Privy Council Appeal No. 23 *of* 1934

James Jackson, substituted for Chief Kwamina Sakyiama - *Appellant*

v.

J. M. Cooke - - - - - - - - - - - *Respondent*

FROM

THE WEST AFRICAN COURT OF APPEAL

REASONS FOR JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 26TH OCTOBER, 1936.

Present at the Hearing:

LORD MAUGHAM.
LORD SALVESEN.
SIR LANCELOT SANDERSON.

[*Delivered by* LORD MAUGHAM.]

This is an appeal from the decision of the West African Court of Appeal pronounced on the 9th May, 1933, deciding that the action, which had been commenced in a Native Tribunal, was not properly before such tribunal and that its judgment and all subsequent proceedings amounted to a nullity but awarding the respondent costs on appeal and in the Courts below. The proceedings were begun by writ of summons dated the 30th January, 1931, in the Native Tribunal of Cape Coast by the appellant as plaintiff against the respondent as defendant and according to the appellant the substantial question was whether the land, the subject of such action, was the property of the family of the plaintiff or the family of the defendant. The writ, however, called upon the defendant to establish his claim to the land.

The Native Tribunal having given judgment on the 31st October, 1931, in favour of the appellant (plaintiff) with costs, the respondent (defendant) appealed to the Provincial Commissioner's Court of the Central Province. The Provincial Commissioner, on the 22nd August, 1932, gave judgment, reversing the decision of the Native Tribunal, in favour of the respondent with costs. From the judgment of the Provincial Commissioner's Court the appellant appealed to the West African Court of Appeal and the appeal came up for hearing before that Court on the 4th May, 1933.

On the 9th May, 1933, after Counsel for the appellant had addressed the Court at length, it transpired that in 1926 the Colonial Secretary of the Colony had issued a notice under the Public Lands Ordinance, 1876 (now Cap. 142 of the Laws of the Gold Coast Colony) to the effect that the land, the subject of the action, was required for the use of the public

service. What happened then is shown by the following note of the President of the Court :—

> " Both Counsel agree that when this suit was instituted, proceedings under the Lands Ordinance in which the defendant Cooke was a claimant, were pending in the Divisional Court at Cape Coast, and had not yet been determined, and are not yet determined.
>
> Both Counsel agree that under section 7 of the Public Lands Ordinance, writ of summons could not have been instituted in the Native Tribunal until the proceedings under the Public Lands Ordinance had been terminated.
>
> The Court adjourns for ten minutes.
>
> On resumption, the Court delivers the following ruling :—
>
> By The Court.
>
> Counsel for each side having admitted to the Court that at the time when the writ of summons in respect of which this appeal has been taken, was instituted in the Native Tribunal, proceedings were then pending in the Divisional Court of Cape Coast under section 7 of the Public Lands Ordinance (Cap. 142) as amended by section 2 of Ordinance 17 of 1929 in which the present defendant was a claimant to the identical land described in the writ of summons, it is clear that under the provisions of the latter section, such an action could not be instituted until after the proceedings before the Divisional Court had been terminated.
>
> The action was therefore not properly before the Native Tribunal and any judgment upon such an action was a nullity and all the subsequent proceedings thereon amounted to a nullity.
>
> We consider that the respondent (Cooke) should have his costs, not only in this Court, but in the Courts below.
>
> The costs in this Court are assessed at the sum of £33 8s. 6d.
>
> The Court below to carry out."

From this decision the appellant has brought the present appeal. He has appeared by counsel to argue that notwithstanding the agreement by his counsel before the Court of Appeal that under section 7 of the Public Lands Ordinance the action could not properly have been instituted in the Native Tribunal until the proceedings under the Public Lands Ordinance had been terminated, it was open to him to contend that both the admission and the finding by the Court of Appeal were erroneous and that the appeal should have been decided on the merits. The respondent did not appear on this appeal and their Lordships have not had the advantage of hearing an argument on his behalf.

Their Lordships were not of opinion that the judgment appealed from could be regarded in strictness as a consent judgment. The decision on the construction of the Ordinance appears to be one for which the Court took at least some responsibility, and this is not the less true because the admission of counsel for the appellant seemed to justify the view expressed by the Court. In these circumstances it seemed to their Lordships desirable to hear the question of construction argued by counsel for the appellant.

At the close of this argument it seemed clear to their Lordships on a consideration of the Ordinance as a whole and in particular of sections 6 and 7 that, after notice had

been given by the Colonial Secretary of the proposed acquisition of the lands in question as lands required for the service of the Colony, the Divisional Court of the Gold Coast was the proper tribunal to determine the amount of compensation due in respect of the lands and also any case of disputed interest in or title to the lands. Under section 7 this determination (subject to appeal) is to be final and conclusive as respects all persons upon whom notices have been served or who have appeared and claimed. Payment of the compensation to the person appearing by the judgment of the Court to have the best right thereto is a complete discharge to the Colonial Secretary, " but shall not hinder any subsequent proceedings at the instance of any person having or alleging better right thereto as against the person to whom such payment may have been made." It is possible that these sections do not take away the right of the proper Native Tribunal to determine some temporary question of possession or receipt of rent or the like arising prior to the conveyance to the Colonial Secretary; but in the present case it is to be noted that the writ of summons sought to establish the title of the Anona family to the land and that although the endorsement on the writ itself stated that the defendant was " involved in litigation in the Divisional Court, Cape Coast, with the intent of alienating the said land to himself and the family he claims to represent and of divesting the said Anona family and their Stool of their rights in the said land." In their Lordships' view this question was within the jurisdiction of the Divisional Court by the express language of the Ordinance. To the knowledge of the appellant there was a proceeding pending before that Court relating to the matter. If the appellant for some reason was too late to make a claim before that Court he would still under the words quoted be entitled to make a claim against the person to whom the payment of the compensation may have been made. In these circumstances their Lordships think that the proceedings before the Native Tribunal were misconceived and could have served no useful purpose. It does not seem to their Lordships necessary to determine whether the Native Tribunal was entirely divested of jurisdiction in the matter by the proceedings in the Divisional Court since on any view the proceedings in the Native Tribunal should have been stayed and the judgment of that tribunal if not a nullity must have been set aside. Their Lordships do not think they are called upon in the present case to consider the precise form of the judgment under appeal since they are satisfied that in substance it is correct.

As regards the costs awarded to the respondent by the judgment it seems to their Lordships sufficient to say that the costs were in the discretion of the Court of Appeal and their Lordships do not consider that there is any special circumstance here which would justify an appeal to His Majesty in Council in respect of costs alone.

Their Lordships have therefore humbly advised His Majesty that this appeal should be dismissed.

(38937—2) Wt. 8136—2 90 11/36 P. St. G. 338

In the Privy Council

JAMES JACKSON, SUBSTITUTED FOR CHIEF KWAMINA SAKYIAMA

v.

J. M. COOK

DELIVERED BY LORD MAUGHAM

Printed by HIS MAJESTY'S STATIONERY OFFICE PRESS,
Pocock Street, S.E.1.

1936