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29/1/1961

IN THE PRIVY COUNCIL

No.46 of 1959

ON APPEAL
FROM COURT OF APPEAL, GIANA

B E T W E E N :

YAW DUEDU (Defendant) .. Appellant

- and -

EVI YIBOE (Plaintiff) .. Respondent

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
W.C.1.
16 FEB 1962
INSTITUTE OF ADVANCED
LEGAL STUDIES

63530

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Respondent's Solicitors.

ON APPEAL
FROM COURT OF APPEAL, GHANA

B E T W E E N :

YAW DUEDU (Defendant) .. Appellant

- and -

EVI YIBOE (Plaintiff) .. Respondent

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IN THE PRIVY COUNCIL

No.46 of 1959

ON APPEAL
FROM COURT OF APPEAL, GHANA

B E T W E E N :

YAW DUEDU (Defendant) .. Appellant
- and -
EVI YIBOE (Plaintiff) .. Respondent

RECORD OF PROCEEDINGS

No. 1

In the Native
Court "B"
of Nkonya

10

CIVIL SUMMONS NO.4/56

CIVIL SUMMONS

No.4/56.

No. 1

IN THE NATIVE COURT "B" OF NKONYA.

BETWEEN: Evi Yiboe of Nkonya Akloba
and

Plaintiff

Civil Summons
No.4/56,
10th January
1956.

Yaw Duedu, Sub-Chief of
Nkonya Akloba

Defendant

To:-- Yaw Duedu, Sub-Chief of Nkonya Akloba.

20

YOU ARE HEREBY commanded to attend this Native
Court at Ahenkro at 8.30 o'clock on the 8th day of
February, 1956 to answer a suit by Plaintiff against
you.

30

The Plaintiff's claim is declaration of his
title, and for that matter, the title of the
Amandja clan of Akloba, with possession, to
all that piece or parcel of land with every-
thing thereon, commonly known and called:
"Logloto-Sakada" land, situate at Akloba in
the Nkonya area with boundaries and dimen-
sions as set forth in the Statement of Claim
attached, and the Plan sketched and delineated
by the consent of both parties.

Dated at Ahenkro this 10th day of January, 1956.

In the Native
Court "B"
of Nkonya

No. 1

Civil Summons
No.4/56,

10th January
1956 -

continued.

Claim	(Declaration of title to land)
Fees:	£2. -. -
Service & Mileage	1. -
Complimentary Fee	<u>-. -. -</u>
	<u>£2. 1. -</u>

Sgd. T.D. Anyomi
President of Native Court.

Sgd. Ankamah Nyarkoh
Registrar, Native Court.

Take Notice that if you do not attend, the Court may give Judgment in your absence. 10

No. 2

Statement of
Claim

No. 2

STATEMENT OF CLAIM

In:-

Evi Yiboe of Nkonya Akloba Plaintiff

versus

Yaw Duedu, Sub-Chief of Nkonya Akloba Defendant

The said "Logloto-Sakada" is bounded on the north by the properties of Akuba of Nkonya Ntumba and Agrey of Nkonya Ahenkro; 20

On the South by the properties of Goku of Kpandu Dafo, Yaw Duedu, the Defendant, Kokroko of Nkonya Akloba and Yaw Duedu, the Defendant again;

On the East by the properties of Kwasi Botte and Opa Okuma, all of Nkonya Akloba and,

On the West by the Volta River; which said land is properly sketched and delineated on a plan, jointly made by both parties by order of Court and tendered by the joint consent of both parties in evidence before the Courts of the Magistrate, Kpandu, the Land Court and the West African Court of Appeal, Accra in a land cause titled:- 30

"Yaw Duedu, sub-chief
of Nkonya Akloba

Plaintiff-Appellant-
Appellant

In the Native
Court "B"
of Nkonya

versus

Evi Yiboe of Nkonya
Akloba

Defendant-Respondent-
Respondent"

No. 2

Statement of
Claim -

continued.

10

in which cause Defendant herein, then the Plain-
tiff sued to claim £25 damages for trespass alleged
to have been committed by Evi Yiboe, then Defendant,
on the said "Logloto-Sakada" land which he, Yaw
Duedu, claimed for himself, complaining that the
Plaintiff herein, then Defendant, had caused a sur-
vey of the land to be made and cement pillars, with
his name inscribed thereon, to be erected on the
land; but lost his claim in all the Courts and
finally, in the West African Court of Appeal on the
7th day of March, 1952, as per a certified true
copy of Judgment in possession of the plaintiff
herein.

20

The Plaintiff now sues for declaration of his
title, and for that matter, title of the Amandja
clan of Akloba to the said "Logloto-Sakada" land,
because he did not counter-claim at the time.

Sgd. Evi Yiboe
Plaintiff.

His
x
mark

Prepared by:-
Sgd. M.C.B. Agbettah Kpandu.

No. 3

CIVIL SUMMONS NO.8/56
(Defendant's Counter-claim)

No. 3

Civil Summons
No.8/56
(Defendant's
Counter-claim)

30

CIVIL SUMMONS

No.8/56.

21st January
1956.

IN THE NATIVE COURT "B" OF NKONYA.

BETWEEN: Evi Yiboe of Nkonya Akloba

Plaintiff

and

Yaw Duedu, sub-chief of Nkonya
Akloba

Defendant

To:- Evi Yiboe Nkonya Akloba.

In the Native
Court "B"
of Nkonya

No. 3

Civil Summons
No.8/56
(Defendant's
Counter-claim)

21st January
1956 -

continued.

YOU ARE HEREBY COMMANDED to attend this Native Court at Ahenkro at 8.30 a.m. on the 8th day of February, 1956 to answer a suit by Defendant against you.

The Defendant also counter-claims that the said "Logloto-Sakada" is a communal land for the town of Akloba and being the overlord of Akloba, the said land is under his control and administration.

Dated at Ahenkro this 21st day of January, 1956.

10

Claim	(Land Cause)
Fees	£2. - . -
Service & Mileage	1. -
Complimentary fee	<u>- . - . -</u>
	<u>£2. 1. -</u>

Sgd. Ankamah Nyarko Sgd. T.D. Anyomi
Registrar Native Court: President of Native Court.

Take Notice that if you do not attend, the Court may give Judgment in your absence.

No. 4

Submissions by
Parties and
Court Order,
8th February
1956.

No. 4

20

SUBMISSIONS BY PARTIES AND COURT ORDER

8.2.56.

In the Nkonya Native Court "B" held at Ahenkro on Wednesday, the 8th day of February, 1956, before Thomas Doh Anyomi - President, with the following Members:-

K.K. Obinyeaboa	of Ntumda
P.K. Anane	of Tayi
Enu Kwadjo	of Tayi
Kwasi Boateng	of Paprawusi

30

Suit No.4/56.

Evi Yiboe of Nkonya Akloba Plaintiff

vs:

Yaw Duedu, Sub-Chief of Akloba Defendant

CLAIM: The Plaintiff's claim is declaration of his

title, and for that matter, the title of the Amandja clan of Akloba, with possession to all that piece or parcel of land with everything thereon, commonly known and called "Logloto-Sakada" land, situate at Akloba in the Nkonya area with boundaries and dimensions as set forth in the Statement of Claim attached, and the plan sketched and delineated by the consent of both parties.

In the Native
Court "B"
of Nkonya

No. 4

Submissions by
Parties and
Court Order,

8th February
1956 -

10

Statement of Claim.

continued.

The said "Logloto-Sakada" land is bounded on the North by the properties of Akuba of Nkonya Ntumda and Aggrey of Nkonya Ahenkro. On the South by the properties of Goku of Kpandu Dafo, Yaw Duedu, the defendant, Kokroko of Nkonya Akloba and Yaw Duedu, the Defendant again. On the East by the properties of Kwasi Bote and Opa Okumah, all of Nkonya Akloba and on the West by the Volta River; which said land is properly sketched and delineated on a plan jointly made by both parties by order of Court and tendered by the joint consent of both parties in evidence before the Courts of the Magistrate, Kpandu, the Land Court and the West African Court of Appeal, Accra, in a land cause titled:

20

Yaw Duedu, Sub-Chief of Plaintiff-Appellant-
Nkonya Akloba Appellant

vs:

Evi Yiboe of Nkonya Defendant-Respondent-
Akloba Respondent

30

in which cause Defendant herein, then the Plaintiff, sued to claim £25 damages for trespass alleged to have been committed by Evi Yiboe, then Defendant, on the said "Logloto-Sakada" land which he, Yaw Duedu, claimed for himself, complaining that the Plaintiff herein then Defendant, had caused a survey of the land to be made and cement pillars with his name inscribed thereon, to be erected on the land; but lost his claim in all the Courts and finally, in the West African Court of Appeal on the 7th day of March, 1952, as per a certified true copy of Judgment in possession of the Plaintiff herein. The Plaintiff now sues for declaration of his title, and for that matter, title of the Amandja clan of Akloba to the said "Logloto Sakada" land, because he did not counter-claim at the time

40

(Mkd.) Evi Yiboe
Plaintiff.

Prepared by:-
(Sgd.) M.C.B. Agbettah,
Kpandu.

50

In the Native
Court "B"
of Nkonya

No. 4

Submissions by
Parties and
Court Order,

8th February
1956 -

continued.

The Defendant also counter-claims as follows:-

"The Defendant counter-claims that the "Logloto-Sakada" is a communal land for the town of Akloba and being the overlord of Akloba, the said land is under his control and administration."

Parties:- Both present.

Pleas:- The Defendant pleaded not liable to the Plaintiff's claim and Plaintiff also pleaded not liable to the Defendant's counter-claim.

10

NOTE:- Before the proceedings could be started, the Defendant submitted a Power of Attorney made by him on the 30th January, 1956, empowering the representative of his linguist Kofi Kokroko in the person of one Abotsi Kwadjo Donkor to represent him in the case. The Plaintiff also applied verbally for permission to allow his son one Aloysius Komla Evi to represent him. By virtue of the provisions of Section 22 of the Native Courts Ordinance Cap 106, and in view of the fact that the representatives have relations with the parties, the Court granted the applications. The following objections were then made by both sides.

20

By Plaintiff's representative:-

The President of the Court in the person of Thomas Doh Anyomi, is the Odikro to the Omanhene of Nkonya. Both Omanhene and Defendant are claiming the land in dispute. I have a case with Boniface Fassah in connection with the land in dispute. Kwasi Boateng is also a linguist to the Chief of Paprawusi and used to follow him during the hearing of the case. All these members are therefore interested and I object them from sitting and hearing the case.

30

By Defendant's representative:-

The Chief of Ntsumuru and Kadjebi and Kofi Amponsah of Wurupong gave evidence in the previous case and being already interested I object them from sitting and taking part in the hearing of the case.

40

In the Native
Court "B"
of Nkonya

No. 5A

PLAINTIFF'S STATEMENT

Plaintiff's
Evidence.

ALOYSIUS KOMLA EVI

No. 5A

ALOYSIUS KOMLA EVI, S.O.C. and States:-

Aloysius Komla
Evi,

(Kwadjo Kumah interpreting him from Nkonya Lan-
guage into Twi).

14th March
1956.

I am a farmer, I live at Akloba. I represent
the Plaintiff herein. On the 26th July, 1944, the
Defendant sued me at the Magistrate's Court, at
Kpandu, vide suit No.44/1944 claiming for £25 dam-
ages for trespass committed on his land situated
at a place called "Ologloto-Sakada". This is the
Writ. I tender same in evidence.

10

Note:- (Defendant not objecting, Writ tendered
and marked Exhibit "A").

He was claiming the land for himself and or his
Stool. The Magistrate decided against him. He
was dissatisfied with the decision and appealed
therefrom to the Provincial Commissioner's Court.
The appeal was removed from that Court to the Land
Court, Accra. The Land Court also decided against
him. The Amandja clan to which I am the head was
declared to be the owner of the land in dispute by
the Judgments of the Courts. The Defendant was
made to understand that neither himself nor his
Stool was the owner of the land. He was again
dissatisfied with the decision of the Land Court
and appealed therefrom to the West African Court
of Appeal. On the 7th March, 1952, the W.A.C.A.
decided the appeal against him. This is copy of
Judgment, I tender same in evidence.

20

30

Note: (Defendant not objecting, Judgment tendered
and marked Exhibit "B". Registrar read contents
to Court).

As I did not counter-claim, the Amandja clan to
which I am the head, was not declared the owner of
the land in dispute. I now sue for declaration of
my title to the Land, before this Court as the
Defendant had been made to understand that the land
was not his Stool land. When the case was before
the Magistrate's Court, the Court ordered and a
plan of the land was made. Here is the plan. I
tender same in evidence.

40

NOTE:- (At this stage, Defendant objected on the grounds that it was not accepted by the Court. The Court also rejected it because it was not marked by the Court. Plaintiff then withdrew the plan and tendered another one which was accepted by the Magistrate's Court, Kpandu, and marked Exhibit "B" by that Court. The Defendant again objected it that it was not accepted by the Court and upon that the Court ordered a new plan to be made and the new plan also was not accepted and marked by the Court. The Court also rejected it from being tendered in evidence on the ground that it was made by the Plaintiff alone at the time. The Plaintiff at this stage, tendered the proceedings in the previous case; Yaw Duedu, Sub-chief of Akloba vs: Evi Yiboe, from the Magistrate's Court, Kpandu, to the Land Court, Accra, in evidence. Defendant did not object but emphasised that the case had been disposed of long ago and had nothing to do with this case. Accepted and marked Exhibit "C".)

In the Native
Court "B"
of Nkonya

Plaintiff's
Evidence.

No. 5A

Aloysius Komla
Evi,

14th March
1956 -

continued.

The matter about the land in dispute had been decided against the Defendant that he or his Stool was not the owner of the land and as I did not counter-claim at the time, hence I have brought this action for a declaration of my title. The land is not a communal land as Counter-claimed by the Defendant.

Note:- At this stage, the Defendant applied for an adjournment to enable him to prepare his cross-examinations. Application granted. Case adjourned at the instance of the Defendant to next Wednesday, the 21st instant at 8 a.m. Defendant to pay an adjournment fee of 5/-.

Cost of today for Plaintiff but it should abide until the disposal of the case.

Recorder:-

(Sgd.) Ankamah Nyarkoh
Registrar.

In the Native Court "B" of Nkonya

Plaintiff's Evidence.

No. 5A

Aloysius Komla Evi,
21st March 1956.

21. 3. 56.

In the Nkonya Native Court "B" held at Ahenkro on Wednesday the 21st day of March, 1956, before Kofi Kuma Obinyeaboa, President, with the following members.

Members:- E.K. Amoah of Wurupong
Enu Kwadjo of Tayi.

Evi Yiboe represented by Aloysius Komla Evi of Akloba

Plaintiff

vs:

10

Yaw Duedu, Sub-chief of Akloba represented by Okyeame Abotsi K. Donkor also of Akloba

Defendant

Parties:- Both present with their representatives.

Questions by Defendant's representatives:-

Q. Do you know that this case is not an appeal brought by you to this Court?

A. Yes.

Q. Do you know that as the case is an appeal before this Court, previous proceedings have nothing to do with the present case?

20

A. They are in connection with this case as they were about the land in dispute.

Q. Is the present case a counter-claim by you before this Court?

A. It is a claim for title to ownership and not a counter-claim.

Q. Can a Writ of Possession be applied for, from a different Court?

A. No, I have sued in this Court for a title of the land in dispute.

30

Q. How many towns between Akloba and Ntumda do that you called a witness from Ntumda?

A. I have only sued for a declaration of my title to the land in dispute and not about a witness.

Q. Why did you not call a witness in this case to prove your title?

A. You were found guilty in the previous case and upon that I have sued you for declaration of my title to the land.

40

- Q. Do you not know that the W.A.C.A. did not in its judgment give you title to the land in view of the fact that it was a communal land?
- A. The W.A.C.A. decided against you but as I did not counter-claim, the title to the land was not given me.
- Q. Did W.A.C.A. give you title to the land in dispute?
- 10 A. No, and that is why I have sued you before this Court for a declaration of my title to the land.
- Q. Are you aware that when the Aklobas migrated from Afutu, my ancestor "Kpabo" by name brought your ancestor by name "Genevi" to the present locality?
- A. I am disputing with you about where we came from, I have only sued you for a declaration of my title to the land in dispute.
- Q. Do you know one "Kusompo" a hunter once to the Chief of Akloba found "Sakada" village?
- 20 A. This question was in the previous proceedings which the Courts decided against you and I have now sued you for a declaration of my title to the land.
- Q. Do you know one "Yaw Saka" from Gonja came and stayed at the area with "Kusimpo" and the land was named after him as "Sakada"?
- A. This is not the question before this Court. They were all embodied in the previous proceedings which the Courts decided against you.
- 30 Q. Do you know one "Omansa" from Odikro's clan had a ruined village on the land in dispute?
- A. This question had already been decided in the previous proceedings by the Courts against you and I have no answer to it again. I have only sued you for a declaration of my title to the land in dispute.
- Q. Do you know one "Tangbaaku" from "Ososo" clan also had a ruined village on the land in dispute?
- 40 A. I am not disputing with you about the property of the "Ososo" clan. One Alidja from the clan gave evidence in the previous case which the Courts decided against you.

In the Native Court "B" of Nkonya

Plaintiff's Evidence.

No. 5A

Aloysius Komla Evi,

21st March 1956 -

continued.

In the Native
Court "B"
of Nkonya

Plaintiff's
Evidence.

No. 5A

Aloysius Komla
Evi,

21st March
1956 -

continued.

Q. Do you know one "Obia-Anyia" from Amandja clan also had a ruined village on the land in dispute?

A. "Obia Anyia" comes from Amandja clan to which I represented in the previous case and Judgment went against you.

Q. Do you know one "Opo Okuma" a hunter then to the Chief of Akloba had a ruined village on the land in dispute?

A. This question also was in the previous proceedings of which a plan was made on the land and upon that the Courts decided against you. I have now sued you for a declaration of my title to the land. 10

Q. Do you not know that the Courts found that the land in dispute was a communal land for the town of Akloba and that was why you were not given title thereof?

A. The Courts decided against you but as I did not Counter-claim, I was not given title. I have now sued you for the title. 20

QUESTION BY COURT:-

Q. Were you given title of the land in dispute by the West African Court of Appeal?

A. I was given title of the land by the Magistrate's Court, Kpandu and the Land Court but was not given title by the West African Court of Appeal as I did not counter-claim in the suit and that is why I have sued for declaration of my title to the land. 30

Q. Do you want this Court to give you title?

A. Yes.

Q. Is the land in dispute a communal land for the town of Akloba?

A. No, it is the estate of one "Obia-Anyia" and I am the representative.

Q. Do you know "Kpabo" has a ruined village on the land?

A. No.

Q. Do you know a stranger by name "Yaw Saaka" lived on the land and the land was named after him as "Sakada"? 40

A. No.

- Q. Do you know one "Kusompo" a hunter to the Chief of Akloba had a ruined village on the land?
 A. No.
- Q. Do you know one "Omansa" from Odikro's clan of Akloba had a ruined village on the land?
 A. No.
- Q. Do you know one "Obia-Anyia" from Amandja clan had a ruined village on the land in dispute?
 A. Yes, because he owned the land.
10. Q. Do you know one "Tangbaaku" from "Ososo" clan had a ruined village on the land?
 A. No.
- Q. Do you know a mountain called "Loklonbo" in Nkonya language on the land in dispute?
 A. No, no mountain is called "Loklonbo" on the land.
- Q. Do you not know the mountain was named by you in Ewe language as "Ologloto"?
 A. No, the mountain is called "Ologloto" and this is known to the Defendant and all the Akloba community and was mentioned in the previous case.
- 20 Q. What is the meaning of "Ologloto" in Nkonya?
 A. In Nkonya it means a mountain that is bent.
- Q. Who gave the "Ologloto" to the mountain?
 A. I gave that name to it.
- Q. Why you gave the name "Ologloto" to the mountain other than the real name "Oloklobo"?
 A. The mountain is called "Oloklobo" and the land is called "Ologloto" but it had been changed to "Ologloto".
- 30 Q. You gave the name "Ologloto" to the mountain?
 A. No.
- Q. Did the land dispute end at the West African Court of Appeal?
 A. No, and that is why I have brought this action.
- Q. With whom do you form boundary on the land in dispute?
 A. On the South, I form boundary with one Goku from Kpandu Dafo. On the East with Okyeame Kokroko of Akloba, Kwasi Botey of Akloba, the Defendant

In the Native
 Court "B"
 of Nkonya

Plaintiff's
 Evidence.

No. 5A

Aloysius Komla
 Evi,

21st March
 1956 -

continued.

In the Native
Court "B"
of Nkonya

Plaintiff's
Evidence.

No. 5A

Aloysius Komla
Evi,

21st March
1956 -

continued.

and Opa Okumah also of Akloba. On the North with one Akloba of Ntunda and one Aggrey of Ahenkro. On the West by the Volta River.

Q. Why did you not subpoena the persons you form boundary on the land to give evidence to support you or clarify that the land in dispute is yours?

A. The land in dispute had already been decided by the Courts. I have only brought this action for declaration of my title. 10

Q. Since you have not produced evidence before this Court, how can the Court give you title to the land?

A. That is why I tendered a plan of the land in evidence and was rejected by the Court.

Q. Do you remember you stated before this Court that in the previous case both of you were ordered by the Court to make a plan on the land?

A. Yes, but I tendered that plan in evidence and was rejected by this Court. 20

Q. Do you remember you produced two plans?

A. Yes, one plan was made by me and the second by the Order of the Court but both plans were rejected by this Court.

Q. Is it an appeal you have brought before this Court?

A. No, I have brought this action for a declaration of my title to the land in dispute.

Q. Why you did not call witnesses to prove your title? 30

A. My witnesses are the papers I have tendered in evidence.

Q. Do you know the documents you have tendered in evidence are proceedings and judgment in the previous case which the West African Court of Appeal declined to give you title?

A. Yes.

Q. Are you proving to the Court that you have no witnesses than the documents you have tendered in evidence? 40

A. Yes, because the case about the land in dispute has been decided from the Magistrate's Court, Kpandu, to the West African Court of Appeal and as I did not counter-claim, the West African Court of Appeal declined to give me title as was done by the Magistrate's Court and the Land Court.

No. 6

OKYEAME ABOTSI KWADJO DONKORIn the Native
Court "B"
of Nkonya

11. 4. 56.

Defendant's
Evidence.

No. 6

Okyeame Abotsi
Kwadjo Donkor,11th April
1956.

Defendant's Statement:-

OKYEAME ABOTSI KWADJO DONKOR, S.A.R.B. and states:-

I am Acting Linguist to the Defendant herein and farmer by profession. I live at Akloba. I represent the Defendant herein. The Omanhene of the Nkonya Division brought all the Nkonyas to the Nkonya Division. It is over 300 years now since we came and settled at this locality. The then Chief of Akloba was "Kpabo" by name who came with the Omanhene. He was the Kyidomhene (rear guard). The Omanhene gave the land from the East to the South to the Kyidomhene and subjects. The Kyidomhene forms boundary with the Omanhene from "Olukponbo" through the midst of two mountains to "DAKODE" near the Volta River. He also forms boundary with the Dafos from "Dinbi-Tenten" which means long savana land, to an ant hill, silk cotton tree to a pond and thence to the Volta River. The River Volta is the boundary on the West. The Kyidomhene's subjects then started cultivation. The portion cultivated by any person becomes his property. The Kyidom Stool was then kept in a cave in the "Tendiyi" mountain and was watched by the 4 great hunters of Akloba. One of the hunters by name "Omansa" hailed from the Odikro's clan. He made a village at the area and the ruin is there now. One "Kosompo" another hunter from the Chief's clan also made a village and the ruin is there now. Another hunter by name "Tangbaaku" from the Jasehene's clan also made a village at the area and the ruin is there also. Another hunter by name "Genevi" from the Amandja clan also made a village at the area. All the 4 hunters lived on the area at their respective villages and watched the Kyidom Stool in the cave. As the Stool was kept in the area, from "Dinibi-Tentten" to "Dinibi-Prepre" portion of the land was prohibited from cultivation save the area leading to the East. The Odikro's clan farms from "Dinbi-Tenten" to the East. The Chief's clan also farms from "Dinbi-Prepre" to the East. One Kwasi Bote is the care-taker of that area now. Then it follows the portion of the Amandja's clan, the portion of the Jasehene's clan follows. The area starts from the South to the North to meet

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In the Native
Court "B"
of Nkonya

Defendant's
Evidence.

No. 6

Okyeame Abotsi
Kwadjo Donkor,

11th April
1956 -

continued.

the land of the Ahenkres. After the death of "Kpabo" the first Chief, "Kpabo-Otu" succeeded and no dispute arose as to the cultivations of the land by the 4 clans. "Kpabi-Kotoko" also succeeded. There was no dispute also at his time. After "Kpabi-Kotoko", "Akwanna" succeeded. There was no dispute about the land during his reign. It was at his time, war broke out between the Ashantis and the Nkonyas. One Yaw Bitey from the Amandja clan led the Ashantis and showed them where any subject of Nkonya took refuge. He followed the Ashantis to the Nkami's land behind the Volta, made a village and stayed there over 30 years when he saw that the Ashantis would kill him, he returned and was rejected by the then chief "Kpabi-Kotoko" but the Omanhene interceded and asked him to go and live with his subjects - hunters at a place called "Dakkode" because he was an aged man. He lived there for some years until one "Owora" from the chief's clan made a village at "Daakode". Yaw Bitey then removed from the hunter's village to "Owora's" and stayed with him. When "Kpabi-Kotoko" died, "Opa" succeeded. There was no dispute about the land at his time. After "Opa", the Defendant succeeded. He is on the Stool over 50 years now. It is about 14 years now the Plaintiff alleged that, that area was the property of his ancestors. One "Wuntsu" is the head of the Amandja clan and not the Plaintiff. The Plaintiff gave portions of the area to some strangers for cultivation without the knowledge of the Defendant as the Chief of Akloba and as a result, the Defendant called him before the Omanhene. He refused to attend and the Defendant took action against him at the Registrar's Court, Kpandu, claiming £25 damages for refusing to take his orders. The Magistrate decided against the Defendant that Plaintiff was his subject and had no right to sue him as such. The Defendant appealed to the Land Court. Both the Magistrate's Court and the Land Court gave title of the land to the Plaintiff. The Defendant again appealed to the W.A.C.A. which decided against the Defendant but cancelled the title given to the Plaintiff by both the Magistrate's and Land Courts. The Land then remained as it was which every subject has right to cultivate as being a communal land. The W.A.C.A. did not give title of the land in dispute to the Plaintiff. Here is the Judgment of the W.A.C.A. I tender same in evidence.

NOTE:- Plaintiff not objecting, accepted and marked Exhibit "B". This is my case.

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QUESTION by Plaintiff's representative:-

Q. Do you remember you have sued me about the land from "Ologloto" to "Sakada" before?

A. Yes.

Q. Do you know the case about the land from "Ologloto" to "Sakada" is not a new case between us now?

A. The case now before this Court is a new case. It is not an appeal.

10 Q. Do you remember you have stated before this Court that I was given title of the land in dispute?

A. Yes, but the title given you by the Lower Courts were cancelled by the W.A.C.A. in its judgment.

Q. Do you know if I had counter-claimed, the title given me should have been confirmed by the W.A.C.A.?

A. The W.A.C.A. would have probably given you the title if you had counter-claimed.

20 Q. Is it clear to you that I am only to sue you for title and not a new dispute over the land?

A. You should sue me afresh for declaration of title to the land and if you succeed, you would be given the title thereof.

QUESTIONS by Court:-

Q. Do you say the area in dispute is a communal land?

A. Yes.

30 Q. Can you point to the Court the ruined villages of the Elders of the 4 clans of Akloba who lived on the land?

A. Yes.

Q. Do you say the portion of the land in which the Kyidom Stool was kept in a cave was prohibited from cultivation?

A. Yes.

Q. Did the 4 clans meet before the cultivation of that area was prohibited?

A. Yes.

40 Q. When the Plaintiff entered into the area in dispute as alleged, was he questioned by you before

In the Native Court "B" of Nkonya

Defendant's Evidence.

No. 6

Okyeame Abotsi Kwadjo Donkor,

11th April 1956 -

continued.

In the Native Court "B" of Nkonya

Defendant's Evidence.

No. 6

Okyeame Abotsi Kwadjo Donkor,

11th April 1956 -

continued.

the other clans?

A. Yes.

Q. Is the Kyidom Stool still being kept in the cave?

A. No.

Q. Is the area in dispute a communal land for the whole town of Akloba which every subject has right to cultivate?

A. Yes.

Q. Have you counter-claimed that the area in dispute is a communal land?

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A. Yes.

Q. What do you mean by "Olukponbo"?

A. It means a dark and cool place and that was why the elders of the 4 clans named the area "Olukponbo".

Q. Is the same place called "Ologloto"?

A. It was the plaintiff who named it as such during the reign of the Defendant and started cultivation before the Defendant warned him.

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Q. Why you stopped the Plaintiff from cultivating a portion of the land since it is a communal land?

A. Because he gave some to strangers and sold some and that was why he was stopped.

Q. Can you get somebody to prove that the area in dispute is a communal land?

A. Yes.

Q. After the judgment of the W.A.C.A. has some of the subjects cultivated some of the land in dispute?

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A. Yes, because the Defendant allowed its cultivation, before the 3 clans. Plaintiff's clan refused to attend when invited.

No. 7

Kofi Cartey,

11th April 1956.

No. 7

KOFI CARTEY

DEFENDANT'S FIRST WITNESS:-

KOFI CARTEY, S.A.R.B. and states:- (One Okyeame Kumi interpreting him from Nkonya language into Twi).

I am Chief Farmer. I am representing Nana Okotor Kwasi II, Omanhene of Nkonya. I live at Ahenkro. I know the parties herein. Defendant is the Kyidomhene of the Nkonyas Division. Plaintiff is his subject. The Nkonyas in the olden days came from the Colony and settled at Kpandu. The residential area at Kpandu was the place we settled but there was lack of drinking water and one hunter by name "Apatako" was detailed to this area to find if there was a drinking water. He came and even killed an elephant near a stream called "Teekpulu". He returned and reported that there was a drinking water at this area. People then came with him and flayed the elephant. Thereafter, we all removed from Kpandu and settled at this area. We called this area "Tekpli". Kyidomhene is the rear guard and whenever we removed to a place his arrival to that place signified that no subject remained behind. This area was thick forst at the time we came and settled here. The Omanhene's hunters then made a village at a place called "Nyantor". At the time one "Kpabo" was the Kyidomhene and the Omanhene gave him and his subjects the area leading to Dafo on the South. The areas at "Nyantor", "Botator", "Dakode" and "Mangoase" are the Stool lands of the Omanhene. The areas at "Ologloto", "Tendiayi" to "Sakada" belonged to Kyidomhene. The boundary between the Omanhene and Kyidomhene is from "Dakode" to a stream called "Teidji" - "Ebumbui" then to a mountain called "Ebota" thence to a hill and the "Ebota" stream. From there, the boundary runs to a Savana land called "Asawu-Dinbi". From there the boundary runs also near the Nyantor mountain to another stream called "Abotafor" - "Ebumbui". From there to a Savana land called "Eketeba-Dinbi". This is the boundary between the Omanhene and Kyidomhene. About 10 years ago, the Kyidomhene complained the Plaintiff to the Omanhene that he has refused his orders in respect of the Akloba communal land to which he was the caretaker. The Plaintiff refused to attend when invited. The Kyidomhene then sued the Plaintiff at the Magistrate's Court, Kpandu. A surveyor was detailed by the Court to survey the land. The Omanhene was informed and he went and showed his land. The Omanhene forms boundary with the Kyidomhene. The area under his control was assigned to him by the Omanhene.

QUESTIONS by Defendant's representative:-

Q. Do you know another place on the boundary is

In the Native Court "B" of Nkonya

Defendant's Evidence.

No. 7

Kofi Cartey,

11th April 1956 -

continued.

In the Native
Court "B"
of Nkonya

Defendant's
Evidence.

No. 7

Kofi Cartey,

11th April
1956 -

continued.

called "Abonyo-sene"?

A. Yes.

Q. Do you know part of the Nyantor mountain facing
Dafo is called by the Aklobas as "Olukpunbo"?

A. Yes, because the place is dark and cool.

QUESTIONS by Plaintiff's representative:-

Q. Are you called Kwasi Kokote?

A. No.

Q. Are you the Omanhene's Stool-father?

A. No.

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Q. Do you remember the late Omanhene Nana Okotor
Kwasi once gave evidence in case between Defen-
dant and Plaintiff about the land from "Ologloto-
Sakada"?

A. No.

Q. Do you remember Kwasi Kokote, Stool-father to
the Omanhene had once given evidence about the
land from "Ologloto-Sakada" in case between the
defendant and the plaintiff?

A. No.

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Q. Were you empowered by the Omanhene to represent
him to give evidence in this case?

A. Yes.

Q. Did he direct you what to say?

A. What he asked me to say, I have stated to the
Court.

Q. Do you remember you have stated before this
Court that the Omanhene was present when the
land in dispute was being surveyed?

A. Yes, he went and showed the boundary between
himself and the Defendant.

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Q. Did the Defendant come and inform you that the
case went against him after the surveying of
the land?

A. He came and reported that all of you have been
asked to use the land.

Q. Do you remember a dispute about the land from
"Ologloto" to "Sakada" had once been heard be-
tween Yaw Duedu and Evi Yibo?

A. Yes.

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Q. Do you remember the case went against Yaw Duedu?

A. No. What I heard was that all of you have been
asked to use the land.

18. 4. 56.

QUESTIONS by Court:-

Q. Was the area in dispute assigned by Omanhene to the Defendant alone or his subjects included?

A. The Omanhene gave the area to the Defendant and his subjects to farm for their livelihood.

Q. Apart from the area in dispute, was any other land given by Omanhene to the Defendant and subject?

10 A. No, but the Defendant made a mention that there was a family land in it.

Q. Has the Plaintiff right to farm at the area also?

A. Yes, because he is a subject to the Defendant and he can farm on the land for his livelihood.

Q. Do you remember one "Kpabo" was then the Chief of Akloba and the Omanhene gave the land to him and subjects?

A. Yes.

20 Q. Upon what charge the Defendant complained the Plaintiff to the Omanhene?

A. He complained the Plaintiff to the Omanhene that he had refused to adhere to his orders by not allowing his followers to prepare their farms for good 3 years before they made new clearings but the Plaintiff did not attend.

Q. Do you remember the Defendant complained the Plaintiff to the Omanhene for settling portions of the area in dispute?

A. Yes.

No. 8

AKRADIE KWADJO

DEFENDANT'S SECOND WITNESS:-

AKRADIE KWADJO alias KWADJO KAKRABA, S.A.R.B. and states:- (One S.K. Donkor interpreting him from Ewe into Twi).

I am a farmer by profession but Stool-father of Kpandu-Dafo. I live at Dafo. I know the parties herein. My great grand-father was one "Kwadja". He begot my grand-father "Kwaadjei" and Kwaadjei

In the Native
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of Nkonya

Defendant's
Evidence.

No. 7

Kofi Cartey,
18th April
1956.

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No. 8

Akradie Kwadjo,

18th April
1956.

In the Native
Court "B"
of Nkonya

Defendant's
Evidence.

No. 8

Akradie Kwadjo,

18th April
1956 -

continued.

also begot my father Kofi Adjei and he begot me. Kwaadjei lived in a village at "Simpetaa" near the Volta. His son "Fia Kwadjo" lived at Simpetaa village also. One "Adjigbe" also lived at a place called "Bodome". I also lived at the two villages. At the time, I cleared my portion of the path to meet the Chief of Akloba. The Chiefs of Dafo. Akloba used to beat gong-gong announcing the clearing of the path. The subjects of both chiefs would then meet and clear the path. From what my grandfathers told me coupled with my personal view, the Dafos and Aklobas form one boundary. This is what I know.

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QUESTIONS by Defendant's representative:-

Q. Do you know there is a mud at where Aklobas and Dafos used to meet when clearing the path?

A. Yes, and from there you reach the Volta.

Q. Do you remember we marked our boundary when a plan of the land in dispute was being made in case myself vs: the Plaintiff?

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A. Yes.

Q. Do you know from the mud, the boundary between us runs to a silk cotton tree, a hill and savana land?

A. Yes.

QUESTIONS by Plaintiff's representative:-

Q. Do you remember you have given evidence twice in case the Defendant vs: Evi Yiboe in respect of the land in dispute?

A. I have given evidence once at Kpandu and this is the second.

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Q. Do you remember in the year 1941 you represented one Kwadjo Kwaadja and gave evidence as 4th witness for the Defendant in respect of the land in dispute?

A. Yes.

Q. Do you remember in the year 1944 you called yourself Kwadjo Kakraka and gave evidence as 3rd witness for the Defendant in respect of the same land in dispute?

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A. No.

Q. Do you remember in the case you gave evidence, Judgment was delivered against the Defendant

and I was given title of the land in dispute?

A. I do not know. I was not at the Court when Judgment was given.

QUESTIONS by Court:-

Q. Is there any other land on which you form boundary with the Plaintiff?

A. No.

Q. Is there any land on which the Dafos form boundary with Aklobas?

10 A. Yes, the Dafos form boundary with the Aklobas on the land in dispute according to my personal view and what my ancestors told me.

In the Native Court "B" of Nkonya

Defendant's Evidence.

No. 8

Akradie Kwadjo,

18th April 1956 -

continued.

No. 9

ASAFOATSE YAW CARL

DEFENDANT'S 3RD WITNESS:-

ASAFOATSE YAW CARL, S.A.R.B. and states:-

20 I am Jasahene of Akloba and farmer by profession. I live at Akloba. I know the parties herein. When late Jasehene of Akloba in the person of one Clenence Kwasi died, I was enstooled as Jasehene. The elders then told me that "Tangbaaku, Kusompo, Omansa and Genevi" were the hunters who lived in the forest near the River Volta, and watched the Stool of Akloba and its paraphernalia then kept in a cave at the area. All the subjects of Akloba used to hunt and farm at the area for their livelihood. The women also used to go to the land and fetch sponges because the area is a communal land for the 4 clans of Akloba. From the lorry road to "Dinbi-prepre" is the area on which every subject has right to farm. From there to the Volta is the area in which the Stool and its paraphernalia were kept in a cave and that area too is a communal land for the 4 clans of Akloba.

30 QUESTIONS by Defendant's representative:-

Q. Have Tangbaaku, Kusompo, Omansa and Genevi ruined villages on the area in dispute?

A. Yes.

40 Q. Did somebody dispute the area during the lifetime of the elders?

A. No.

No. 9

Asafoatse Yaw Carl,

18th April 1956.

In the Native
Court "B"
of Nkonya

Defendant's
Evidence,

No. 9

Asafoatse Yaw
Carl,

18th April
1956 -

continued.

Q. As a subject of Akloba, has the Plaintiff any right to farm at the area?

A. Yes.

QUESTIONS by Plaintiff's representative:-

Q. Are you the Osafohene Yaw Kumah?

A. Yes.

Q. Do you remember you have once given evidence at the Magistrate's Court, Kpandu, in case Yaw Duedu vs: Evi Yiboe?

A. Yes.

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QUESTIONS by Court:-

Q. Are you giving evidence in respect of the land from lorry road to the Volta?

A. I am giving evidence about the land from "Tendiayi" to the Volta.

Q. Do you know the boundary between Plaintiff and Defendant?

A. Plaintiff do not form boundary with the Defendant. He has no separate land at the area in dispute. All the 4 clans have farms at the area in dispute because it is a communal land.

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Q. Is there any separate land apart from the land in dispute?

A. No, all the 4 clans have farms from the lorry road to "Dinbi-Tenten" and from there to the Volta, all the 4 clans have access to the area because it is a communal land.

No.10

Kwadjo Koto,

18th April
1956.

No.10

KWADJO KOTO

DEFENDANT'S 4TH WITNESS:-

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KWADJO KOTO, S.O.C. and states:-

I am a farmer. I live at Akloba. I know the parties herein. My fathers from "Kpabo-Ementi" clan have farms on the "Tendiayi" land. The land leading to the Volta is the communal land for the 4 clans of Akloba. My father's land is from "Kunka-Dinbiano" to "Asawu-Dinbi". The land in dispute was reserved from cultivation by the then elders of Akloba because valuable properties were kept at

the area. All the 4 clans have right to the area because it is a communal land under the control of the Chief of Akloba.

QUESTIONS by Defendant's representative:-

Q. Is the same land called "Asawu-Dinbi" also called "Dinbi-prepre"?

A. Yes.

Q. Do you remember your father's portion of the land forms boundary with the portion of the land of Genevi from Amandja clan on the North?

A. Yes.

QUESTIONS by Plaintiff's representative:-

Q. Do you remember in the case Yaw Duedu vs: Evi Yiboe one Thomas Ampong represented your father Kwasi Bote and gave evidence at the Magistrate's Court, Kpandu, in respect of the land from "Ologloto to Sakada"?

A. No.

QUESTIONS by Court:-

Q. Did the elders keep any valuable property at the area in dispute?

A. Yes, and that was why the area was reserved from cultivation.

Q. What valuable properties the elders kept at the area?

A. They kept the Stool and its paraphernalia at the area.

Q. The area was reserved by the elders for whom?

A. It was reserved as a communal land for the whole Akloba.

Q. The remaining land was for whom?

A. It was the land used by the 4 clans.

Q. Has the Plaintiff a separate land apart from the area in dispute?

A. His clan also has a portion in the communal land.

In the Native
Court "B"
of Nkonya

Defendant's
Evidence.

No.10

Kwadjjo Koto,

18th April

1956 -

continued.

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In the Native
Court "B"
of Nkonya

No.11

JOSEPH KWAMI

DEFENDANT'S 5TH WITNESS:-

Defendant's
Evidence.

JOSEPH KWAMI, S.O.C. and states:-

No.11
Joseph Kwami,
18th April
1956.

I am a Council Clerk for the Nkonya Local Council stationed Ahenkro. I know the parties herein. I am a native of Akloba and hail from the Odikro's clan. I am representing the Odikro's clan of Akloba in giving this evidence. The land in dispute between the parties herein is a communal land for the 4 clans of Akloba. The 4 clans comprise the Chief's family called "Ementi"; the "Odikro's" family called "Ebume"; the Plaintiff's family called "Amandja" and Jasehene's family also called "Ososo". Each clan has its land apart from the one in dispute. As all the clans are under the Chief of Akloba who is the overlord, he has control over the land in dispute, as laid down from time immemorial or from the time the Nkonyas migrated from Larteh and settled at the present locality. The first chief of Akloba to this region was called "Kpabo". There were hunters from each clan who came with the Chief. The hunter from the Chief's clan was called "Kusompo". "Tangbaaku" from the Ososo's clan, "Genevi" from the Amandja's clan and Omansa from the Odikro's clan. The emigrants fought while on their way to this region. The hunters therefore having arrived at this area, sought a place as shelter for the emigrants. Kusompo found a cave at the area in dispute and reported to the Chief. The Chief and elders decided and hid the Akloba Stool and its paraphernalia in the cave when there was war. The 4 great hunters were the caretakers of the cave and the forest surrounding it was prohibited from cultivation. At the time the Adas used to sell human beings for salts, a period over 200 years ago, Kusompo made a village at the area and named it Sakada. One Yaw Saka from Gonja in the N.Ts. came and stayed with Kusompo. People used to say at the time that I am going to Yaw Saka's village and that is why the village is called "Sakada". Owing to the prohibition of the forest by the elders, the area was not cultivated when cocoa came for use. People who lived at the village cultivated the savana land for their livelihood. About the year 1920, the Aklobas started carving canoes at the area from the Chief and fetch sponges from the area. The lands belonging to the 4 clans start from the town to "Dinbi-Tenten" and "Dinbi-prepre". About 16 years now Plaintiff violated the

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order of the Chief and elders and entered the area and gave portions thereof on "Abunu" and "Abusa" systems to people. The Chief warned him but he refused to adhere to and it resulted litigation. The ruined villages of the hunters can be seen at the area now. The cocoa farm made by the Plaintiff at the area, can be seen that it was made during the litigation. After the disposal of the first case at the West African Court of Appeal the Chief and elders allowed the cultivation of the area by the subjects of Akloba. The Plaintiff then brought this action. The area in dispute forms boundaries with the lands of Ahenkros on the North and Dafos on the South.

In the Native
Court "B"
of Nkonya

Defendant's
Evidence.

No.11

Joseph Kwami,

18th April
1956 -

continued.

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QUESTIONS by Defendant's representative:-

Q. Has the Plaintiff right to cultivate some of the land for his livelihood?

A. Yes.

QUESTIONS by Plaintiff's representative:-

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Q. Do you know Odikro Komla had once given evidence at the Magistrate's Court, Kpandu in respect of the land from "Ologloto to Sakada"?

A. I do not know.

Q. Where were you during the first case between Yaw Duedu and Evi Yiboe?

A. I was then a teacher and used to be transferred to places.

Q. Was there an Odikro at Akloba at the time who could give evidence in such a case?

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A. Yes, and he could give the evidence if he liked so to do.

QUESTIONS by Court:-

Q. Was Genevi among the Chief and elders when they prohibited the cultivation of the area in dispute?

A. Yes.

Q. Why the Plaintiff was objected from cultivating the area?

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A. He was objected from selling it and not from cultivating it.

Q. Why the elders did not warn Plaintiff from selling it?

A. The Chief and elders invited him just to warn him but he refused to attend.

In the Native
Court "B"
of Nkonya

Defendant's
Evidence.

No.11

Joseph Kwami,

18th April

1956 -

continued.

Q. Did the Chief complain him to any elder?

A. Yes, the Chief complained him to the Omanhene.
He refused also to attend.

Q. Has the Plaintiff's clan its separate land apart
from the area in dispute?

A. Yes.

Q. When the cultivation of the land was prohibited,
how many villages were there at the time?

A. The 4 hunters had 4 villages on the area at the
time, watching the properties then kept there. 10

Q. Do you know the boundary between Ahenkro and
Akloba?

A. Yes, the boundary starts from the Volta on the
West to a place called "Dakodo" thence to a
place "Aboanyosene" (the junction of two moun-
tains), thence to "Olukpunbo" mountain on the
East.

Q. Do you know the boundary between Akloba and
Dafɔ?

A. Yes, it starts from the Volta to a pond, thence
to a tree called "Keli", then it runs to an ant
hill and to "Dinbi-tenten" savana land on the
East. 20

At this stage, the Defendant's representative
abandoned the evidence of his late witness Kwaku
Alidja. He stated that he hailed from the Jase-
hene's clan and the evidence to be given by him
was the same as the evidence already given by Jase-
hene Yaw Carl. Defendant's case then closed.

No.12

COURT NOTES AND ORDER FOR INSPECTIONIn the Native
Court "B"
of NkonyaNo.12Court Notes
and Order for
Inspection,25th April
1956.

In the Nkonya Native Court "B" held at Ahenkro on Wednesday, the 25th day of April, 1956, before Kofi Kumah Obinyeaboa - President, with the following members:-

E.K. Amoah of Wurupong
Enu Kwadjo of Tayi.

10 Evi Yiboe represented by
Aloysius Komla Evi of Akloba Plaintiff

vs.

Yaw Duedu, Sub-Chief of Akloba
represented by Okyeama Abotsi
K. Donkor also of Akloba Defendant

Parties:- Both present with their representatives.

By Court to Plaintiff:-

Q. Do you desire that the land in dispute be inspected?

20 A. No, because apart from the previous Judgments in the proceedings I have tendered in evidence, I have nothing again to point to the members at the inspection.

By Court to Defendant:-

Q. Do you desire that the land in dispute be inspected?

A. Yes.

O R D E R.

30 Upon the request of the Defendant, the Court orders that for the purpose of keeping the fountain of justice undefiled, the locus in quo be inspected on the 16th May, 1956 before Judgment. The Defendant to pay the usual land inspection fee of £2.

Kofi Kumah Obinyeaboa His
President. x
mark

Recorder:-
(Sgd.) Ankamah Nyarkoh,
Registrar.

In the Native
Court "B"
of Nkonya

No.13

VIEWERS' REPORT (KOFI KUMA OBINYEABOA)

No.13

Viewers'
Report (Kofi
Kuma
Obinyeaboa),
22nd May 1956.

In the Nkonya Native Court "B" held at Ahenkro on Wednesday, the 22nd day of May, 1956, before Kofi Kumah Obinyeaboa, President - with the following members:-

E.K. Amoah of Wurupong
Ehu Kwadjo of Tayi.

Evi Yiboe represented by
Aloysius Komla Evi of Akloba Plaintiff 10

vs:

Yaw Duedu, Sub-Chief of Akloba
represented by Okyeame Abotsi
K. Donkor also of Akloba Defendant

Parties:- Both present with their representatives.

VIEWERS' REPORT.

KOFI KUMAH OBINYEABOA, S.A.R.B. and states:-

I am a member of this Court. I live at Ntumda. On the 5th April, 1956, the Court ordered that the area in dispute in this case would be viewed by members on the 16th May, 1956, before Judgment. On that day, we went to the area without the Plaintiff. We first reached at the junction of two paths and we passed on the right path to a savana land called "Dinbi-prepre". The Defendant showed us the fallow land of one "Kusompo". He also showed us the fallow land of one "Tangbaaku". From there, he showed us the fallow land of one "Genevi". We came back to the junction and passed on the left path to a long savana land called "Dinbi-tenten". He showed us the fallow land of one "Omansa" and his ruined village. At the ruined village, we saw old broken dishes and cowries used by the then dwellers of the village. From there, Defendant took us to the ruined village of Tangbaaku. We saw a quantity of "Egoro" and other medicinal herbs and a number of broken dishes at this ruined village. 20 30

From there, he took us to one Genevi's ruined village. We saw three short old sticks at the area and Defendant explained that it was part of the broken hut erected by the descendants of the said "Genevi". We then climbed a certain mountain to a cave and Defendant explained that, that was the place the ancient Stool and its paraphernalia were 40

kept. A quantity of cowries were found in it. Defendant took us again to the ruined village of one "Kusompo". It is near the Volta River and the place is called "Sakada". We saw a full grown orange tree and Defendant explained that it was planted by Atu Yaw. We then returned home.

Questions by Plaintiff's representative:-

I have no question because I did not take part during the inspection.

10 Questions by Defendant's Representative:-

Q. Do you remember I pointed the sitting place of the hunter who watched the Stool and its paraphernalia?

A. Yes.

Q. Do you remember I showed you the palm trees around the Sakada village planted by the Defendant under the instruction of the then German Commander?

A. Yes.

20 Questions by Court:-

Q. How many Court members went with you for the inspection of the area?

A. We were three in number. The bailiff also went with us for the inspection. We all saw the things I have mentioned in my report given herein and can substantiate same.

At this stage, members went into consultation and on resumption, passing the following Judgment.

No.14

JUDGMENT AND ORDER

J U D G M E N T.

In the case:

"The Plaintiff's claim is declaration of his title, and for that matter, the title of the Amandja clan of Akloba with possession, to all that piece or parcel of land with everything thereon, commonly known and called

In the Native Court "B" of Nkonya

No.13

Viewers' Report (Kofi Kuma Obinyeaboa),
22nd May 1956
- continued.

No.14

Judgment and Order,
22nd May 1956.

30

In the Native
Court "B"
of Nkonya

No.14

Judgment and
Order,

22nd May 1956

- continued.

"Logloto-Sakada" land, situate at Akloba in
"the Nkonya area with boundaries and dimen-
"sions as set forth in the Statement of Claim
"attached, and the plan sketched and deline-
"ated by the consent of both parties".

In support of the above claim, the Plaintiff filed
a Statement of Claim in which he asserted that:-

"the said "Logloto-Sakada" land is bounded on
"the North by the properties of Akuba of
"Nkonya Ntumda and Aggrey of Ahenkro; on the 10
"South by the properties of Goku of Kpandu-
"Dafo, Yaw Duedu, the Defendant, Kokroko of
"Nkonya Akloba and Yaw Duedu, the Defendant
"again; on the East by the properties of
"Kwasi Boto and Opa Okuma, all of Nkonya
"Akloba and on the West by the Volta River,
"which said land is property sketched and
"delineated on a plan jointly made by both
"parties by order of the Court and tendered
"by the joint consent of both parties in evi- 20
"dence before the Courts of the Magistrate,
"Kpandu, the Land Court and the West African
"Court of Appeal, Accra, in a Land cause
"titled:-

"Yaw Duedu, sub-chief of Nkonya Akloba, Plain-
"tiff-Appellant-Appellant; vs: Evi Yiboe of
"Nkonya Akloba, Defendant-Respondent-Respondent,
"in which cause Defendant herein, then the
"Plaintiff, sued to claim £25 damages for tres- 30
"pass alleged to have been committed by Evi
"Yiboe, the Defendant, on the said 'Logloto-
"Sakada' land which he Yaw Duedu, claimed for
"himself, complaining that the Plaintiff here-
"in, then Defendant had caused a survey of the
"land to be made and cement pillars, with his
"name inscribed thereon, to be erected on the
"land; but lost his claim in all the Courts
"and finally in the West African Court of Ap-
"peal on the 7th day of March, 1952, as per a 40
"certified true copy of Judgment in possession
"of the Plaintiff herein. The Plaintiff now
"sues for declaration of his title, and for
"that matter, title of the Amandja clan of
"Akloba to the said "Logloto-Sakada" land be-
"cause he did not counter-claim at the time."

The Defendant also counter-claimed as follows:-

"The Defendant also counter-claims that the

"said "Logloto-Sakada" land is a communal land for the town of Akloba and being the overlord, the said land is under his control and administration."

In the Native
Court "B"
of Nkonya

No.14

The facts in the case are that, in the year 1944, the Defendant instituted action against the Plaintiff at the Magistrate's Court, Kpandu, upon the following claim:-

Judgment and
Order,
22nd May 1956

- continued.

10 "The Plaintiff in his capacity as the sub-chief of Nkonya Akloba, claims from the Defendant herein the sum of £25 for trespass committed by Defendant upon all that piece or parcel of Akloba Stool land, commonly known and called "Ologloto-Sakada" and bounded on the North by the property of the Head Chief of the Nkonya Division, on the South by the property of the Divisional Sub-Chief of Kpandu-Dafo, on the East by the communal land divided among the heads of the 4 clans of Nkonya Akloba and on the West by the River Volta, for wrongfully entering the said land by Defendant, making plan thereof, fixing cement pillars with his inscriptions thereon and thereby falsely claiming it his property without the knowledge and consent of Plaintiff. Plaintiff applies for the order of Interim Injunction restraining Defendant, his men or Labourers from entering any part of the land in dispute for the purpose of doing any work pending hearing and determination of the case."

20

30 The Magistrate's Court decided against the Defendant and gave title of the land in dispute to the Plaintiff. Being dissatisfied, the Defendant appealed to the Provincial Commissioner's Court which appeal was later removed to the Land Court. That Court also upheld the decision of the Magistrate's Court. The Defendant again appealed to the West African Court of Appeal. The West African Court of Appeal though upheld the decisions of the Courts below but set aside the title given to the Plaintiff in the following terms:-

40 "But as the Defendant did not counter-claim for a declaration of title, that portion of the Magistrate's Judgment which reads - "I can therefore only conclude that the land specified by Plaintiff in his claim is not Akloba Stool land but belongs to the Defendant either in his personal capacity or as head of his family or of the Amandja clan" - should not in my opinion, be regarded as one".

In the Native
Court "B"
of Nkonya

No.14

Judgment and
Order,

22nd May 1956

- continued.

The Plaintiff now brought this action for a declaration of title to the said land. He based his claim upon the old proceedings. This Court is of the opinion that, the action before it, is not an appeal but a new claim and in an action for a declaration of title to land, the onus is on the Plaintiff but failed to produce witnesses to prove it. The Defendant on the other hand, asserted that, the land in dispute was a communal land for the town of Akloba and all subjects including Plaintiff have right to cultivate same for their livelihood. He emphasised that as the land was a communal land from time immemorial, the ancestors of the 4 clans in Akloba who lived on the land, had ruined villages thereon. Opanyin Kofi Cartey, representative of the Omanhene of Nkonya, Akradie Kwadjo (alias) Kwadjo Kakraba, Stool father of Kpandudrafo, Asafoatse Yaw Carl, Jasehene of Akloba of the "Ososo" Clan, Kwadjo Koto of the "Ementi" clan and Joseph Kwami of the Odikro's clan, gave evidence in support of the Defendant that the area in dispute was a communal land for the town of Akloba. To enable the Court to satisfy itself whether the locus in quo was a communal land or a private property, it was inspected by members. Part of it have been converted into farms by individuals of the 4 clans. The ruined villages of the 4 great ancestral hunters from the 4 clans and cowries used by them, as well as the cave in which the ancient stool and its paraphernalia were kept for safe custody from enemies were found at the area. The spot on which "Tangbaaku" the herbarian among the hunters grew "Egoro" and other medicinal herbs were also seen. From the evidence on record therefore coupled with the personal view of the area, the Court is satisfied that the area in dispute is a communal land for the town of Akloba. Judgment therefore for the Defendant with costs to be taxed.

O R D E R.

The Court orders that the land being a communal land, it should remain as it is under the control of the Defendant as the head of the town of Akloba.

(Mkd.) Kofi Kumah Obinyeaboe
PRESIDENT.

His
x
Mark

Recorder:-

(Sgd.) Ankamah Nyarkoh
Registrar.

No.15

GROUNDS OF APPEAL

IN THE BUEM-KRACHI DISTRICT NATIVE APPEAL
COURT - JASIKAN.

In the Buem-
Krachi District
Native Appeal
Court

No.15

Grounds of
Appeal,
31st May 1956.

BETWEEN:-

EVI YIBOE, represented by Aloysius
Komla Evi of Akloba Plaintiff-Appellant.

and

10

YAW DUEDU, Sub-Chief of Akloba,
Represented by Okyeame Abotsi K.
Donkor also of Akloba Defendant-Respondent.

GROUNDS OF APPEAL.

20

1. The Native Court below has misdirected itself by assuming that, the claim by the Plaintiff has been such that one can legally counter-claim in it; and has therefore accepted what was termed as "Counter-claim" by the Defendant for hearing in conjunction with action for legal declaration of title in a cause already determined by a higher Court.
2. The hearing of the cause by the Native Court below has been both legally and procedurally wrong and is therefore irregular.
3. The Native Court below has acted ultra vires, the fact that it cannot alter the decision of the Supreme Court.

Dated at Kpandu this 31st day of May, 1956.

(Sgd.) A.K. Evi Yiboe
Appellant.

30

The Registrar,
Buem-Krachi District Native Appeal Court, Jasikan,

and

To Yaw Duedu, Sub-Chief of Akloba, Defendant-
Respondent, Nkonya Ahenkro.

In the Buem-
Krachi District
Native Appeal
Court

ADDITIONAL GROUNDS OF APPEAL

No.16

ADDITIONAL GROUNDS OF APPEAL.

Additional
Grounds of
Appeal,
26th July
1956.

1. With the existence of Exhibit "B" (WACA Judgment of 7/3/1952) which the defendant admits and; in accordance with the terms of the said Exhibit, there was no ground for the Native Court below to receive fresh evidence from the parties as if they were before a Court of first instance.

2. The Defendant-Respondent himself admits in clear terms that, he has sued in the Magistrate's Court for this very land - that Judgment was given against him - that he appealed to Land Court and lost his case there too, and that the 7th March, 1952, Judgment given by W.A.C.A. was also against him when he appealed from the Judgment by the Land Court. 10

3. The Defendant-Respondent also admits that, the Magistrate's Court before which he gave evidence, giving judgment against him, awarded title to the land to Plaintiff-Appellant and that that award was confirmed by the Land Court. 20

4. That portion of Exhibit "B" which reads:-

"But as the Defendant did not counter-claim for a declaration of title that portion of the Magistrate's Judgment which reads:- "I can therefore only conclude that the land specified by Plaintiff in his claim is not Akloba Stool land but belongs to Defendant either in his personal capacity or as head of the Amandja Clan", should not in my opinion, be regarded as one" 30

is a legal formality, for the Defendant (Plaintiff herein) to sue for declaration for his title to the land.

5. The Defendant himself has agreed that, Judgments having been given against him in all the Courts at the time he tried to claim the land for his Stool, the Plaintiff has only to sue him for declaration of his title because he (Plaintiff) did not counter-claim when the case was before the Magistrate's Court. In support of this, I am 40

putting into evidence the answers given by the Defendant-Respondent on page 16 of copy of Proceedings now before this Court, when he was cross-examined by me (Plaintiff).

In the Buem-Krachi District Native Appeal Court

6. The Judgment by the Nkonya Native Court "B" which emanated from illegal and unprocedural hearing, is an attempt to overrule the Judgments given by the Supreme Courts when that Native Court "B" has no jurisdiction to do so.

No.16

Additional Grounds of Appeal,

26th July 1956 -

continued.

10 7. The Judgment is a product of inexperience and partiality of members of the Native Court below. And I submit that, the issue being only declaration of title to a property which has already been adjudged by the Highest Court of the country, experienced members of this competent District Native Appeal Court, do justice by allowing the Appeal, and declaring my title to the "Ologloto-Sakada" the subject matter which has been in dispute and ended in the West African Court of Appeal on the 7th of March, 1952.

20

Dated at Kpandu this 26th day of July, 1956.

(Sgd.) A.K. Evi Yiboe
Appellant.

The Registrar,
Buem-Krachi District Native
Appeal Court, Jasikan,

and

To Yaw Duedu, Sub-Chief of
Akloba - Defendant-Respondent,
Nkonya Akloba.

30

No.17

REPLIES TO GROUNDS OF APPEAL

REPLIES TO GROUNDS OF APPEAL
OF THE PLAINTIFF-APPELLANT HEREIN.

No.17

Replies to
Grounds of
Appeal,

13th August
1956.

1. That there are no substances in all the grounds put forward by the Plaintiff-Appellant and should not be countenanced since no Court can give title to a party in a land cause without the party producing evidence to support his claim. In his

In the Buem-
Krachi District
Native Appeal
Court

No.17

Replies to
Grounds of
Appeal,

13th August
1956 -

continued.

claim as appeared at page 3 of the Appeal Records, the Plaintiff-Appellant sued the Defendant-Respondent for a declaration of title to the land in dispute and in such suits, the onus is always on the Plaintiff but he failed to discharge it by production of witnesses in support. The Nkonya Native Court therefore dwelling on the evidence produced by the Defendant rightly decided against the Plaintiff and its judgment should not be disturbed.

10

2. That in the previous action, the Defendant sued for damages for trespass against the Plaintiff and without putting a claim of title, the plaintiff was given title of the land on which he committed the trespass by both the Magistrate's and the Land Courts and thereupon the proceedings from the Lower Courts became null and void when the title assigned to the Plaintiff was set aside by the West African Court of Appeal.

3. That assuming the Judgment of the West African Court of Appeal on the 7th March, 1952 referred to by the Plaintiff-Appellant in his Grounds, gives title of the land to him or upholds the Judgments of the Lower Courts, the only avenue the Plaintiff-Appellant should have adopted, was to have applied for a Writ of Possession to dispossess Defendant-Respondent.

20

4. That failing to apply for a Writ of Possession in that behalf to the Courts proves beyond reasonable doubt that the previous suit ended at the West African Court of Appeal and Plaintiff-Appellant could not call upon the Nkonya Native Court with the copies of proceedings and Judgments thereof to merely declare him owner of the land in dispute without the support of any evidence.

30

5. That being unable to apply to the Courts for Writ of Possession the Plaintiff-Appellant instituted a fresh action at the Nkonya Native Court for declaration of title to the land. (See his answer to the 1st question by Defendant's representative at page 11 of the Appeal Records). It was his duty to have declared his title by evidence in support of his claim but failed so to do and merely tendered in evidence proceedings and judgments of possession. The Defendant-Respondent who counter-claimed that the area was a communal land for the whole town of Akloba, supported his claim with the

40

evidence of members from the 3 clans of Akloba, the Stool-father of Kpandu-Dafo and the representative of the Omanhene of the Nkonya Division. The judgment of the Nkonya Native Court, was, from the facts before it, impartial and should not be disturbed.

Dated at Jasikan, Buem State, this 13th day of August, 1956.

10

(Mkd.) Nana Yaw Duedu His
x
Mark
DEFENDANT-RESPONDENT.

In the Buem-Krachi District Native Appeal Court

No.17

Replies to Grounds of Appeal,

13th August 1956 -

continued.

Prepared by:-

Sgd. Tim.A.K. Towoe,
Lic'd No.34390/56/Jas.
made in 3 copies.

Witness to marks:-

Chd.

Sgd. C.K. Botey.

20

To The Registrar,
Buem-Krachi Native Court of Appeal,
Jasikan

and

To the within-named Plaintiff-Appellant,
Evi Yiboe represented by Aloysius Komla Evi
of Akloba.

No.18

COURT NOTES AND JUDGMENT

18. 9. 56.

In the Buem-Krachi Native Appeal Court held at Jasikan, on Tuesday the 18th day of September, 1956, before N.Y.K. Asare, Esquire, of Borada, President, with the following members:-

W.K. Siaw
Nana Agya Mensah II

Civil Appeal No.19/56.

Evi Yiboe represented by Aloysius Komla Evi of Akloba Plaintiff-Appellant

vs:

Yaw Duedu, Sub-Chief of Akloba, represented by Okyeame Abotsi K. Donkor also of Akloba Defendant-Respondent.

30

40

No.18

Court Notes and Judgment,

18th September 1956.

In the Buem-
Krachi District
Native Appeal
Court

No.18

Court Notes
and Judgment,
18th September
1956 -
continued.

Appeal from the Nkonya Native Court "B",
Ahenkro.

PARTIES:- Parties present.

NOTE:- The record of proceedings from the Lower Court, the Grounds of Appeal filed by the Appellant, and the Replies to the Grounds of Appeal filed by the Respondent, have been fully read by this Court.

NOTE:- Evi Yiboe interpreted by Kwadjo Tetteh,
S.A.R.B.:-

10

BY COURT TO APPELLANT:-

Q. Have you any other submission to give in addition to your Grounds of Appeal?

A. Nil.

By Court to Respondent:-

Q. Have you any other submission to give in opposition to the grounds of appeal?

A. Nil.

BY COURT TO APPELLANT:-

Q. Why did you not ask power of the land from the higher Court which delivered judgment in your favour?

20

A. During that time I did not remind it so I did not know.

Q. As you did not know, has it been your point to ask the power from the Higher Court and you have brought it to the Lower Court?

A. When I know this the law has changed and that is, I should start it from the Court in my town.

Q. Then do you know that the case is a new one?

30

A. It is not a new case because it has been already decided.

Q. If it is not a new case then is the judgment of the Higher Court holding good?

A. Yes.

BY COURT TO RESPONDENT:-

Q. Do you remember this case is not a new case contrary to the case decided in the Higher Court?

A. Is a new case.

Q. As it is a new case you called witnesses to hear

40

evidence for you in the Lower Court?

A. Yes.

Q. Is the judgment of the West African Court of Appeal still holding good?

A. No.

NOTE:- The members retired into consultation and returned to give the following judgment.

JUDGMENT:-

10 In this Civil Appeal, the Plaintiff-Appellant claimed from the Defendant-Respondent before the Nkonya Native Court "B", Ahenkro, as follows:-

20 "The Plaintiff's claim is declaration of his title and for that matter, the title of the Amandja clan of Akloba with possession, to all that piece or parcel of land with everything thereon, commonly known and called "Logloto-Sakada" land, situate at in the Nkonya area with boundaries and dimensions as set forth in the Statement of Claim attached and the plan sketched and delineated by the consent of both parties"

The Defendant-Respondent also counter-claims that as follows:-

"The Defendant also counter-claims that the said Logloto-Sakada is a communal land for the town of Akloba and being the overlord of Akloba, the said land is under his control and administration."

30 The record of proceedings from the Lower Court, the Grounds of Appeal filed by the Appellant and the replies to Grounds of Appeal filed by the Respondent have been carefully read by this Court. After this the Court took statements from both parties herein on record in connection with their contentions.

40 In his grounds of appeal, the Appellant contends that when the Respondent took the previous action against him before the Magistrate's Court, Kpandu, the case was decided in the Appellant's favour and when the Respondent was dissatisfied with the judgment of the Magistrate's Court, he appealed to the Land Court, Accra, and the appeal

In the Buem-
Krachi District
Native Appeal
Court

No.18

Court Notes
and Judgment,
18th September
1956 -

continued.

In the Buem-
Krachi District
Native Appeal
Court

No.18

Court Notes
and Judgment,
18th September
1956 -

continued.

was decided in the Appellant's favour there again. Upon the judgment of the West African Court of Appeal the appellant took this action against the Respondent herein in accordance with the above claim. That as he the appellant did not counter-claim against the respondent's claim before the Magistrate's Court, Kpandu, and this has been taken by the Appellant, against the Respondent in lieu of that, the Lower Court was wrong and parties in giving judgment against the appellant and as it has no jurisdiction to do so hence this Appeal.

10

In his replies to the grounds of appeal, the respondent also contends that there are no substances in the grounds put forward by the appellant. The appellant failed to discharge his claim by production of witnesses in support. That the Nkonya Native Court dwelt on the evidence produced by the respondent rightly decided against the appellant, therefore its judgment should not be disturbed by this Court. That in the previous action, the title assigned to the appellant by the Lower Courts was set aside by the West African Court of Appeal therefore, the only avenue the appellant should have adopted was to have applied for a writ of possession to dispossess the Respondent if the appellant thinks that the judgment of the West African Court of Appeal gave him title of the land in dispute or upheld the judgment of the Lower Courts. That the appellant was unable to apply for writ of possession but rather took this action and the respondent counter-claimed against the Appellant that the area was a communal land for the town of Akloba supported his claim with evidence from the three clans of Akloba, therefore, the judgment of the Lower Court was impartial and should not be disturbed.

20

30

After carefully scrutinizing the contentions of both parties herein, this Court is of the opinion that this action is a new claim and differs from the previous action which went before the Higher Courts, therefore, if the appellant claims in this action for a declaration of title to the land in dispute upon the judgment of the Higher Courts and could not appeal against the judgment of the West African Court of Appeal dated 7th March 1952, which upheld the decisions of the Courts below but set aside the title given to the appellant by the Courts below, then, there is no reason why the appellant should take this action against

40

the respondent therein as the Lower Court has no jurisdiction to give him title to the land in dispute when the West African Court of Appeal has refused to give him such title to the said land. As the respondent is the head of the town of Akloba, the control of the land in dispute should be vested in him in accordance with the Native Customary laws and usage because it is a communal land.

10 With the foregoing facts at the disposal of this Court, the judgment of the Nkonya Native Court "B" Ahenkro, dated 22nd May, 1956, is hereby restored. Appeal therefore dismissed by this Court with costs to be taxed for the Defendant-Respondent and against the Plaintiff-Appellant herein.

Court below to carry out.

Sgd. N.Y. Asare,
President.

Buem-Krachi Native Appeal
Court.

20 W/to signature:-
Sgd. G.K. Apreko,
Registrar, B.K.N.A.C.
18/9/56.

In the Buem-
Krachi District
Native Appeal
Court

No.18

Court Notes
and Judgment,
18th September
1956 -
continued.

In the
Supreme Court

No.19

GROUNDS OF APPEAL

No. 19
Grounds of
Appeal,
5th October
1956.

In the Supreme Court of the Gold Coast,
Eastern Judicial Division
Land Court - Accra
A.D. 1956.

Evi Yiboe, represented by Aloysius
Komla Evi of Akloba ... Plaintiff-Appellant-
Appellant

vs:

10

Yaw Duedu, Sub-Chief of Akloba
represented by Okyeame Abotsi
K. Donkor also of Akloba ... Defendant-Respondent-
Respondent

GROUNDS OF APPEAL.

Judgments of the Trial Native Court and the
Native Appeal Court were wrong, because

- (1) On the facts found by the Magistrate's Court
in the case of "Yaw Duedu, etc. - Plaintiff
versus Evi Yiboe, etc. - Defendant" in the
Judgment of that Court dated 26th November,
1948 and confirmed by the West African Court
of Appeal by their judgment of the 7th March,
1952, the Respondent herein was estopped from
averring that the land in dispute was Stool
land and from disputing the ownership of the
Appellant of the said land, and judgment should
therefore have been entered for the Appellant
and the Respondent's counter-claim dismissed. 20
- (2) The Judgments of the two Courts below were
against the weight of evidence. 30

Dated at Accra, this 5th day of October, 1956.

(Sgd.) A.K. Evi Yiboe
Appellant herein.

The Registrar,
Land Court, Accra

and to the above-named Respondent of Akloba.

No.20

ADDITIONAL GROUNDS OF APPEAL

The Trial Native Court was wrong in refusing to admit in evidence the Plan which was made on the order of the Magistrate's Court, Kpandu, in connection with the hearing by that Court of the case of "Yaw Duedu, etc. vs: Evi Yiboe".

Dated at Accra, this 2nd day of January, 1957.

10

(Sgd.) A.K. Evi Yiboe
APPELLANT.

THE REGISTRAR, LAND COURT, ACCRA

and

TO THE ABOVE-NAMED RESPONDENT OF AKLOBA.

No.21

ARGUMENTS OF COUNSEL

19th March, 1957.

20

In the Supreme Court of Ghana, Eastern Judicial Division (Land Division) held at Victoriaborg, Accra, on Tuesday the 19th day of March, 1957, Before His Lordship Mr. Justice Ollennu.

Evi Yiboe - Plaintiff-Appellant-Appellant

vs:

Yaw Duedu, etc. - Defendant-Respondent-Respondent.

Mr. Akuffo Addo for the Appellant

Mr. E.O. Asafu Adjei for the Respondent.

MR. AKUFFO ADDO:-

30

This is an appeal from a decision of the Buem Krachi Native Appeal Court sitting on appeal from the Nkonya Native Court "B".

The Judgment of the Nkonya Native Court "B" is

In the
Supreme Court

No. 20

Additional
Grounds of
Appeal,

2nd January
1957.

No. 21

Arguments of
Counsel,

19th March
1957.

In the
Supreme Court

No. 21
Arguments of
Counsel,
19th March
1957 -
continued.

at page 31, and that of the Native Appeal Court is at page 41.

Exhibits "A", "B" and "C" show that in a previous suit relating to the same land the Defendant then Plaintiff claimed title to the land as Akloba Stool land and lost and the Plaintiff then Defendant won in his capacity as head of his family or clan, but as he did not counter-claim in the said suit no declaration could be made in his favour.

In delivering the Judgment of the Court of first instance in that case, the Magistrate who heard the case declared that "the land belongs to the Defendant (now Plaintiff) either in his personal capacity as head of his family or of the Amandja clan." 10

The Defendant is estopped by that Judgment from claiming the land to be communal land in other words Stool land. The use of the Terms "Stool land" and "Communal land" are synonymous.

The Plaintiff now claims as head of the Amandja clan that was the same capacity in which he defended the former suit. 20

The matter is res judicata, and the Court is entitled to look at the proceedings in the former case to determine the plea.

The only interpretation which can be placed upon the findings of the Magistrate in the former proceedings is that the land is the property of the Amandja family or clan.

If the matter is not res judicata, the evidence given by the Plaintiff together with the judgments in the previous case is sufficient evidence to warrant a declaration of title in favour of the Plaintiff. 30

The Judgment of Native Court "B" of Nkonya made findings of fact directly in conflict with those made by the Magistrate's Court in the former suit Exhibit "B".

The counter-claim in the present case is the same as the claim in the former suit, that is, "Stool" and "Overlord". 40

Refers to page 38 where the Native Court quotes the Judgment of West African Court of Appeal in the former case.

I ask that the Judgment of the two Native Courts to be set aside and judgment entered for the Plaintiff.

MR. ASAFU ADJAYE:-

10 For the submission of res judicata to succeed, the Appellant must prove that all the elements of res judicata are present.

I refer to Agbo Kofi v: Addo Kofi, 1 W.A.C.A. 285, where it is laid down that the judgment relied upon must be certain.

If the plea is estoppel, then sufficient evidence must be given.

The former case was one of trespass; any question of title mentioned by or purported to be decided by the Magistrate in his judgment in the former case is obiter.

20 I refer to page 38 of the record - paragraph 2 .

The issue in the former case was trespass; not one of ownership as in this case.

The Plaintiff would not be entitled to judgment only upon the production of the judgments in the former case.

The Defendant called witnesses and inspected the land and made findings of fact. The Plaintiff did not refute those important pieces of evidence.

30 There is ample evidence to support the judgment of the Native Courts.

The defence is that the land is communal land. Each of the 4 clans including the Plaintiff has right to occupy it.

MR. AKUFFO ADDO:-

The claim for damages for trespass made by the Defendant in the former case was dismissed, because the Magistrate found that the Plaintiff now Defendant

In the
Supreme Court

No. 21

Arguments of
Counsel,

19th March
1957 -

continued.

In the
Supreme Court

No. 21

Arguments of
Counsel,

19th March
1957 -

continued.

was in possession as owner.

The case of Chief Tengey Djokoto IV vs: Chief Saba III substituted for Chief Akoboko is on all fours with this case. I shall submit the judgment of W.A.C.A. in it to the Court later on.

The setting aside of the Declaration of Title made in favour of the Defendant now Plaintiff does not detract from the cogency of the facts embodied in the judgment.

COURT:-

10

Judgment reserved to be delivered on Friday,
22nd March, 1957.

Sgd. N.A. Ollenu,

JUDGE.

In the High
Court, Ghana

No. 22

Judgment,

22nd March
1957.

No. 22

J U D G M E N T

22nd March, 1957.

In the High Court of Justice (Land Division) in the Eastern Judicial Division, held at Victoriaborg, Accra, on Friday, the 22nd day of March, 1957, before Ollenu, J.

20

Land Appeal No. 111/1956.

Evi Yiboe, represented by Plaintiff-Appellant-
Aloysius Komla Evi of Akloba Appellant

vs:

Yaw Duedu, Sub-Chief of Akloba,
represented by Okyeame Abotsi Defendant-Respondent-
K. Donkor, also of Akloba Respondent.

JUDGMENT:

In this action commenced in the Native Court "B" of Nkonya, the appellant claimed for himself and on behalf of the Amandja clan of Akloba declaration

30

of title to, and recovery of possession, of a piece or parcel of land known as "Logloto-Sakada" situate at Akloba in the Nkonya area.

In the High
Court, Ghana

No. 22

The Respondent was sued in his capacity as sub-chief of the said Nkonya Akloba.

Judgment,
22nd March
1957 -
continued.

The Respondent counter-claimed for a declaration that the said "Logloto-Sakada" land is a communal land for all tribes inhabiting the said town, and that the same is under his control and administration as the overlord or chief of the said town of Akloba.

10

The history of the case is as follows:-

On or about the 8th day of January, 1941, the Respondent's Stool caused bye-laws to be published directing citizens of Akloba who sell, pledge or let out portions of the land in dispute to report the transaction to his Stool, and that any citizen who failed to comply with the said order should suffer a fine of 26/- and a live sheep.

20

The Appellant wrote to the Respondent refusing to comply with the said bye-law, claiming the land to be his property. The Respondent referred the matter to Head Chief for settlement, but the Appellant would not attend the invitation of the Head Chief, whereupon the Respondent took action against the Appellant in the Magistrate's Court at Kpandu, claiming £50 damages for disregarding the lawful orders of the Stool.

30

The Magistrate dismissed that claim holding that disobedience to lawful order of a Stool is a criminal offence and did not give cause for an action for damages; and further that "ownership of land in Nkonya Akloba is not confined to the Divisional Chief and his Sub-Chiefs but is vested in individuals as well. That judgment was confirmed on appeal by the Provincial Commissioner of the Eastern Province.

40

On the 17th day of July, 1944, the Respondent instituted action in the Magistrate's Court, Kpandu, for £25 damages for trespass alleging that the Appellant had wrongfully entered upon the said land, made plan of it and fixed pillars thereon.

In a judgment delivered on the 26th day of November, 1948, the Magistrate held as follows:-

In the High
Court, Ghana

No. 22

Judgment,

22nd March
1957 -

continued.

"I can therefore only conclude that the land specified by the Plaintiff in his claim is not Akloba Stool land but belongs to the Defendant either in his personal capacity as head of his family or of the Amandja clan".

"I therefore find that the Plaintiff's claim for damages for trespass committed by the Defendant fails".

The Respondent appealed to the Land Court but his appeal was dismissed. He thereupon appealed to the West African Court of Appeal. That Court by a Judgment delivered on the 7th day of March, 1952 dismissed the appeal, but amended the judgment of the Magistrate by deleting therefrom the passage declaring the Appellant the owner of the property on the grounds that no declaration can be made in his favour when he had not counter-claimed.

10

On the 10th day of January, 1956, the Appellant instituted the present suit.

In support of his case the Appellant gave a short oral evidence and tendered in evidence the Writ of Summons in the former case, the proceedings and Judgments in it up to the Land Court, and the Judgment of the West African Court of Appeal. He led no other evidence in proof of his title and refused to answer any questions by the Respondent or the Native Court relating to title, and called no witnesses. He also refused to attend the inspection of the land by the Native Court.

20

The Respondent on the other hand led evidence and called witnesses to prove his counter-claim that the land is communal land, and at the inspection of the land, showed the Native Court features on the land evidencing the use of it by all 4 clans of Akloba as communal land.

30

The Native Court held that the Appellant had failed to prove his claim, and that the Defendant had established his counter-claim. They therefore dismissed the Plaintiff's claim and entered Judgment for the Defendant both on the claim and counter-claim. The Appellant appealed from that Judgment to the Buem-Krachi Native Appeal Court, but lost. He has now appealed to this Court.

40

Mr. Akufo Addo for the Appellant submitted that

the Native Courts misdirected themselves when they held that the Appellant failed to prove his case: because (a) the matter was res judicata by reason of the judgment in the previous suit, and (b) the Respondent is estopped by the findings of facts made in the previous suit both from disputing the claim of the Appellant and maintaining his counter-claim.

In the High
Court, Ghana

No. 22

Judgment,
22nd March
1957 -

continued.

10 He submitted that if the Appellant had counter-claimed in the previous suit, he would upon the facts found by the Magistrate have been entitled to a declaration of title and the present suit would not have been necessary.

20 He referred the Court to a Judgment delivered by Coussey, J. as he then was, sitting in this Court on the 28th June, 1950, in transferred Suit No. 11/1949 entitled Chief Tengey Djokoto IV, Head of the Bate Tribe of Anlo for himself and as representing the Bate Tribe vs: Chief Saba III of Djita, Akahoho Amu, Nuworkpor Dadie, Kawu Ganah, Azagu Akabutu, Habada Atsi, Kutu Alakpator, Akpakuni Alorku which he said is on all fours with the present suit.

Mr. E.O. Asafu Adjaye for the Respondent argued that the matter was not res judicata because the issue in the former suit was one of trespass, while - the issue in the present case is one of title, and that any decision which the Magistrate purported to give on title is obiter.

30 He submitted therefore that the Appellant cannot succeed in the present action where title is specifically raised without leading evidence in proof of his title and relying solely on the proceedings and judgments in the former suit.

On the question of estoppel he submitted that the contentions of Mr. Akufo Addo are not maintainable in the present case.

40 Mr. Akufo Addo in reply submitted that when carefully studied the whole of the proceedings and judgments in the former case amply support his contention that the matter is res judicata, because title was put in issue and proved in the former case.

In a claim for trespass, a plea of ownership by the Defendant usually puts the title of the

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Court, Ghana

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Judgment,
22nd March
1957 -
continued.

Plaintiff in issue especially where the Defendant is in possession.

I think however that that principle applies where the title of the Defendant must conflict with that of the Plaintiff e.g. a claim by one subject against another subject of the same stool in respect of stool land, a claim by one member of a family against another member of the same family in respect of family land, a claim by one family against another family or a claim by one Stool against another Stool.

10

It will not be the same in the case of a claim by a Stool against a subject in respect of Stool land, or the head of a family against a member of Stool family. In these latter cases the ownership of the Defendant in possession could only be the usufruct while absolute title may be vested in the Stool or the family. Therefore a declaration of ownership in favour of the individual against the Stool or the family may amount to nothing more than a declaration that the individual is entitled to the usufructuary or the possessory right in the land and that declaration may not affect the absolute title to the Stool or family.

20

For that reason it is only in rare cases that a Stool can succeed against a subject in an action for trespass, and for that matter a family against a member thereof.

To operate as res judicata the judgment relied upon must "Conclude not merely as to the point actually decided, but as to a matter which it was necessary to decide, and which was actually decided, as the ground-work of the decision itself, though not then directly the point at issue", per Coleridge, J. in the Queen against the Inhabitants of the Township of Hartington Middle Quarter, 199 England Reports, K.B.288 at page 293.

30

It is therefore necessary as submitted by Mr. Akufo Addo, to study the proceedings and judgments in the former suit to ascertain whether the issue in this case is the same as was decided in the former case, or the same which was actually decided as the ground for the decision in the former suit. If it is, that will be the end of the whole matter. I have consequently made such a study and found great assistance in Exhibit "B" which is the same as

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Exhibit "D" the judgment of the West African Court of Appeal delivered on the 7th March, 1952.

In the High Court, Ghana

No. 22

Judgment,
22nd March
1957 -
continued.

10 In the case of Chief Tengey Djokoto IV etc. vs: Chief Saba III etc. cited by Mr. Akufo Addo, the Towie tribe who were in possession of portion of the Djita lands brought action against the Bate tribe for declaration of their title to the said Djita lands. The Bate tribe set up a counter-claim for damages for trespass on the ground that the Towie tribe had without right cut down a number of palm trees on the land.

To succeed on their counter-claim against the Towie tribe who were in possession, it was necessary for the Bate tribe to prove a superior right to immediate occupation, namely, their title to the land.

The claim and the counter-claim made title of either tribe an issue in that case.

20 The Trial Court dismissed the claim of the Towie Tribe and entered judgment for the Bate tribe on the counter-claim, declared them owners of the land and awarded them damages for trespass.

On appeal, the West African Court of Appeal upheld the judgment in favour of the Bate tribe on the claim and on the counter-claim for trespass, but set aside the declaration of title made in their favour as they had not counter-claimed for declaration of title.

30 Thereafter the Bate tribe headed by Chief Tengey Djokoto IV sued the Towie tribe headed by Chief Saba III for a declaration of title. Coussey, J., as he then was, held that the issue in the 2nd case, namely title of the Bate tribe to the Djita lands was precisely what was fully litigated in the former trial for the determination of the issue of trespass raised by the counter-claim therein.

40 That was a claim by one tribe against another, therefore a plea of ownership to the counter-claim for damages for trespass must of necessity put the title of the claimant in issue.

That is not the case here.

Before the West African Court of Appeal it was

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Court, Ghana

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Judgment,

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continued.

submitted on behalf of the Respondent, then Appellant, in the former case, that the "real issue between the parties was the question whether the Defendant (now Appellant) held the land under the Stool (Respondent's Stool), or whether it was his personal property in which the Stool had no interest" that "the Plaintiff (now Respondent) has at no time questioned the Defendant's (Appellant's) right to occupy and use the land in question, and that it is clear the Magistrate misdirected himself as to the real issue in the case, because he based his decision on the evidence relating to the Defendant's (Appellant's) occupation and user of the land over a period of years, in respect of which no complaint had been made by the Plaintiff (Respondent)." 10

On behalf of the Appellant it was submitted that "the Plaintiff (Respondent) had sued for damages for trespass not for a declaration of title of the Stool" and that "upon a careful analysis of the evidence it is clear that the Plaintiff (Respondent) was endeavouring to establish a right to possession of the land in question, on behalf of the Stool inimical to the Defendant's (Appellant's) possession and user of such land. In other words that the evidence led on behalf of the Plaintiff (Respondent) was designed to support his claim for trespass, not a claim to establish any overall right of the Stool". 20

The Court reviewed the evidence coupled with the wording of the claim and came to the conclusion that the issue before the Magistrate was as submitted by Respondent's (Appellant's) Counsel. 30

I have studied the record of proceedings in the former case, Exhibit "C" in this case. One fact stands out pre-eminently in it namely, the contention by the Respondent that the land belongs to his Stool that is to a community consisting of 4 clans including the Appellant's clan and that any member of the community has right to occupy any portion of it with the customary permission of the Stool or head of the community. 40

In such a case all the Appellant, a subject or member of the community need prove to succeed in the action for trespass by the Stool or head of the community against him is that he is in possession or occupation.

I do not therefore see how the West African Court of Appeal could have come to any other conclusion that the one to which they came.

In the High
Court, Ghana

No. 22

Judgment,
22nd March
1957 -
continued.

10 It means that the questions as to the title of the Respondent's Stool or the Akloba community in the land as well as the issue as to whether the land is the Appellant's absolute property in which the Respondent's Stool or the Akloba community have no interest were not in issue nor were they necessarily decided for the determination of the issue of trespass.

20 In my opinion the proceedings and judgment in the former suit cannot operate as res judicata in the present suit. Therefore to succeed in his present claim to ownership of the land by his clan to the exclusion of the other three clans in Akloba, the Appellant must discharge the onus which lies upon any Plaintiff in an action for declaration of title, and prove his case to the satisfaction of the Court. This he failed to do.

As regards estoppel:

Estoppel seals a party's mouth to stop him from speaking or prohibits him from alleging the contrary of what he had said on a previous occasion.

30 Had the issue raised in the counter-claim been decided in the former suit I would have had no hesitation in holding that that decision, even if it did not operate as res judicata, would operate to seal the mouth of the Respondent from raising it. And had the contention of the Respondent in his counter-claim been the contrary of what he alleged in the previous case, I would have held that he is estopped from making his counter-claim. But that is not the case.

In my opinion both the Native Court "B" and the Native Appeal Courts properly directed themselves and were right in the decisions they gave.

40 For these reasons I dismiss the appeal with costs which I assess at £27.5.3d including Counsel's costs of 20 guineas.

The points raised in the appeal are of considerable importance and I think the Appellant should be

In the High Court, Ghana

No.22

Judgment,
22nd March
1957 -
continued.

given an opportunity for further appeal if he should wish to do so. I shall be prepared to grant special leave to appeal if application is made.

Sgd. N.A. Ollennu
JUDGE.

Counsel:

Mr. Koranteng Addo for Mr. Akuffo Addo for Plaintiff-Appellant-Appellant.

Mr. E.O. Asafu-Adjaye for Defendant-Respondent-Respondent.

10

In the Court of Appeal

No.23

Notice and Grounds of Appeal,
3rd May 1957.

No. 23

NOTICE AND GROUNDS OF APPEAL

IN THE COURT OF APPEAL,
A C C R A.
A.D. 1957.

NOTICE OF APPEAL.

EVI YIBOE, represented by Plaintiff-Appellant-
Aloysius Komla Evi of Akloba Appellant

vs.

YAW DUEDU, Sub-Chief of Akloba,
represented by Okyeame Abotsi Defendant-Respondent-
K. Donkor also of Akloba Respondent

20

TAKE NOTICE that the Plaintiff herein being dissatisfied with the decision of the Land Court, Accra, in the Judgment of Ollennu, J. dated 22nd day of March, 1957 and having applied for and obtained Special Leave to appeal therefrom on the 26th day of April, 1957 DO HEREBY APPEAL to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

30

AND THE APPELLANT further states that the names and addresses of the persons directly affected by the appeal are those set out in paragraph 5.

2. The appeal is against the whole of the decision. In the Court of Appeal

3. GROUNDS OF APPEAL:

No.23

The Learned Judge of the Land Court was wrong in dismissing the Plaintiff's appeal, because,

Notice and Grounds of Appeal,

3rd May 1957

- continued.

(a) The Native Courts below should have entered judgment for the Plaintiff on the strength of the decision in the case of Yaw Duedu (Plaintiff) versus Evi Yiboe (Defendant) referred to in the proceedings.

10 (b) The Judgment entered for the Defendant on his counter-claim was wrong in law, because the Defendant was estopped by the judgment in the case of Yaw Duedu vs. Evi Yiboe aforesaid from claiming the land as his Stool property.

4. RELIEF SOUGHT:

That judgments of the Land Court and the Native Courts below be set aside and judgment entered for the Plaintiff with costs here and below.

20 5. The names and addresses of persons directly affected by the appeal:

Sub-Chief Yaw Duedu of Akloba.

DATED AT KWAKWADUAM CHAMBERS, ACCRA, THIS 3RD DAY OF MAY, 1957.

(Sgd.) E. Akufo Addo.

SOLICITOR FOR THE PLAINTIFF-APPELLANT-APPELLANT.

THE REGISTRAR,
LAND COURT,
ACCRA.

No. 24

No.24

30 ARGUMENTS OF COUNSEL

Arguments of Counsel,

15th October, 1957.

15th October 1957.

In the Court of Appeal, Tuesday the 15th day of October 1957, Coram:van Lare, Ag.C.J., Granville Sharp, J.A. and Adumua-Bossman, J.

In the Court
of Appeal

Civil Appeal
No.68/57

No.24

Evi Yiboe, represented by Plaintiff-Appellant-
Aloysius Komla Evi of Akloba, Appellant

versus

Yaw Duedu, Sub-Chief of Akloba,
represented by Okyeame Abotso Defendant-Respondent-
Kwadjo Donkor also of Akloba Respondent.

Arguments of
Counsel,

15th October
1957 -

continued.

Akufo Addo, with him Owusu for appellant

E.O. Asafu Adjaye for respondent.

10

AKUFO ADDO:

Gives resume of the history of the case.

Refers to the early proceedings Exhibit "C".

Argues grounds (a) and (b) as at page 57.

Submits that the earlier case Exhibit C - Title was
in issue.

Refers to evidence of defendant (as plaintiff in the
earlier case) p.83 .

In the first case - estoppel applies to all is-
sues necessary for the purpose of making a finding
in the case.

20

In the first case before the issue as to tres-
passer as trespass, ownership in the defendant was
necessary to be decided.

Refers to Everest & Strode 2nd Edition - on
Estoppel p.91.

Refers to evidence plaintiff (as defendant in
the earlier case) p. 94 .

Refers to Magistrate's judgment p.103 - issue
was clearly one of ownership or title as to the land
in dispute. Since plaintiff lost to defendant as
ownership before Magistrate defendant's ownership
had been declared.

30

Submitted that in new decision in the earlier
case defendant in the present action cannot be per-
mitted to relitigate his claim of ownership in the
present action. Defendant therefore estopped from
defending the action of ownership in the present
action.

BOSSMAN:- Draws attention to Akadjakrom Stool vs. Atonkor Stool & ors. 1 W.A.L.R.162. (Subject of appeal).

In the Court
of Appeal

No.24

AKUFO ADDO:- Continues refers to Fiaga Addai Kwesi & ors vs. Fiaga Abutia Kwadjo - W.A.C.A. 22nd February, 1944.

Arguments of
Counsel,

Cites judgment of Coussey, J. in Chief Tengeny Djokoto IV etc. vs. Chief Saba III etc. delivered 28th June 1950 - Land Court.

15th October
1957 -

continued.

10 Refers to the judgment appealed from page 48/56, at p.51 line 4 - stress must be placed on the findings - in the judgment.

Line 12 et sequitur page 52 Categories p.55 line 11 .

20 Submitted that the judgment of the Magistrate's Court, in the earlier case dismissed the respondent's claim for trespass and found that his Stool was not the owner of the land in dispute; that decision on the authority of Fiaga Addai Kwesi & ors. v. Fiaga Abutia Kwadjo such decision has been held to be a decision in favour of the defendant none the less.

Refers to p.55 - on Estoppel: Judge right - but it is submitted that exactly is what happens in this case and judgment should have been given in favour of appellant.

ASAFU ADJAYE:- In referring to the Abutia Case - the phrase used was "any the less" and not "none the less". Adjourn until tomorrow 16/10/57.

30 Sgd. W.B. van Lare,
Ag. Chief Justice.

16th October, 1957.

16th October
1957.

ASAFU ADJAYE:- Appellant's points are (1) By virtue of the Magistrate's judgment upheld by W.A.C.A. he can successfully plead Res judicata and (2) that there was sufficient evidence on record which could have entitled the appellant now in the former case to succeed.

40 Court draws attention to what appellant argues here. Submitted that the issues in the previous case were clearly set out in the W.A.C.A. judgment.

In the Court
of Appeal

No.24

Arguments of
Counsel,
16th October
1957 -

continued.

It is not open for this Court to enquire into what the issues were as set out in W.A.C.A. judgment and this Court can not go behind. This Court must accept the findings on those issues.

Refers to the judgment of W.A.C.A. as at p.115/118. At page 117- 4th paragraph - Refers to what was contended by the Respondent's Counsel at p.115.

Submitted that the finding of the Magistrate to the effect that the land belonged to the defendant is deleted from the Magistrate's judgment by the W.A.C.A. judgment.

10

The latter part of the W.A.C.A.'s judgment must be read in conjunction with what the judgment said were the issues.

The gist of the matter is what was the issue in the earlier case? One of possession or one in respect of over all right of the Stool of the land?

Read through W.A.C.A.'s judgment p.115/118, and lays stress on the issues joined at the trial.

Submitted that not what Counsel said in argument but what the Court decided. What did the Court decide as the issues? W.A.C.A. judgment says the issues were as contended by the respondent.

20

The trial Native Court in this present action said plaintiff did not have a declaration of title in the judgments tendered by plaintiff and therefore as he led no evidence as to title he cannot be entitled to judgment.

See paragraph 4 at p.117 - W.A.C.A. - issues as respondent submitted.

30

Refers to p.53/4 of judgment appealed from.

Submitted that in the first case a complete answer to the claim was that the defendant had been in possession without question. Therefore no issue on ownership had been joined.

If plaintiff's claim is dismissed as the issue as to possession only can be said that the new claim as to ownership is res judicata by the earlier judgment? Necessary to consider the present claim:-

Refers to Okarjakrom vs. Atonkar, 1 W.A.L.R. p.163 stresses first paragraph of the judgment.

In the Court
of Appeal

Refers to Agbo Kofi vs. Addo Kofi, 1 W.A.C.A. p.284 at p.285 paragraphs 3 & 4 particularly paragraph 4. "Where issue is not distinctly put in issue and there is no solemn declaration as to the issue res judicata can not apply."

No.24

Arguments of
Counsel,

16th October
1957 -

continued.

Also to Brandley vs. Ord. 26 English Reports p.359.

10 If the Magistrate's judgment had not been varied then a plea of res judicata would have been good; but in this case it is submitted that W.A.C.A. judgment contains no solemn declaration of respondent's title and he cannot plead res judicata as to question of title.

Submitted plaintiff in the present case has failed to prove his title to the land.

20 I am not conceding that where even there is a Solemn declaration of title in favour of a party that party can succeed in an action for declaration of title by merely tendering in evidence that Solemn declaration particularly where the rights of others are involved. It shall still be necessary for him to adduce evidence as to his ownership apart from the judgment.

30 In the present case the respondent says the land in dispute belongs to 4 other clans including the appellant. It is admitted that there are 2 other clans in the division. When dealing with res judicata must be considered with all intents and purpose.

Refers to Halsbury 3rd Edition, Vol.15 paragraph 380 page 202. "Effect of a judgment for defendant".

In the present case trial Native Court found plaintiff not entitled to declaration. Issue had been decided and this is an appeal from concurring judgments.

40 AKUFO ADDO:- With reference to judgment of W.A.C.A. in the first all it does is to dismiss the appeal. Possession may be in one because he is either owner himself; or derived from the owner or as a subject of a Stool which owns the land.

In the Court
of Appeal

No.24

Arguments of
Counsel,

16th October
1957 -

continued.

In the earlier case Stool said land in dispute is common to all the 4 clans; plaintiff in present case said the land belonged to his clan.

The Okadjakrom vs: Atonkar case is different from present case which is rather on all fours with the Fiaga Addai Kwesi vs: Abutia Kwadjo.

The law as to estoppel is to be found in Everest & Strode 2nd Edition on Estoppel p.91; See also page 90. One cannot talk of possession in vacuo it must be related to something.

10

C.A.V.

Sgd. W.B. van Lare,

Ag. Chief Justice.

No.25

Judgment,

4th November
1957.

No. 25

J U D G M E N T

IN THE COURT OF APPEAL
ACCRA, GHANA.

Coram:

van Lare, Ag. C.J.
Granville Sharp, J.A.
Adumua-Bossman, J.

20

Civil Appeal
No.68/57

4th November, 1957.

Evi Yiboe, represented by Plaintiff-Appellant-
Aloysius Komla Evi of Akloba, Appellant

v:

Yaw Duedu, sub-chief of Akloba,
represented by Okyeame Abotsi Defendant-Respondent-
Kwadjo Donkor also of Akloba Respondent.

30

J U D G M E N T.

VAN LARE, AG.C.J.: This is an appeal by special leave by the plaintiff-appellant from the judgment of Ollennu, J. affirming the decision of the Buem-Krachie Native Appeal Court, which also confirmed the decision of the Nkonya Native Court "B".

The claim is for declaration of title in respect of a piece of land commonly known and called "Lagloto-Sakada" situate and being at Akloba in Nkonya, Trans Volta Togoland. It is agreed that there is no uncertainty about the identity of the land and it is also common ground that the land subject matter of the present suit is identically the same as the one in dispute between the same parties on previous occasions.

In the Court
of Appeal

No.25

Judgment,

4th November
1957 -

. continued.

10 The plaintiff-appellant in this case as in the previous suits sued for himself and on behalf of the Amandja clan of Akloba; the defendant-respondent, a sub-chief also as in the former suits represented the Stool of Akloba in the present suit.

20 There is a counter-claim to the effect that the disputed land is a communal land which is under the control and administration of the defendant-respondent. The real matter for a decision in this case must therefore be whether absolute ownership of the "Logloto-Sakada" land is vested exclusively in the appellant representing the Amandja clan of Akloba or in the respondent representing the Stool of Akloba as a communal land for all the inhabitants of that town.

The present case arose in the following circumstances:-

30 It would appear that for several years the plaintiff had been dealing with the land as owner and generally exercising acts of ownership in respect of it. In the year 1941 the respondent's Stool apparently in order to assert title to the disputed land and particularly to challenge the plaintiff's right to deal with the land as an exclusive owner unsuccessfully sued the plaintiff for damages for refusing to comply with its order which requested the inhabitants of Akloba who sold, pledged or let out portions of the land to report to the Stool. It must be presumed that the plaintiff-appellant had been dealing with the land exclusively on his own without reference to the Stool. It cannot be doubted that even at this earliest stage the real source of trouble between the parties was one relating to ownership.

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Subsequently in the year 1944 the matter came to a head again when the respondent instituted action in the Magistrate's Court, Kpandu, against the

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appellant and claimed damages for trespass alleged to be committed by the appellant "for wrongfully entering the said land ... making plans thereof, fixing pillars with his inscription thereon, and thereby falsely claiming it as his property ...". The respondent applied for and was granted an interim injunction which restrained the appellant "his men or labourers from entering any part of the land in dispute for the purpose of doing any work thereon."

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The appellant in answer to the claim against him pleaded absolute ownership of the disputed area and successfully resisted the respondent's action in damages for trespass. The suit dragged on in the Magistrate's Court, Kpandu, until 26th November 1948 when judgment was delivered. The record of proceedings in the case is exhibited in the present proceedings and a careful study of it convinces me beyond doubt that the issue that was joined and required determination was one of ownership, the issue being whether the appellant 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.

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Surely a claim founded in trespass must involve the question of ownership in the plaintiff if the defendant puts up and claims absolute ownership of the land. This is so whether the claim is by a Stool against a subject, or by a family against a member; once the subject or member puts up an adverse title of exclusive absolute ownership he thereby challenges the title of the Stool or family in respect of the land. Title can only be excluded if the defendant in an action for trespass concedes the title of the plaintiff. Here definitely was therefore a case where the appellant's title conflicted with that of the respondent. The clan put forward exclusive ownership against the Stool. In my view the question of usufructuary right or determinable interest did not arise in the case as appears to be the opinion of the learned Judge from whose judgment this appeal lies. With respect the learned Judge of the Land Court erred in his view. Neither party conceded ownership to the other in respect of the land. If it has been so I would have agreed with the view of the learned Judge. There is a usufructuary right or determinable interest if there is no denial by the other party in possession of the disputed land that he is in such

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possession with leave and licence. Had the appellant conceded title of the disputed land to the Stool, respondent in the former case, then it can be argued that the appellant put up his usufructuary rights when he joined issue with the Stool in the proceedings before the Magistrate. But as I have already said the appellant in the 1944/48 case between him and the respondent in effect joined issue on the question of ownership; and what were the findings of the facts to enable a decision to be taken by the trial Magistrate in the case? Before dismissing the respondent's claim of damages for trespass the Magistrate found as follows:-

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"When I visited the land on the 24th November, 1948 I was able to confirm that one of the farms made by defendant's 4th witness was situate within the land claimed by plaintiff and that it contained a permanent crop, namely mature cocoa which is in my opinion approximately 20 years old. It is admitted by plaintiff that the farm of defendant's 5th witness which is also situate within the land claimed by plaintiff contains cocoa of similar age and maturity. Finally defendant's 4th witness stated that he had for 7-8 years paid market tolls in respect of Sakada market to defendant, whose clan opened the market about 12 years ago. It is completely contrary to all my experience of customs in these parts that a person who had a valid claim to ownership of land should allow another person to grant permission to third parties to plant permanent crops or erect a market on such lands and to receive annual rents or market tolls from these third parties. Now although the cocoa trees must have been planted not later than the period 1928-30 the plaintiff did not initiate legal action against the defendant until 1941."

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I have underlined the words "a person who had a valid claim of ownership of land" in order to draw attention to their importance. Clearly the respondent litigated title of the disputed land. Then the trial Magistrate solemnly declared thus:-

"I can therefore only conclude that the land specified by plaintiff (now respondent) in his claim is not Akloba Stool land but belongs to the defendant (now plaintiff) either in his personal capacity or as head of his family or of the Amandja clan."

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The respondent thus failed against the appellant in 1948 because he could not establish a superior title to that claimed and put forward by the appellant, justifying his possession and dealings with the land as owner. The respondent then appealed to the Land Court and lost. He proceeded to the West African Court of Appeal and again lost. Unfortunately the appellant did not counterclaim and although the important issue concerning title was found in his favour nevertheless the Court could not grant him such a decree in the absence of a counterclaim. There is no doubt whatsoever that if he had counterclaimed he would have got a decree of such declaration of his title. The West African Court of Appeal delivered its judgment dismissing the respondent's appeal on the 7th day of March 1952, and concluded by drawing attention to the legal position as follows:-

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"..... but as the defendant did not counterclaim for a declaration of title that portion of the Magistrate's judgment which reads:

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"I can therefore only conclude that the land specified by the plaintiff in his claim is not Akloba Stool land but belongs to the defendant either in his personal capacity or as head of his family or the Amandja clan",

should not in my opinion, be regarded as one."

In other words despite the Magistrate's solemn declaration in the appellant's favour in the case he could not obtain a decree as to declaration of his title because of mere procedural technicality.

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But, now what is the effect of such solemn declaration in favour of a defendant who has not counterclaimed in an action when that issue is again the subject of litigation between the same parties where the defendant becomes the plaintiff, and plaintiff becomes the defendant in a subsequent action? This question is aptly answered by the following quotation from the judgment of the West African Court of Appeal on the 17th February, 1947 in the case entitled Fiaga Abutia Kwadjo II & Anor. etc representing the people of Abutia v: Fiaga Addai Kwasi Awudome.

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"When the case was heard by the Magistrate it was discovered that there was a judgment of

the West African Court of Appeal dated the 22nd February, 1944, with regard to this very land and between the same parties. In that case, however, the present defendant-appellant had been the plaintiff-appellant and the present plaintiffs-respondents had been the defendants-respondents.

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Unfortunately it would appear that in giving judgment the Magistrate had given a declaration of ownership in favour of the defendant although there was no claim by him before the Court which caused the West African Court of Appeal to make the following observation in the course of their judgment:

'In such cases the proper course is merely to dismiss the plaintiff's claim. This, of course, does not mean that the matter is any the less res judicata in favour of the defendants.'

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Learned Counsel for the appellant in this case took this to mean that the plea of res judicata could not be raised by the defendants should the case again come before the Court. This interpretation of the words in the judgment is incorrect, and it is clear that the learned Judges in that case were endeavouring to make it clear that although a declaration of ownership and possession could not be given in the particular case before the Court because of the omission on the part of Counsel for the defendant to enter a counterclaim to this effect nevertheless the judgment would be a bar to any further proceedings between the parties.

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The Magistrate at the end of this case decided quite correctly that the matter was res judicata ... "

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The unreported case of Trans.Suit 11/49 Chief Tengey Djokoto IV, etc. v: Chief Saba III of Djita etc. in which judgment was delivered on the 28th June, 1950, Land Court, Accra, also appears to be on all fours with the present case.

It is not correct therefore, on the authorities, that the judgment of the West African Court of Appeal delivered on 7th March 1952 in the case between these

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same parties varied or amended the Magistrate's judgment delivered on the 26th November 1948 nor that it operated so as to delete the passage from the judgment declaring the appellant the owner of the disputed land. I am fortified in my conviction in declaring that such solemn declaration of the Magistrate is res judicata which the appellant can successfully plead in the present case. The learned Judge with respect was therefore wrong in the view he took of the West African Court of Appeal judgment, Exhibit "B".

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As a sequel to the decision of the West African Court of Appeal confirming the decision of the Magistrate Court, Kpandu, between the parties the appellant on the 10th June 1956 instituted the present suit. It was but a technical procedure whereby he could obtain a decree of declaration of his title. In support of his claim for such declaration of title he tendered in evidence the writ of summons in the former case, the proceedings and judgments in it including that of the Land Court and the West African Court of Appeal and relied on these which in law clearly establish his title. He offered no other evidence, and in view quite properly, as he already had a solemn declaration in his favour against the respondent, now a defendant who was estopped to open his mouth and to re-litigate the same issue as to his claim of title to the same land. The trial Native Court did not appreciate the novelty of the procedure. It was of the opinion that appellant did not discharge the onus placed on him in a claim for declaration of title; but appellant produced the best evidence possible against which the defendant-respondent could not be heard. The Native Courts found it difficult to realise that this was a simple matter of procedure to obtain a formal decree. The defendant-respondent's Stool was permitted to lead evidence and re-litigate concerning the land which it claimed vested in it for a communal use. The trial Native Court gave judgment for the defendant-respondent's Stool on the counterclaim and dismissed the plaintiff's claim. On appeal to the Native Appeal Court the decision of the trial Native Court was confirmed and so did the Land Court from whose judgment this appeal comes before this Court by special leave.

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Enough has been said to show that the Native Courts and the Land Court should have entered judgment for the plaintiff on the strength of the decision in the case of Yaw Duedu (plaintiff) vs: Evi

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Yiboc (defendant) by the Magistrate's Court, Kpandu referred to in the proceedings, and that the Courts below misdirected themselves when they held that the appellant failed to prove his case, because (a) the matter was res judicata by reason of the judgment in the previous suit, and (b) that the respondent is estopped by the findings of fact made in the previous suit both from disputing the claim of the appellant and maintaining his counterclaim.

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10 Mr. Asafu-Adjaye for the Stool in this Court has endeavoured to show that the matter was not res judicata because as he contended the issue in the former suit was one of trespass as against right of possession only. He submitted that in the West African Court of Appeal judgment the issues as shown are those resting on right of possession, and that it is not open for this Court to go beyond what the West African Court of Appeal finds to be the issues. I do not agree. The West African Court of Appeal was only concerned with the decision as affecting right of possession because at the hearing of the appeal the respondent appeared to have changed his front as to concede the appellant's right of possession as one of the four clans of Akloba and entitled to the use and enjoyment of the disputed land as if the Stool had not in fact claimed an overall absolute title. To say that because the respondent's claim in the previous suit was limited to possession and did not bring into issue absolute ownership is to beg the question. In any case if the Stool did not do so the Amandja clan clearly did; and it became absolutely necessary for the Stool to deny the appellant's claim of exclusive ownership by establishing its own superior title which failed.

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40 "It is not necessary, in considering the question res judicata, that there should be an express finding in terms if when you look at the judgment and examine the issues raised before the Court, you see that the point came to be decided as a separate issue for decision, and was decided between the parties." Everest & Strode, 2nd Ed. p.90. Looking at not only the West African Court of Appeal judgment but also at the Magistrate's judgment, which W.A.C.A. confirmed, one cannot help discovering that title or ownership was the issue which had to be decided before judgment could be given in the case as it belonged and formed the basis of the litigation between the parties. In this connection I again quote from Everest & Strode, same edition, at p.91:

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"The plea of res judicata applies, except in special case, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce judgment but to every point which properly belonged to the subject of litigation, and which the parties exercising reasonable diligence, might have brought forward at the time."

It is agreed that if the issue in the present case is the same as was decided in the former suit, or the same which was actually decided as the ground for the decision in the former suit then that will be the end of the matter, and on the authorities, there should have been judgment for the appellant and that the respondent's claim ought to be dismissed.

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As I am of the opinion that the self same right and title is substantially the same in issue in this case as in the former case, the fact that the appellant in this case was the defendant in the former case is immaterial, the plea for res judicata must succeed.

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Mr. Asafu-Adjaye has referred this Court to and appeared to have adopted the words in the opening paragraph of Ames, Ag.J.A. in delivering the judgment in Okadjakrom Stool v: Atonkor Stool & ors 1 W.A.L.R.162 at p.163, and wondered whether res judicata could be raised against a defendant in a suit. The answer is to be found in Long vs: Gowlett (1923) 2 Ch.177 which is that "res judicata" is effective to stop a defendant from defence as well as a plaintiff from attack.

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I would allow the appeal, and set aside the judgment appealed from, and that of both the Native Appeal Court, and the trial Native Court. Judgment should be entered for the plaintiff-appellant on his claim for ownership and the defendant-respondent's counterclaim must be dismissed. The costs of the appellant in this Court is assessed at £93.3.0.

Sgd. W.B. van Lare.

GRANVILLE SHARP, J.A.: I agree.

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Sgd. Granville Sharp.

ADUMUA-BOSSMAN, J.: I have had the advantage of reading the judgment just read by the Acting Chief

Justice and agree entirely with him that the appeal should succeed. I would however, in deference to my learned Judge in the Land Court who obviously took considerable pains to examine the contentions raised by the contending parties before him, add my own views, as follows:-

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10 The question raised for determination throughout the Courts below and before us, is whether or not a previous litigation between the same parties and admittedly concerning the same area of land the subject matter of this new action - had determined and settled the question of the ownership of or title to the disputed land between the parties.

20 That previous litigation had taken place during the years 1944/48 in the Court of the Magistrate - constituted by the then District Commissioner of Kpandu - in the then Mandated Sphere of British Togoland, which Court then had jurisdiction under the Native administration (Togoland Southern Section) Ordinance Cap. 90 Section 76, to hear and determine suits relating to ownership, occupation and possession of land within the Mandated Territory (see Fiaga Eglomesse v: Nana Akpandja, 5 W.A.C.A. p.10).

The proceedings and judgment of that former action were admitted at the trial in the Native Court and marked Exhibit "C", and from then, it emerges that the present defendant-respondent, then as plaintiff, had claimed as follows:-

30 "£25 for trespass committed by defendant upon all that piece or parcel of Akloba Stool land commonly known and called "Logloto to Sakada" ... for wrongfully entering the said land by defendant making plan thereof, fixing cement pillars with his inscription thereon, and thereby falsely claiming it (as) his property without the knowledge and consent of plaintiff".

40 The defendant referred to in the claim is now the plaintiff-appellant before us.

"Ex facie", the claim is in trespass above set out, was based or founded on the alleged ownership or title of the Akloba Stool, and grounded on the alleged commission by the then defendant of certain acts by which he, on his part, had asserted ownership or title to the disputed land.

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It was a claim which, beyond question, raised the issue of ownership and or title to the disputed land.

The then plaintiff, who was represented by his son at the trial, supported his claim with evidence which, 'inter alia' contained the following material and pertinent pieces of evidence :-

"As Divisional sub-chief of Nkonya-Akloba he (plaintiff) has a land known as Stool property ... On 8/1/41 I put a bye-law against the said land that anybody selling pledging or giving 'ABUSA' or 'ABUNU' system should report himself to plaintiff. On 11/1/41 I received a letter from Defendant The letter reads thus:-

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'I will not carry your Orders out because I am claiming the land as my bona fide property' ...

After all the defendant went and surveyed the said land in dispute thereby fixing cement pillars with his name written thereon and thereby falsely claim it to be his property. So at present plaintiff in his capacity explaining and claiming the said land in dispute known as from Logloto to Sakada as my Stool property."

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The then defendant admitted the acts complained of as well as the fact that he was claiming the land as his property, but justified his conduct with evidence as to how his ancestor by name "OBI ANYA" had founded and settled on the land with his children when the same was vacant, unowned forest land, and how thereafter the clan or family of his said ancestor had throughout, exercised dominion and ownership over the disputed land, including the grant of various portions thereof to several persons from whom he was collecting rents tolls and or tribute.

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Each side called witnesses in support of its case.

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The Magistrate after causing plan to be made by a surveyor of the area in dispute, and hearing all the evidence and also carrying out a personal inspection, decided adversely against the plaintiff (now defendant-respondent) but in favour of the

defendant (now plaintiff-appellant) and the following portions of his judgment are worth referring to.

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10 "The most significant features of the parole evidence led before the Court are firstly that the plaintiff in his cross-examination did not attempt to question the testimony of defendant's 1st witness that defendant has people who pay rent to him working on the land for him; that they had (in 1946) occupied the land for 15 years; that defendant had more than 14 villages on the land but plaintiff has no village on it ...

* * * * *

20 When I visited the land, I was able to confirm that one of the farms made by defendant's 4th witness contained a permanent crop, namely mature cocoa which in my opinion is approximately 20 years old. It is admitted by plaintiff that the farm of defendant's 5th witness ... contains cocoa of similar age and maturity. Finally defendant's 4th witness stated that he had for 7-8 years paid market tolls in respect of Sakada market to defendant whose clan opened the market about 12 years ago. It is completely contrary to all my experience of custom in these parts that a person who had a valid claim to ownership of land should allow another person to grant permission to third parties to plant permanent crops or erect a market on such land and to receive annual rents market tolls from these third parties ...

* * * * *

30 I can therefore only conclude that the land specified by plaintiff in his claim is not Akloba Stool land but belongs to defendant either in his personal capacity or as Head of his family or of the Amandja clan. I therefore find that plaintiff's claim for damages for trespass committed by defendant fails."

40 It is beyond question therefore that so far as the proceedings and judgment of the Magistrate are concerned (i.e. Exhibit "C") they clearly and unmistakably disclose an adjudication and determination of the issue or question of the ownership and/or title of the disputed land, as necessarily incident to the issue of trespass.

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The matter however did not end there but was taken by the then plaintiff as appellant before the West African Court of Appeal, and although that Court on or about the 7th day of March, 1952, dismissed the appeal and confirmed the learned Magistrate's decision, it is upon certain passages in its judgment admitted at the trial as Exhibit "B" which the defendant-respondent would appear to have relied throughout the various Courts below, and on which able Counsel on his behalf has relied before us, to contend and maintain that ownership and/or title was not adjudicated or determined in the former litigation, but only the issue of trespass, leaving the question of ownership and/or title open for determination in this new litigation.

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It becomes necessary therefore to examine that judgment of the West African Court of Appeal dated 7th March, 1952, Exhibit "B".

From that examination it appears that at the hearing of the appeal, learned Counsel for the then appellant (now defendant-respondent) submitted that:-

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"It is obvious from plaintiff's case in the trial Court that the real issue between the parties was the question whether the defendant held the land under the Stool or whether it was his personal property in which the Stool had no interest."

Pausing here for a moment, I do not think that anyone could quarrel with that submission - which, paradoxically enough, was a clear admission that the real issue before the Magistrate had been ownership i.e. ownership of the Stool as claimed by the then plaintiff, or of the defendant and/or his clan or family, as claimed by the said defendant.

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But after that submission, Counsel went on to make the further submission, rather difficult to comprehend in all the circumstances, if one may say so with the utmost respect to Counsel, as follows:-

"Apart from the acts complained of in the writ of summons the plaintiff has at no time questioned the defendant's right to occupy and use the land in question and it is clear the Magistrate misdirected himself as to the real issue in the case, because he based his decision on evidence relating to the defendant's occupation

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and user over a period of years, in respect of which no complaint had been made by the plaintiff. For these reasons the case should be sent back for a new trial."

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10 The argument or submission is difficult to understand as I have observed, because on that which he himself had admitted to be the real issue before the Magistrate, the evidence of the defendant's occupation and user of the disputed land was relevant and most material matter for consideration, since it was by or from the nature of that occupation and user, according as it was or was not adverse to the Stool, that the Magistrate could determine whether, as claimed by the plaintiff, the defendant was occupying and using merely as a tenant of the Stool, or as claimed by the defendant, he was occupying and using as owner in his own right.

20 Be that as it may - learned Counsel for the defendant-respondent before the West African Court of Appeal appears to have understood the further submission as a change of front, and in my opinion rightly so, for it appears that at that stage, Counsel for the appellant was suggesting that before the Magistrate his client had all along acknowledged the right of the defendant-respondent to occupy and use the land as he had been doing, but was only insisting that there was a sort of bare title or overlordship right in the Stool.

30 It was to meet this, that learned Counsel for the defendant-respondent pointed out, as appears in the judgment Exhibit "B", that plaintiff-appellant's attitude had changed and that he was putting his case on a much lower level before the West African Court of Appeal than he had done before the Magistrate, and that at the trial before the Magistrate the plaintiff had in fact challenged and questioned even the defendant's right to occupation and user.

That is how I understand defendant-respondent Counsel's submission to the Court, that:-

40 "Upon a careful analysis of the evidence it is clear that the plaintiff was endeavouring to establish a right to possession of the land in question on behalf of the Stool inimical to the defendant's possession and user of such land - in other words that the evidence led on

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behalf of the plaintiff was designed to support his claim for trespass, not a claim to establish any overall right of the Stool, and that the real issue between the parties was 'who is entitled to possession of the land' ". . .

Learned Counsel for the defendant-respondent appears to have been saying something like this, as I understand him:

"I submit it is too late for my learned Friend to say here in this Appeal Court that his client did not in the Magistrate's Court, challenge or question my client's right to the occupation and user of the land in dispute as he would have Your Lordships believe, because that was just what his client did, on the basis or ground that the land was Stool land, possession of which was in him and with which possession he alleged my client had interfered in such a way as to entitle him the plaintiff to damages for trespass; on the other hand, my client maintained that he was entitled to occupy and do the acts complained of, because he was the owner of the land."

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That is how, it seems to me, the question of occupation and possession came to be thrown into bolder relief in the arguments before and in the judgment of the West African Court of Appeal, and it was that prominence given in the arguments and the judgment to the question of occupation and user, which would appear to have misled the learned Judge in the Land Court.

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But the question of the ownership and/or title to the disputed land, which was the very basis and foundation of the issue of trespass, was never, nor indeed could be, lost sight of.

That is made quite clear in the learned President's consideration and examination of the contentions of Counsel, and his final conclusion on those contentions, as appeared in his judgment, to the undermentioned portion of which I make no excuse for making reference at this stage:-

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"During the course of defendant's evidence he testified that 'in 1941 I was called by plaintiff with other clans of Akloba. Plaintiff said he was prohibited use of the Logloto

to Sakada land to anyone else. I told him I could not comply with his prohibition for there I lived with my children'. The land referred to is that in dispute in this case and the allegation was not challenged by cross-examination. It was after this incident that the plaintiff brought his successful proceedings against the defendant referred to in the evidence of Nicholas Duedu, 1st witness for the plaintiff in the case now before us. Moreover, it seems clear from the cross-examination of the 4th witness for the defendant that the plaintiff was claiming an absolute right to the market situated on the land in dispute.

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There is other evidence particularly of 5th witness called on behalf of the plaintiff, which seems to me to support the proposition that the issue on which the case was fought before the Magistrate was that contended for by the respondent's Counsel.

The evidence as a whole, coupled with the wording of the claim and the plaintiff's attempt in 1941 to dispossess the defendant, leaves me in no doubt that the issue before the Magistrate was as submitted by respondent's Counsel."

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That is to say, in addition to the basic and fundamental issue of ownership and/or title which Counsel for the then appellant himself had admitted to be before the Magistrate, the issue of possession also had been raised by the said appellant as plaintiff, contrary to his Counsel's submission to the Appeal Court, but as rightly submitted by the defendant-respondent's Counsel.

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A careful examination of the judgment of the Appeal Court Exhibit "B" therefore satisfies me beyond doubt that the conclusion to which that Court came on the question of what issue was before the Magistrate's Court at the trial of the action between the parties, was the conclusion that the issue was "absolute title", and not just occupation or possession.

In this connection, one may be pardoned for making reference again to the passage in the judgment of the learned President, W.A.C.A. as follows:-

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"Moreover it seems clear from the cross-examination of the 4th witness for the defendant that the plaintiff was claiming an absolute right to the market situated on the land in dispute."

There remains but to be dealt with, the further contention of learned Counsel for the defendant-respondent before us as to the effect of the passage in the judgment of the West African Court of Appeal Exhibit "B", as follows:-

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"As the defendant did not counterclaim for a declaration of title, that portion of the Magistrate's judgment which reads:-

'I can therefore only conclude that the land specified by the plaintiff in his claim is not Akloba Stool land but belongs to the defendant either in his personal capacity or as Head of his family or of the Amandja clan' -

should not, in my opinion, be regarded as one."

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Learned Counsel has submitted that it is a clear pronouncement that the then defendant-respondent (now plaintiff-appellant) before us was not the owner of the land and it was further indication that the West African Court of Appeal was completely excluding ownership as an issue in that former litigation.

But the fallacy in the argument is obvious. There is a clear difference or distinction between findings of fact, and orders or decrees which may be made upon such findings of fact, and it is clear that the effect of the portion of the judgment referred to was, to put it most favourably to the defendant-respondent, to exclude and obviate the possibility of the findings being wrongly considered or taken as constituting an order of decree for declaration of title - for it is common learning that procedurally, in the absence of a counterclaim by a defendant, no order or decree by way of relief can be made in his favour.

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In the words of Kingdon, C.J. Nigeria in Civil Appeal No.42/43 Fiaga Addai Kwasi & Mankrado Danku vs: Fiaga Abutia Kwadjo & Fiaga Ayipey 22nd February 1944 W.A.C.A. (unreported):

"It is however most unfortunate that although the case was brought by agreement in order that a decision might be given regarding the divisional boundary the suit took the form of a claim by the plaintiff only; because it is well established ... that when that is the case a declaration of ownership and possession cannot be made in favour of the defendant, since there is no claim by him before the Court.

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10 In such cases the proper course is merely to dismiss the plaintiffs' claim."

But even without an order or decree of relief being made upon a Court's findings in favour of a defendant because he has not counterclaimed, the findings nevertheless remain of full force and effect.

20 In the words of Coussey, J. as he then was, in Transferred Suit No.11/49 Chief Djokoto IV etc. vs: Chief Saba III Land Court 27th June, 1950 (unreported):

30 "I am unable to agree with the submission to this Court that the Appeal Court by expunging that part of the Divisional Court's judgment only which gave the defendant an unsought declaration of title to land, reversed the whole judgment. I hold that the Appeal Court dismissed the appeal and thereby upheld the decision of the Divisional Court that, as against the plaintiff's predecessor-in-title then defendant, the then plaintiffs had failed to establish any title to the land."

Substitute the word "Magistrate" for "Divisional" and delete the words "predecessor-in-title" - and the above citation might have been made of or concerning the parties before us.

And since it is the same findings made by the learned Magistrate namely:-

40 "that the land in dispute is not Akloba Stool land but belong to the defendant either in his personal capacity or as head of his family or the Amandja clan"

confirmed by the dismissal of the then plaintiff-appellant's appeal by the West African Court of

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Appeal, which he, as defendant sought to re-litigate by his plea of "Not liable" before the trial Native Court; and since it is the maxim that:-

"interest reipublicae ut sit finis litium, ne lites sint immortales dum litigantes sunt mortales"

(Per Willes J. in G.N.Rly.Co. vs: Mossop 17 C.B.140 - Vol. 25 L.J.C.P. (N.S) 22 at p.26);

it follows the defendant-respondent should not have been allowed so to re-litigate the same findings but that judgment or decree should have been entered or made upon those findings against him upon the plaintiff-appellant's claim on the writ.

10

For the above reasons, I also agree the appeal should be allowed.

Sgd. K. Adumua-Bossman.

Akufo-Addo, with him Owusu for the appellant.

Asafu-Adjaye for the respondent.

No.26

Court Notes
granting
Final Leave
to appeal to
Her Majesty
in Council,

21st April
1958.

No.26

COURT NOTES GRANTING FINAL LEAVE TO
APPEAL TO HER MAJESTY IN COUNCIL

20

21st April, 1958.

In the Court of Appeal, Monday the 21st day of April 1958. Coram Sir Arku Korsah, C.J., Granville Sharp, J.A. and Ollennu, J.

Civil Motion
No.11/58

Evi Yiboe, represented by
Aloysius Komla Evi of
Akloba,

Plaintiff (Respondent
to Privy Council)

30

versus

Yaw Duedu, Sub-Chief of
Akloba, represented by
Okyeame Abotsi Kwadjo
Donkor also of Akloba

Defendant (Appellant
to Privy Council)

MOTION ON NOTICE for and on behalf of Yaw Duedu the Applicant (Appellant to Privy Council) herein for an Order for Final Leave to Appeal from the judgment of the Ghana Court of Appeal delivered herein on or about the 4th day of November, 1957, to Her Majesty's Judicial Committee of the Privy Council, England etc.

Mr. Albert Asafu Adjaye for defendant-applicant.

Mr. Akufo Addo for plaintiff-respondent.

10 COURT:

Granted as Prayed. Costs of the day and of the previous abortive applications to go to Respondent, fixed at 30 guineas.

Sgd. K.A. Korsah
Chief Justice.

In the Court
of Appeal

No.26

Court Notes
granting
Final Leave
to appeal to
Her Majesty
in Council,

21st April
1958 -

continued.

ExhibitsE X H I B I T S

"C"

"C" - APPEAL RECORD IN SUIT NO.44/1944 FROM
MAGISTRATE'S COURT TO LAND COURT

Appeal Record
in Suit No.
44/1944 from
Magistrate's
Court to Land
Court,

17th July 1944
to
19th May 1950.

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN PROVINCE OF THE GOLD COAST
MAGISTRATE'S COURT HOLDEN AT KPANDU.

BETWEEN:

YAW DUEDU, Sub-Chief of Nkonya
Akloba PLAINTIFF

and

EVI YIBOE of Nkonya Akloba DEFENDANT.

10

TO EVI YIBOE OF NKONYA AKLOBA.

YOU ARE HEREBY COMMANDED in His Majesty's name to attend before this Court at Kpandu on Wednesday the 26th day of July, 1944, at 8.30 o'clock in the forenoon, then and there to answer a suit by Yaw Duedu, Sub-Chief of Nkonya Akloba against you.

The Plaintiff in his capacity as the Sub-Chief of Nkonya Akloba claims from the Defendant herein the sum of £25.--. (twenty-five pounds) for trespass committed by Defendant upon all that piece or parcel of Akloba Stool land commonly known and called "Ologloto to Sakada" and bounded on the North by the property of the head-chief of Nkonya Division, on the South by the property of the D/S/Chief of Kpandu Dafo, on the East by the communal land divided among the heads of the four clans of Nkonya Akloba and on the West by the River Volta, for wrongfully entering the said land by Defendant making plans thereof, fixing cement pillars with his inscription thereon, and thereby falsely claiming it his property without the knowledge and consent of Plaintiff.

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30

(2) Plaintiff applies for an order of Interim Injunction restraining Defendant, his men or labourers from entering any part of the land in dispute for the purpose of doing any work thereon pending hearing and determination of the case.

Issued at Kpandu the 17th day of July, 1944.

Sum claimed	..	..	..	£25. - . - .
Court fees	..	..	..	-.15. - .
Bailiffs' fees	..	..	..	<u>-. 5. 6.</u>
				<u>£26. - . 6.</u>

Exhibits

"C"

Appeal Record
in Suit No.
44/1944 from
Magistrate's
Court to Land
Court,

17th July 1944
to
19th May 1950

- continued.

(Sgd.) T.A. Mead,
MAGISTRATE.

10. 9. 46.

10 In the Magistrate's Court of the Gold Coast,
Eastern Province held at Kpandu on Tuesday the 10th
day of September, 1946, Before His Worship John
Duncan, Esq., Magistrate.

Both parties present.

Defendant refers to telegram from Barrister
Asafu-Adjaye asking for an adjournment to enable
him to appear on behalf of the Defendant.

Plaintiff not represented by lawyer, and ob-
jects to adjournment.

BY COURT:-

20 By virtue of Cap.90 Section 58 I refuse leave
for Defendant to be legally represented in this
Court.

Adjournment refused.

By Defendant:- I plead not liable.

By Plaintiff:- I ask that my son, Nicholas Duedu,
should be my mouth piece because my
voice is weak and easily tired.

By Court:- Permission granted.

By Defendant:- I ask that my son, Aloysius Evi
should be my mouth piece as I am old.

30 By Court:- Permission granted.

FOR PLAINTIFF:

1st Witness (S.O.B.) states:-

I am Nicholas Duedu, farmer, of Nkonya Akloba.

Exhibits

"C"

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- continued.

I represent the Plaintiff Chief Yaw Duedu of Nkonya Akloba. I am speaking in his name. I desire to speak in English. As a Divisional Sub-Chief of Nkonya Akloba he has a land known as Stool property, which is bounded on the North by the land of the Head Chief's Stool land at Nkonya Ahenkro; on the South by the land of the Div. Sub-Chief of Kpandu Dafo; on the East by the land divided among the four clans of Nkonya Akloba and their heads; on the West by the River Volta.

10

On the 8th January, 1941, I put a bye-law against the land and the bye-law says that any body selling, pledging or giving "abusa" and "abunu" systems should report themselves to Plaintiff and that anyone who failed to do so would suffer a fine of 26/- and a life sheep.

On the 11th January, 1941, I received a letter from Defendant care of the Chief of Nkonya Kedjebi. The letter reads thus: "I will not carry your orders out because I am claiming the land as my bona fide property". Plaintiff did not understand defendant's claim and so referred the case to the Head Chief of Nkonya. Defendant would not accept the Head Chief's call. Plaintiff therefore issued a summons against the Defendant in the Magistrate's Court, Kpandu, on the grounds of disobedience to my lawful order. Plaintiff did not then raise the question of ownership. Plaintiff was found guilty on the grounds that the offender should be punished according to a criminal offence and not on a civil summons to a claim damage. The case was delivered on 21st July, 1941. Plaintiff took an appeal to the Hon. C.E.P's Court at Koforidua and I was found guilty again on the same grounds as before. The case was delivered on 17th April, 1943. The P.C. stated in his Judgment that the Judgment was held not for the claiming of the ownership but Plaintiff did not take the proper step of taking the action against the Defendant. And so he failed.

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sicsic

After all this the Defendant went and surveyed the said land in dispute, thereby fixing cement pillars with his name written on and thereby falsely claiming it to be his property. So at present Plaintiff in his capacity explaining and claiming the said land in dispute known as from Ologloto to Sakada as my Stool land. So if these my four witnesses bear evidence against the brothers which mentioned and is not equivalent to my evidence I

40

sic

should be found guilty. And I have got two judgments to prove in this case in my former action from Magistrate's Court, Kpandu and Hon. C.E.P's Court, Koforidua. That is the end.

X by Def's Rep.

Q. Does Plaintiff claim to be the Chief of Akloba?

A. Yes.

Q. Are you showing the boundary of the whole Akloba village or sub-division?

10 A. No. Plaintiff is only showing the boundaries of the land in dispute.

Q. Is this land a land which was under dispute and known as Logloto to Sakada land?

sic A. Yes, but the proceedings were different from that.

Q. Do you remember in the first case you stated that the Logloto to Sakada land is a communal land?

A. Yes, even in this present case Plaintiff's subjects from Akloba can use the said land with Plaintiff's permission.

20 Q. Being communal land are you telling the Court that all Akloba require Plaintiff's permission to use the land?

A. Yes.

Q. Are you referring to the same land as the Stool land?

A. Yes, the meaning of Stool land is under the subordination of the chief in town. I always allow people who want to get something out of the land to do so because they are my sons.

30 Q. If everybody is liable to use Plaintiff's Stool land can Plaintiff's Stool also be used in the same manner?

A. No, because Stool matters are extra things such as ... I mean the succession to a Stool is different from the ownership of land.

Q. Does Plaintiff know that the power of a Stool is land?

A. Plaintiff knows.

40 Q. How can anyone use your land and not use your Stool at the same time?

A. Stool matters are different from land matters.

Exhibits

"C"

Appeal Record
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- continued.

Exhibits

"C"

Appeal Record
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Magistrate's
Court to Land
Court,

17th July 1944
to
19th May 1950
- continued.

- Q. Is Plaintiff saying he was advised by the D.C. or the Court to take a fresh action about the land?
- A. District Commissioner told Plaintiff he did not judge any matter about the land, but disobedience to lawful order.
- Q. Were both parties present when District Commissioner mentioned this?
- A. This appears in his judgment, which I have got to prove.
- Q. Did you read it from the judgment or were you told by the District Commissioner?
- A. I read these from the judgment.
- Q. Are you saying the land is bounded on the east by lands divided among the four clans?
- A. Yes.
- Q. When was this land divided?
- A. In olden days.
- Q. Are all the Nkonya customs the same or different?
- A. Customs are many. Some concern same.
- Q. Is Plaintiff saying he has divided his land and taken a share since he came to Nkonya?
- A. The land is divided among the four clans of Akloba and the rest is known as Stool property.
- Q. Did Plaintiff know there were wild animals in the olden days in Logloto to Sakada land?
- A. Yes.
- Q. Does Plaintiff know that in those days one had to be brave before going to bush?
- A. Yes.
- Q. Is Plaintiff telling the Court that he was able to kill all these beasts before you divided this land among the people?
- A. All Akloba subjects respond for this affair.
- Q. Was Plaintiff made chief by God, nature or his people?
- A. By his people.
- Q. Does Plaintiff know that one has to be powerful before enstooling a Chief?
- A. Yes.

10

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- Q. How can a Chief divide a land among the four clans if they are not working for him?
- A. They can work in their individual lands and when anything comes out of it as their property when the Stool occasion is held they go out with their property.
- Q. So are each of these clans labourers to the Chief?
- 10 A. They are serving their grandfathers, the Stool. They are not labourers.
- Q. How many villages has Plaintiff on the Logloto-Sakada land?
- A. He has two.
- Q. Do you know if I have more than 15 (fifteen) villages on that land?
- A. No.
- Q. In the previous case did Plaintiff say I have more than 12 villages on the land?
- A. Yes.
- 20 Q. Does Plaintiff know that all the people along the Volta within the limits of this land are my subjects?
- A. Not only your people live there, but people from different clans in Akloba live there.
- Q. Who are the other people?
- A. One Attu Yaw, Plaintiff's father, stayed there previously one Amba Yaw from Plaintiff's clan one Odani Yaw from another clan.
- Q. Did they work there or have villages?
- 30 A. The village is for Plaintiff's general subjects. He who wants something asks Plaintiff for permission and I allow him. He leaves when he finishes.
- Q. Did Plaintiff build a village there?
- A. As a Chief not as himself Plaintiff built the village.
- Q. Is Odani Yaw a brother to Tsiami Kokroko?
- A. They are of the same clan but I don't know their relationship.
- 40 Q. Do you know that Tsiami Kube begot Tsiami Kokroko and Odani Yaw?
- A. No.

Exhibits

"C"

Appeal Record
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- continued.

Exhibits

"C"

Appeal Record
in Suit No.
44/1944 from
Magistrate's
Court to Land
Court,

17th July 1944
to

19th May 1950

- continued.

Q. Do you know whether Logudo and Sesere are my strangers working under Abunu system for me?

A. Plaintiff does not know them. He made bye-laws just to know who use this land at such time and the case is brought to the Court.

Q. Does Plaintiff look after his Stool land?

A. Yes.

Q. Do you know Yaw Biti and Sakada Komla are my children?

A. Yes. But as Chief they are under (him) Plaintiff. 10

Q. Do you know that Sakada and Yaw Bitikope are named after these people?

A. Yes. I know one village is called Okra Kwamekrom. That is the same name as Yaw Bitikope. A village can be named by anybody's name and it matters not. The land itself bears a name.

Q. Should one who owns a village name his village?

A. No. Anybody can name a village.

No more questions. 20

X BY COURT:-

sic The Logloto to Sakada land dispute was determined in the Honourable Commissioner of Eastern Province's Court on appeal from the Magistrate's Court, Kpandu. It was not a land case. It was a question of disobedience to a lawful order. It is the matter referred to me in evidence. Defendant is a subject of Plaintiff.

2nd Witness S.A.R.B. states:-

KWAKU ALIJI: 30

I am Kwaku Aliji, sawyer, of Akloba Nkonya. One day Plaintiff cause gong-gong to be beaten asking us all to assemble in his house. At the assembly Plaintiff told us he knows we all have our individual lands but there is a hilly land called Sakada and if anyone in need of money he can go there, cut a tree, make a canoe and sell it. We also take sponge there for sale. Now Plaintiff sees that the land is being sold, which is not lawful. Therefore he orders that the land from Logloto to Sakada should not be sold and anyone who does so should inform him. Also from Dakode to Odoo's village we must 40

tell Plaintiff if anyone sells land there. Defendant refused to obey the order. From Adika Tete land to the Volta is a Stool land; I was in Akloba from when the Plaintiff asked me to bear witness for him. This is what I know about the case. I know that Adika Tete's village is different from Dakole, Sakada and Klobito. Plaintiff put a byelaw on the land in dispute. Akloba people have lands according to their clans but there is a communal land which extends to the Volta.

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X by Def's Rep.:-

Q. To which Akloba clan do you belong?

A. I am from Djigbe, the north side.

Q. Do you know the clan called Atinka?

A. We Djigbes are the Atinkas.

Q. Is Adika Tete a land or a village?

A. It is a village.

Q. On what land is Adika Tete village?

A. It is on the land Denumete.

20

Q. Is Klobita a village?

A. Yes.

Q. Whose village was it?

A. My father called Krampa lived in it. I don't know the owner of the village. Klobita is a communal land of Akloba town.

Q. Whose village is Sakada?

A. Anybody at all goes there to settle.

Q. Do you know Sakada Komla?

A. No.

30

Q. Do you know Yaw Biti or Okra Kuame?

A. No.

Q. Do you know Okloto means somebody's father?

A. I don't know.

No more questions as witness knows nothing about the land in dispute.

No XX by Plaintiff.

No XX by Court.

Exhibits

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Exhibits

"C"

Appeal Record
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to

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- continued.

3rd Witness S.O.B. states:-

THOMAS NYAMPONG:

I am Thomas Nyampong, farmer of Nkonya Akloba. I am the substitute of Kwesi Bote. There is a forest and we have cut our shares. From Kpandu-Krachi lorry road to Tendia there is a meadow. The land from the middle to the River Volta belongs to the Chief of Akloba. There are two mountains in the land; the Lokloto mountain continues to Botame and up to the River Volta. This place belongs to Plaintiff. All individuals in Akloba have a land from the town of Akloba to the middle. Akloba town consists of four clans. Two have no land in the disputed land for all that belongs to Plaintiff. The Defendant had a land at Akloba. It is an individual land. Defendant is not the owner of the land in dispute. That is all I know.

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sic

X by Def:-

sic

Q. Kwasi Bota was the brother of Sub-Chief Duedu. Is that so?

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A. Yes.

Q. Do you inherit in common with Kwasi Bote?

A. No.

Q. If the brother of Yaw Duedu gets something do you being Yaw Duedu's brother also get it?

A. Yes.

Q. Before Yaw Duedu gave an order did he inform you?

A. Yes.

Q. When Evi wanted to make a plan of the land in dispute what did Yaw Duedu tell you?

30

A. He told me that land does not belong to Defendant.

Q. Have you a land from Logloto to Sakada?

A. I have said I have no land there.

Q. Do you know the two villages along the Volta-Sakada Yawbite?

A. Yes.

Q. To whom do they belong?

A. I don't know.

Q. How many villages have you on the land in dispute?

40

- A. I have not been allowed by the Plaintiff to stay there. I have therefore no village.
- Q. Do you know that I have about fifteen villages from Sakada to Logloto?
- A. No.
- sic Q. During which chief's reign was the allegedly communal land now in dispute divided from the clan lands?
- 10 A. I cannot say. Formerly the land was held by individuals. As regards the working on the land by any individuals ...
- Q. Does the Chief go to the forest and share his land among them?
- A. I don't know.
- No more questions.
- sic No examination by Plaintiff.
- X by Court:-
- Q. Who was Kwesi Bote?
- A. He is an old man who cannot come here.
- 20 4th Witness: S.A.R.B. states:-
- KWADJO KWEDJA:
- sic I am Kwadjo Kwedja, farmer of Kpandu Dafo. I have a road boundary on Krachi Kpandu road with Plaintiff. I also have another road boundary with Plaintiff along the Kratchi River. I am representing the Chief of Kpandu Dafo. The boundary I have mentioned is only the boundary between Kpandu Dafo and Nkonya Akloba. I have marked no tree with Plaintiff's boundary because I have no dispute with Plaintiff.
- 30 X by Def's Repr.:-
- Q. Do you know one Goku from Kpandu Dafo?
- A. Yes.
- Q. What is he to you?
- A. My uncle.
- Q. Do you know one Zetopo from Kpandu Dafo?
- A. Yes.
- Q. What is he to you?
- A. My uncle.

Exhibits

"C"

Appeal Record
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Exhibits

"C"

Appeal Record
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- continued.

Q. Do you enjoy one property with those uncles?

A. Yes.

Q. Have you a boundary with Defendant on the North towards Sakada?

A. No.

(Defendant's representative queries Registrar's translation. Query overruled).

Q. Do you know that Defendant has some people at Sakada?

A. No.

Q. Do you remember we went round Defendant's boundary together before a plan was made?

A. No.

Q. Have you any land towards the River Volta?

A. Yes.

Q. With whom have you a boundary?

A. I have boundaries with plaintiff.

Q. Are you speaking of Kpandu Dafo and Nkonya boundary?

A. That is a question for the Chief, and for me.

No more questions.

No re-examination by Plaintiff.

X by Court:-

Q. Are the boundaries you have described, the boundaries between Kpandu Dafo and Nkonya or between your own land and the Amandja Family's land, or between your land and Nkonya Akloba Stool land?

A. The boundary is with Plaintiff's land, Nkonya Akloba Stool land. So it is since my grandfather's time.

5th Witness, S.A.R.B. states:-

KWESI KOKWATI:

My name is Kwesi Kokwati, Stool Father of Nkonya Ahenkro. The whole land of Nkonya belongs to me but I have given a portion to the Sub-Chief of Nkonya-Akloba. From Logloto mountain to Bote and to Bakoli is Plaintiff's land. My land continues from this boundary to Mangosse. At Dakoli a village belongs to Plaintiff.

sic

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Defendant has demaracted a portion to the Plaintiff's land as his and in fact I have not given a part of the land to Defendant.

Exhibits

"C"

Appeal Record
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- continued.

Q. Do you know a village called Okra Kwamekrom?

A. Yes.

Q. To whom does it belong?

A. To the Plaintiff.

Q. Is the name Okwamekrom the name of the land or does it have a separate name?

10 A. The name of the place in dispute is called Dakoa.

X by DEFENDANT:-

Q. Are you representing the Head Chief of Nkonya?

A. Yes.

Q. Are you the Stool father?

A. Yes.

Q. Is Botato included in the land given to the Sub-Chief of Nkonya Akloba?

A. No.

20 sic Q. Is the land you gave to Plaintiff in or near Logloto mountain?

A. It is near the Logloto mountain.

Q. Do you remember Plaintiff making bye-laws about the land in dispute and defendant refused to obey as the land belongs to him?

A. Yes - but the land does not belong to the Defendant.

Q. Do you remember Defendant driving you away with the canoe you made in Defendant's land?

30 A. The canoe was stolen from me and Defendant paid for it.

No more questions.

X by Court:-

Q. Have you seen the pillars which it is alleged Defendant has placed on Plaintiff's land?

A. I have not seen any pillar.

PLAINTIFF'S CASE CONCLUDED.

Exhibits

"C"

Appeal Record
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- continued.

11. 9. 46.

DEFENDANT:1st Witness, S.O.B. states:-

I am ALOYSIUS EVI. I am the son of the Defendant and his authorised representative. I am a produce buyer, living at Nkonya Akloba. My grandfather was Obi Anya. He migrated from Late to Nkonya. He settled at Ologloto and farms there with his children, and hunted. His farm extended from Ologloto to Yawobitekope, and right up to Sakada. There was big forest hill of wild animals before the Nkonys went there. He hunted and settled there with his children. His land bounded with Nkonya Ntumdas land towards Krachi side. He had a boundary there with Akoba. On the South side with Goku's land of Kpandu Dafo, whose descendant 3rd Plaintiff's witness. He has a brother called Emmanuel Zitopo. The said Zitopo attempted a land dispute with me in 1938. I tender in evidence a paper from 3rd Plaintiff's witness who said in evidence yesterday that he does not know in connection with the land in dispute (Exhibit "A").

sic

He wrote the letter to one Dufa, the head of Amandja clan (family). The land bounded on the east with Yaw Duedu's land. From there it joined Kwasi Bote's land. There it joins Opa Okuma's land. Then again Kwasi Bote's land. On the West it bounds with the Volta River. My grandfathers were in possession of that land for many years. One Ete succeeded Obi Anya in occupation of the land. Akyeble also succeeds Ete. Abulam is also one of the elders who can enjoy the land. One Alufu Botso was also in charge of the land. Also Owusie was there. They followed Yiboe. Then Osuma; then comes Sakada Komla. Then Evi succeeded him. The land was not disputed by any Chief with my grandfathers. One Kwaku Sibre's father of Nkonya Kadjebi obtained permission to work on that land. Kwaku Sabre is dead, but I tender his evidence in the case Ywao Duedu, Sub-Chief of Nkonya Akloba v. Evi Yiboe of Nkonya Akloba heard by this Court in 1941. (Exhibit "B").

sic

Kugbe, Tsiame Kokroko's father, also obtained permission to use the same land. He also gave evidence in the previous case. He is too old to attend and so I tender his previous statement in evidence. (Exhibit "C").

One Akoa, also from Nkonya Ahenkro has cut a WAWA tree and made a canoe with it. I have taken it from him. He is also dead, but he gave evidence in the previous case. I tender it in evidence (Exhibit "D").

10 I also permitted the Ntsumuru Chief to cut and use one WAWA tree at Logloto. He is one of my witnesses. I have people working on the land for me and they pay a rent to me. They have been there over 15 years now. One Gesere of Zugu is there. Also one Lugudo of Bakpa. They will testify for me. In 1941 I was called by Plaintiff with other clans of Akloba. Plaintiff said that he has prohibited use of the Logloto to Sakada land to anyone else. I told him I could not comply with his prohibition for there I lived with my children. The Head Chief of Nkonya Ahenkro took up the matter very strongly. They had wanted the District Commissioner to endorse their so-called bye-laws. I also brought the matter 20 to the District Commissioner. The District Commissioner told them they should return and go through their bye-laws again with the other elders. I made a plan of the land and erected pillars around it. The map was produced to the Court in the first case. The map is in the possession of this Court and I should like it to be tendered in evidence.

BY COURT:-

30 Permission granted. Map tendered - Exhibit "E". I have more than 14 villages on the land and they are properties of my grandfathers. The Plaintiff has no farm and no village on it.

BY PLAINTIFF:-

I desire to object to the production of Exhibits "B", "C" and "D". They have descendants and representatives whom I would like to cross examine.

BY COURT:-

Objection noted but overruled.

Q. Who is Defendant in Akloba?

A. Defendant is in charge of the Amandja family.

40 Q. You know one called Obi Tete?

A. Yes, he is from my clan.

Exhibits

"C"

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- continued.

Q. Is he the head of the Amandja clan?

A. He is one of the elders but not the head.

No more questions.

BY COURT:-

Q. Who is the head of the Amandja clan?

A. Defendant.

Q. Has Kwaku Sibre no descendant whom you could called to give evidence?

A. His son is very young. I don't know his brother.

Q. Has Tugbe no representative who could attend? 10

A. Tsiami Kokroko was Tugbe's representative. He is now too old to attend. All his sons are against him and support Plaintiff.

Q. Has Akoa no descendant or representative?

A. He has only a daughter and she has gone elsewhere, where exactly I do not know.

No X by Plaintiff.

2ND WITNESS (S.A.R.B.) states:-

KOFI ASIEDU:

I am Kofi Asiedu farmer of Nkonya Ntumda. I represent John Otu. The Nkonyas immigrated from Late. Among them was Akoba. They came and settled in Nkonya. Akoba got a land at Nyanto. This man came and met Obi Anya of Nyanto. They had a common boundary between them from Nkamiti Kusi to Kpokpo from there to Limba, from there to Panto. There is a tree with rocks under it. From there to Kpaka Wudja, from there to Akusuamuto. From there to Kpantankplama meadow. From there to Dakole, from Dakole to Kele. From there to the River Volta. At the right hand side the land belongs to Akoba, and the land at the left side belongs to Obi Anya. I remember Defendant telling me that he gave a portion of land from Nkamiti Kusi to Kpokpo to Aggrey. 20 30

X by Plaintiff:-

Q. Are you representing the Chief of Ntumda?

A. I represent Akoba of Ntumda.

Q. Is Akoba known as Chief of Ntumda?

sic A. He is Asafo of Ntumda.

Q. Is Obi Anya known as Chief of Nkonya Akloba?

A. No.

Q. How many farms are in between my farm and yours?

A. Three

Q. And so you jump over the three to make a boundary with Obi Anya?

A. Yes.

Q. Do you know other villages besides three between us?

10 A. No.

Q. How do you manage to have a common boundary with Obi Anya if there are three farms between your land?

A. These three farms were not there originally.

Q. Did the land belong to you before the farms were built?

A. Yes.

No more questions.

BY COURT:-

20 Q. Are John Otu and Akoba the same person?

A. Akoba is John Otu's grandfather.

3RD WITNESS, S.A.R.B. states:-

OKYEAME YAO TANO:

30 I am Okyeame Yao Tano. I am representing Asiedu of Ntsumuru. I am a farmer living at Ntsumuru. About 35 years ago my grandfather who was Kodjo Odoi and Aga Kuma went and begged Alo Kpubutsi who is head of Amandja clan - I mean was the head of the clan to give them some valuable trees in the land in dispute. The trees were given to them and they made canoes. When the canoes were ready they went to Alo Kpubutso as a thanksgiving; I know this land belongs to the Defendant and since then I have asked my subjects to approach Defendant for permission to use the land. At Nkonya the custom is that every clan had its own separate land under the head of the clan. If a time comes when I have no place to farm on my land, I ask some of my subjects the permission to use the land and give a pot of
40 palm wine to the head of the clan as a thanksgiving. I have never asked Plaintiff for permission to use

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Logloto to Sakada land. I do not give a share of my Stool land to my subjects.

X by Plaintiff:-

Q. Did you know of any boundary you have in my land?

A. No.

Q. How do you know that the land in dispute belonged to Obi Anya, Defendant's grandfather?

A. I don't know any boundary between yourself and Obi Anya but I know I sued to go to Obi Anya for land.

10

No more questions.

No X by Court.

4TH WITNESS, S.O.K. states:-

GESERI ZUGU:

I am Geseri Zugu, farmer of Nkonya Sakada. I have arrived in this country from Zugu and I put up with Adamu, my country man, at Sakada. I wanted to farm. He said he would take me to his landlord whose name was Suka. He is now dead. I gave him 12/- per year as rent. I have been staying there until Suma died. His successor was shown to me. His name was Kobina Sesento. He is dead. Now Evi Yiboe has succeeded Kobina Sisento and he is my present landlord. I know one Lugudo was also on the land in dispute. I don't know to whom he pays rent. All I know is that he and I stay on the same land. It is Evi Yiboe's land.

20

X by Plaintiff:-

Q. Do you know Plaintiff is Chief of Akloba?

A. Yes.

30

Q. Have you ever reported your presence on the land in dispute to Plaintiff?

A. No, but my landlord said he had reported my arrival to you.

Q. Can you point out any boundaries of the land in dispute?

A. No.

X by Court:-

Q. Has Plaintiff ever claimed any rent from you?

A. No.

40

Q. Has Plaintiff ever made any palaver with you because you are farming on the land in dispute?

A. No.

Q. Has he ever made any palaver with Lugudo for the same reason?

A. I do not know.

Q. Has anyone other than Evi Yiboe and his predecessor ever claimed rent from you?

A. No.

10 No X by Plaintiff.

5TH WITNESS, S.A.R.B. states:-

LUGUDO:

I am Lugudo, farmer and fisherman and canoe maker, living at Yaobitiko. I came there 15 years ago. I met one Agbayive who took me to Suma who gave me land on which to make a farm. I gave Suma a pot of palm wine. I wanted to make a cocoa farm and he said I could do it on the Abusa system. I told him I should also like to plan corn. He told me he would charge me rent at 12/- per annum. I agreed. I said I wanted to make canoes and so I went to Sakada Komla who had succeeded Yaw Bite. Sakada Komla gave me the wood to make canoes. He said I should make canoes on the Abusa system. I have been farming and making canoes in this fashion for fifteen years without being trouble by anyone. Sakada Komla and Evi Yiboe are in charge of the land now. I pay rent to Evi Yiboe.

X by Plaintiff:-

Q. Do you know Plaintiff is Chief of Akloba?

30 A. No.

Q. Have you ever reported to Plaintiff since your arrival?

A. No.

Q. Do you know any boundaries of the land in dispute?

A. Yes, I know those I was shown by Evi Yiboe.

Q. Are you a native of Nkonya Akloba?

A. No.

No more questions.

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BY COURT:-

Q. Has Plaintiff ever claimed any rent from you?

A. No.

Q. Has Plaintiff ever made any palaver with you for farming on the land in dispute?

A. No.

Q. Has anyone other than Evi Yiboe and his predecessors ever claimed rent from you?

A. No.

No X by Plaintiff.

No more witnesses.

10

BY COURT:-

Case adjourned until 12th instant for viewing of land. I order both parties and all witnesses will meet me at Nkonya Abetenase at 8 a.m. on the 12th instant.

(Sgd.) John Duncan.

12. 9. 46.

BY COURT:-

Court adjourned to Nkonya Abetenase and proceeded to view the land in dispute. Parties were unable to agree on the boundaries of the said land.

20

Court orders that a survey of the land claimed by Plaintiff be carried out. Court further orders that the land farmed by 4th and 5th Defence witnesses be indicated on the plan prepared by the surveyor to be engaged by Court. Court further orders that each party deposit the sum of £100 (One hundred pounds) against the cost of the said survey not later than 12 noon on 12th November, 1946.

30

(Sgd.) John Duncan,
Magistrate.

YAW DUEDU OF NKONYA AKLOBA .. PLAINTIFF
 versus
 EVI YIBOE OF NKONYA AKLOBA .. DEFENDANT.

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WHEREAS an Order has been made by this Court on the 12th day of September, 1946, to the effect that, as the both parties were unable to agree on the boundaries of the land in dispute a survey of the land claimed by Plaintiff be carried out; and

10 WHEREAS the Court further ordered that each party should deposit the sum of one hundred pounds (£100) against the cost of the said survey not later than 12 noon on the 12th November, 1946.

THIS COURT is satisfied that the above order with regard to the deposit has been carried out, and I, JOHN DUNCAN, Magistrate, do hereby order you F.K. ZIDDAH, Licensed Surveyor to do the survey as follows:-

20 To survey the land claimed by the Plaintiff in the case: Yaw Duedu versus Evi Yiboe, and that the land farmed by 4th and 5th defendant's witnesses be indicated on the plan.

Dated at Kpandu this 13th day of November, 1946.

(Sgd.) John Duncan,
 MAGISTRATE.

24. 11. 48.

CORAM: JOHN DUNCAN, ESQ., MAGISTRATE.

YAW DUEDU vs: EVI YIBOE.

30 The Court met Plaintiff and Defendant and their witnesses in Nkonya Akloba at 8 a.m. and proceeded to view the land. An area near Pillar BP.27 was declared a Court at 9 a.m.

1ST WITNESS called by the Court: S.O.K. states:-

I am Christian Kosi Selormey, Registrar, Magistrate's Court, Kpandu. I tender in evidence an original plan Reference No. FKZ/1/47 entitled "Plan showing land in dispute at Nkonya Akloba in the Kpandu District of B.M. Togoland, Yaw Duedu Plaintiff versus Evi Yiboe Defendant, prepared by F.K.A.

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Zidah, Licensed Surveyor, Kadjebi, in accordance with order of the Court made on 13th November, 1946, by Mr. J. Duncan, Magistrate. The plan is signed by Mr. Ziddah whose signature I recognise and identify.

The plan was shown by the Court to the representatives of Plaintiff and Defendant, who were reminded that they were still on oath.

Plaintiff's 1st witness: I confirm that the plan shows all the lands claimed by Plaintiff in this case and that I pointed out the boundaries to Mr. Ziddah personally.

10

Defendant's 1st witness: I confirm that the plan shows all the lands claimed by Defendant in this case and that I pointed out the boundaries to Mr. Ziddah personally.

Court adjourned.

The Court visited the farm named on the plan "Gazele's Farm No. 1" and satisfied itself that it contained mature cocoa aged approximately 20 years, the tree having a girth of 11-12 inches, one foot from the base. An area in this farm was declared a Court at 9 a.m.

20

Plaintiff's 1st witness (still on oath), I confirm that the farm named on the plan as "Alugudo's farm" lies within the land claimed by Plaintiff and contains mature cocoa of approximately the same age as the cocoa on Gezele's Farm No. 1.

Defendant's 1st witness (still on oath): I confirm the evidence just given by Plaintiff's 1st witness.

30

The Court adjourned and proceeded to Sakada Market which is merely a clearing in the bush. The market area was declared a Court at 10.15 a.m.

Defendant's 4th witness (still on oath) recalled by Court states:

I am the Headman of the small hamlet at the edge of Sakada Market. I settled at Sakada for 7-8 years ago. I pay tolls in money and in kind such as fish in respect of the market to the Defendant.

40

X by Defendant:-

I remember that the market was built by Defendant's clan about 12 years ago.

XX by Plaintiff:-

I do not know that this market was opened in 1938 by Kokroko, linguist of Nkonya Akloba and that he slaughtered one sheep and sent 3d to the Chief of Kpandu Dafo.

The Court adjourned at 10.30 a.m.

10 Judgment to be given at Kpandu at 8 a.m. on the 26th November, 1948.

(Sgd.) John Duncan,
MAGISTRATE.

26. 11. 48.

In the Magistrate's Court of the Gold Coast, Eastern Province held at Kpandu on Friday the 26th day of November, 1948, before His Worship John Duncan, Esquire, Magistrate.

Yaw Duedu versus Evi Yiboe.

20 Before delivering Judgment the record of evidence taken on the land in dispute on the 24th instant was read over to the representatives of both parties who confirm that it was an accurate record of the proceedings.

JUDGMENT:

This is a land case from the Nkonya Division and comes before the Court by virtue of Section 76 of Cap. 90. Plaintiff's claim is as follows:-

30 "The Plaintiff in his capacity as the sub-chief of Nkonya Akloba, claims from the Defendant herein the sum of £25 for trespass committed by Defendant upon all that piece or parcel of all that Akloba Stool land commonly known and called "Ologloto to Sakada" and bounded on the North by the property of the Head Chief of Nkonya Division, on the South by the property of the Divisional Sub-Chief of Kpandu Dafo, on the east by the communal land divided among the heads of the four clans of Nkonya Akloba,

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and on the West by the River Volta, for wrongfully entering the said land by Defendant making plans thereof, fixing cement pillars with his inscriptions thereon, and thereby falsely claiming it his property without the knowledge and consent of Plaintiff."

"2. Plaintiff applies for an Order of Interim Injunction restraining Defendant, his men or labourers from entering any part of the land in dispute for the purpose of doing any work thereon pending hearing and determination of the case."

10

The case first came before the Court on the 26th July, 1944, when Mr. T.A. Mead, Magistrate, ordered that Defendant was to plant no more permanent crops on the land, nor to make clearings for such a purpose nor to cut down timber until the suit was finally determined.

The case first came before the present Magistrate on 10th September, 1946. Plaintiff's son Nicholas Duedu, represented the Plaintiff and appeared as Plaintiff's 1st witness. He referred to the fact that this matter had already appeared before this Court the Provincial Commissioner's Court. The first point to be determined is therefore, whether this is a case of res judicata. The fact that the Defendant did not tender this plea is immaterial for it cannot be assumed that an illiterate farmer, unassisted by Counsel, fully appreciated this point.

20

30

The claim in the original case known as: Yawo Duedu, Sub-chief of Nkonya Akloba versus Evi Yiboe of Nkonya Akloba reads as follows:-

"The Plaintiff's claim against the Defendant is £50 damages for disregarding Plaintiff's lawful order as sub-chief and head over all that piece or parcel of communal land which starts from Ologloto to Sakada forbidden cultivation, sale or pledge of any portion thereof without Plaintiff's permission, according to custom, the Defendant herein wrongfully entered the said land by cultivating, selling pledging and giving under "Abusa" and "Abunu" systems of the said land thereby falsely claiming it his grandfather's land without the knowledge and consent of the Plaintiff as sub-chief of Akloba and overseer of the said land".

40

The Defendant issued a counter-claim worded as follows:-

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10 "The Counter-Claim of the Defendant on behalf of the Amandja family of Nkonya Akloba against the Plaintiff herein is £50 damages for Plaintiff's unlawful order issued to restrain the Defendants from owning, hold possession and use of all that piece or parcel of the land which starts from Ologloto to Sakada, the property founded by their great grand-
 10 father Obianya over 100 years ago, and was succeeded by Eteh, Akyibleh, Yawobi, Ogye-Kwami, Atu-Lawu, Abloam, Abbu, Alupobutsor, Owusie, Yiboe Esuma and Sakada Komla without interference by the Akloba Stool, on which land Defendant's family have over 12 villages some of which are over 50 years old, which land Plaintiff now terms "Communal land" with deliberate intent to create right for his Stool over the said land."

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20 The learned Magistrate who heard this case ruled that disobedience of the Plaintiff's lawful order would be a criminal offence and that the Defendant could not therefore be liable to a civil action for damages. He further found that ownership of land is not confined to the Divisional Chief or his sub-chiefs, but that it is vested in individual as well. The function of a chief in signing a conveyance of land is merely that of a witness, and in order that he be informed of any such transaction taking place within the limits of his jurisdiction.
 30 The Plaintiff's claim for damages on the ground that the Defendant has no right to own land therefore also failed. He therefore gave judgment for the Defendant. It should be noted that Defendant's counterclaim is not mentioned in this judgment, which was upheld by the Provincial Commissioner's Court, Eastern Province, on the 17th April, 1943.

40 In my opinion the foregoing judgments do not determine the ownership of the land described in Yaw Duedu's claim as the land "which starts from Ologloto to Sakada" and it is significant that the learned Magistrate did not visit the land and did not attach any sketch or plan of the land to his judgment.

I therefore hold that this case is not a res judicata and have proceeded to consider the case on the evidence brought by both parties but taking into account the finding of the Courts in the

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previous case that ownership of all land in Nkonya Akloba is not confined to the Divisional Chief or his sub-chiefs but that it is vested in individuals as well.

After hearing the parole evidence of Plaintiff's and Defendant's witnesses on the 10th and 11th September 1946, I visited the land in dispute on the 12th September, 1946, in the presence of both parties and their witnesses. I found that the parties were unable to agree on the area of land which was actually in dispute and that each party had cut boundary lines through the "bush" which were a considerable distance apart. I therefore ordered that a survey of the land claimed by the Plaintiff should be carried out and that the land farmed by the 4th and 5th Defence witnesses (Geseri Zugu and Lugudor Gadoto) should be indicated on the plan prepared by the surveyor.

10

Owing to my absence on leave and to the fact that I was posted to another District on my return from leave I could not resume the hearing until the 24th November, 1948, when I again visited the land in the presence of both parties and their witnesses.

20

The most significant features of the parole evidence led before the Court are firstly that the Plaintiff in his cross-examination did not attempt to question the testimony of the 1st Defendant's witness that that Defendant has people, who pay rent to him, working on the land for him; that they had (in 1946) occupied the land for 15 years; that Defendant had more than 14 villages on the land but that Plaintiff has no farm and no village on it; secondly, that Defendant's fourth witness states that Defendant is the successor of the persons whom he has regarded as his landlords and to whom he had paid rent and that Plaintiff has never claimed rent from him; thirdly that Defendant's 5th witness states that Evi Yiboe is his landlord and is the successor of the people whom he had (in 1946) for fifteen years regarded as his landlord and to whom he has paid rent and that Plaintiff has never claimed rent from him.

30

40

When I visited the land on the 24th November, 1948, I was able to confirm that one of the farms made by Defendant's 4th witness was situate within the land claimed by Plaintiff and that it contained a permanent crop, namely mature cocoa which is in

my opinion approximately 20 years old. It is admitted by Plaintiff that the farm of Defendant's 5th witness which is also situate within the land claimed by Plaintiff contains cocoa of similar age and maturity. Finally Defendant's 4th witness stated that he had for 7-8 years paid market tolls in respect of Sakada market to Defendant, whose clan opened the market about 12 years ago. It is completely contrary to all my experience of customs in these parts that a person who had a valid claim to ownership of land should allow another person to grant permission to third parties to plant permanent crops or erect a market on such lands and to receive annual rents of market tolls from these third parties. Now although the cocoa trees must have been planted not later than the period 1928-30 the Plaintiff did not initiate legal action against the Defendant until 1941.

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I can therefore only conclude that the land specified by Plaintiff in his claim is not Akloba Stool land but belongs to the Defendant either in his personal capacity or as head of his family or of the Amandja clan.

I therefore find that the Plaintiff's claim for damages for trespass committed by the Defendant fails. I award costs to the Defendant, costs to be taxed.

I hereby revoke the Order of Interim Injunction made by Mr. T.A. Mead, Magistrate, on the 26th day of July, 1944.

(Sgd.) John Duncan,
MAGISTRATE.

Filed 21/1/49

In the Senior District Commissioner's Court, Ho.
Constituted by the Magistrate's Court, Kpandu.

Yawo Duedu, Sub-Chief of Nkonya Plaintiff-Appellant
versus

Evi Yiboe of Nkonya Akloba - Defendant-Respondent

PRELIMINARY GROUNDS OF APPEAL.

1. That the Judgment of the Magistrate's Court, Kpandu, delivered on the 26th day of November,

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1948, was against the weight of evidence and
therefore wrong.

Dated at Kpandu this 21st day of January, 1949.

Sgd. N. Duedu.

for PLAINTIFF- APPELLANT.

The Registrar,
Senior District Commissioner's Court, Ho.
Constituted by the Magistrate's Court,
Kpandu,

and

The within-named Evi Yiboe, the
Defendant-Respondent herein of Nkonya Akloba.

10

IN THE SUPREME COURT OF THE GOLD COAST,
EASTERN JUDICIAL DIVISION,
LAND COURT, ACCRA.
A.D. 1950

Yaw Duedu Sub-Chief of
Nkonya Akloba Plaintiff-Appellant

versus

Evi Yiboe of Nkonya
Akloba Defendant-Respondent.

20

PLEASE TAKE NOTICE that at the hearing of the
appeal herein, leave of the Court will be asked to
add the following ground of appeal:-

GROUND 2:

The conclusion arrived at by the Learned Magi-
strate was bad in law for vagueness and uncertainty
and ought to be set aside.

Dated at Kadoe Chambers, Accra, this 7th day of
February, 1950.

30

Sgd. Koi Larbi
SOLICITOR FOR THE PLAINTIFF-APPELLANT

The Registrar,
Land Court, Accra

AND

To the above-named Defendant-Respondent,
Evi Yiboe of Nkonya Akloba, Kpandu District.

19th May, 1950.

In the Land Court of the Supreme Court of the Gold Coast, Eastern Judicial Division held at Victoria-borg, Accra on Friday, the 19th day of May, 1950, before Smith, Acting Chief Justice.

A.17/50.

Yaw Duedu Appellant

versus

Evi Yiboe Respondent

10 K. Larbi for Appellant.
Quist for Respondent.

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K. LARBI:-

Magistrate in addition to finding that land was not the Plaintiff's Stool land went on to find that it was the Defendant's land, but could not decide whether Defendant owned it in his present capacity or as head of his family or of the Amandja Clan.

26 Defendant is one of the Plaintiff's subjects and head of one of Plaintiff's clan.

Asks obiter remarks to be deleted from judgment.

QUIST:-

Judgment quite clear. Plaintiff claimed trespass and that land belonged to his Stool. Magistrate found not Stool land or in possession of anyone claiming through him. Previous Judgment had also found against Plaintiff. Plaintiff had no case.

30 LARBI:-

Defendant a native of Akloba and a subject of Plaintiff.

JUDGMENT

The Magistrate's findings were perfectly clear and amply supported by the evidence. He found that the land did not belong to the Plaintiff's Stool but that it did belong to the Defendant. This was sufficient to put the Plaintiff out of Court.

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The Magistrate's inability to say whether Defendant held the land as his own property or as head of his family or clan may leave the Defendant in an unsatisfactory position, but this is no concern of the Plaintiff.

The Appeal is dismissed with costs to be taxed.

I assess Counsel's fees at £15.15/-.

Sgd. A.C. Smith,
JUDGE.

"A"

10

This is the document referred
to and marked Exhibit "A" in
re Yawo Duedu vs: Evi Yiboe

Dafo Kpandu
August th 1938

Mr. Dufa,
Akloba (Nkunya).

W A R N I N G

Sir,

I have learned from reliable source, and went to see myself that you are working for your own benefit, without receiving due permission from me, in that piece of land situate lying and being along River Volta, extending from the village Sakada, through Asusoe Togoe to Mango Kofe (opposite to Atakuase on the other bank of the River Volta). This land is my property and I have the right to ask you to stop doing any kind of work there as from the 15th day of August, 1938.

20

Any sign that shall show me of your occupying that piece of land beyond the 15th instant shall be taken as an evidence for "Trespass".

30

Please take this as a warning, and a final one to withdraw from the land, yourself, anything belonging to you and your people (if any).

I beg to be, Sir,

Yours truly,

Sgd. Emmanuel C.F. Zeytopowh.

EXHIBIT "B"

This is the evidence put in evidence
and marked "B" by Defendant in re
Yawo Duedu vs. Evi Yiboe.

In the Magistrate's Court of the Gold Coast,
Eastern Province, held at Kpandu, on Thursday,
the 22nd day of May, 1941, before His Worship
J.B. Hooper, Esquire, Magistrate.

Yawo Duedu, Sub-Chief
of Nkonya Akloba Plaintiff

versus

Evi Yiboe of Nkonya Akloba Defendant.

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40

FIRST WITNESS FOR THE DEFENDANT:

KWEKU SIBRI: S.A.R.B.

Adontenhene of Nkonya living at Kadjebi. About
60 years ago, I accompanied my father Sibri to Abu-
lam and my father asked him to give him a piece of
Sakada land. Abulam asked him to produce palm wine
offered prayers and gave him the land. We stayed
for 8 years and returned to our town. We never
went back again. No one came to stop me working
on the land.

BY DEFENDANT:

The Nkonyas have four clans in each town. Each
clan has a head and owns land. The head of a clan
can allow a man to sell the portion on which he is
working. Since cocoa came you can sell land to
strangers. Any order made must be made after cal-
ling the heads of clans and discussing the matter
with the people. Since cocoa came land has been
given on Abusa. Land can be pledged. From time
immemorial you can sell palm trees or silk cotton
trees on your land. You cannot sell land which
does not belong to you. Where there is a document
about sale of land the Chief signs the document as
a witness, and he is given drink for that.

XXD. BY PLAINTIFF:

Plaintiff is Chief of Akloba. I stayed on
Sakada land 60 years ago, I have stayed on no other
Akloba land. I don't know the conditions of owner-
ship of Akloba land. My father merely asked a land

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owner, who gave permission to work on his land. No land was sold and no one worked on the Abusa system. There was a Chief in Akloba, and Abulam was a subject of the Chief, but we never asked his permission to work on the land. This Chief was over the four clans. Every clan has its own land but the clans are subjects to the Chief. If a stranger comes to stay with a subject, it is the custom for the subject to introduce the stranger to the Chief. If a stranger works on the land without the knowledge of Chief and the Chief finds out, he cannot turn the stranger out but only ask why he was not told.

10

Yes, Defendant sent you a letter through me some five months ago. I returned the letter saying I had never heard of such an order, and not made such an order myself. I endorsed the letter myself. The letter told of an order preventing the use of land from Ologloto to Sakada for 8 years.

XXD. BY COURT:-

20

In my country, anyone has the right to sell land. He can sell it without document if he wishes otherwise, if there's a document the Chief must witness the signature. I have control as Adontenhene only over that land which belongs to my clan. The Divisional Chief has no control over my land at all. Even before cocoa came land was sold, but there were no documents then. In those days nobody informed the Chief at all. This was the custom in the Adonten Division. I am next to the Head Chief and all divisions had the same custom. I don't know Akloba custom, because when I was there, there were no boundaries.

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EXHIBIT "C"

This is the evidence tendered in evidence
and marked Exhibit "C" in re Yawo Duedu
vs: Evi Yiboe.

SECOND WITNESS FOR THE DEFENDANT.

OKYEAME (LINGUIST) KOFI KOKOROKO: S.A.R.B.

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I am Plaintiff's linguist from Akloba. I have boundary with Defendant from an ant-hill to a place called Gbedumede where there is a rock and small stream. This land is to the East of Defendant's.

Exhibits

"C"

Appeal Record
in Suit No.
44/1944 from
Magistrate's
Court to Land
Court,

17th July 1944
to

19th May 1950

- continued.

I have boundary to the South with the Plaintiff and another near the Plaintiff's with Kwasi Bote. The latter encroached on my land. The case came before the Plaintiff and Ogbi Tete told that his grandfather's said he owned the land. 12/- and a live sheep was produced and the matter was settled in our favour. My father KUBE approached Abulam and asked him for permission to stay on Sakada land. Abulam agreed and we went to stay on Sakada land. Yao Saka otherwise Atewu was on the land. We stayed there for four years and then came back. A case between Kwasi Bote and Sakada Komla was brought before the Plaintiff. I was ordered by Plaintiff to view the land and the case was decided against Sakada Komla who had encroached on Kwasi Bote's land. It was agreed that Sakada Komla should pay tribute annually. There was a dispute between Yao Kuma and Ogbi Kofi. I as Plaintiff's linguist was sent to view the land. As a result it was decided judgment should be against Yao Kuma. Ogbi was told to show the proper boundary. A market was established at Sakada. I was sent to the opening by the Plaintiff. In accordance with the custom Sakada Komla was asked to provide a live sheep and Sakada Komla's son paid the 6/- demanded. This I reported to the Plaintiff. I offered the prayers that day. I asked Sakada Komla to produce the live sheep and the 6/- because he was the landowner. I am head of the Bame clan. The Chief cannot sell my clan's land. If I've inherited from my ancestors, I can pledge that land. I can sell this land to a stranger and after the money has been paid inform the Chief. I remember Defendant selling some land to get money for a dispute with Aggrey. The land from Ologloto to Sakada all belongs to Obianye.

XXD. BY DEFENDANT:

I am linguist to the Chief of Akloba. Every clan in Akloba has its own clan land. I know the Demitenten land; my predecessors had land there. Tenne-eye land was farmed by my predecessors. The Defendants also farmed there and Plaintiffs and Defendant also farmed on the Ologloto land. Obianye made farms at Sakada. Adzible's land is between Ologloto and the Volta. Owusie's land is near Sakada and was given him after a dispute with Bansa of Kpandu Dafo. The people belong to Defendant's clan. Ndani Yao is my son he stayed at Sakada. Yao Kuma is also my son. Opokuma has made farms on Ologloto land. He is of Plaintiff's clan. Siende

Exhibits

"C"

Appeal Record
in Suit No.
44/1944 from
Magistrate's
Court to Land
Court,

17th July 1944
to
19th May 1950

- continued.

of Ososo clan, Krampa of Ososo clan farmed on Ologloto land. Edika Teteh is the brother of Siende and works on the Ologloto land. Atu Yao of the Plaintiff's clan farmed on the land at the same time of Ndani Yao. I've never sold any clan land. I do not need to. If I needed money I'd sell the land and then inform you. If I owe money to a Kpandu man, and pay I inform the Chief. If I don't report the Chief can enquire why I didn't do so. Every clan has got its lands, we only serve a Chief. I bought some land at Dapa. One Tawia sold it to me. This was in Buem State, at Ahamansu. I heard Defendant was selling lands and Plaintiff sent him a letter. The purchaser of land mentioned in Exhibit "B" paid 30/- for the Chief's signature. It is only when the sale of the land is complete that documents are made I remember Plaintiff caused gong-gong to be beaten and the order was made. I don't remember a list of lands sold being given by Plaintiff to Defendant, other Defendants protesting. Yes, all the Akloba lands are under the Chief, but each man has his own property.

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XD. BY COURT:-

There is no common land I know of.

All the land belongs to someone.

When someone in the clan wishes to sell land he consults me, because I am head of the land.

After the land is sold the Chief is informed.

EXHIBIT "D"

This is the Statement tendered in evidence
by Defendant in re Yawo Duedu vs: Evi Yiboe
and marked Exhibit "D".

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SIXTH WITNESS FOR THE DEFENDANT:

KWAMI AKOA, S.A.R.B.

sic I live at Nkonya Ahenkro and am a farmer. About 60 years ago I came to cut a silk cotton tree on Yao Bi's land to make a canoe from this tree. I didn't make one for the tree was taken away by Yao Bi, because he said the land on which the tree was belonged to him. So I went away and left it.

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XXD. BY PLAINTIFF:

The land was on Chief's. It belonged to Yao Bi - a native of Akloba. I know there was a Chief of Akloba at the time.

"B" - WEST AFRICAN COURT OF APPEAL JUDGMENT,
YAW DUEDU vs: EVI YIBOE.

Exhibits

"B"

WEST AFRICAN COURT OF APPEAL
 General sitting held at
 Accra, 7th March, 1952.

West African
 Court of
 Appeal
 Judgment,
 Yaw Duedu vs:
 Evi Yiboe,
 7th March
 1952.

Cor: Foster-Sutton, P., Coussey, J.A. & Korsah, J.

Civil Appeal No. 54/50.

Yaw Duedu, Sub-Chief of
 Nkonya Akloba,

Plaintiff-Appellant-
 Appellant

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versus

Evi Yiboe of Nkonya
 Akloba,

Defendant-Respondent-
 Respondent.

ORAL JUDGMENT.

FOSTER-SUTTON, P. The Plaintiff-Appellant in this case sued in his capacity as the sub-chief of Nkonya Akloba, and in his Writ of Summons he claimed the sum of £25 for the trespass alleged to have been committed by the Defendant on the land the subject matter in dispute.

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The acts of trespass complained of were, that he, defendant had caused a survey of the land to be made and, cement pillars, with his name inscribed thereon, to be erected on the land.

The action was tried in the Magistrate's Court at Kpandu in the Eastern Province.

30

The Magistrate found that the land specified by Plaintiff in his claim was not Akloba Stool land and that it belonged to "the Defendant either in his personal capacity or as head of his family or of the Amandja clan", and he dismissed the Plaintiff's claim. At the same time he revoked an Interim Injunction which had previously been granted at the instance of the Plaintiff pending a decision on the claim.

An appeal to the Land Court by the Plaintiff was dismissed by Smith, J., who held that the "Magistrate's findings were perfectly clear and amply supported by the evidence". The present appeal is

Exhibits

"B"

West African
Court of
Appeal
Judgment,
Yaw Duedu vs:
Evi Yiboe,

7th March
1952. -

continued.

against that judgment. On behalf of the Appellant it has been submitted, inter alia, that a Writ of Summons in an action of this kind should not be read too strictly, and that it is obvious from the Plaintiff's case in the trial Court that the real issue between the parties was the question whether the Defendant held the land under the Stool or whether it was his personal property in which the Stool had no interest.

Counsel for the Appellant submitted that, apart from the acts complained of in the Writ of Summons, the Plaintiff has at no time questioned the Defendant's right to occupy and use the land in question and that it is clear that the Magistrate misdirected himself as to the real issue in the case because he based his decision on evidence relating to the Defendant's occupation and user of the land over a period of years, in respect of which no complaint had been made by the Plaintiff. For these reasons he asked that the case be sent back for a new trial. 10 20

Counsel for the Respondent submitted that the Appellant put his case much lower in this Court than he did in the trial before the Magistrate. He pointed out that the Plaintiff had sued for damages for trespass, not for a declaration of the title of the Stool, and that he had asked for, and obtained, an Interim Injunction restraining the Defendant from "entering any part of the land in dispute for the purpose of doing any work thereon" pending the hearing and determination of the case. 30

Respondent's Counsel did not dispute the submission of Counsel for the Appellant that in cases such as this the Court should not be too strict in regard to matters of procedure and that the object of such a trial is that the real dispute between the parties should be adjudicated upon. He conceded that the principle contended for has been affirmed by decisions of this Court, but he submitted that in considering the real nature of the claim regard must be had to all relevant facts, and that upon a careful analysis of the evidence it is clear that the Plaintiff was endeavouring to establish a right to possession of the land in question, on behalf of the Stool, inimical to the Defendant's possession and user of such land. In other words that the evidence led on behalf of the Plaintiff was designed to support his claim for trespass, not a claim to establish any overall right of the Stool, and that 40

the real issue between the parties before the Magistrate was "who is entitled to possession of the land."

Upon that basis he submitted that the Appellant had failed to discharge the onus which was upon him, and that the Magistrate was right in rejecting his claim for damages for trespass.

10 During the course of the Defendant's evidence he testified that "In 1941 I was called by Plaintiff with other clans of Akloba. Plaintiff said that he has prohibited use of the Logloto to Sakada land to anyone else. I told him I could not comply with his prohibition for there I lived with my children." The land referred to is that in dispute in this case, and the allegation was not challenged by cross-examination. It was after this incident that the Plaintiff brought his unsuccessful proceedings against the Defendant, referred to in the evidence of Nicholas Duedu, the first witness called on behalf of the Plaintiff in the case now before us. 20 Moreover it seems clear from the cross-examination of the 4th witness for the Defendant, when he was recalled, at page 21 of the record, that the Plaintiff was claiming an absolute right to the market situated on the land in dispute.

30 There is other evidence, particularly that of Kwesi Kokwati, Stool Father of Nkonya Ahenkro; the 5th witness called on behalf of the Plaintiff, which seems to me to support the proposition that the issue on which the case was fought before the Magistrate was that contended for by the Respondent's Counsel.

The evidence as a whole, however, coupled with the wording of the claim and the Plaintiff's attempt in 1941 to dispossess the Defendant, leaves me in no doubt that the issue before the Magistrate was as submitted by Respondent's Counsel.

40 I am also of the opinion that the Plaintiff failed to discharge the onus of proof which was clearly upon him.

For the foregoing reasons I would dismiss this appeal with costs fixed at £20: 16: Od, but as the Defendant did not counter-claim for a declaration of title that portion of the Magistrate's judgment which reads:

Exhibits

"B"

West African
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continued.

Exhibits

"B"

West African
Court of
Appeal
Judgment,
Yaw Duedu vs:
Evi Yiboe,
7th March
1952 -
continued.

"I can therefore only conclude that the land specified by Plaintiff in his claim is not Akloba Stool land but belongs to the Defendant either in his personal capacity or as head of his family or of the Amandja clan",

should not, in my opinion, be regarded as one.

COUSSEY, J.A.: I concur.

KORSAH, J. : I concur.
