerated in the Affidavit supporting this Motion.

Motion adjourned from 1/7/49.

Mover—present.

The Mover states that he wants final leave to appeal to be granted in respect of the judgment given on 10th May.

30

The Court pointed out that this judgment had to be reviewed by this Court and that an exactly similar judgment was given in June 29th (the reason for the review was that owing to an error in the date of a Gazette Notice the Senior District Commissioner Mr. Spooner had not got jurisdiction when the appeal was heard on May 10th.)

The Mover insisted that to avoid any doubt as to whether the conditions of appeal had been properly fulfilled, he wished to have final leave to appeal against the judgment of May 10th. He would also ask for conditional leave to appeal against the reviewed judgment given on June 29th.

40

Final leave to appeal granted in respect of the judgment dated May 10th. Appeal and Grounds of appeal to be filed within seven days hereof and a copy thereof served on the Respondent.

(Sgd.) D. M. ALLEN.

No. 12.

GROUNDS OF APPEAL against Judgment of 10th May, 1949.*In the
West
African
Court of
Appeal.***IN THE WEST AFRICAN COURT OF APPEAL.**No. 12.
Grounds
of Appeal
against
Judgment
of 10th
May 1949,
18th July
1949.Between **CHIEF KOFI POKU**, succeeded by **NANA
OWUSU AGYEMAN, Kenyasehene** . . . Appellant

and

ODIKRO KWAKU WUSU, succeeded by **CHIEF
KOFI FORFIE, Odikro of Marban** . . . Respondent.

The Appellant, being dissatisfied with the judgment of the Chief Commissioner's Court of Ashanti, Kumasi delivered on the 10th day of 10 May, 1949, and having obtained final leave to appeal therefrom dated the 15th day of July, 1949, hereby appeals to the West African Court of Appeal upon the grounds hereinafter set forth.

GROUNDS OF APPEAL.

1. The Judgment of the Chief Commissioner's Court of Ashanti given against the Appellant on the 10th day of May, 1949, is a nullity in view of the following reasons viz. :—

According to Order No. 32 of 1949, signed by the Acting Colonial Secretary on 10th May, 1949, the Chief Commissioner's Court Order No. 84 of 1948, appointing Mr. A. C. Spooner to preside 20 over the Chief Commissioner's Court of Ashanti was rescinded and Mr. D. M. Allen was by Order No. 32 of 1949, appointed to preside over the Chief Commissioner's Court of Ashanti as from the 10th May, 1949.

Since this Judgment was given by Mr. A. C. Spooner on the 10th day of May, 1949, when his power to exercise Judicial powers or jurisdiction in that Court had been rescinded, it follows in effect that the proceedings and Judgment are a complete nullity and should be treated as such and this appeal allowed with costs on grounds of Law. 30

Dated this 18th day of July, 1949.

(Sgd.) **OWUSU AGYEMAN III,**
Appellant.The Registrar,
Chief Commissioner's Court,
Kumasi,
Ashanti.

And copy for service on the Respondent.

COURT NOTES granting Final Leave to Appeal against Judgment of 29th June 1949.

In the Chief Commissioner's Court.

No. 14.
Court Notes granting Final Leave to Appeal against Judgment of 29th June 1949, 12th August 1949.

IN THE CHIEF COMMISSIONER'S COURT held at Kumasi on Friday the 12th day of August, 1949, before His Worship A. C. SPOONER, Esquire, Acting Assistant Chief Commissioner, appointed to preside over the Chief Commissioner's Court.

CHIEF KOFI POKU, succeeded by NANA OWUSU AGYEMAN III KENYASEHENE . Plaintiff-Appellant-Respondent-Appellant 10

v.

ODIKRO KWAKU WUSU succeeded by ODIKRO KOFI FORFIE OF MARBAN . Defendant-Respondent-Appellant-Respondent.

MOTION *ex parte* by Nana Owusu Agyeman III—Kenyasehene, Plaintiff-Appellant-Respondent-Appellant herein praying fervently for grant of Final Leave to appeal from the reviewed Judgment given against him by the Chief Commissioner's Court of Ashanti on the 29th day of June, 1949, as all conditions imposed on him on the 22nd day of June, 1949, have been fulfilled in purview of facts enumerated in the Affidavit supporting 20 this Motion.

Motion with affidavit in support filed on 2/8/49.

Mover—represented by D. C. Antoh.

Court :

The Registrar informs Court that the conditions imposed on the applicant have been fulfilled within the prescribed period. Final Leave to appeal granted in respect of the reviewed judgment of the 29th June, 1949. Appeal and Grounds of appeal to be filed within seven days hereof and a copy thereof served on the Respondent.

(Sgd.) A. C. SPOONER, 30
Ag. Asst. Chief Commissioner.



No. 15.

GROUNDS OF APPEAL against Judgment of 29th June 1949.

IN THE WEST AFRICAN COURT OF APPEAL.

Between CHIEF KOFI POKU, succeeded by NANA

OWUSU AGYEMAN III, Kenyasehene . . . Appellant

and

ODIKRO KWAKU WUSU, succeeded by CHIEF

KOFI FORFIE, Odikro of Marban . . . Respondent.

*In the
West
African
Court of
Appeal.*

No. 15.
Grounds
of Appeal
against
Judgment
of 29th
June 1949,
17th
August
1949.

10 The Appellant being dissatisfied with the judgment of the Chief Commissioner's Court of Ashanti, Kumasi delivered on the 29th June, 1949, and having obtained final leave to appeal therefrom dated the 12th day of August, 1949, hereby appeals to the West African Court of Appeal upon the grounds hereinafter set forth.

GROUNDS OF APPEAL.

1. The Court Below was apparently wrong to over-rule the Appellant's Submissions filed on 29/6/49, and was further wrong to hold that he had jurisdiction to review his Judgment originally given on the 10th day of May, 1949, in view of the fact that Final Leave to Appeal had not been granted.

20 The Authority for Review is Schedule 3 Order 41 Rule 1 of Cap. 4. It has been specifically laid down under this Authority that where *Leave to Appeal shall have been obtained* and such Appeal not withdrawn the Judicial Officer shall not have Jurisdiction to review his Judgment. The Court Below was aware that the Appellant had already obtained Leave to Appeal in respect of the Judgment dated the 10th day of May, 1949, and such Appeal not withdrawn and it was wrong for the Court Below to review his Judgment as there is no provision in that Schedule 3 Order 41 Rule 1 of Cap. 4 that the Court Below could review his Judgment when
30 in effect that the Court Below acted *ultra vires* and that his Judgment of 29/6/49 is a complete nullity and must be treated as such and this appeal allowed with costs for the Appellant herein in the interest of Justice.

2. JUDGMENT OF COURT BELOW INCONSISTENT WITH EVIDENCE ON RECORD.

[Reasons not printed.]

*In the
West
African
Court of
Appeal.*

3. JUDGMENT OF COURT BELOW PALPABLY AGAINST THE
WEIGHT OF EVIDENCE.

[Reasons not printed.]

No. 15.
Grounds
of Appeal
against
Judgment
of 29th
June 1949,
17th
August
1949,
continued.

(Sgd.) OWUSU AGYEMAN III
(Kenyasehene),
Appellant.

The Registrar,
Chief Commissioner's Court,
Kumasi, Ashanti.

AND COPY FOR SERVICE ON THE RESPONDENT.

10

Upon the 23rd day of August, 1949, I served a copy of this Grounds
of Appeal on Odikro Kofi Forfie of Marban personally at Marbang.

(Sgd.) E. T. TACKIE,
Bailiff.

No. 16.
Court
Notes of
Arguments,
22nd June
1951.

No. 16.
COURT NOTES of Arguments.

22nd June, 1951.

IN THE WEST AFRICAN COURT OF APPEAL, Gold Coast Session.

Coram Sir JOHN VERIFY, Ag. P., LEWEY, J.A., and MORGAN, J.
91/49.

20

AGYEMAN

v.

KOFI FORFIE

Asafu-Adjaye for Appellant.

Benjamin for Respondent.

Benjamin :

Appellant should elect on which appeal he is proceeding.

Asafu-Adjaye :

Appellant desires to proceed with both. Arguments can be merged
—but leave to appeal has been granted in both.

30

Court :

No notice of preliminary objection.

First appeal should proceed first.

Adjaye :

Judgment on 10th May 1949 (Record page 6).

Appointment of Mr. Spooner—1948. Order No. 84/1948. Page 382
Order 1948 dated 1st June 1948.

1949 Order No. 32/1949 page 391 Ordinance 1949 dated 19th May
1949—No. 84/48 rescinded—therefore Mr. Spooner ceased to hold appoint-
10 ment and Mr. Allen appointed in his stead and Mr. Spooner had no
jurisdiction.

Judgment delivered on 10th May 1949 by Mr. Spooner therefore a
nullity.

Section 63 Cap. 4—“ during the period of such appointment.”

Subsequent history :

Conditional leave to appeal 27th May.

Hearing notice for review—objection 28th June. Mr. Spooner sat
again on 29th June and reviewed his Judgment of 10th May.

Order reinstating No. 42/49 dated 21st June 1949 for period 23rd to
20 30th June 1949.

Mr. Spooner then read his judgment again.

Order 41 Cap. 4 does not provide for review on motion of Judge,
Magistrate or Judicial Officer.

r. 2 application ; within 14 days.

cf. Order 26 “ either of his own motion or on application.”

cf. Sections 28 and 30 Cap. 4—“ with or without application.”

Review not good therefore and could not cover lack of jurisdiction
on 10th May 1949—which it would not do in any event if no judgment on
10th May 1949 it could not be reviewed.

30 Order 41 r. 1—“ except where . . . obtained leave to appeal.”

Conditional leave to appeal granted but not final leave.

As to operation of Order 32/49—Section 16 Interpretation Ordinance
Cap. 1.

Benjamin :

Only judgment to be considered is that of 29th June and not that of
10th May. By time of final leave judgment of 10th May merged into
judgment of 29th June.

Order 41 not applicable—refers only to trials at first instance.

Ashanti Native Courts Ordinance applicable Cap. 80 section 10.

*In the
West
African
Court of
Appeal.*

No. 16.
Court
Notes of
Arguments,
22nd June
1951,
continued.

*In the
West
African
Court of
Appeal.*

No. 16.

Court
Notes of
Arguments,
22nd June
1951,
continued.

Mr. Spooner was reinstated and then gave his judgment—the earlier judgment being a nullity.

No power to review under Cap. 4 and Cap. 80 therefore no review and judgment of 29th June is original judgment even though Mr. Spooner intended to act under Order 41.

(*Court* : Was Order 42/49 *intra vires* ? purports to appoint a second person to exercise jurisdiction while another person still exercising it ?)

In interest of justice second judgment of 29th June with jurisdiction should be taken as the real judgment.

Adjaye :

10

Mr. Spooner could not be re-appointed until Mr. Allen's appointment was rescinded.

Section 63—only one person to preside.

Mr. Spooner bases his review on Order 41.

As to “leave to appeal” in Order 41 rule 1 leave to appeal means any leave—conditional or final.

Order for conditional leave grants leave to appeal subject to conditions.

(*Benjamin* : *Mansah v. Ulzen*, Renner's Gold Coast Reports page 248.)

Authority cited refers only to whether appeal is properly before Appeal Court not merely obtaining leave to appeal. 20

C. A. V.

No. 17.
Judgment,
28th June
1951.

No. 17.
JUDGMENT.

WEST AFRICAN COURT OF APPEAL. General sitting held at Accra,
28th June, 1951.

Cor : VERITY, Ag. P., LEWEY, J.A., and MORGAN, J.

Civil Appeal

No. 91/1949.

NANA OWUSU AGYEMAN (Kenyasehene) Plaintiff-Appellant-
Respondent-Appellant 30

v.

CHIEF KOFI FORFIE, Odikro of Marban Defendant-Respondent-
Appellant-Respondent.

JUDGMENT.

MORGAN, J. :

In this case proceedings were commenced by writ of summons dated 6th October, 1936, in the Kumasi Divisional Native Court " B." The Plaintiff's claim being for the recovery of the Ahafo-Marban land. The Native Court " B " gave judgment for the Defendant on 13th December 1947.

Against this judgment the Plaintiff successfully appealed to the Asantehene's Court " A 2," the judgment of that court being dated
10 14th February, 1949.

Appeal proceedings against the judgment of the Asantehene's Court to the Chief Commissioner's Court, were instituted by the Defendant on the 15th February, 1949.

On 22nd April, 1949, Mr. A. C. Spooner by virtue of his appointment under the Chief Commissioner's Court Order (No. 2) 1948 dated 1st June, 1948, presided over the Chief Commissioner's Court, and, having heard the parties, adjourned the proceedings to 6th May, 1949.

On 10th May, 1949, Mr. Spooner gave judgment in favour of the Defendant.

20 Against this Judgment the Plaintiff was on 27th May, 1949, granted leave to appeal, conditional upon the fulfilment of certain conditions, by Mr. D. M. Allen, who exercised jurisdiction in the Chief Commissioner's Court by virtue of his appointment under the Chief Commissioner's Court Order, 1949, dated 10th May, 1949.

Under the provisions of this latter order the appointment of Mr. A. C. Spooner to preside over and to exercise judicial functions in the Chief Commissioner's Court was rescinded, and by section 16 of the Interpretation Ordinance that order became effective as from the 9th May, 1949.

30 It is clear that Mr. Spooner's appointment to preside over, and exercise judicial functions in the Chief Commissioner's Court, having been terminated with effect from the 9th May, 1949, he had no authority to preside over, and to deliver a judgment of that Court on the 10th May, 1949.

On the 29th June, 1949, Mr. Spooner having been authorised by the Chief Commissioner's Court Order (No. 2), 1949, dated 21st June, 1949, again presided over the Chief Commissioner's Court and, purporting to review the judgment delivered by him in this case on the 10th May, 1949, avowedly under the provisions of Order 41 of Schedule 3 to the Courts Ordinance, in fact re-read that judgment.

40 On the 1st July, 1949, the Plaintiff applied for final leave to appeal against the judgment of the 10th May, and the following order was made

*In the
West
African
Court
Court of
Appeal.*

No. 17.
Judgment,
28th June
1951,
continued.

*In the
West
African
Court of
Appeal.*

No. 17.
Judgment,
28th June
1951,
continued.

by the Chief Commissioner's Court, now presided over by Mr. D. M. Allen exercising jurisdiction by virtue of the Chief Commissioner's Court Order, 1949, dated 10th May, 1949 :—

“ The Registrar informs Court that the conditions imposed on the applicant have all been fulfilled within the prescribed period.
“ In view of the fact that the judgment against which the Plaintiff-Appellant-Respondent-Appellant is appealing has been reviewed, motion for final leave to appeal against the reviewed judgment is adjourned until July 15th. The Defendant-Respondent-Appellant-Respondent is to be notified of this Order.”

10

On the 15th July the Motion for final leave to appeal was again before the Chief Commissioner's Court, and final leave to appeal against the judgment of the 10th May was granted. On hearing this motion the presiding officer, Mr. Allen, made the following note :—

“ Final leave to appeal granted in respect of the judgment dated May 10th. Appeal and Grounds of appeal to be filed within seven days hereof and a copy hereof served on the respondent.”

The Plaintiff by Motion filed on the 13th July 1949, applied for, and was granted, conditional leave to appeal against the reviewed judgment of the 29th June ; final leave to appeal against that judgment was granted on the 12th August, by Mr. Spooner who resumed his duties as presiding officer in the Chief Commissioner's Court by virtue of the Chief Commissioner's Court Order (No. 3) 1949, dated 16th July, 1949.

20

There are now two appeals by the Plaintiff before this Court, the one against the judgment of the Chief Commissioner's Court dated the 10th May, and the other against the reviewed judgment dated the 29th June. At the hearing of the appeals, and on the application of learned counsel for the Defendant, it was agreed that the appeal against the judgment of the Chief Commissioner's Court dated the 10th May, 1949, should be argued first.

30

The grounds of appeal against this judgment allege that Mr. Spooner's authority to preside over, and exercise jurisdiction in the Chief Commissioner's Court having been terminated by the Chief Commissioner's Court Order, 1949, dated 10th May, 1949, with effect from 9th May, 1949, that judgment is a nullity.

It was inevitable that reference was made during the argument of both learned counsel to the judgment of the 29th June because that judgment was disputed on the grounds, *inter alia*, that the provisions of Order 41 of Schedule 3 to the Courts Ordinance do not permit of a review of a judgment when an application for leave to appeal against it has been successful, and the subject of an order of a court of competent jurisdiction and moreover that the purported reviewed judgment could not give effect to the original judgment which was a nullity. Learned counsel for the Defendant in the course of his argument submitted that

40

the power to review a judgment was only barred when an application for final leave to appeal had been granted. He also contended that the "reviewed judgment" should be deemed to be the original judgment in that admittedly the judgment of 10th May was a nullity.

*In the
West
African
Court of
Appeal.*

In my opinion the grounds of appeal against the judgment of 10th May are well founded.

No. 17.
Judgment,
28th June
1951,
continued.

Mr. Spooner's authority to exercise judicial powers in the Chief Commissioner's Court had been rescinded with effect from the 9th May, 1949, and no decision of his given on the 10th May, 1949, could be a
10 judgment of that court.

I would accordingly allow the appeal against the judgment of the 10th May, 1949, and declare it to be a nullity. I would make no order as to costs.

The appeal against the reviewed judgment of the 29th June, 1949, has not yet come before this Court, but in view of the opinion I have expressed on the judgment of the 10th May, it follows that the reviewed judgment must also in my view be declared a nullity.

(Intd.) H. G. M.

20 VERITY, Ag. P.
I concur.

(Sgd.) JOHN VERITY.

LEWEY, J.A.
I concur.

(Intd.) A.L.

Counsel :

E. O. Asafu-Adjaye for Appellant.

C. F. Hayfron-Benjamin for Respondent.

No. 18.

COURT NOTES of Judgment.

30 28th June 1951.

IN THE WEST AFRICAN COURT OF APPEAL, Gold Coast Session :
Coram Sir JOHN VERITY, Ag. P., LEWEY, J.A., and MORGAN, J.

91/49.

NANA OWUSU AGYEMAN

v.

CHIEF KOFI FORFIE.

Judgment delivered by Morgan, J.

Appeal allowed—Judgment of Court of C.C.A. set aside as a nullity. Reviewed Judgment also declared a nullity. No order as to costs.

40

(Sgd.) JOHN VERITY,
Ag. P.

No. 18.
Court
Notes of
Judgment,
28th June
1951.

No. 19.

COURT NOTES granting Final Leave to Appeal to Her Majesty in Council.

*In the
West
African
Court of
Appeal.*

25th October 1951.

IN THE WEST AFRICAN COURT OF APPEAL, Gold Coast Session :
Coram : MORGAN, J., sitting as a Single Judge of Appeal.

No. 19.
Court
Notes
granting
Final
Leave to
Appeal
to Her
Majesty in
Council,
25th
October
1951.

NANA OWUSU AGYEMAN III

v.

CHIEF KOFI FORFIE

Motion for an Order granting final leave to appeal to Privy Council.
A. O. Larbi for Benjamin for Appellant.
Application for final leave.
Application granted.

10

(Sgd.) H. G. MORGAN,
J.
24.10.



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*

RECORD OF PROCEEDINGS

A. L. BRYDEN & WILLIAMS,
53 VICTORIA STREET,
LONDON, S.W.1,
Solicitors for the Appellant.

WATERHOUSE & CO.,
1 NEW COURT,
CAREY STREET,
LONDON, W.C.2,
Solicitors for the Respondent.