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INSTITUTE OF ADVANCED
LEGAL STUDIES

In the Privy Council.

30979

No. 64 of 1947.

ON APPEAL FROM THE WEST AFRICAN
COURT OF APPEAL
(GOLD COAST SESSION)

UNIVERSITY OF LONDON
W.C.I.
14 JUL 1953
INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN

NII ABOSSEY OKAI II and KORKOI ABOSSEY
(Defendants) APPELLANTS

AND

NII AYIKAI II, Manche of Akumajay (Plaintiff) RESPONDENT.

CASE FOR THE APPELLANTS

RECORD

1.—This is an Appeal from a Judgment of the West African Court of Appeal, dated the 15th June, 1946, which affirmed a Judgment of the Supreme Court of the Gold Coast, Divisional Court, Accra, dated the 27th September, 1945. p. 51 p. 42

2.—The Plaintiff obtained a Civil Summons on the 6th February, 1941, in the Tribunal of The Paramount Chief of the Ga State, Eastern Province, Gold Coast, against Nathaniel Tagoe and Korkoi Abossey claiming that as Mantse of Akumajay he was the owner of a piece of land at Accra known as Obete Kpakpo and asking for a declaration of title as against the Defendants who were claiming it. p. 1

Nathaniel Tagoe having died, an Order, dated the 4th March, 1944, substituted Nii Obose Okai II with one Ayi Tagoe as his guardian. p. 7, l. 20

3.—The case was transferred for hearing to the Divisional Court at Accra on the 28th August, 1943. p. 5, l. 14

4.—The material paragraphs of the Statement of Claim are as follows :—

(1) The Plaintiff is the Mantse of the Akumajay Division of Accra and as such represents the Stool and people of Akumajay, p. 7, l. 38

INSTITUTE OF ADVANCED
LEGAL STUDIES,
25, RUSSELL SQUARE,
LONDON,

RECORD

and the first Defendant is the successor by native custom of Nii Abose Okai I (deceased), and the second Defendant was a daughter of the said Nii Abose Okai I.

(2) The land known as "the Obete Kpakpo lands" is the property of the Akumajay Stool, it having been acquired by right of occupation and use in accordance with the principles of native custom.

The said land was first occupied by the ancestors of the Plaintiff about 200 (two hundred) years ago on their immigration to Accra from Ayawaso and the said land has since been in the occupation and undisturbed possession of the said Akumajay Stool. 10

(3) Nii Abose Okai I, an elder of the Akumajay Stool, was, in his lifetime, a caretaker of the properties of the Akumajay Stool and people and as such caretaker had control of the said "Obete Kpakpo lands."

(4) The said Nii Abose Okai I in his lifetime, always declared himself a caretaker of the said "Obete Kpakpo lands" for the Akumajay Stool and never at any time claimed the said land to be his individual property, and in all matters affecting "the Obete Kpakpo lands" he acted for and on behalf of the Akumajay Stool. 20

(6) The land known as "The Obete Kpakpo lands" referred to above is:—

All that piece or parcel of land situate in Accra and bounded on the north by Gong Kpata (Kpata Hill), on the south by Korle Webii lands, on the east by Ablekuma Road (now the Wiegyan railway line) and on the west by Oblogo Road.

5.—The material paragraphs of the Statement of Defence are as follows:— 30

p. 8, l. 38

(2) The Defendants say that the land in dispute is the property of Na Adawede family, a distinct branch of the Akumaje Stool family of which the present head is the first Defendant, Nii Obose Okai II, and not the property of the Akumaje Stool.

(3) The said land in dispute originally belonged to the Obutu Stool, which granted it by way of gift to the said Na Adawede, grand-daughter of the then Mantse of Obutu, upon her marriage with Nii Ayikai I, the then Mantse of Akumaje.

(4) The said grant was made about 250 years ago to the said Na Adawede and her heirs being issues of her body. 40

(5) At the time of the said grant to the said Na Adawede, the Akumaje Mantse, Nii Ayikai I, and his people were settled at Ayawaso.

(6) The Defendants are direct descendants of Na Adawede, and they and their predecessors in title being direct descendants of Na Adawede, and known as the Na Adawede family, have been in undisturbed possession and occupation of the land, the subject matter of this suit, for the said period of about 250 years, and they have dwelling houses and farms thereon.

(7) The said Akumaje Stool has never been in occupation or possession of the said Obete Kpakpo lands, the subject matter of this suit.

10 (8) The said Na Adawede family have always exercised acts of ownership over the land, the subject matter of the suit, by sales, gifts, leases, and licences to persons who paid tolls to the head of the said family for the use and occupation of plots allotted to them.

(9) The Defendants deny that Nii Abose Okai I did, at any time, act as caretaker of the said lands for the Akumaje Stool, and neither the said Nii Abose Okai I nor any other head of the said Na Adawede family did at any time account to the Akumaje Stool for tolls collected or other profits accruing from the said lands.

20 (10) The said Nii Abose Okai I, from about the year 1918 until his death, and whilst head of the said Na Adawede family, acted as Akumaje Mantse, but this property of his family did not become Akumaje Stool property by reason of his having held such acting position.

6.—On the 9th August, 1944, the Court ordered a plan to be made p. 10, l. 15 of the land in dispute.

It also granted an interim injunction against both Defendants with the proviso that the injunction would not apply to applications for land p. 11, l. 6 made by the Government for acquisitions for sanitary or other purposes of benefit to the general community.

30 7.—On the 28th October, 1944, one Sarah Addo was ordered to be p. 14, l. 21 joined as co-Defendant, but on the 12th September, 1945, there was an p. 38, l. 41 Order by which she was struck off as co-Defendant.

8.—Kru Tei, first witness for the Plaintiff, said that he was a son of p. 19, l. 8 Abose Okai I ; that his father died about 1930 ; that the village of Abose p. 19, l. 10 Okai is another name for the land in issue ; that his father told him that p. 19, l. 13 the land belonged to the Akumajay Stool ; that his father on the death of an uncle looked after the property and held the Stool keys ; that his father told him that he was a direct descendant of Adawude ; that the p. 19, l. 32 present Mantse after being on the Stool for a short time, went away for about 15 years and returned to be enstooled for a second time ; that his p. 19, l. 44 grand-uncle, Nii Badu, had been caretaker ; that in the long history of Akumajay, Ayikai I and Ayikai II had been the only two Mantses ; that

- p. 20, l. 6 on the death of his father Nathaniel Tagoe took charge of the lands ; that Nathaniel Tagoe, Nii Akrong, and he himself, were direct descendants of Adawude who came from Obutu ; that the name of the land is literally
- p. 20, l. 39 "vultures" Pool ; that the caretakers were descendants of Adawude ; that the Mantse is taken from his family ; that the land belongs to the
- p. 21, l. 17 descendants of Nii Ayikai and Adawude ; that the present head of the family is Nii Akrong who looks after the stool lands and holds the stool keys ; that J. D. Tetteh Annan, Robert Cobbin Abose, Korkoi Abose, Tetteh Abose, and Nii Amah Tagoe (whose names appear in the deeds) are
- p. 21, l. 25 direct descendants of Adawude ; that he had heard that the Plaintiff is descended from Odey, sister of Nii Ayikai I. 10
- p. 22, l. 20 The Plaintiff, in his evidence, said that he became Mantse in 1914 ; that he abdicated in 1925 and was re-instated in 1940 ; that he learned about the traditions of the Stool when he was installed ; that in addition
- p. 23, l. 2 to the lands in issue Kwashiman, Nsakiman, Anyaa, Manhean, Ayikai Doblo, Okushibiade and Akrama-man lands belong to the Stool ; that
- p. 23, l. 9 Nii Ayikai I married Adawude from Obutu whose descendants are still
- p. 23, l. 32 alive ; that on the female side he was descended from Odey, sister of
- p. 24, l. 7 Ayikai I ; and that Adawude was the daughter of the Mantse of Obutu.
- p. 23, l. 20
- pp. 86, 115, He made reference to Exhibits " A," " B," " C " and " D." 20
- 116, 117
- p. 25, l. 5 Robert Coppin Abose, 2nd witness for the Plaintiff, said that the
- pp. 104, 110 late Nii Abose Okai was his father's elder brother ; that he was a witness to Exhibits " E " and " F " ; and that the descendants of Adawude have no Stool apart from the Akumajay Stool.
- p. 26, l. 31 Boi Maclean, 3rd witness for the Plaintiff, said that he was descended from Nii Ayikai I, but not in the Adawude line, and that he knew people who farmed on the land and who did not belong to the Adawude family.
- p. 107 Jacob Okai Thompson, 4th witness for the Plaintiff, produced a copy of the deed of covenant, dated the 25th August, 1936, which was Exhibit " G." 30
- p. 27, l. 30 Okorli Mensah, 5th witness for the Plaintiff said that he was an attendant of the Plaintiff and that the land in issue stops at Gon-Kpataa,
- p. 28, l. 1 but that Akumajay land stretched beyond it for a long way.
- pp. 96, 72, Kojo Fio Quartey, 6th witness for the Plaintiff, dealt with Exhibits
- 68 " H," " J," " K."
- p. 28, l. 30 Ayi Laryea, 7th witness for the Plaintiff, said he had farmed for six years on the land in issue and had not heard of the Na Adawude family to which he did not belong.
- p. 29, l. 23 The Plaintiff, on being recalled, said that with reference to Exhibit " D." he first knew of it when it was published ; that with reference to
- p. 117 Exhibit " C," he could not remember if Nii Akrong was present at
- p. 116 a meeting of the elders or whether he had asked him about the land at the time ; that he was the next chief after Ayikai I ; and that when he was installed, Abose Okai had put forward as candidate Tete Annan (a member of the Na Adawude family).

9.—Nii Akrong, 1st witness for the Defendants, said that he looked after the Stool ; that Nii Ayikai I married Na Adawude, grand-daughter of the Manche of Obutu ; that their children included Ayeley, Korkoi and a son Amah Ashong ; that he was descended from Ayeley and that Abose Okai was descended from Korkoi ; that the land was given by the Manche of Obutu to Na Adawude on her marriage to Ayikai I ; that the land was not given to Ayikai I ; that the land belongs to the descendants of Na Adawude by Ayikai I ; that nobody else has an interest in the land ; that according to Ga custom the grandson of the Manche succeeds, but that if there is no grandson, the son succeeds ; that the Akumajay custom is the same as the general Ga custom ; that according to the custom the Manche of Akumajay should be a descendant of Ayikai I and Na Adawude ; that the Plaintiff is not a descendant of Nii Ayikai I ; that he did not write Exhibit “ D,” but signed the original at the Manche’s house on his instructions ; that he did not tell the Manche that the land was Stool land ; that as regards Exhibit “ F,” it was prepared by the Government and that his signature was on it; that he did not tell the Government that the land was Stool land ; that he did not read Exhibit “ F,” but being a Government document he signed it without question ; that Ayikai Doblo, Akushibiade and Akrama-man lands are stool lands having been given to Nii Ayikai I by the Obutu Manche before the marriage ; and that if a man buys land with his own money and owes allegiance to a Stool, he can properly describe the land as Stool land, although the land was not the property of the Stool.

Sample Mensah, 2nd witness for the Defendants, said that as an Obutu man he knew that the land in question had been given to Na Adawude by the Mantse of Obutu ; that one of the persons who had been sent by that Mantse to look after Adawude and work on the land was Obintey who gave his name to the land as Obintey Kpakpo which was also known as Obose Okai.

30 Korkoi Abose, 2nd Defendant, said that she was the daughter of the late Nii Abose and widow of Nathaniel Tagoe ; that many people of the family of Na Adawude were buried on the land ; that people not belonging to the land would not be buried there ; that the village of Abose Okai had developed into a township with Schools, Churches and other public buildings, which her father had granted ; that of late years the Government had acquired an interest in the land for which she, along with Nii Akrong and Nathaniel Tagoe had made the necessary papers ; that no compensation had been made in respect of the land granted to the Government for earthquake re-housing schemes ; that there is one fetish on the land called the Afieye fetish which she looked after ; and that she did not know of any other fetish.

Gabriel Titus Glover, 3rd witness for the Defendants, gave evidence about Exhibit “ 4.”

Exhibits “ 5 ” and “ 6 ” were tendered.

p. 31, l. 9

p. 31, l. 12

p. 31, l. 16

p. 31, l. 23

p. 31, l. 25

p. 31, l. 28

p. 31, l. 32

p. 117

p. 31, l. 36

p. 31, l. 45

p. 110

p. 32, l. 7

p. 32, l. 16

p. 33, l. 1

p. 33

p. 33, l. 30

p. 34, l. 6

p. 34, l. 17

p. 34, l. 45

p. 35, l. 22

p. 35, l. 29

p. 35, l. 38

p. 83

pp. 87, 93

- p. 42 10.—Judgment was delivered in the Supreme Court of the Gold Coast, Divisional Court, Accra, on the 27th September, 1945, by Mr. Justice McCarthy.
- p. 42, l. 6 Before reading his Judgment, the Trial Judge said
- “ I mention that I have since the case was last before the
“ Court, noticed that there are references to Ayikai I in Reindorf’s
“ History of the Gold Coast and that I thought a reference to the
“ Afieye fetish of sufficient interest to mention in my Judgment.”
- p. 43, l. 1 The Trial Judge said that the land in issue is 1.28 square in area and is delineated in Exhibit “ 3 ” (a separate document) ; that towards the end of the seventeenth century one Ayikai moving from Ayawaso, 11 miles inland, founded the Akumajay quarter of Accra ; that interesting details about his origin and adventurous career are given in Chapters III and VII of Reindorf’s History of the Gold Coast and Ashanti ; that the Mantse of Obutu, who also migrated to the Coast, gave his daughter, Na Adawude to Ayikai in marriage ; that the Plaintiff traces his title to the land in issue to an alleged gift to Ayikai, while the Defendants trace it to an alleged gift to Na Adawude from the said Abutu Mantse ; that according to the late Abose Okai the land was granted by the said Obutu Mantse to Ayikai and Na Adawude and their children and that this family exclusively constitutes the Akumajay Stool family ; that according to the Defendants by Ga custom eligibility to sit on the Stool descends ordinarily through the male line of the founder and that this family were the only descendants of the founder ; that Boi Maclean asserted that he is a descendant of Ayikai and yet is not a member of the family ; that from the time of Ayikai for about 200 years there had been no occupant of the Stool until 1914 when the present Mantse of Akumajay was enstooled as Ayikai II at the age of 16 ; and that he abdicated in 1925 and was again put on the Stool in 1940.
- p. 43, l. 23 20
- p. 26, l. 31 30
- p. 43, l. 43 The Trial Judge went on to say that, so far as living memory goes, it is beyond question that the Na Adawude family has been specially associated with the land in dispute and have occupied it to a great extent ; that the persons in charge of the land have been members of the family ; that the person in charge of the property in issue usually had the custody of all the Stool lands and property and often had been the acting Akumajay Mantse ; that during the past twenty years very numerous grants of the land had been made by the person in charge for the time being and that there was no reason to suppose that the moneys received had ever been accounted to anyone who was not a member of the family ; that only members of the family had joined in the making of these grants ; that Korkoi Abossey (2nd Defendant) lives on the land and tends the Afyie fetish which stands in an ancient grove on it, but that Reindorf at p. 107 mentioned that Ayikai I owned a fetish of the same name (which evidently did not belong to Na Adawude) ; and that Korkoi Abossey stated that many members of the family were buried on the land and that nobody outside the family was so buried.
- p. 44, l. 3 40
- p. 44, l. 11
- p. 44, l. 15

The Trial Judge then found as follows :—

“ The evidence as to occupation taken together with that of
 “ tradition would, I think, have been sufficient to establish the
 “ family’s title, but for the evidence which it is submitted by the
 “ Plaintiff shows clearly that prominent members of the family
 “ have repeatedly made it clear that they have occupied the land
 “ as caretakers on behalf of the Stool, and not as owners. This
 “ submission I find to have been fully substantiated.”

10 As regards the evidence that the land was Stool land, the Trial Judge pp. 19, 22
 drew attention to the evidence of Kru Tei, R. C. Abossey, the Plaintiff and p. 25
 Okorli Mensah. p. 23, l. 5
 p. 27, l. 39

He then said that there was no opposition to the public notice of p. 86
 1922, but that another notice in 1940 led to an assertion of ownership on p. 115
 behalf of the family by Nathaniel Tagoe and was again followed by a notice p. 116
 from Nii Akrong. p. 117

The Trial Judge went on to say that a number of documents had been p. 44, l. 42
 produced which were executed by the head of the family as caretaker for
 the Stool and which stated that the land belonged to the Stool.

20 Although these admissions did not operate as an estoppel, their weight p. 45, l. 7
 as evidence was a matter of common sense.

“ The facts as revealed by the evidence as to the extensive p. 45, l. 17
 “ control exercised by the family over Obete Kpakpo are quite
 “ reconcilable with the position so often alleged by the family
 “ that it has functioned as caretaker of the land of the Stool.
 “ A caretaker is normally accountable to the owner, but as already
 “ suggested what would be abnormal elsewhere has apparently in
 “ certain respects been the normal state of affairs in Akumajay.”

30 The Trial Judge granted the declaration asked for by the Plaintiff,
 but said “ I would add that this result does not necessarily affect any
 “ rights which the family may have in respect of the land, on the footing
 “ that it is Stool property.”

11.—That the West African Court of Appeal by a Judgment, dated
 the 15th June, 1946, affirmed the Judgment of the Court below. p. 51

The Court of Appeal cited the passage about the place of admissions p. 52, l. 9
 in civil cases stated in Halsbury’s Laws of England, 2nd edition, Vol. 13, p. 52, l. 24
 pages 574 and 575 and said that admissions are no estoppels and are not
 conclusive against the party against whom they are tendered.

40 “ He always has the right to prove the circumstances or to
 “ show that they were due to erroneous conception of the law, or
 “ ignorance of the real facts or other circumstances which
 “ sufficiently explain them.”

p. 19 to
p. 22

The first admission relied upon by the Trial Judge was the evidence of Kru Tei, a son of Nii Abose Okai, who said that his late father had told him that the land belonged to Nii Ayikai's Stool, the first Mantsey of Akumajay.

p. 25

The witness had said that when there was no Mantse in Akumajay his father held the Stool keys and looked after the Akumajay land and property.

p. 104
p. 110
p. 27

The next witness relied upon by the Trial Judge was R. C. Abose, a nephew of the late Nii Abose Okai, who said that his uncle had sold some of the lands in issue as caretaker of the Stool and referred to the 10 circumstances of the execution of Exhibits "E" and "F" as he was one of the witnesses.

p. 53, l. 8

The Trial Judge had also referred to the evidence of Okorli Mensah.

p. 53, l. 10

The Court of Appeal held that there was such ambiguity in the evidence of this last named witness that it could not be relied upon.

pp. 86, 115

The Court of Appeal then held that they did not regard the evidence of oral admissions strong enough, by themselves, to displace the findings of occupation and tradition made by the Trial Judge in favour of the present Appellants.

p. 117

The Court then considered the documentary evidence of admissions. 20 Exhibits "A" and "B" were public notices, which did not carry the case any further.

p. 53, l. 18

In the opinion of the Court of Appeal, Exhibit "D" was of importance and was embodied in Judgment.

p. 116

It was a challenge to a Public Notice to the effect that Nathaniel Tagoe was the Head of the family and headman of the village; that the land is not attached to the Akumajay Stool; and that it forms the Nii Obose Okai family property.

Exhibit "D" is a notice with the name of "Nii Akrong" at the end and with his description "Head of Obose Okai's family." Then appears 30 the names of four persons as having signed and 11 persons as having made their marks.

p. 31, l. 35
to l. 46

There is a denial of what was said by Nathaniel Tagoe along with these words "we hereby affirm that Obete Kpakpo land is a property attached to the Stool of Akumajay Mantse. That the late Nii Obose Okai was, prior to his death, a member of the Akumajay Stool and had been 'caretaker'."

The Appeal Court quoted a passage from the evidence of Nii Akrong in which he said that he did not write the notice although he signed the original at the Manche's house; that the Manche sent for him, told him 40 about a previous notice and said that a reply had been drafted which he should sign; that before he signed the paper the Manche asked him whether the land was the private property of Abose Okai or stool land; that he replied that Abose Okai did not buy the land; and that he did not tell the Manche that the land was stool land.

The Court of Appeal said that such an explanation was very properly disregarded by the Trial Judge.

“The witness Nii Akrong is literate.

“His handwriting as appears in the original of Exhibit ‘F’ marks “him out as fairly educated.”

Now it is interesting to observe with regard to these remarks that Exhibit “D” has “Sgd” before the names of four of the presumed signatories while these three letters do not appear before the name of Nii Akrong.

- 10 Then again as regards Exhibit “F” referred to, (Sgd) appears before the name, but this is qualified by the words:—

“Signed by setting his mark hereto.”

The Court then considered Exhibit “E” which is an indenture “Between Nee Akrong and Nathaniel Tagoe . . . for themselves and on behalf of the elders and people of the Stool of Akumajay whose consent and concurrence is hereby testified by some of them subscribing their names to these presents as witnesses (hereinafter called ‘the Lessors,’ etc.)” The plan attached to this Exhibit has on three sides the words “Opete Kpakpo or Lessors Family Land.”

- 20 Exhibit “F” was then considered.

It contains the introductory words “Between Nee Akrong of the Stool of Akumajay (Accra) . . . acting for himself and as the representative of all other members of the Stool of Akumajay (Accra) whose consent to or concurrence in these presents is for the more perfect assurance of the provisions hereof requisite or desirable according to native customary law or to the customs of the said stool of Akumajay which consent is sufficiently testified by the attestation of these presents by some of such members.”

- 30 Again it is interesting to note that against the reputed signature of Nee Akrong are the words “Signed by setting his mark hereto.”

In his evidence the witness said “My signature is on it. The document was prepared by the Government. I did not tell the Government that the land was stool land . . . Being a Government document I signed it without question.”

Exhibit “G” is an indenture between Korlay Ammah and others and the Governor of the Gold Coast with an introductory and descriptive paragraph somewhat similar to that of Exhibit “F.” Korlay Ammah signs this Government document by his mark.

- 40 Exhibit “H” is a document in which Abose Okai is described as Caretaker and representative of Akamaijain Stool, also head of the Stool family of Akanmaiain quarter, James Town, Accra.”

The Court of Appeal said that in these documents the several grantors expressly stated that they were caretakers or representatives of the Stool and were conveying the land or area respectively with the consent and concurrence of the elders, councillors or people.

p. 83
p. 87
p. 93
p. 72

In the opinion of the Court of Appeal Exhibits "4," "5" and "6" (which had not been referred to by the Trial Judge) were not of the same value as admissions made against interest.

In dealing with Exhibit "J" the Court of Appeal said that Abose Okai had said that he was caretaker of the Stool and that the land now in issue was Akumajay Stool land.

The Court of Appeal held there was no evidence to support the conclusion arrived at by the Trial Judge from the reading of a passage in Reindorf's History. The only reference to a fetish was the answer by the 2nd Defendant in response to a question by the Court. 10

The Court of Appeal said it was clear that the Trial Judge did not base his Judgment on the passage which he quoted, but on the evidence of admissions in the case.

The Court of Appeal, being satisfied that there was ample evidence to support the Judgment of the Court below, dismissed the appeal with costs.

12.—The present appeal has been preferred against the aforesaid Judgment of the West African Court of Appeal, dated the 15th June, 1946, and the Appellants humbly submit that the appeal should be allowed with costs, for the following, among other

REASONS

20

1. BECAUSE the land in issue was given over 200 years ago by the then Mantse of Obutu to Na Adaduwe on her marriage with the first Mantse of Akumajay for her maintenance and the maintenance of her descendants.
2. BECAUSE the direct descendants of the said marriage constitute the Family of Na Adaduwe as represented by the Appellants.
3. BECAUSE the Respondent is not a descendant of the said marriage, being merely a descendant of a sister of the first Mantse of Akumajay. 30
4. BECAUSE the Family of Na Adaduwe have always exercised acts of ownership over the land in issue by sales, gifts, leases and licences.
5. BECAUSE tolls which were paid were always used for the benefit of the Na Adaduwe family and were never accounted for to the Stool of Akumajay.
6. BECAUSE the Courts below could find no evidence showing any such accountancy to the Stool.
7. BECAUSE the Courts below rightly found that the evidence as to occupation taken together with that of tradition was 40

in favour of the Appellants, but they failed to apply the law resulting from this finding as laid down by the *Bokitsi* case and other cases which followed on this decision.

8. BECAUSE the Burial Ground on the land in issue is reserved for members of the Na Adaduwe family.
9. BECAUSE the one and only Fetish in the sacred grove on the land is, and has always been, in charge of a member of the Na Adaduwe family.
10. BECAUSE the 2nd Appellant is in charge of it at present.
- 10 11. BECAUSE the Trial Judge was wrong in quoting from Reindorf's History, which was not in evidence, and drawing an inference contrary to the evidence before him.
12. BECAUSE the Trial Judge was wrong when he said that his Judgment against the Appellants did not necessarily affect any rights which the family had in respect of the land, on the footing that it is stool property.
13. BECAUSE in declaring the Na Adaduwe land to be Stool land he was ordering the revenues derived from it for over 20 200 years by the Family to be shared in future by others who were not members of the family.
14. BECAUSE it was rightly contended that being the direct descendants of the marriage between the first Mantse and Na Adaduwe, the family had the right to select a Mantse, and that in the absence of a Mantse for over 200 years, the right of being described as "Caretaker of the Stool," "looking after Stool property," and "holding the keys," fell within the province of the Head of the Adaduwe family for the time being.
- 30 15. BECAUSE the evidence is that other property had been given by the Mantse of Obutu to the first Mantse of Akumajay, prior to the marriage, and treated as Stool property and the administration of this property would fall upon the Head of the family of the marriage, who again could rightly be described as "Caretaker" in the absence of a Mantse.
16. BECAUSE the right description of "Caretaker of the Akumajay Stool" in such circumstances would not turn the maintenance given property of the family into Stool property of Akumajay.
- 40 17. BECAUSE the Courts before failed to appreciate the so-called admissions in the case or the real facts or other circumstances which sufficiently explain them.

18. BECAUSE Exhibit " D " 9th December, 1940, was drafted at the house of the present Mantse and signed by Nii Akrong with his mark on the instructions of the said Mantse.
19. BECAUSE Exhibits " E," 30th May, 1936 ; " F," 18th November, 1939 ; " G," 25th August, 1936 ; and " H," 8th October, 1929, were all documents which were made and signed when there was no Mantse, and naturally were signed by the person acting as Caretaker of the vacant Stool for the time being.
20. BECAUSE the West African Court of Appeal was right in 10 holding that the evidence of the oral admissions was not sufficient to displace the findings of the Trial Judge in favour of the Appellants in regard to occupation and tradition.
21. BECAUSE the West African Court of Appeal was wrong in saying that Nii Akrong was literate and that his handwriting was that of a fairly educated man, whereas the evidence showed that he signed with his mark documents prepared by the Respondent and the Government official respectively.

T. B. W. RAMSAY.

In the Privy Council.

No. 64 of 1947.

ON APPEAL FROM THE WEST AFRICAN COURT
OF APPEAL (GOLD COAST SESSION).

BETWEEN

NII ABOSSEY OKAI II and
KORKOI ABOSSEY
(*Defendants*) APPELLANTS

AND

NII AYIKAI II, Manche of
Akumajay (*Plaintiff*) RESPONDENT.

CASE FOR THE APPELLANTS

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