

Case No. 4 29, 1961

IN THE PRIVY COUNCIL

No. 46 of 1959

ON APPEAL  
FROM THE COURT OF APPEAL OF GHANA

UNIVERSITY OF LONDON  
W.C.1.  
INSTITUTION  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

B E T W E E N

YAW DUEDU ... Appellant

— and —

EVI YIBOE ... Respondent

0353

C A S E FOR THE RESPONDENT

RECORD

10 1. This is an appeal from a judgment, dated pp.62-81  
the 4th November, 1957, of the Court of Appeal  
of Ghana (van Lere, Ag.C.J., Sharp, J.A. and  
Adumua-Bossman, J.) allowing the Respondent's pp.48-56  
appeal from a judgment, dated the 22nd March,  
1957, of the High Court of Ghana (Ollennu,  
J.) dismissing an appeal from a judgment of the pp.41-43  
Buem-Krachi District Native Appeal Court dated  
the 18th September, 1956, dismissing an appeal pp.31-34  
from a judgment of the Native Court "B" of  
20 Nkonya dated the 22nd May, 1956, holding that  
certain land in dispute between the parties was  
communal land and should remain under the  
Appellant's control.

2. The question raised by the Appeal is  
whether the Appellant is estopped from claiming  
title to the land in dispute against the  
Respondent by a judgment of the West African  
Court of Appeal dated 7th March 1952, given in  
earlier proceedings between the same parties  
30 relating to the same land. Exhibit "B"  
pp.115-118

3. The Respondent issued a summons against  
the Appellant in the Native Court "B" of  
Nkonya on the 10th January, 1956. By his  
statement of claim, he claimed a declaration pp.1-2  
pp.2-3

RECORD

pp.3-4 of his title and that of the Amandja clan of Akloba to the Logloto-Sakada land, as therein described and identified by a plan. The Appellant counterclaimed that the said land was communal land for the town of Akloba and was under his control and administration, he being the overlord of Akloba.

4. At the hearing in the Native Court the Respondent tendered in evidence proceedings in Suit No.44/1944 between the same parties relating to the same land as is involved in this appeal. These proceedings showed the following previous history of litigation concerning the land: 10

pp.104-105 For many years the Respondent had been occupying the land as owner and generally exercising acts of ownership in respect of it. In 1941 the Appellant unsuccessfully sued the Respondent for damages for refusing to comply with the Appellant's order forbidding any sales of portions of the land without the Appellant's permission. In 1944 the Appellant began an action in the Magistrate's Court, Kpandu against the Respondent for trespass to this land. On the 26th November, 1948 judgment was given in favour of the Respondent. The Respondent's defence in that action had been that the land belonged to him. The Magistrate ended his judgment with these words: "I can therefore only conclude that the land specified by Plaintiff (the Appellant in this appeal) in his claim is not Akloba Stool land but belongs to the Defendant (the Respondent in this appeal) either in his personal capacity or as head of his family or of the Amandja clan". The Appellant appealed to the Supreme Court of the Gold Coast, where his appeal was dismissed, and thence to the West African Court of Appeal, where his appeal was again dismissed on the 7th March, 1952. In giving the judgment of that Court, Foster-Sutton, P. concluded his judgment by pointing out that since the Respondent had not counterclaimed for a declaration of title, the portion of the Magistrate's judgment quoted above should not be regarded as such a declaration. 20 30 40

pp.103-107  
pp.94-95  
p.107, 11.  
19-23  
pp.109-110  
pp.115-118

pp.10-14 5. The Respondent called no other evidence,

beyond stating that he owned the land.

6. The Appellant called six witnesses, who said that his ancestors had settled and occupied the land, his Stool and paraphernalia had once been kept in a cave on the land, and the land was Stool land under the Appellant's control.

pp.15-28

10 7. The members of the Native Court inspected the land in dispute, and gave judgment on the 22nd May, 1956. The Court held that the onus was on the Respondent, and he had failed to call witnesses to prove his title to the land. The Appellant had called witnesses who had said it was communal land for the town of Akloba. From such evidence, and from the Court's own inspection of the land, the Court was satisfied that the land was such communal land. An order was made that the land should remain under the Appellant's control as head of the town of Akloba.

pp.30-31  
pp.31-34

20 8. The Respondent appealed to the Buem-Krachi District Native Appeal Court, which, on the 18th September, 1956, dismissed his appeal. In its judgment the Native Appeal Court held that the present action constituted a new claim by the Appellant and differed from the previous suit between the parties. In that suit, the Court said, the West African Court of Appeal had refused to give the Respondent title to the land. As the Appellant was the head of the town of Akloba, the control of the land should be vested in him, because it was communal land.

pp.41-43

30 9. The Respondent appealed to the High Court of Ghana, where, on the 22nd March, 1957, Ollennu, J. dismissed the appeal. The learned Judge, in his judgment, reviewed the history of the case and the previous proceedings between the parties. He said that where trespass was alleged, the title to the land was usually in dispute. However, in a case between a Stool and a subject in respect of Stool land, there might, he said, be nothing more than a dispute over the usufructuary right of the subject, which left the superior title of the Stool unimpaired. The previous proceedings before the West African

pp.48-51

p.54,11.33-46

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p.55,11.4-14 Court of Appeal had, in his view, been such a case, the Respondent being then entitled to succeed merely by showing that he was lawfully in possession under the Stool. The question whether the land was the Appellant's absolute property had not, he said, then been in issue, and it followed that the previous judgment could not operate as res judicata in the present suit.

10. The Respondent appealed to the Court of Appeal of Ghana. That Court (van Lare, Ag.C.J., Sharp, J.A. and Adumua-Bossman, J.) on the 4th November, 1957 allowed his appeal. Van Lare, Ag. C.J. analysed the facts of, and the decision in, the previous suit, No.14/1944. He found that the issue there joined was one of ownership, being whether the Respondent had exclusive ownership of the disputed land or whether the land was owned by the Stool for the common use of the inhabitants of the town. Ollennu, J. had been wrong in thinking that a question of usufructuary right or determinable interest had arisen. Title to the disputed land had been litigated. That issue had been determined in the Respondent's favour, and it was only because of a procedural technicality, viz. his failure to counterclaim, that he had not got a declaration of his title. In spite of that, the judgment was a bar to further proceedings between the parties, and the Appellant was estopped from re-litigating the issue of title to the same land. The issue of ownership had clearly been in issue in the previous proceedings, and the doctrine of res judicata was applicable. The appeal should be allowed. Sharp, J.A. agreed.

11. Adumua-Bossman J., in his judgment, reviewed the previous proceedings. It was unquestionable that in the proceedings before the Magistrate there had been a determination of the issue of title to the land in dispute, as a necessary incident to the Appellant's claim based on trespass. There had been a change in the Appellant's approach before the West African Court of

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Appeal, where he had admitted the Respondent's right to user of the land. The issue of ownership was nevertheless kept in view, as appeared from the arguments of counsel and the decision itself. Although the Court of Appeal had not made a declaration in favour of the Respondent, the Magistrate's finding in his favour had been confirmed by the Court of Appeal and remained of full force and effect. The Appellant should not have been allowed to relitigate that finding, and the appeal should be allowed.

10. 12. The Appellant's claim in suit No.44/1944 was for trespass to the land now in dispute, and the Respondent's defence was that the land belonged to him. The Respondent respectfully submits, therefore, that the issue as between him and the Appellant of title to that land was an issue which it was necessary to decide, and was in fact decided, in that suit. The question of what the issues were is to be distinguished from the question of what relief the Court was able to grant. It was held that title to the land in dispute was in the Respondent. Thus, the issue in the present proceedings was decided in earlier proceedings between the same parties, and the Appellant is barred from setting up against the Respondent a claim to title to the land in dispute.

20 30 13. The Respondent respectfully submits that the judgment of the Court of Appeal of Ghana was right and ought to be affirmed, and this appeal ought to be dismissed, for the following (amongst other)

R E A S O N S

- 40 1. BECAUSE the issue of title to the disputed land was determined between the Appellant and the Respondent in suit No.44/1944:
2. BECAUSE by the judgments given in suit No.44/1944 the Appellant is estopped from denying the Respondent's title to the disputed land:

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3. BECAUSE in the present proceedings the issue of title to the disputed land is res judicata in favour of the Respondent:
4. BECAUSE of the other reasons given in the judgments of van Lare, Ag.C.J. and Adumuxa-Bossman, J..

DINGLE FOOT

J.G.Le QUESNE.

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C A S E FOR THE RESPONDENT

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MESSRS HERBERT OPPENHEIMER,  
NATHAN & VANDYK  
20, Copthall Avenue,  
London Wall,  
LONDON, E.C.2.

Solicitors for the Respondent.