

Nkwantahene Nana Kwame Boakye Tromu II. - - *Appellant*

v.

Bechemhene Nana Fosu Gyeabuor II. - - - *Respondent*

FROM

THE WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 5TH JULY, 1948

Present at the Hearing:

LORD SIMONDS

LORD MACDERMOTT

SIR MADHAVAN NAIR

[*Delivered by* LORD MACDERMOTT]

The matter for determination in this appeal is the ownership of a tract of land in the Crown Colony of Ashanti which is claimed by the plaintiff and appellant on behalf of the Stool of Nkwanta and by the defendant and respondent on behalf of the Stool of Bechem. The parcel in dispute is shown edged in yellow on the map prepared by Mr. Ernest S. S. Wood, a licensed surveyor, which is exhibit "B1". Its boundary on the south-east is portion of a river line which traverses the district and flows from north-east to south-west. Going down-stream this line is formed as follows: the Buakukruwa (Obukruwa) to where it joins the Adrenko (Adingkra), the Adrenko to where it joins the Bua (Boa), the Bua to where it joins the Kwaso (Kosu) and then the Kwaso. Above the confluence of the Bua and the Kwaso (hereinafter called the river junction) this line crosses the Kumasi road. The south-eastern boundary of the parcel in question starts at or near the river junction and runs down-stream along the course of the Kwaso. The parcel thus lies on the right or north-west bank of the Kwaso. Its north-east boundary runs north-west from the river junction and does not follow any natural feature. The boundaries on the north-west and south-west follow an irregular course which eventually reaches the Kwaso again near the south-western corner of the parcel.

Above the river junction the river line just described forms the boundary between the Nkwanta land to the north-west of it and the Bechem land to the south-east. That was determined in 1913 in the course of an earlier dispute between the parties. The present controversy turns on whether the river line below the river junction (that is to say the Kwaso from its confluence with the Bua) is also the boundary between the rival claimants. The appellant says that it is. The respondent, on the other hand, contends that this part of the river line flows through the Bechem land with the area in dispute on one side and the remainder of the Bechem territory on the other.

~~The earlier dispute to which reference has just been made was settled by an agreement in writing made by the representatives of both Stools on the 22nd May, 1913, before District Commissioner A. W. Norris. The~~

material portions of this document, which will be spoken of as the 1913 agreement, read as follows:—

“ 1. The boundary between Bechem and Nkwanta to be the thalweg of the Obukruwa-su to where it joins the Adinkra-su thence to the Boa-su following the thalweg of the Boa to the point where the Kosu joins it.

Bechem people to have full use of all farms and hunting Huts at present used by them on Nkwanta land without tribute from any rubber or cocoa grown or manufactured on that land.

2. The only claim Nkwanta reserves is—if any gold or other mineral is found thereon, or a concession of any sort granted.”

It would appear that this settlement was reached after the dispute had been investigated by District Commissioner T. E. Fell and his note, dated the 17th April 1913, of the parties' statements was put in evidence as an annexure to the 1913 agreement. No objection was taken to the admissibility of this note which runs thus:—

<p>“ Chief of Nkwanta vers. Chief of Bechem</p>	}	<p>Claims land from where Obuokrukrua River crosses the Kumasi Road till it joins the Kosu River.</p>
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NKWANTA—Obuokrukrua river after crossing the road flows to Adinkra River, then flows to Boa river and then to Kosu river. The land on the right bank is mine given by the Chief Commissioner in 1906. The Boa river joins the Kosu river near to Kosu village. There are three camps on this land:—They are called Adesua, Yao Kokwa Esuboi, Anwiafutu.

The last camp was made by Kosu people—long ago—before the rubber trade.

They are Bechem people and made the camp for hunting. I take the leg of the game.

When the Rubber came I did not claim rubber tribute from them. The dispute started with the building of Yao Anto's village. He took plantain trees to plant at his village and Bechem people threw them away.

It was just a few trees near a camp.

Only one camp was occupied by Bechem people. It was on account of this I began to take tribute on rubber.

I always took tribute on game.

In the olden days of the Kings of Coomasie Kosu was my boundary—Ancestral Boundary.

So far as Bechem acknowledge this land in [*sic*] mine they can stay there.

CHIEF OF BECHEM.

In the Ashanti days we met road cleaning at Obuokrukruwa River. This was made the Boundary by the Chief Commissioner. We have a boundary with Bomaa, a stream named Grunyah. It runs into Kosu River near Bosankro.

The Chief of Nkwanta has also a part there. We have no settled boundary with Nkwanta in the bush. A camp Acheremosu was built by my grandfather who has a hunter—near Josu River. No tribute has been paid from it. Now Nkwanta has been claiming it.

Adjourned for inspection of land.”

Their Lordships were informed in the course of the hearing that the 1913 agreement, without the annexure of the 17th April, was officially recorded as an executive decision in a volume known as a “ Boundary Book ” for the purposes of the Boundary, Land, Tribute and Fishery Disputes (Executive Decisions Validation) Ordinance enacted by the Governor of the Gold Coast in 1929 (1936 Revision Cap. 120), and it was conceded that in consequence the 1913 agreement had, by virtue of

section 3 (1) of the Ordinance, become "invested with full and definite legal force and effect for all purposes whatsoever as against all persons whomsoever the rights of the Crown alone being reserved."

In the long course of the litigation arising from the present dispute the parties have already appeared before four courts. It is, however, unnecessary for the purposes of this judgment to give more than a brief summary of the proceedings. By a civil summons dated the 19th August, 1937, the appellant's predecessor, as plaintiff, brought the respondent before the Asantehene "B" Court to show cause why he had started farming on the Nkwanta-Kwasu land without permission and why he had prohibited the plaintiff's tenants from farming thereon. Witnesses were called by both sides and the plaintiff put in evidence the 1913 agreement and the annexed note of District Commissioner Fell. The Court then deputed five messengers to view the land and report. After they had reported in favour of the respondent the Court, on the 28th November, 1938, held that the parcel did not belong to the plaintiff and gave judgment against him. From the terms of its judgment it appears that this Court read the 1913 agreement as not relating to the area below the river junction. On appeal to the Asantehene "A" Court further evidence was heard and messengers were again appointed to inspect the locus. They having failed to agree in their findings, the Court sent Mr. Ernest S. S. Wood to survey the land and prepare a map. This is the exhibit "B1" already mentioned. On the 19th August, 1940, the "A" Court delivered judgment allowing the appeal. The present respondent then appealed to the Court of the Chief Commissioner who, on the 5th October, 1940, dismissed his appeal.

It is apparent from the judgments of the "A" Court and the Chief Commissioner that they both regarded the 1913 agreement as extending to the area below the river junction so as to embrace the parcel now in dispute and that they were influenced in reaching this conclusion by the terms of District Commissioner Fell's note. The present respondent next appealed to the West African Court of Appeal. On the 3rd June, 1941, it gave judgment in his favour, holding that the 1913 agreement did not rule the dispute and that on the other evidence there was ample material to justify the finding of the "B" Court. Its judgment was therefore restored with the addition of a declaration that the land in dispute was as shown in Mr. Wood's map, exhibit "B1". It is from this decision that the Nkwantahene now appeals.

A procedural point taken on behalf of the appellant may conveniently be disposed of first. It was to the effect that the messengers appointed by the "B" Court had gone beyond their province by examining witnesses instead of confining themselves to a scrutiny of the locus and the results of their own observation and that this vitiated the judgment which was founded in part upon their report. In their Lordships' opinion this contention is ill-founded. The messengers appear to have discharged their task in a reasonable manner. The parties were present during the investigation and the plaintiff not only co-operated with the messengers in their activities but refrained from objection or complaint of any kind when their report was submitted to the Court.

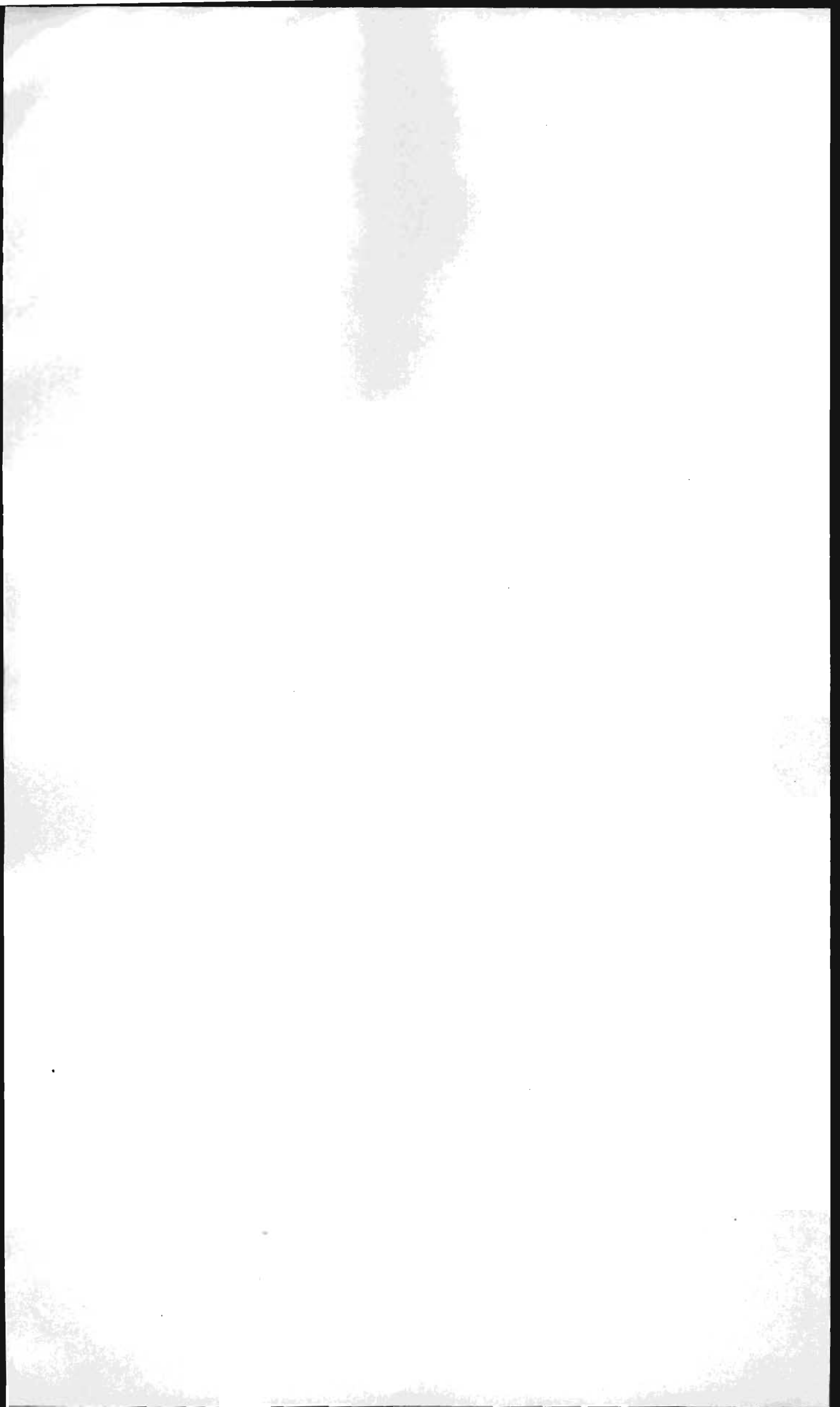
It is clear that if the 1913 agreement be left out of account the other evidence is amply sufficient to support the conclusions of the "B" Court and the Court of Appeal; and it is equally clear that if the 1913 agreement fixed a boundary for the parcel now in dispute the other evidence cannot prevail against it and the decisions of the "A" Court and the Chief Commissioner must stand. The appeal therefore hinges on the meaning of the 1913 agreement. Two submissions were advanced on behalf of the appellant in this connection. First of all it was said that on the true construction of the 1913 agreement the boundary therein described did not stop at the river junction but continued below it along the line of the Kwaso and so along the border of the parcel in question. Secondly, and in the alternative, it was contended that a doubt or question arose as to the correct interpretation of the 1913 agreement and that in conse-

quence of this and of the provisions of section 3 (3) of the Ordinance of 1929 the "B" Court, being a Native Court, lacked jurisdiction to fix the boundary and thus determine the dispute.

In the opinion of their Lordships the first sentence of paragraph (1) of the 1913 agreement describes a boundary in terms which leave no room for doubt as to its down-stream terminus. The boundary is to be the thalweg, or middle line, of the rivers named "to the point where" the Kwaso or Kosu joins the Bua or Boa. There is nothing ambiguous about that and if this part of paragraph (1) stood alone the boundary so described would plainly stop short of the parcel in dispute. It was urged, however, that the second part of paragraph (1) justified a construction favourable to the appellant as the provision thereby made for the benefit of Bechem people using farms and hunting huts on Nkwanta land could only be explained on the basis that the boundary fixed bordered the land which is now in dispute and on which, admittedly, some of the Bechem people have settled. Their Lordships are unable to attach any weight to this argument which is quite inconclusive. The provision in question is not inconsistent with the natural meaning of the earlier part of paragraph (1) and, on the evidence, it may well have been directed to a state of affairs existing in 1913 in respect of an area quite distinct from the parcel with which this appeal is concerned. The appellant also relied upon the annexure to the 1913 agreement as supporting his interpretation. It was contended that District Commissioner Fell's notes of the statements of the parties showed that in 1913 each was laying claim to an area which included the subject of the present suit and that it should therefore be inferred that the boundary then fixed was intended to settle the whole matter in dispute at that time and so could not be taken as ending at the river junction. Their Lordships do not wish to be regarded as laying down or recognising any general rule to the effect that an annexure of this kind can be examined for the purpose of determining the meaning of a separate and subsequent document which is not in itself ambiguous. But as no question of admissibility has been raised before the Board and as the annexure was undoubtedly considered by the Courts in Africa their Lordships will proceed on the assumption that its terms may be canvassed for the purpose of ascertaining the scope of the 1913 dispute. When this is done, however, the result does not advance the appellant's case. The heading of the note—"Claims land from where Obuokruksua River crosses the Kumasi Road till it joins the Kosu River"—supports the interpretation favoured by the respondent and there is nothing in what follows to lead to a different conclusion. It indeed seems likely—so far as the localities and rivers mentioned can be identified—that the statement of each Chief, as recorded in the annexure, referred to parts of what is now the area claimed. But in the circumstances that does not appear to their Lordships to be a factor of any great significance. The personal statements of litigants are seldom confined to the precise subject matter in dispute and claims are often buttressed or adorned by a recital of extraneous matter. Their Lordships, therefore, consider that on its true construction the 1913 agreement did not apply to or fix any boundary in respect of the parcel in question.

The second point taken by the appellant may be dealt with shortly and without any detailed consideration of the somewhat difficult terms of section 3 (3) of the Ordinance. That sub-section cannot apply unless some real doubt or question arises as to the interpretation or application of the document recorded in the Boundary Book. In the present case the document is the 1913 agreement without more and for the reasons already stated their Lordships cannot regard it as raising any doubt or question of the kind mentioned.

Their Lordships are accordingly of opinion that the 1913 agreement does not rule the present dispute and that the decision of the "B" Court should not have been disturbed. They will, therefore, humbly advise His Majesty that the judgment of the West African Court of Appeal be affirmed and the appeal dismissed. The appellant will pay the costs of this appeal.



In the Privy Council

NKWANTAHENE NANA KWAME BOAKYE
TROMU II.

2.

BECHEMENE NANA FOSU
GYEABUOR II.

[DELIVERED BY LORD MACDERMOTT]

Printed by His Majesty's Stationery Office Press,
DRURY LANE, W.C.2.

1949