Privy Council Appeal No. 64 of 1947

Nii Abossey Okai II and another - - - - - - *Appellants*

v.

Nii Ayikai II - - - - - - - - - - *Respondent*

FROM

THE WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 24TH JULY, 1950

Present at the Hearing:

LORD PORTER
LORD OAKSEY
LORD RADCLIFFE
SIR JOHN BEAUMONT
SIR LIONEL LEACH

[*Delivered by* SIR LIONEL LEACH]

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, dated the 27th September, 1945, and delivered in a suit brought by the respondent for a declaration of his title to certain land situate on the outskirts of Accra. The plaintiff claimed that, as the Mantse of Akumajay, he was the owner of the land, an area of 1.28 square miles, known as "Obete Kpakpo", which means "The Vultures Pool". The emblem of the Akumajay Stool is a vulture. The defendants were Nathaniel Tagoe and Korkoi Abossey (the second appellant). They denied the plaintiff's claim and averred that the title to the land was vested in them as the representatives of the Na Adawede family, which they said was a distinct branch of the Akumajay Stool family.

The case was transferred for hearing to the Supreme Court of the Gold Coast, Eastern Province. During its pendency Nathaniel Tagoe died and Nii Abossey Okai II (the first appellant) was made a defendant in his place.

The plaintiff alleged that the land in dispute was first occupied by his ancestors about two hundred years ago on their immigration to Accra from Ayawaso and that it had remained throughout in the occupation and undisturbed possession of the Akumajay Stool. The defendants maintained that the land originally belonged to the Obutu Stool, that about 250 years ago the Obutu Stool granted it by way of gift to Na Adawede, a granddaughter of the Mantse of Obutu, upon her marriage to Nii Ayikai I, the first Mantse of Akumajay and that ever since it had been owned and enjoyed by the Adawede family.

As far as is known there have only been two occupants of the Akumajay Stool, Nii Ayikai I and the plaintiff. The plaintiff was

enstooled in 1914 at the age of 16. In 1925 he abdicated and went to Nigeria where he remained until 1940. He returned to Accra in that year and was again placed on the Stool.

The action was tried by the Acting Chief Justice of the Supreme Court, who found that as far as living memory went the Na Adawede family had been especially associated with the land, that all the persons known to have been in charge of it had been members of that family, that during the past twenty years or so numerous grants of plots had been made for monetary consideration by the persons in charge, especially by Abossey Okai, who had given his name to a township within the area, that the second defendant tended the fetish standing in an ancient grove on the land and that no persons other than members of the family had been buried in the burial ground. But he went on to hold that these facts could not be accepted as establishing a title in the Na Adawede family because it had repeatedly been asserted by prominent members thereof that they were in occupation as caretakers for the plaintiff's Stool and not as owners.

Kru Tei and R. C. Abossey, the son and nephew respectively of the late Abossey Okai gave evidence in support of the plaintiff's claim that the land belonged to the Akumajay Stool and it was proved that in 1921 Abossey Okai, who was then the head of the Na Adawede family, told the plaintiff that the land belonged to the Stool.

On the 8th October, 1929, Abossey Okai as the "caretaker and representative" of the Akumajay Stool, and also as the "Head of the Stool family" conveyed a plot of the land to a purchaser. On the 30th May, 1936, Nii Akrong (who was then the head of the Na Adawede family), and the late Nathaniel Tagoe "for themselves and on behalf of the Elders and people of the Stool of Akumajay" executed a lease of another plot. On the 18th November, 1939, Nii Akrong under a similar description conveyed a parcel of the land to the Governor of the Gold Coast.

On the 5th August, 1922, the plaintiff published a notice informing the public that the Obete Kpakpo property was attached to the Akumajay Stool and that no part of it could be lawfully disposed of except by the Mantse with the consent of his councillors. No protest was made by the defendants' family with regard to this notice. A similar notice was issued by the plaintiff when he returned from Nigeria in 1940, and this caused Nathaniel Tagoe to publish a statement alleging that the land was not attached to the Stool and claiming that it was the property of the Nii Abossey family. On the 9th December, 1940, Nii Akrong, as the head of the Abossey Okai family, and fifteen other members of that family, issued to the public a statement in denial of Nathaniel Tagoe's claim. The statement was in these words :—

> "In the issues of November 28 and December 2, 1940, there appeared a Notice signed by Nathaniel Tagoe, who styles himself as Headman of Obinte Kpakpo village and Head of late Abossey Okai's family, and that lands known as Obinte Kpakpo lands are family lands of the late Nii Abossey Okai of Accra.
>
> The Public is hereby informed that we the undersigned principal members of the said Abossey Okai's family, declare positively that the publication by Nathanial Tagoe referred to above touching Obete Kpakpo lands is untrue and unfounded, and we hereby affirm that Obete Kpakpo land is a property attached to the Stool of Akumajay Mantse. That the late Nii Abossey Okai was, prior to his death, a member of the Akumajay Stool and had been 'Caretaker.'
>
> The public is hereby further informed that the said Nathaniel Tagoe has never been appointed 'Headman' of Obinte Kpakpoe Village neither has he been 'Head' of Abossey Okai's family."

At the hearing Nii Akrong gave evidence on behalf of the defendants and attempted, but without success, to explain away his action in having signed the notice of the 9th December, 1940.

The Supreme Court held that the evidence relied on by the plaintiff established his title and accordingly granted the declaration sought by him.

The defendants appealed to the West African Court of Appeal on the grounds that the learned Judge had misdirected himself in the matter of and as to the effect of the documents and writings produced in evidence, that he had been wrongly influenced by passages from Reindorf's History of the Gold Coast and Ashanti and that his judgment was inequitable. The Appellate Court rejected these contentions and upheld the judgment of the Supreme Court.

The question whether the land in suit was occupied by members of the Na Adawede family as owners or as caretakers for the plaintiff's Stool is one of fact and both the African Courts have held that it was as caretakers. This really disposes of the appeal because there are no special circumstances which would warrant their Lordships departing from their usual practice of not allowing a question of fact to be reopened when there have been concurrent findings thereon. There has been no misdirection and no erroneous construction placed on the documentary evidence. On the other hand there is an abundance of evidence, oral and documentary, to support the finding of fact. There is no foundation for the suggestion that the Supreme Court was wrongly influenced by extracts from Reindorf's History of the Gold Coast and Ashanti. As the Court of Appeal pointed out, the learned Judge did not base his judgment on the passages which he quoted from the work, but on the evidence of repeated admissions by members of the Na Adawede family that they were caretakers of the property for the Akumajay Stool. The argument that the judgment was inequitable was based on the evidence that members of the family had been in occupation of the land for a very long time without accounting to the Stool and had exercised acts of ownership, but it ignores the important fact that they were in occupation as caretakers for the Stool.

Their Lordships will humbly advise His Majesty that the appeal should be dismissed. The appellants will bear the costs of the appeal.

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In the Privy Council

NII ABOSSEY OKAI II AND ANOTHER

v.

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DELIVERED BY SIR LIONEL LEACH

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