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19, 1952

No. 18 of 1950.

**In the Privy Council.**

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**ON APPEAL**  
*FROM THE WEST AFRICAN COURT OF APPEAL*  
*(Gold Coast Session)*

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**BETWEEN**

- 1. **CHIEF KOFI OWUSU** for and on behalf of **Toase Stool**
- 2. **YAW TARKU** (Defendants) - - - - - *Appellants*

**AND**

**CHIEF KWAME DAPAAH** for and on behalf of **Aferi Stool** (Plaintiff) - - - - - *Respondent*

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**RECORD OF PROCEEDINGS**

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UNIVERSITY OF LONDON  
W.C.1.  
20 JUL 1953  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

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# In the Privy Council.

## ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL (Gold Coast Session)

BETWEEN

1. CHIEF KOFI OWUSU for and on behalf of Toase Stool
2. YAW TARKU (Defendants)

AND

CHIEF KWAME DAPAAH for and on behalf of Aferi Stool (Plaintiff)

UNIVERSITY OF LONDON W.C.1. Appellants 20 JUL 1953 INSTITUTE OF ADVANCED LEGAL RESEARCH
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# RECORD OF PROCEEDINGS

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# In the Privy Council.

## ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL (Gold Coast Session)

BETWEEN

- 1. CHIEF KOFI OWUSU for and on behalf of Toase Stool
- 2. YAW TARKU (Defendants) . . . . . *Appellants*

10 AND

CHIEF KWAME DAPAAH for and on behalf of Aferi Stool (Plaintiff) . . . . . *Respondent.*

# RECORD OF PROCEEDINGS

No. 1.

### APPLICATION FOR SUMMONS.

IN THE NATIVE COURT OF ASANTEHENE COURT "B"—  
MENHYIA.

Please issue writs of Summons as hereunder and make same returnable at an early date :—

20 CHIEF KWAME DAPAAH OF AFERI for and on behalf of himself and of The Stool of Aferi . Plaintiff

*Vs.*

- 1. CHIEF KOFI OWUSU on behalf of The Toase Stool and
- 2. YAO TARKU . . . . . Defendants.

The plaintiff claims :—

30 1. As against both defendants that he as representing the Aferi Stool is the owner of all that piece or parcel of land situate lying and being at Nkwakom and bounded on the North by Nerebehin and Akrofuomhene's lands on the South by Esuowisau and Moduans Stream on the East by Aboabo Stream and Wherekesiom and on the West by Kobri Stream known as Kobrisu.

2. As against the 2nd defendant damages or mesne profits for the use of portion of the said plaintiff's land for the last 24 years for the cultivation of cocoa and

*In the Asante-hene's "B" Court.*

No. 1. Application for Summons, 27th May 1941.



*In the  
Asante-  
hene's  
" B "  
Court.*

3. For an Injunction to restrain the defendants from committing any acts of trespass on or entering upon the said land in the absence of payment of recognised Native Customary Tribute by the Defendants to the Plaintiff for their occupation and use of the said plaintiff's stool land.

Dated at Kumasi this 27th day of May, 1941.

No. 1.  
Application  
for  
Summons,  
27th May  
1941,  
*continued.*

The Registrar,  
Nana Asantehene's Native Court " B,"  
Menhyia Kumasi.

CHIEF KWAME DAPAAH,  
Plaintiff. his  
X  
mark

10

Witness to mark :

(Sgd.) J. K. DAPAAH.

No. 2.  
Civil  
Summons,  
29th May  
1941.

**No. 2.  
CIVIL SUMMONS.**

IN THE DIVISIONAL COURT OF ASANTEHENE—KUMASI

CHIEF KWAME DAPAAH OF AFERI for and on  
behalf of himself and of the Stool of Aferi . . . . . Plaintiff

*Vs.*

- 1. CHIEF KOFI OWUSU on behalf of the Toase Stool 20
- and
- 2. YAO TARKU . . . . . Defendants.

To CHIEF KOFI OWUSU and Or. of Toase.

YOU ARE HEREBY commanded to appear before this Court at Kumasi on the 5th day of June, 1941, at 8 o'clock forenoon to answer a suit against you by plaintiff.

The plaintiff claims (A) as against both defendants as per particulars attached.

Dated at Kumasi, Ashanti, this 29th day of May, 1941.

Sum Claimed	Damages and Injunction	30
Summons Fee	£1	— —
Service	—	4 —
Adasuam	—	3 6
Mileage	—	— —
<b>Total</b>	<b>£1</b>	<b>7 6</b>

(Sgd.) BUACHI YAM,  
President.

Witness to mark

(Sgd.) HENRY QUARSHIE  
for Registrar.

40

## COURT NOTES ON ISSUE.

*In the  
Asante-  
hene's  
" B "*  
*Court.*

*ISSUE* : " The Plaintiff claims :—

1. As against both defendants that he as representing the Afari Stool is the owner of all that piece or parcel of land situate lying and being at Nkwakom and bounded on the north by Nerebehin and Akrofuomhene's lands on the South by Esuowinsu and Moduasu stream on the East by Aboabo Stream and Wherekesiom and on the West by Kobri Stream known as Kobri.

No. 3.  
Court  
Notes on  
Issue,  
14th July  
1941.

10 2. As against the 2nd defendant damages or mesne profits for the use of portion of the said plaintiff's land for the last 24 years for the cultivation of cocoa, and

3. For an Injunction to restrain the defendants from committing any acts of trespass on or entering upon the said land in the absence of payment of recognised Native Customary Tribute by the Defendants to the Plaintiff for their occupation and use of the said plaintiff's Stool land."

Plaintiff and 1st defendant present.

20 2nd defendant absent, he sent a letter to the effect that he had applied to the Divisional Court, Kumasi, for copies of some relative judgments in respect of the plaintiff's claim and therefore he wanted two months' adjournment of the case.

*Court* : At the request of the defendants the Court adjourns the case to 14th August, 1941, at 9 a.m.

(Sgd.) BUACHI YAM,  
President.

Witness to Signature :

(Sgd.) I. K. AGYEMAN

Registrar,

30

14.7.41

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## PLAINTIFF'S EVIDENCE.

No. 4.

EVIDENCE of Chief Kwame Dapaah, Plaintiff.

*In the  
Asante-  
hene's  
" B "  
Court.*

*Plaintiff's  
Evidence.*

*All parties present.*

Plaintiff, CHIEF KWAME DAPAAH, Afarihene, swore great oath and stated as follows :—

No. 4.  
Chief  
Kwame  
Dapaah,  
Plaintiff,  
15th and  
27th  
August  
1941,  
Examina-  
tion.

My name is Kwame Dapaah. I am the Afarihene. It was during the time of my predecessor called Akyeampon Akwasi, Afarihene, that the land in dispute called Nkwakuom, became the property of the Afarihene. It was the Otumfuo, Nana Asantehene, Oti Akenten that presented it to my predecessor, and my stool subject called Kwaku Adubeh who was the caretaker of the land. Adubeh died but his children remained there. When my Nana Kwakyi died, one Brobby succeeded him. The 1st Defendant's predecessor called Ampofu got a case with my predecessor Brobby about ownership of the land in dispute, the case was heard before the Otumfuo Asantehene in the olden days and judgment was given in favour of my predecessor. The boundary between the Afarihene's (myself) and the Toasehene's (1st Defendant) portions of the land was therefore demarcated at a stream called Esuowin, thence to Modwiwasu, thence to another stream called Kobi. At the close of each year, Adubeh's children who remained there used to send a number of yams to the occupant of my Stool for ceremonial purposes and if any man killed or ensnared any game (animal) the legs of same were sent to my predecessor as well. A certain woman called Atta Twireday of Besiase also lived at Nkwakuom and each year she sent to my Stool, palm oils and a mushroom called " Sibrie " Rubber tapped from the land, when my predecessor called Kwabena Tiaa was Afarihene, was sent to him. This time Nana Afrifa was occupying the Toase Stool, vice Nana Ampofu. No dispute arose between them. Later on, the late Chief Gyawu became Toasehene while Attah Yao occupied mine. They got Great Oath case about some rubber tapped, the case was heard before the then Bantamahene, Osei Mampong, and judgment was given in favour of my predecessor, Attah Yao, and the rubber given to him. The Court proposed to go and see the boundary but later, Kwaku Yeboah was deputed to go. He went but the Toasehene did not agree to the boundary being Esuowin and so we returned. I wrote to the then District Commissioner, Mr. Wheatly who went and inspected the land and fixed the boundary at Esuowin. Chief Gyawu appealed from that judgment to His Honour, the Chief Commissioner's Court, but judgment was again given in my favour and a Plan of the area made. I tender the copy of the Chief Commissioner's judgment and the Plan in evidence. (Judgments of Mr. L. H. Wheatley, D.C., dated 15th January, 1917, and Sir Fuller, C.C.A., dated 17th April, 1917,) all on one paper and a sketch of the area accepted and marked as Exhibits " A " and " B " respectively.

*Chief Kofi Owusu, 1st Defendant :* I object to the said Plan or sketch being accepted in evidence, in view of the fact that it was not prepared by a surveyor nor was it signed by anybody.

Court.

*Court :* Court, however, accepted the sketch and will consider it at the time of delivering its judgment.

When the judgment was given in favour of my predecessor, Chief Gyawu paid all his costs. As I became Afarihene, I wrote to the Odikro of Nkwakuom called Yao Berku to come for arrangement to be made, he did not come and so I wrote again through the District Commissioner Kumasi who referred my letter to the Bantamahene at the time called Kwame Kyem who invited Yao Berku to Kumasi. Yao Berku pacified me with £60 0s. 0d., and we agreed that at the expiration of each year he and all the Nkwakuom people should pay me £20. I had a written agreement made with him and I tender the same also in evidence. 10 (Document dated 16th January, 1924, accepted and marked as Exhibit "C".)

*1st Defendant, Chief Kofi Owusu* : I object to this also because it was Yao Berku alone who made the said Agreement, no other person of Nkwakuom signed it. Besides, Yao Berku was plaintiff's relative.

*Court* : Let this document also be accepted and to be considered later on.

One Kwaku Anfwere of Besiase also farmed my land he had written Agreement with me paying me £10 a year. I tender the Agreement also in evidence. (Document dated 16th January, 1924, accepted and marked 20 "D.") The successor to Yao Berku has paid the £20 this year. The second defendant farmed the land I invited him to come for arrangement, he refused to come and so I went and sued him before His Honour the Judge, Kumasi, claiming £240 being tribute for farming my land.

Second Defendant alleged that he did not occupy my land. The 1st Defendant wrote a letter to say that the Nkwakuom land belonged to him. The Judge appointed a Surveyor to go and survey the land and it was done. The Judge, however, struck out my case with costs of Yao Tarku against me and advised me to take action here because the case concerned a land and therefore I came and sued the two Defendants. 30 I tender the Plan also in evidence. Plan dated 4.5.41 also accepted and marked "E." This is my case.

*Court* : Let this Plan be accepted and put on the docket of the case, and the Court will consider the 1st Defendant's objection later.

*Further hearing adjourned to Thursday, 21st of August, 1941, at 9. a.m.*

(Sgd.) BUACHI YAM,  
President,

Atip.

Witness to signature :

(Sgd.) I. K. AGYEMAN,

40 Registrar.

15.8.41.

*In the  
Asante-  
hene's  
" B "*  
*Court.*  
*Plaintiff's  
Evidence.*

No. 4.  
(Chief  
Kwame  
Dapaah,  
Plaintiff,  
15th and  
27th  
August  
1941,  
Examina-  
tion,  
*continued.*  
Court.  
Examina-  
tion,  
*continued.*

[sic]

*In the* 27.8.41.

*Asante-*  
*hene's*  
*" B "*  
*Court.*

*All parties present.*

*Plaintiff XXd. by 1st Defendant :*

*Plaintiff's*  
*Evidence.*

No. 4.  
Chief  
Kwame  
Dapaah,  
Plaintiff,  
15th and  
27th  
August  
1941,  
Cross-  
examina-  
tion.

Q. You stated before the Court the other day that you acquired the land in the reign of Nana Oti Akenten, which land ?

A. The land stretching from Afari to Esuowin called Nkwaakuom is mine.

Q. Were you a Chief during the reign of Nana Oti Akenten ?

A. Yes, my predecessor called Akyeampong Akwasi was a Chief.

Q. Who was your Head Clan Chief ?

A. I was independent serving under the Otumfuo, my Titular father direct.

[sic] Q. Do you know a *placed* called Abina Dwaasi ?

A. Yes, it is my deserted village, it is from there I settled at Afari.

Q. When did you remove from there to Afari ?

A. I removed from Abina Dwaasi to Afari when Nana Oti Akenten was Asantehene.

Q. Who were the Chiefs settling there in that area ?

A. There was no other Chief beside me, I was the only Chief living there.

Q. You stated before this Court the other day that your subject called Kwaku Aduwubi first founded Nkwakuom, are you definite it was so ?

A. Yes.

Q. Do you not remember that Kwaku Aduwubi was a subject of the Anantahene and that his relatives are there now ?

A. I do not remember, I had a subject called by that name too.

Q. Has your said subject Kwaku Aduwube any surviving relatives at Nkwaakuom now ?

A. No, they have all died out.

Q. Did you not state here the other day that his relatives were alive and are living at Nkwaakuom today ?

A. Yes, I stated that.

Q. Who do you say are the said relatives of the said Kwaku Aduwube ?

A. One is Ama Aniniwah and Akosua Donkor. These are of course not my stool subjects, they are children and grandchildren of my subject Aduwube.

Q. What is the name of Aduwube's sister with whom he went to Nkwaakuom ?

A. He went alone.

Q. Do you not know that Nkwaakuom was founded by my Safohene called Boaity Kwafra ?

A. No.

Q. Do you not remember that Kwaku Aduwube was Anantahene's subject and he went to Nkwaakuom for hunting purposes after my subject, Safohene Boaity *Kwafra* had founded Nkwaakuom ?

[sic]

A. No.

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- Q. Do not you remember that I did not permit burial of the remains of Aduwube at Nkwaakuom and same were buried at Donkoasi ?
- A. No, his remains were buried there.
- Q. Could you show where he was buried ?
- A. No, he was buried many years ago.
- Q. Who succeeded your said subject Aduwube ?
- A. Nobody succeeded him, I did not elect anybody to his place.
- Q. I put it to you therefore that the Nkwaakuom land is mine, it is part of the tract of land assigned to me by the Otumfuo Nana Osei Tutu ?
- 10 A. No, it is mine.
- Q. Why did this land assume the name Nkwaakuom ?
- A. It is my subject who founded it, made farms and had abundant crops and named the place Nkwaakuom.
- Q. Have you ever heard of the name of a village of mine called Nkuran ?
- A. Yes.
- Q. Is it not true that Nkwaakuom derived its name of Nkuran, meaning " Nkuran Kokom " ?
- A. No.
- 20 Q. Is it not because people from Nkuran went to Nkwaakuom for foodstuffs and as these were plentiful there hence they called it Nkwaakuom ?
- A. No, my land was simply called Nkwaakuom.
- Q. You mentioned the name of one Attaa Twaaday the other day as having settled at Nkwaakuom ; who took her there ?
- A. It was Hiawuhene who took her there.
- Q. Through whom do you say Attaa Twaaday did send to you, palm oil and Sibray (mushroom) ?
- A. She brought them by herself to my elders.
- Q. Which Hiawuhene took her to settle there ?
- 30 A. Hiawuhene called Okunuku.
- Q. Do you mean to say that it was the elders Hiawuhene, who took her there ?
- A. I say it was Hiawuhene called Okunuku.
- Q. Do you not remember that it was when Hiawu Boarkyi went to the village (died) that Attaa Twaaday was about to be beheaded and she ran to my predecessor called Ampofu who gave Attaa Twaaday to Adjoa Antwiwaa to allot her a place to settle and for that reason and in recognition of that at every Adwidie Fiada Attaa Twaaday sent palm oil and yams through Antwiwa to me ?
- 40 A. I do not know all these.
- Q. Who was the Asantehene at the time you say Okunuku took Attaa Twaaday to Nkwaakuom ?
- A. It was in the reign of Nana Agyeman, Asantehene.
- Q. Was it not during Nana Bonsu's time that Attaa Twaaday ran to Nkuran and my predecessor sent her to Nkwaakuom ?
- A. No, I say she went to Nkwaakuom in Nana Agyeman's reign.
- Q. Do you know Nthinkwaakrom at Nkwaakuom ?
- A. Yes.
- 50 Q. Do not you remember that Nana Bonsu sent one Siyewu, Kofi Berkoe and Kobri E nukwa there for the purpose of tapping palm wine for him ?

*In the  
Asante-  
hene's  
" B "  
Court.*

*Plaintiff's  
Evidence.*

*No. 4.  
Chief  
Kwame  
Dapaah,  
Plaintiff,  
15th and  
27th  
August  
1941,  
Cross-  
examina-  
tion,  
continued.*

*In the  
Asante-  
hene's  
" B "*  
*Court.*  
-----  
*Plaintiff's  
Evidence.*  
-----  
No. 4.  
Chief  
Kwame  
Dapaah,  
Plaintiff,  
15th and  
27th  
August  
1941,  
Cross-  
examina-  
tion,  
*continued.*

A. Yes, it is true but it was the Otumfuo who requested my predecessor called Kaakyi to place these men there to tap palm wine for the Otumfuo.

Q. You alleged the other day that your predecessor and mine litigated for this Nkwaakuom land before, in the olden days ; who was the Otumfuo at that time ?

A. Nana Agyeman was the Otumfuo.

Q. You added the other day too that fees on rubber were paid to you ; who collected same for you ?

A. It was Yao Twinibua and other times too I went and collected same myself. 10

Q. Was it Yao Twinibua who was your caretaker ?

A. No, he was your subject but he lived there.

Q. Was he your caretaker ?

A. Yes.

Q. Who was your caretaker previous to Yao Twinibua ?

A. I do not know.

Q. I put it to you that Yao Twinibua is my Odikro at Nkwaakuom looking after my land there and that he has never sent any fees to you before ?

A. It is not true. 20

Q. Do you know Gyawu ?

A. Yes.

Q. Was he not my Odikro at Nkwaakuom ?

A. Yes, it is so.

Q. What did Gyawu too collect for you ?

A. Rubber and legs of game.

Q. You alleged the other day that in the olden days your predecessor and mine litigated for this land and boundaries were set up ; if so what was the necessity and what cropped up that Osei Mampon, late Bantamahene also proposed to send to demarcate the said boundary but it was not demarcated ? 30

A. The boundary was at Esuowin but when the messengers sent by Chief Osei Mampon went they wanted to deviate from it.

Q. Do you not know that my boundary with you is at a place called Abutansu to Sutray, thence to Krubinahu, thence to Bonhunum ?

A. No, these are in the middle of my land, you are not near there.

Q. You state that you litigated over the land with my predecessor was the left hand side going from Nkwaakuom to Nkuran, was Yao Tarkukrom included ?

A. Yes, it was included. 40

Q. Did the Commissioner say the boundary extend from Esuowin to Subompan ?

A. He decided that it should be from Esuowin to Ayankama.

Q. Is it so inserted in that judgment ?

A. I do not know.

Q. Do you know that portion called Apatrapa ?

A. No.

Q. Do not you remember that my predecessor called Nana Tarkwa Fori founded a cottage there, now deserted but there is still my fetish called Taakofi and some Ntome at present ? 50

A. I do not know this.

Q. Did you not see the stream Asuakwasi lying at Apatrapa recently you went there ?

- A. No.  
 Q. Is not Modwiwasu in Nkwaakuom ?  
 A. Yes, it is the watering place there.  
 Q. Is not Modwiwasu a " Tudieh " (A Pool) ?  
 A. No it flows into another called Kobi.  
 Q. Is Kwaku Barnieh your elder at Nsuta looking after your land there ?  
 A. Yes.  
 10 Q. I think he has right to negotiate with anybody to use your land there without your knowledge ?  
 A. No, he cannot, unless with my knowledge and consent.  
 Q. Was any arrangement made by him in connection with your land without your knowledge and consent valid ?  
 A. No reply by the Plaintiff.  
 Q. You allege that Yaw Berku effected arrangement with you concerning the Nkwaakuom land, has Yaw Berku an authority to do so without my permission ?  
 A. Yes he has authority.  
 Q. Do you mean to say you have had judgment for the land then ?  
 20 A. Yes.  
 Q. If therefore I had made an arrangement with you in connection with a land and paid you fees about it and discovered later that the land does not belong to you could I not sue you for recovery of the fees I had wrongly paid to you ?  
 A. I have no answer for this.  
 Q. I put it to you that Sir Fuller did not give judgment for you according to the copy of proceedings tendered in evidence by yourself and marked as Exhibit " A " ?  
 A. He gave judgment for me.  
 30 Q. You say you have a boundary with Nkawie Panin, do you not remember that the Nkawie Panin land is mine and that I have sworn the Great Oath about it and no one has been able to reply to it ?  
 A. I do not know.  
 Q. Is not Nitiwadasu my boundary with the people of Weredu ?  
 A. No.  
 Q. You alleged that Yao Tarku, 2nd Defendant's village belongs to you. Have you an arrangement with him too ?  
 A. No.  
 Q. Since when did Yao Tarku settle there ?  
 40 A. It is about twenty-four years ago.  
 Q. Have you taken any action against him since these twenty-four years ?  
 A. No, only during this year that I sued him at the Divisional Court, Kumasi, for refusing to make arrangement with me.  
 Q. Did you sue him for arrangement or that you had arrangement with him and so you were claiming £240 from him ?  
 A. I sued him that he occupied my land he refused to go into terms with me and so I was claiming £10 a year from him.  
 Q. Do you know the portion called Senkori, a portion of the land you  
 50 say belongs to you ?  
 A. Yes, it is there, Kwaku Anfwere, lived and he made arrangement with me.

*In the  
Asante-  
hene's  
" B "  
Court.*

*Plaintiff's  
Evidence.*

*No. 4.  
Chief  
Kwame  
Dapaah,  
Plaintiff,  
15th and  
27th  
August  
1941,  
Cross-  
examina-  
tion,  
continued.*



*In the Asantehene's "B" Court.*  
*Plaintiff's Evidence.*  
 No. 4.  
 Chief Kwame Dapaah, Plaintiff, 15th and 27th August 1941, Cross-examination, *continued.*

*Q.* Was Anfwere paying you tribute before he made the said arrangement with you ?

*A.* He sent me rubber and legs of game.

*Q.* Who stationed Anfwere at Senkori ?

*A.* He went there by himself.

*Q.* Was it not I who stationed him there ?

*A.* No.

*Q.* Is your arrangement with him valid and does bind me ?

*A.* No, it does not.

*Q.* Have you not caused to be reversed certain arrangements made by 10 Kwaku Barnieh, in respect of Nsuta land without your knowledge ?

*A.* No.

*Q.* Is it not the source of the stream Esuowin at the right side of the path from Nkwaakuom to Nkuran where stands a Wawa tree on the bank of the stream ?

*A.* No.

*Q.* I put it to you definitely that the right-hand portion does not belong to you ?

*A.* It is mine.

*No more questions by 1st Defendant.*

20

*Plaintiff XXd. by 2nd Defendant :*

*Q.* Was it you who stationed me at my cottage ?

*A.* No.

*Q.* I put it to you that I live on Nkuran land which is not your land ?

*A.* Your cottage is my land.

*No more questions.*

Examination by Court.

*Plaintiff XXd. by Etutuohene :*

*Q.* How many subjects have you at Nkwaakuom ?

*A.* I have no subject there.

*Q.* Who is your caretaker of the land there ?

*A.* It is Yaw Berko.

*Q.* Whose subject is he ?

*A.* He is 1st Defendant, Toasehene's subject.

*Q.* Is he the Odikro there ?

*A.* Yes, after him came one Brobbey also a subject of Toasehene.

*Q.* Does 1st Defendant know and admit that Yaw Berku acts for you there ?

*A.* Yes, he does.

*No more questions by Etutuohene.*

30

*Plaintiff XXd. by Gyasehene :*

*Q.* Which is your head boundary with the 1st Defendant ?

*A.* It is Asuowin, thence to Modwiwasu, thence to Kobi.

*Q.* Have you had a case about this land before ?

*A.* Yes.

*Q.* Have you a copy of the previous judgment ?

*A.* Yes, I have tendered in evidence.

*No more questions by Gyasehene.*

40

*Plaintiff XXd. by Etipinhene :*

Q. Before Yaw Berku and Anfwere made arrangements with you had you had the litigation with 1st Defendant's predecessor ?

A. No, it was after.

Q. Whom did Yaw Berku side ?

A. 1st Defendant's predecessor.

Q. Was Yaw Berko the only Toase subject there at the time ?

A. No, but he was their head.

10 of 1917 Exhibit " A " ?

A. Yes.

Q. Were you the plaintiff in that case which went before Mr. L. H. Wheatley and later before Sir Fuller or you were the defendant ?

A. I was the plaintiff.

Q. Would you be surprised if I tell you then that according to Sir Fuller's judgment Exhibit " A " tendered by yourself judgment was given against you ?

A. Yes, I would be surprised.

*No more questions.*

20 *Further hearing adjourned to 28.8.41, at 9 a.m.*

(Sgd.) BUACHI YAM,

President.

Witness to signature :—

(Sgd.) I. K. AGYEMAN,

Registrar,

27.8.41.

No. 5.

EVIDENCE of Yaw Berku, 1st witness for Plaintiff.

28.8.41.

30 *All parties present.*

*Plaintiff's 1st Witness :—*

YAW BERKU, Broker, sworn and stated as follows :—

Nkwaakuom is my village. I am a subject of Toase Stool. When the late Chief Osei Mampong was Bantamahene the Plaintiff in this case alleged that he had a boundary with Chief Gyawu, Toasehene, at the time on the Nkwaakuom land and that their boundary was at Mowduwasu to Kobrim. The District Commissioner at the time, hearing the case went to Nkawie, and delivered judgment in favour of the Plaintiff in this case. The 1st Defendant's predecessor, Toasehene, appealed from that judgment  
40 to the Chief Commissioner's Court. Sir Fuller heard the appeal but

*In the Asante-hene's " B " Court.*

*Plaintiff's Evidence.*

No. 4.

Chief Kwame Dapaah, Plaintiff, 15th and 27th August 1941, Examination by Court, *continued.*

No. 5. Yaw Berku, 1st witness for Plaintiff, 28th August 1941, Statement.

*In the Asantehene's "B" Court.*  
*Plaintiff's Evidence*  
 No. 5.  
 Yaw Berku,  
 1st witness for Plaintiff,  
 28th August 1941,  
 Statement, continued.

upheld the judgment of the District Commissioner but Sir Fuller demarcated no boundaries. By and by the Plaintiff came and sued me that I farmed his land but paid him no tribute. The D.C. heard the case and said that the Plaintiff had sued me for nothing because the Toasehene, Nana Gyawu, who had a case with him objected to the judgments and was then dead and why should the Plaintiff go and sue me, he struck out the Plaintiff's case against him and referred the case to Chief Kwame Kyem, then Bantamahene to take it home for settlement. Chief Kwame Kyem invited us and claimed a pacification of £60. 0. 0d from me and all the other people who lived and farmed the Nkwaakuom land. After that, it was arranged that we who farmed the land should pay £20 to the Plaintiff every year. We agreed to it and gave the Plaintiff a document to that effect. Chief Kwame Kyem and his Linguist Kwaku Yeboah signed as witnesses. We continued to pay the £20 every year until I was removed from my position as an elder but my successor in office has been paying the fee. This is all that I know. 10

Examination by Plaintiff.

*Witness XXd. by Plaintiff.*

Q. Did we not go with the D.C. to Esuowin ?

A. Yes, we went there.

Q. Did not the D.C. say that my boundary with the Toasehene was at Esuowin to Modwiwasu ? 20

A. I did not hear it.

Q. Why did you agree to pay me tribute if the land is not mine ?

A. I made arrangement with you concerning Nkwaakuom land.

Q. Was not the Toasehene's Linguist called Asantiwa present when Chief Kwame Kyem decided the case ?

A. No.

Q. Was Kwaku Yeboah present ?

A. Yes.

Q. Did Anfwere too not make arrangement with me ? 30

A. He did.

Q. On whose land does Kropah occupy ?

A. I think he occupies your land.

*No more questions by Plaintiff.*

Cross-examination.

*Witness XXd. by 1st Defendant :*

Q. Were you paying Plaintiff any tribute in respect of the land prior to the hearing of the case to which you have referred ?

A. No.

Q. Had you not sent shares of rubber or any valuable thing accruing from the land to the Plaintiff ? 40

A. No, never.

Q. If the Plaintiff alleges that shares of rubber and other things were given to him is it correct ?

A. No, it is not correct.

Q. By whose permission did you occupy the Nkwaakuom land ?

A. It was your predecessor called Oyin Awere, Toasehene.

Q. Had Boaitey any other name ?

A. I know only Boaitey.

- Q. Have you heard of one Kwaku Aduwube ?  
 A. Yes.  
 Q. Where did he hail from ?  
 A. I do not know.  
 Q. Has he any relatives at Nkwaakuom to-day ?  
 A. Yes.  
 Q. Had Nkwaakuom been founded before Aduwube went there to settle ?  
 A. Yes.
- 10 Q. Is it true then if the Plaintiff alleges that it was his stool subject called Aduwube who founded Nkwaakuom village ?  
 A. No, it would be untrue, it was Boaitey of Nkuran who founded there.  
 Q. Where was Plaintiff living when my predecessor caused Nkwaakuom to be founded ?  
 A. I do not know.  
 Q. Have you heard of Abina Dwaasi before ?  
 A. Yes.  
 Q. Was not the Plaintiff living there before ?  
 A. I have heard so.
- 20 Q. Have you heard of the name of a certain woman called Attaa Twaaday ?  
 A. Yes.  
 Q. Had she settled Nkwaakuom before ?  
 A. Yes.  
 Q. Who made her live there ?  
 A. I do not know.  
 Q. Do you know Nthinkwaakrom too ?  
 A. Yes.
- 30 Q. How and why was that cottage founded ?  
 A. I have heard that it was the Otumfuo Nana Bonsu who acquired that place from your predecessor, Nana Ampofu for the Nthinkwaa to tap palm wine for the Otumfuo.  
 Q. Will you be surprised to hear if the Plaintiff alleges that, that portion belongs to him ?  
 A. Yes, because that portion belongs to your stool.  
 Q. Where is my ancient boundary with the Plaintiff ?  
 A. The ancient boundary was where a tree called Kurubaa was.
- 40 Q. Where does Modwiwasu lie, and what it is ?  
 A. It is a pool but it flows when it is flooded.  
 Q. Have you heard of the name of Esu Akwasi before ?  
 A. Yes, it lies at Apatrapa.  
 Q. Is it the same as Modwiwasu ?  
 A. No.  
 Q. Which portion of the land do you say we litigated for the left or the right-hand side as you go from Nkwaakuom to Nkuran ?  
 A. It was the right-hand side where Modwiwasu lies.  
 Q. Is where the 2nd Defendant lives part of the Nkwaakuom land ?  
 A. No.
- 50 Q. If the Plaintiff alleges that, that side belongs to him is it correct ?  
 A. Yes, because Nkwaakuom ends at Obuohu.  
 Q. Do you know Sankori ?

*In the  
Asante-  
hene's  
" B "*  
*Court.*

*Plaintiff's  
Evidence.*

No. 5.  
Yaw Berku,  
1st witness  
for  
Plaintiff,  
28th  
August  
1941,  
Cross-  
examina-  
tion,  
*continued.*

*In the Asantehene's "B" Court.*  
*Plaintiff's Evidence.*  
 No. 5.  
 Yaw Berku,  
 1st witness  
 for  
 Plaintiff,  
 28th  
 August  
 1941,  
 Cross-examination,  
*continued.*  
 Examination by  
 Court.

A. Yes.

Q. Will it surprise you if you hear that according to your agreement with the Plaintiff, Exhibit "C," the Plaintiff had assigned to you only a small portion of land to farm ?

A. Yes.

Q. Was I present when the said agreement was prepared ?

A. No.

Q. Did you tell me before paying the said tribute ?

A. No.

Q. What are you to the Plaintiff ?

10

A. He is my paternal brother.

Q. If somebody acting as a caretaker enters into agreement with some one without the knowledge of this Chief, in respect of his Chief's land, is it valid ?

A. No.

*No more questions by 1st Defendant.*

*Witness XXd. by Etutuohene :*

Q. Who do you know is the owner of the Nkwaakuom land originally ?

A. It is the Toasehene who stationed us there in the olden days.

Q. Were there two Kwaku Aduwube at Nkwaakuom ?

20

A. No, only one.

Q. If the land belongs to Toasehene why did you enter into agreement with the Plaintiff paying him tribute ?

A. I did it because the Plaintiff took me to the D.C. who in turn referred the case to Kwame Kyem to decide and he made us enter into terms with the Plaintiff as such.

Q. You know the land belongs to the Toasehene but you entered the agreement through fear ?

A. Yes.

Q. Did you inform the Toasehene at the time before making that agreement ?

A. No.

*Witness XXd. by Gyasehene :*

Q. Did the Bantamahene demarcate any boundary between the Plaintiff and the Toasehene ?

A. No.

*Witness XXd. by Etipinheme :*

Q. Had Nkwaakuom been founded when the Plaintiff lived at Abina Dwaasi ?

A. Yes.

40

Q. Were you paying him tribute then ?

A. No.

Q. Before you went to Nkwaakuom had you heard that it had been litigated for before ?

A. No.

Q. Do you say that Sir Fuller gave judgment for the Plaintiff ?

A. Yes.

*No more questions.*

*Further hearing adjourned to Wednesday, the 3rd September, 1941, at 9 a.m.*

(Sgd.) BUACHI YAM,  
President.

*In the Asante-hene's "B" Court.*

*Plaintiff's Evidence.*

Witness to Signature :

(Sgd.) I. K. AGYEMAN,  
Registrar,  
28-8-41.

No. 5.  
Yaw Berku,  
1st witness for Plaintiff,  
28th August 1941,  
Examination by Court,  
*continued.*

10

No. 6.

**EVIDENCE of E. A. Kufuor, 2nd witness for Plaintiff.**

17.9.41.

*All parties present.*

*Plaintiff's 2nd witness :*

E. A. KUFUOR, Licensed Surveyor, Kumasi, S.O.B. and stated as follows :

No. 6.  
E. A. Kufuor,  
2nd witness for Plaintiff,  
17th September 1941,  
Statement.

During this year, Barrister E. O. Asafu-Adjaye showed a certain Plan, prepared in connection with a case Chief Gyawu of Toase and Chief Kwame Dapaah of Afari to me and said that His Honour the Judge wished me to go to Yao Tarku (2nd Defendant's) village and measure a stream called Esuowin and Yao Tarku's village his farms in order to compare my Plan with the old sketch so as to know whether Yao Tarku's village and farms were on Chief Kwame Dapaah's land. I went to His Honour the Judge's Court and fixed a date on which I would be ready to go and do the work. When the date expired and I went to the Judge's Court for instructions to proceed, I was told by the Registrar, Divisional Court, Kumasi, that Yao Tarku had written to ask for a time to enable him to be ready. I returned home and waited up to the time fixed by Yao Tarku when the Plaintiff and I went to Yao Tarku's village with a view to doing the work but Yao Tarku was not there. I asked the Plaintiff what I should do seeing that Yao Tarku was absent. The Plaintiff said I should go on with the work because he was going to pay my fees, besides, Yao Tarku did not like the work to be done. Then I went on and did the Plans which were submitted to the Judge's Court, Kumasi, and afterwards I heard that the case had been referred to this Court. I was not called at the Judge's Court to give evidence there. This is all that I know.

*Witness XXd. by Plaintiff :*

Q. Did not the Judge say you should go and show where Yao Tarku's farm lay ?

Examination by Plaintiff.

*In the  
Asante-  
hene's  
" B "  
Court.*

A. I was not there if he said so or not.

Q. Where was Yao Tarku's farm as you went there ?

A. Standing in the stream Esuowin and facing the source, Yao Tarku's farm is on the right portion, and on the left if you turn towards Ankama.

*Plaintiff's  
Evidence.*

*No more questions by Plaintiff.*

*Witness XXd. by 1st Defendant :*

No. 6.  
E. A.  
Kufuor,  
2nd witness  
for  
Plaintiff,  
17th  
September  
1941,  
Examina-  
tion by  
Plaintiff,  
*continued.*  
Cross-  
examina-  
tion.

Q. In your experience as a Surveyor do you say or can you tell the Court that the sketch, Exhibit " B " which bears no date nor signed by anybody is in order ?

A. If it has no reference then it is not in order, it is of no value in that respect. If it was not signed then it is of no value.

Q. Did the Plaintiff show you some boundaries ?

A. Yes.

Q. Were the people with whom he said he had the said boundaries present ?

A. No, they were not present.

Q. Could you see or make it out if in showing you the boundaries the Plaintiff included a portion of my land ?

A. No, I could not.

Q. Could you detect too if names of certain streams there were given to you wrongly ?

A. No.

Q. I suppose you trekked about a portion of the land like from Kumasi to Nkawie and saw plenty of cocoa farms, did you see the forest in the midst of the land ?

A. Yes.

Q. Did you give evidence before His Honour the Judge submit your Plans and same were admitted as being in order ?

A. No.

*No more questions by 1st Defendant.*

*Witness XXd. by 2nd Defendant :*

Q. Was I present when you were preparing the said Plans ?

A. No.

*Examina-  
tion by  
Court.*

*Witness XXd. by Etutuohene :*

Q. Did you know the land and had you gone there before, prior to your going to make these Plans ?

A. No.

*Witness XXd. by Gyasehene :*

Q. Did the Plaintiff show you his boundary with Toasehene ?

A. Yes. He did.

*Witness XXd. by Etipinhene :*

Q. Is your Plan in order ?

A. Yes, it is.

Q. Since the Defendants were not present when you prepared those Plans are they bound by them ?

A. It is Court that can say if the Defendants are bound by those Plans or not, I cannot definitely say it.

*No more questions.*

10

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30

40

## EVIDENCE of Kwame Kyem, 3rd witness for Plaintiff.

17.9.41.

*Plaintiff's 3rd Witness :*

KWAME KYEM, Farmer, sworn and states as follows :—

- What I know is that, about twenty or more years ago, Chief Kwame Dapaah, the Plaintiff herein, had a dispute about a parcel of land with the 1st Defendant's predecessor, the late Chief Akwasi Gyawu. The case was heard and determined by the then District Commissioner, called
- 10 Mr. Wheatley at Nkawie and judgment was entered in favour of the Plaintiff herein. Chief Gyawu appealed from that judgment to the Chief Commissioner's Court, Kumasi. Sir Fuller heard the appeal but upheld the D.C.'s judgment. Later on, Chief Kwame Dapaah sued one Yao Berku for having failed to go into terms with him in respect of annual tribute to be paid to him by the said Yao Berku. I was requested to settle the matter as I was then the Bantamahene and so I called the Plaintiff who said that Yao Berku and the other people had disturbed him and if they wished to continue to farm the land, they must pay him £80 in consideration of the past privileges they had enjoyed from the land.
- 20 D.C. heard the summons case but referred it to me to effect the arrangement between Plaintiff and Yao Berku and his people as regards the tribute.

After discussions the plaintiff agreed to accept £20 a year from Yao Berku and his people for farming plaintiff's portion of the land. Also I made Yao Berku pacify the plaintiff with £60. I deputed my Linguist Kwaku Yeboah to go and see to the document to be prepared.

This is all that I know.

*No question by plaintiff.*

*Witness XXd. by 1st Defendant :*

- 30 Q. Was I included in the said arrangement made with plaintiff by Yao Berku ?
- A. No.
- Q. In connection with what land was the said arrangement made ?
- A. Chief Kwame Dapaah's portion of the Nkwaakuom land which Yao Berku and some people farm.
- Q. What is the extent of the land about which the said arrangement was made ?
- A. I do not know
- Q. Do you state definitely that you were not personally present when the said arrangement was made ?
- 40 A. Yes, I was not present myself.
- Q. If somebody stated that the arrangement was made before you and you held the pen for your mark to be made was it incorrect ?
- A. Yes, it would be incorrect, I was not present.
- Q. Therefore, you do not know the terms of the said or alleged arrangement ?
- A. Yes, because I was not present. Kwaku Yeboah went to witness it.

*In the Asante-hene's " B " Court.*

*Plaintiff's Evidence.*

No. 7.  
Kwame Kyem,  
3rd witness  
for  
Plaintiff,  
17th  
September  
1941,  
Statement.

Cross-examination.



*In the  
Asantehene's  
"B"  
Court.*

*Q. Were you present when the said judgments were given ?  
A. No, I was only told.*

*No more questions by 1st Defendant.*

*Plaintiff's  
Evidence.*

*No. 7.*

*Kwame  
Kyem,  
3rd witness  
for  
Plaintiff,  
17th  
September  
1941,  
Examina-  
tion by  
Court.*

*Witness XXd. by Etutuohene :*

*Q. Do you know the boundary between the plaintiff and 1st defendant?  
A. No.*

*No more questions to the witness.*

**No. 8.**

**EVIDENCE of Odikro Kojo Brobbey, 4th witness for Plaintiff.**

*No. 8.  
Odikro  
Kojo  
Brobbey,  
4th witness  
for  
Plaintiff,  
17th  
September  
1941,  
Statement.*

*17.9.41.*

**10**

*Plaintiff's 4th witness :*

**KOJO BROBBEY, Odikro of Nkwaakuom, sworn and stated as follows .**

I hold two receipts for the sums of £8 and £12 respectively, being tributes I paid to the Plaintiff this year, for and on behalf of Yao Berku. Receipt Nos. 26223 and 26226 shown to the Court and returned to the witness.

*No questions by Plaintiff.*

*Cross-  
examina-  
tion.*

*Witness XXd. by 1st Defendant :*

*Q. Do you know a man called Kwaku Aduwube ?*

*A. Yes.*

**20**

*Q. Is he a subject of Chief Kwame Dapaah ?*

*A. No, he is Anantahene's subject.*

*Q. If therefore the Plaintiff says Kwaku Aduwube is his subject and it was he who founded Nkwaakuom is it correct ?*

*A. It is incorrect, we founded there.*

*Q. Who founded Nkwaakuom ?*

*A. It was my predecessor called Boaitey Kofinam who served your stool.*

*Q. To whom were fees or things accruing from the land sent in the olden days ?*

**30**

*A. To your predecessor called Nana Ayim Awere.*

*Q. Where did Kwaku Aduwube hail from ?*

*A. He hailed from Donkoase.*

*Q. Has he surviving relatives ?*

*A. Yes.*

*Q. Have they any authority on the Nkwaakuom land ?*

*A. No.*

*Q. I suppose Kwaku Aduwube's relatives who died were not buried at Nkwaakuom why ?*

*A. It was on account of a fetish called Amaadaa.*

**40**

- Q. Up to when were deceased people buried there ?  
 A. When Nana Piaahene was Toasehene.  
 Q. Is where Yao Tarku's cottage is part of the Nkwaakuom land ?  
 A. No, it is Nkuran land.  
 Q. I think Nkuran and Nkwaakuom have a boundary ?  
 A. Yes, their boundary is "Obuohu."  
 Q. Did they litigate for that portion on the right-hand side where Yao Tarku's cottage is ?  
 A. No.
- 10 Q. Have you heard of the portion called Apatrapa ?  
 A. Yes.  
 Q. Is it Nkwaakuom land ?  
 A. No, it is Nkuran land.  
 Q. Where does Modwiwasu lie ?  
 A. It lies on the left-hand side of Nkwaakuom.  
 Q. Is Modwiwasu a stream ?  
 A. No, it is a pool.  
 Q. Will it be correct if one says it is a stream ?  
 A. No, it will be incorrect because it is a pool.
- 20 Q. Do you know the land on which Asua Akwasi lies ?  
 A. Yes, it is called Apatrapa.  
 Q. Can its name be changed for Modwiwasu.  
 A. No. It is always Asua Akwasi.  
 Q. Have you heard of the name of a woman called Ataa Twaday ?  
 A. Yes, she went to Nkwaakuom through your predecessor, Nana Ampofu.  
 Q. If the Plaintiff who subpoenaed you alleges that it was he who made her stay at Nkwakuom will it be true ?  
 A. No, it will be incorrect.
- 30 Q. Is Sankori a part of the Nkwaakuom land ?  
 A. No.  
 Q. Have you made any arrangement with the Plaintiff ?  
 A. No, the money I paid on the two receipts represent Yao Berku's fees not mine ; I have no arrangement with Plaintiff.  
 Q. Did you know the alleged terms before paying Yao Berku's money ?  
 A. No.  
 Q. If Yao Berku made a farm while he was Odikro and he has been destooled does his successor take possession ?  
 A. No, and if he made any arrangement with the Plaintiff he made it
- 40 for himself alone not for the Odikro or all the people.  
 Q. Where is the olden boundary between Afari and Nkwaakuom ?  
 A. It is called Abutansu, to Sutre, to Kurubaasi thence to Bonhunum and thence to Kobirim.  
 Q. Where is my portion ?  
 A. You own the left-hand portion and the Plaintiff the right portion.

*No more questions by the 1st Defendant.*

*Witness XXd. by Etutuohene :*

- Q. On whose land do you squat ?  
 A. Chief Owusu, Toasehene (1st Defendant's) land.

*In the  
Asante-  
hene's  
" B "  
Court.*

*Plaintiff's  
Evidence.*

*No. 8.  
Odikro  
Kojo  
Brobby,  
4th witness  
for  
Plaintiff,  
17th  
September  
1941,  
Cross-  
examina-  
tion,  
continued.*

*Examina-  
tion by  
Court.*

*In the  
Asante-  
hene's  
" B "  
Court.*

*Q. Do you farm Plaintiff's land ?*

*A. No.*

*No more questions by Etutuohene.*

*Plaintiff's  
Evidence.*

*No. 8.  
Odikro  
Kojo  
Brobbey,  
4th witness  
for  
Plaintiff,  
17th  
September  
1941,  
Examina-  
tion by  
Court,  
continued.*

*Witness XXd. by Etipinhene :*

*Q. Did Yao Berku inform the Toasehene before he made the said arrangement with the Plaintiff ?*

*A. No.*

*Q. Have you paid the said £20 to the Plaintiff through the Toasehene before ?*

*A. No.*

*Q. Has the Toasehene queried you about it before ?*

*A. No.*

*No more questions.*

*Further hearing adjourned to Monday, 22nd September, 1941, at 9 a.m.*

(Sgd.) BUACHI YAM,

President.

Witness to Signature :

(Sgd.) I. K. AGYEMAN,

Registrar.

17.9.41.

10

20

*No. 9.  
Kojo  
Kukura,  
5th witness  
for  
Plaintiff,  
10th  
November  
1941,  
Statement.*

**No. 9.**

**EVIDENCE of Kojo Kukura, 5th witness for Plaintiff.**

10.11.41.

*All parties present.*

*Plaintiff's 5th witness :*

**KOJO KUKURA, s.a.r.b. And stated as follows :**

About eighteen years ago, the Plaintiff in this case sued the 1st Defendant's predecessor called Barfuo Gyawu, Toasehene, in respect of the Nkwaakuom land, now in dispute. The case was heard by the then District Commissioner, Mr. Wheatley. Mr. Wheatley heard the case at Nkawie and entered judgment in favour of the Plaintiff and against 30  
1st Defendant's predecessor. The D.C. decided the boundary between the Plaintiff and the Toasehene to be at a stream called Esuowin to Modwiwasu Ti thence to another stream called Ayankama. This is all that I know. After the first case, the 1st Defendant's predecessor appealed from the D.C.'s judgment to His Honour, the Chief Commissioner's Court but the D.C.'s judgment was upheld.

*Witness XXd. by the Plaintiff :*

Q. Did you accompany the party when Mr. Wheatley went and demarcated the boundary between my portion and the 1st Defendant's portion of the land ?

A. Yes.

Q. Did the D.C. demarcate a boundary between my portion and Nkawie Kuma too ?

A. Yes, he said is at a stream called Kobi to another stream called Modwiwasu Aboye.

10 *No more questions by Plaintiff.*

*Witness XXd. by 1st Defendant :*

Q. Are you a Stool holder at present ?

A. No.

Q. Is it because you merely accompanied the said party hence you came to give evidence ?

A. I was a Linguist to the Chief of Nkawie when the boundary was going to be demarcated therefore I went too.

Q. Does anybody occupy the Nkawie Kumah Stool now ?

A. Yes.

20 Q. Do you represent him in this case ?

A. No, I have myself been subpoenaed.

Q. Do you say the D.C. demarcated a boundary between Afari and Nkawie Kuma ?

A. The D.C. made a mention of it I do not know if he recorded it.

Q. Do you say that both Esuowin and Modwiwasu streams have one common source ?

A. Yes, their sources meet together.

Q. Where does the source of Esuowin stream lie if you go from Nkwaakuom to Nkuran ?

30 A. It lies on the right hand portion.

Q. Where is the source of Modwiwasu too ?

A. It is on the same right hand portion.

Q. Is Modwiwasu a stream or a pool ?

A. It is a stream.

Q. Have you walked from Modwiwasu source before ?

A. Yes, I have walked in it before but I did not reach its source.

Q. From the source of Modwiwasu to its tributary who owns the land on the right ?

A. It belongs to the Chief of Nkawie-Panin.

40 Q. Who owns that portion on the left hand side ?

A. The Afarihene (Plaintiff) owns it.

Q. Before reaching the source of these two streams who owns the land on the right ?

A. You own that portion and the Plaintiff also owns that on the left.

Q. From Nkuran to Nkwaakuom and as you reach Esuowin who owns the land on the right ?

A. I do not know. I have not been there.

Q. Do you know where the 2nd Defendant lives ?

A. Yes.

*In the  
Asante-  
hene's  
" B "*  
*Court.*

*Plaintiff's  
Evidence*

No. 9.  
Koja  
Kukura,  
5th witness  
for  
Plaintiff,  
10th  
November  
1941,  
Examina-  
tion by  
Plaintiff.  
Cross-  
examina-  
tion.

- In the Asante-hene's "B" Court.*  
*Plaintiff's Evidence.*  
 No. 9.  
 Koj, Kukura, 5th witness for Plaintiff, 10th November 1941, Cross-examination, continued.
- Q. Do you know the land about which we have been sued ?  
 A. Yes.  
 Q. If the Plaintiff alleges that from Nkuran to Nkwaakuom he owns both the left and right hand portions of the land will it be correct ?  
 A. Yes, it will be true.  
 Q. Did the D.C. go from Esuowin to Anyankama ?  
 A. No.  
 Q. Have you farms on the Nkwaakuom land ?  
 A. No.  
 Q. Was it not I who constructed the left hand portion of the lorry 10 road there ?  
 A. I do not remember.  
 Q. Do you know a certain stream there called Asuo-Akwasi ?  
 A. No.  
 Q. Do you know a portion of the land called Apatrapa, where I have a fetish called Tano Kofi and a cemetery ?  
 A. No, and I have not heard of them before.  
*No more questions by 1st Deft.*  
*No questions by members of the Court.*

No. 10.  
 Chief Osei Kofi,  
 6th witness for Plaintiff, 10th November 1941,  
 Statement.

No. 10.

20

**EVIDENCE of Chief Osei Kofi, 6th witness for Plaintiff.**

10.11.41.

*Plaintiff's 6th Witness :*

CHIEF OSEI KOFI, swore the Great Oath and stated as follows :

About ten years ago, the Plaintiff and the 1st Defendant's predecessor litigated over the ownership of the Nkwaakuom land. It was Mr. Wheatley who acting as next to the Chief Commissioner heard the case. The judgment in that case was given in favour of the Plaintiff. Prior to delivering his judgment, he went to Nkawie and we all proceeded to the boundary between the Plaintiff and the 1st Defendant called Modwiasu Ti and Esuowinti. My uncle and predecessor called Akumia, and all the elders and young men of Afari, Toase and Nkawie went to the disputed land. The Commissioner demarcated the boundary between the Plaintiff and the 1st Defendant at Modwiasu Ti to Esuowin Ti, the Plaintiff owns the left-hand portion and the 1st Defendant, Toasehene, also owns the right-hand side. I have a boundary there with the Toasehene. This is all that I know. 30

Examination by Plaintiff.

*Witness XXd. by Plaintiff :*

Q. From Nkwaakuom to Esuowin who owns the right portion of the land ?

A. You own it.

Q. From Esuowin to Anyankama who owns the left side ?

A. You.

*No more questions by Plaintiff.*

40

*Witness XXd. by 1st Defendant :*

Q. Do you remember that I have sworn to the Great Oath that the portion of the land which you alleged that is yours belongs to me and you have not been able to respond to the Oath ?

A. Yes, I have not responded to it because my predecessor litigated for it and judgment was given in his favour.

Note : At this stage, the Witness replied to the Great Oath sworn by the Toasehene.

10 Q. Do you say which is my portion as you go from Modwiwasuti to Esuowinti ?

A. Yes, you own the right.

Q. Do you know the land about which the Plaintiff has sued us ?

A. Yes.

Q. Do you know the portion from Nkuran to Nkwaakuom ?

A. No.

Q. Do you know the portion called Apatrapa ?

A. No.

Q. Do you know Asuo-Akwasi ?

A. No.

20 Q. Have Modwiwasu and Esuowin one source ?

A. No.

Q. Do you know the other portion called Atta Twidaykrom ?

A. No.

Q. Does Modwiwasu flow ?

A. Yes.

Q. Is it not a pool ?

A. No.

Q. Do you know where the 2nd Defendant's cottage is ?

A. Yes.

30 Q. Do you know how he went there ?

A. No.

Q. Do you know Yao Tarku ?

A. Yes.

Q. Do you know whose land is where he lives ?

A. Yes, it belongs to the Plaintiff.

Q. Does he live at Esuowinti ?

A. It is the same portion.

Q. Do you know where Kojo Nkansa lives ?

A. He lives on my land.

40 Q. Was it you who put him there ?

A. No.

Q. How long ago since he settled there ?

A. It is a long time, he went there since the advent of cocoa industry in this country.

*No more questions by 1st Defendant.*

*Witness XXd. by 2nd Defendant :*

Q. Since when did I make my cottage there on the land ?

A. Since the advent of cocoa industry.

50 Q. Have I been paying tribute to anybody ?

A. I do not know.

*No more questions by 2nd Defendant.*

*In the  
Asante-  
hene's  
" B "  
Court.*

*Plaintiff's  
Evidence.*

*No. 10.  
Chief Osei  
Kofi,  
6th witness  
for  
Plaintiff,  
10th  
November  
1941,  
Cross-  
examina-  
tion.*

*In the  
Asante-  
hene's  
" B "  
Court.*

*Witness XXd. by Gyasehene :*

*Q.* Do you know the full boundary between the Plaintiff and the 1st Defendant on the land in dispute ?

*A.* Yes, it is from Modwiwasuti to Esuowinti.

*Plaintiff's  
Evidence.*

*No more questions by Gyasehene.*

No. 10.  
Chief Osei  
Kofi,  
6th witness  
for  
Plaintiff,  
10th  
November  
1941,  
Examina-  
tion by  
Court.

*Witness XXd. by Etipinhene :*

*Q.* Before reaching Modwiwasuti what marks the boundary ?

*A.* I do not know.

*No more questions.*

Plaintiff has no more witness to call.

10

*Plaintiff :* I subpoenaed the 2nd Defendant to produce certain letters in his possession in evidence. (Letters dated 8th April, 1941, signed by Mr. B. Crosby Davis, Registrar, Divisional Court, Kumasi, and 9th April, 1941, addressed by H. A. Hayfron Benjamin to the Registrar, Divisional Court, Kumasi, are accepted and marked as Exhibits " E " and " F " respectively.)

*Further hearing adjourned to Friday, the 14th November, 1941, at 9 a.m.*

(Sgd.) BUACHI YAM,

President.

20

Witness to Signature :

(Sgd.) I. K. AGYEMAN,

Registrar.

10.11.41.

*Case for the Plaintiff closed.*

*Defendants'  
Evidence.*

**DEFENDANTS' EVIDENCE.**

No. 11.  
Chief Kofi  
Owusu, 1st  
Defendant,  
9th, 11th  
and 18th  
February  
1942,  
Statement.

No. 11.

**EVIDENCE of Chief Kofi Owusu, 1st Defendant.**

9.2.42.

*All parties present.*

30

1st Defendant, CHIEF KOFI OWUSU, swore Great Oath and stated as follows :

My case is that, it was during the reign of Nana Osei Tutu, Asantehene that my great grandfather and predecessor called Barfuor Ayim came from Denkyira to Ashanti to settle in Ashanti to assist the Otumfuo Asantehene to administer the affairs here. The Otumfuo Asantehene allotted a parcel of land to my grandfather to settle on. The Obaa-Panin with whom

Barfuor Ayim came was called Kyeiwaa. As Barfuor Ayim had many followers he first settled at a place called " Afarsie Bon " and his son called Fosuhene Panin also settled at Twedieh village. His Abontendomhene to settle at Twedieh Nkwanta, alias Sibidieh. The name of the Abontendomhene was Oteng Panin, Barfuor further founded the present Nkuran village. When Barfuor Ayim was coming from Denkyira, he came with his Safuhene called Afuaduwa. Later on, Oteng Panin removed and went and settled at the present village of Toase. Barfuor Ayim's Twafuohene called Akeseh founded and occupied Mpasaatia and other villages on the

10 lands attached to my stool. When Afuaduwa was living with Barfuor Ayim at Nkuran, his followers farmed the Nkuran land and used to fetch their foodstuffs therefrom. As they used to go to their farms very often, and fetch plaintain in abundance they called the place from where they fetched the plaintain as " Kokom " i.e. Nkuran Kokom which meant that a portion of the same Nkuran land. When Afuaduwa was not Boaiety Kwafram took his place and founded a cottage at the present Nkwaakuom village because his people were farming there already. Whatever valuable thing such as game or rubber that accrued from that land was sent to the occupant of my stool. Sometime in the time of my predecessor called

20 Afrifa the following Akyim people went and tapped rubber there on the land in dispute and sent my stool's share to him. Owusu-Ansah, Dobrah and Obiremkoa. King Nana Bonsu also sent one Kwame Dawra and Kofi Berkoe to go and tap palmwine and the place they occupied on the land in dispute is still there called " Nkinkwakrom." A certain woman called Attaa Twaaday of the village of Besiasi was about to be beheaded in the olden days but she besought my predecessor called Ampofu to beg for her. He did so for her and consequently, my predecessor Ampofu gave the woman to the 2nd Defendant's great grandmother called Adjuah Antwiwa, who lived at the village of Fwidiesu to accommodate her. This

30 village Fwidiesu was founded by one of my stool elders called Kofi Akyempon.

*Further hearing adjourned to Wednesday the 11th February, 1942.*

(Sgd.) BUACHI YAM,

President.

Witness to Signature :

(Sgd.) I. K. AGYEMAN,

Regr.

9.2.42.

11.2.42.

40 *All parties present.*

*1st Defendant continues his statement :*

As requested, I allotted the said Attaa Twaaday a portion of my land at Nkuran to settle hence, after her settlement it was named after her as Attaa Twaadaykrom. In token of ownership of the land, Attaa Twaaday was to and she used to send to my stool, on every " Adwide Fiaada " in every year, palm oil and a number of yams. From this Fwidiesu you go

*In the  
Asante-  
hene's  
" B "   
Court.*

*Defendants'   
Evidence.*

*No. 11.  
Chief Kofi  
Owusu, 1st  
Defendant,  
9th, 11th  
and 18th  
February  
1942,  
Statement,  
continued.*



*In the  
Asante-  
hene's  
" B "  
Court.*

*Defendants'  
Evidence.*

No. 11.  
Chief Kofi  
Owusu, 1st  
Defendant,  
9th, 11th  
and 18th  
February  
1942,  
Statement,  
*continued.*

up to Apatrapa as you go from Fwadiesu to Nkwaakuom it is on the left-hand side. This Apatrapa was founded by one of my predecessors called Takwah Fori whose fetish called Tano Kofi is there at the present; his watering place was called Esuo-Akwasi the source of which is from Nkuran. From Fwadiesu or Nkuran going towards Nkwaakuom you cross a certain stream called Esuowin whose source is in the left-hand portion as one goes from Nkuran or Fwadiesu to Nkwaakuom, and there is a tree called Wawa on its source. Esuowin also flows from its base across the Fwadiesu or Nkuran Nkwaakuom path to another stream called Subompan on the right-hand portion. It is on this right-hand portion that the 10  
2nd Defendant's cottage is, after the portion occupied by Attaa Twaaday's cottage. The legs of games from where the 2nd Defendant lives are regularly sent to me as the owner of the land. Since the 2nd Defendant founded his cottage there, he has never, on any occasion paid any fee to any Chief to testify that he the Chief is the owner of the land. Second Defendant, however, has in addition to my land which he farms freely, being my stool subject, farmed on Kojo Fah's portion and it is in respect of that alone that he, 2nd Defendant, and his sister called Abena Agyepoma pay annual tribute of £2 and £1 respectively. In the olden days, when Nana Bonsu was Asantehene, one Kwaku Adubeh of Dompooase 20  
went and lodged the Odikro of Nkwaakuom, my land. Kwaku Adubeh's sister was called Akosua Asoh who went with him to settle at Nkwaakuom for hunting purposes, and Akosua Asoh's descendants who are Anantahene's subjects are still occupying that portion of my land. In the olden days, Nana Efua Kobi's attendant called Sansabuami, a woman went to Nkuran and dug a well for drinking purposes. As she was an attendant of Nana Efua Kobi the people of the village called the well " Mmodwiwasu " and it remains to-day. The " Mmodwiwasu " is neither a stream nor a river, it was only that the people who used it made a footpath, which when it rains becomes flooded and water from it runs into the " Mmodwiwasu." 30  
It is about two miles walk through farms from Esuowinsu where the Wawa tree stands to the Mmodwiwasu, it is also about the same distance from Esuakwasi, the watering place of the Apatrapa people, to the stream called Kobi, Esuakwasi lies on the left-hand side while Mmodwiwasu is on the right but one has to walk about two miles before reaching the Mmodwiwasu. While the Plaintiff stated his case here the other day, he called Esuakwasi as " Mmodwiwasu " and that is why I am defining those streams clearly. The Plaintiff further tried to call the Nkuran land, where the 2nd Defendant lives as Nkwaakuom land. But it is not the case, the Odikro of Nkwaakuom is different and the caretaker of my land where the 2nd Defendant lives is 40  
different. My caretaker of the portion where 2nd Defendant lives was called Kofi Acheampon and while he was not I put Akwasi Wusu there. While Akwasi Wusu also was not I put Osei Kojo there. While Osei Kojo also died, I put Osei Kwame there. *There* were my head gun carriers or " Atumtufuohene." With regard to Nkwaakuom, one Yaw Twiniboa succeeded the previous caretakers for me and as Yaw Twiniboa died, Kwabena Gyawu succeeded him. Kwabena Gyawu was also succeeded to by Yaw Berku. Yaw Berku was succeeded to by Kojo Brobby who is alive. The portion I call Nhinkwakrom was occupied by some Nhinkwaa but as they removed, one Kojo Ahin farmed there by my permission and 50  
nicknamed it " Seyekodi ni " (should we live to enjoy the proceeds of our farms) and for that purpose it has borne that name " Sonkori " up to this

[sic]

day. When Kojo Anin was not alive, one Ayiwa settled there with one Akwasi Kokor who are the Otumfuo Asantehene's Atumtufuo and that cottage or village is inhabited to-day. It has never come to my notice that anybody has ever sent anything from the land to the Plaintiff. The boundary between Nkuran and Nkwaakuom is Obuoho and the 2nd Defendant lives on the right-hand side as one goes from Nkuran or Fwadiesu. And the boundary between my portion of the land and that of Owieredu Dikro is called Ntiwa Dasuor, which is a stream. From Ntiwa Dasuor to Abutansu I have a boundary with the Plaintiff at the Abutansu

10 which is our head boundary. Thence to another place called Sutray, thence to the Nkwaakom path to the Kumasi-Nkawie Lorry Road. From the Sutray to the Lorry Road, I own the left-hand side portion up to "Krobinahu" thence to "Bonhunum" and the Plaintiff also owns the right-hand portion. This is the boundary between Nkwaakom and Afari. I remember in 1917 my predecessor called Chief Akwasi Gyawu had a litigation with the Plaintiff over the ownership of this very Nkwaakom land. The case was heard by the then District Commissioner Mr. L. H. Wheatley who proposed to view the land. He did go up to the Esuowin stream and was only told that the land in dispute was the portion on the

20 right-hand side. He did not go to the source of Esuowin nor did he walk in it up to "Mmodwiwasu" or Kobrom and decided that from the source of Esuowin to Mmodwiwasu thence to Kobrom should be the boundary. He said nothing about the portion now occupied by the 2nd Defendant because it was not in respect of that area that my predecessor Chief Gyawu litigated with him. Chief Akwasi Gyawu, my predecessor, was aggrieved by Mr. Wheatley's Judgment and so he appealed therefrom to the Chief Commissioner's Court, presided over by Sir F. C. Fuller, Chief Commissioner, Ashanti. In the face of law, and in my own opinion my predecessor's

30 appeal was allowed and judgment of the Chief Commissioner's Court was entered in my predecessor's favour. In that, His Honour's decision was not in respect of the Nkwaakom land; what I mean to say is, that, His Honour the Chief Commissioner said nothing about the Nkwaakom land as far as copy of his decision, tendered in evidence in this case by the Plaintiff, is concerned. The second point is, the Chief Commissioner gave judgment against the Plaintiff and the Plaintiff in that case, to which I have referred, was the Plaintiff in this case. In about 1941, the Plaintiff went and sued the 2nd Defendant at the Divisional Court, Kumasi, claiming an amount of £240 which he Plaintiff alleged that represented twenty-four years' tribute at £10 a year. I should like to tender a copy of

40 the writ of summons in evidence. (Copy of the writ of summons dated 28th January, 1941, tendered by 1st Defendant accepted and marked as Exhibit "G".) Then the 2nd Defendant went and swore to an affidavit stating that he did not live on the Plaintiff's land. I tender a copy of his affidavit also in evidence. (Copy of affidavit dated 14th February, 1941, accepted and marked as Exhibit "H".) When the case went before the Judge's Court I thought that the 2nd Defendant had trespassed to the Plaintiff's portion of the land. On that occasion I observed that the Plaintiff showed the Judge the copy of Sir Fuller's decision. The Judge told him that that paper did not mean anything in that case, and therefore

50 he Judge Fuad would not accept it as an Exhibit in that case, because the case decided by the Chief Commissioner affected the Nkawie land and not the Nkwaakom land. The Plaintiff produced, also, an agreement made

*In the  
Asante-  
hene's  
" B "  
Court.*

*Defendants'  
Evidence.*

No. 11.  
Chief Kofi  
Owusu, 1st  
Defendant,  
9th, 11th  
and 18th  
February  
1942,  
Statement,  
*continued.*

*In the  
Asante-  
hene's  
" B "*  
*Court.*

*Defendants'  
Evidence.*

No. 11.  
Chief Kofi  
Owusu, 1st  
Defendant,  
9th, 11th  
and 18th  
February  
1942,  
Statement,  
*continued.*

between him and Yaw Berku in respect of the Nkwaakom land, to my surprise, it was only that day that I saw that document or heard of it. The Judge asked the Plaintiff where was the 2nd Defendant's agreement with him which entitled him to claim the said £240 0s. 0d. The Plaintiff said Yaw Berku paid him tribute but the Judge said, if Yaw Berku was a fool and the 2nd Defendant was not he could not admit it to be binding on the 2nd Defendant. Consequently, I swore to an affidavit to the effect that the parcel of land occupied by Yaw Tarku, 2nd Defendant herein, was mine. I tender copy of my affidavit in evidence. (Copy of affidavit accepted and marked Exhibit " I "). The Judge therefore ruled in favour 10 of the 2nd Defendant and against the Plaintiff with costs. And from there the Judge referred the Plaintiff to this Court and he came and sued the 2nd Defendant and me. I tender also copy of the Judge's Ruling in evidence. (Copy of the Judge's Ruling dated 5th May, 1941, accepted and marked Exhibit " J "). Again the Plaintiff sued some of my stool subjects claiming £70 from one Kwabena Nimo in respect of the portion of the land called " Sankori " before this Court and the case is before this Court now. This is my case. I ought to have sued the Plaintiff and not he to sue me, because he had entered into agreement with some people in respect of the Nkwaakom land which is my property. If Yaw Berku paid 20 any money to the Plaintiff, it might be that Yaw Berku thought that the Nkwaakom land belonged to the Plaintiff.

*Cross-  
examina-  
tion.*

*1st Defendant XXd. by the Plaintiff :*

*Q.* You stated that you occupied the land in dispute during the reign of Otumfuo, Mana Osei Tutu, did you not overtake anybody on the land ?

*A.* No, you were living at a place called Ahinadjuasi which lies between Tanosu and Abuakwa road.

*Q.* Had not Nkawie Panin been founded then ?

*A.* No, and both Nkawie Panin and Kemka were given portions by me to occupy. 30

*Q.* Had I not founded Nkwaakom before you came from Denkyira ?

*A.* Not at all, it was my own predecessor called Boaity Kwafraam who founded Nkwaakom.

*Q.* Do not you remember that my grandmother called Akosua Saah and your predecessor called Ampofu litigated over this same Nkwaakom land, before Nana Agyeman, Asantehene, in the olden days and judgment was given in favour of my grandmother Akosua Saah ?

*A.* Never, because when Nana Agyeman was Asantehene my Stool was occupied by Nana Owusu Piabre but he never litigated as you allege.

*Q.* Do you know a portion of the Nkwaakom land is called Ampofu 40 Boa (Ampofu lies) ?

*A.* No, not to my knowledge.

*Q.* Do you not remember that when the late Osei Mampon was Bantamahene my predecessor called Atta Yaw litigated with your predecessor Gyawu about this same land and judgment was given against your predecessor ?

*A.* I have never heard of it.

*Q.* Do you not remember that when you had a case with Kojo Sanaah and I was a witness I gave evidence to the effect that my boundary with you was from Esuowin to Ayankama ? 50

*A.* No, and even at that time you had a dispute with me. It was not I who subpoenaed you either.

Q. You state that Sir Fuller did not give judgment in my favour, why then have your Stool subjects farming the land been paying me annual tribute ?

A. It has never come to my knowledge or hearing until you sued the 2nd Defendant at the Judge's Court, Kumasi.

Q. Do you charge the stranger-farmers tribute in respect of the Nkwaakom land ?

A. They were paying me tribute through my caretaker there.

Q. How many such strangers were paying you tribute ?

10 A. They paid the tribute through the Odikro there who was my caretaker.

Q. I put it to you that Amankwa of Akyiremadi was paying tribute to me ?

A. I do not know.

Q. I put it to you that since Sir Fuller gave judgment for me all the farmers have been paying tribute to me ?

A. I do not know and because of this litigation I have collected tribute from nobody.

20 Q. Do not you know that the Hiawuhene's subjects called Anfwiree and others pay me £10 a year, in respect of the Nkwaakom land ?

A. I did not know until you sued the 2nd Defendant at the Divisional Court, Kumasi.

*Further hearing adjourned to Thursday, 12th February, 1942, at 9 a.m.*

(Sgd.) BUACHI YAN,

President.

Witness to Signature :

(Sgd.) I. K. AGYENAN,

Registrar,

11.2.42.

30 18.2.42.

*All parties present in Court.*

Plaintiff continues his questions to 1st Defendant :

Q. You allege that the parcel of the land in dispute is your property, how much tribute have you ever collected from it ?

A. I cannot tell you how much money I have since collected from the land. I have proved my traditional title to the land. Besides those farming the land are my stool subjects who contribute to my stool debt and services.

40 Q. My Afari subjects farm Abutansu and Yao Tarku Krom, how often have you charged them fees ?

A. I have never seen one farming there.

Q. How far is Esuowin to Asuo-Akwasi on the land ?

A. It will be about one mile.

Q. When I had a case with Chief Gyawu and judgment was given against him, who appealed to the Chief Commissioner's Court ?

A. It was my predecessor Chief Akwasi Gyawu who appealed.

*In the  
Asante-  
hene's  
" B "  
Court.*

*Defendants'  
Evidence.*

*No. 11.  
Chief Kofi  
Owusu, 1st  
Defendant,  
9th, 11th  
and 18th  
February  
1942,  
Cross-  
examina-  
tion.  
continued.*

*In the  
Asante-  
hene's  
"B"  
Court.  
—  
Defendants'  
Evidence.  
—  
No. 11.  
Chief Kofi  
Owusu, 1st  
Defendant,  
9th, 11th  
and 18th  
February  
1942,  
Cross-  
examina-  
tion,  
continued.  
Examina-  
tion by  
Court.*

Q. Do not you remember that your predecessor paid my costs in that appeal case ?

A. I do not know, I was not a Chief then.

Q. Do not you remember that Sir Fuller used to call appellants as plaintiffs ?

A. I do not know that.

Q. If someone appealed from a judgment and the appellate Court dismissed the appeal then who is the loser ?

A. The appeal you refer to was not dismissed.

*No more questions by Plaintiff.*

10

*1st Defendant XXd. by Etutuohene :*

Q. Do you know the land about which your predecessor Chief Gyawu and the Plaintiff litigated some time ago ?

A. Yes.

Q. Did they litigate about Nkwaakom land ?

A. Yes, it was about the Nkwaakom land, Nkuran land was not included.

Q. Has the Plaintiff included Nkuran land in this case ?

A. Yes, he has.

*No more questions by Etutuohene.*

20

*1st Defendant XXd. by Etipinhene :*

Q. In the case to which you both have referred did your predecessor and the Plaintiff go to the land and had the boundary demarcated ?

A. No.

Q. Did you litigate for the Nkawie Panin land too ?

A. No.

Q. Have you not seen the C.C.A.'s judgment on 17.4.17 before ?

A. No, until recently when the Plaintiff sued the 2nd Defendant at the Divisional Court, Kumasi.

Q. Does not that judgment go against your stool ?

30

A. No, it does not because it was entered in favour of my stool.

Q. Is Yaw Berku who pays annual tribute to the Plaintiff your subject ?

A. Yes.

Q. Do not terms made by Yaw Berku with the Plaintiff go against your stool ?

A. No, because he could effect any arrangement with anybody without my knowledge and that will never be against my stool.

*No more questions.*

**No. 12.**  
**EVIDENCE of Yaw Tarku, 2nd Defendant.**

*In the  
Asante-  
hene's  
" B "  
Court.*

2nd Defendant, YAW TARKU, Sworn and states as follows :

I have nothing more to say than what the 1st Defendant has stated. I am not litigating for land, it was the 1st Defendant who gave me a parcel of land called Bredi, a part of Nkuran land to found my cottage. I have never paid tribute to anybody and all the games killed there I obtain the 1st Defendant's customary share and send same to him. Recently, the Plaintiff came to say that I might pay him tribute and I said no I did not  
10 occupy his land and then he came and sued me.

*Defendants'  
Evidence.  
---  
No. 12.  
Yaw Tarku,  
2nd  
Defendant,  
18th  
February  
1942,  
Statement.  
Cross-  
examina-  
tion.*

This is all I have to say.

*2nd Defendant XXd. by Plaintiff :*

*Q.* Were you not present and aware when I was litigating with your Chief Gyawu ?

*A.* I was not there. The land I am farming now was farmed by my ancestors in the olden days.

*No more questions.*

*2nd Defendant XXd. by Etipinhene :*

*Q.* How long now since you farmed the land ?

20 *A.* My ancestors farmed it from time immemorial when Nana Ayim was Toasehene.

*Examina-  
tion by  
Court.*

*No more questions by Etipinhene.*

*2nd Defendant XXd. by Etutuohene :*

*Q.* Has the Plaintiff ever queried you concerning your occupation of the parcel of the land before ?

*A.* No.

*No more questions.*

*Further hearing adjourned to Thursday, the 19th February, 1942.*

(Sgd.) BUACHI YAM,  
President.

30

Witness to signature :

(Sgd.) I. K. AGYEMAN,  
Registrar.

18.2.42.

*In the  
Asante-  
hene's  
"B"  
Court.*

No. 13.

**EVIDENCE of Osei Kwame, 1st witness for Defendants.**

19.2.42.

*All parties present.*

*Defendants'  
Evidence.*

Defendants' 1st Witness, OSEI KWAME, Elder of Toasehene and Farmer, sworn and stated as follows :

No. 13.  
Osei  
Kwame,  
1st witness  
for  
Defendants,  
19th  
February  
1942,  
Statement.

I am the Odikro of Fwudiesu, on the Nkuran land belonging to the 1st Defendant, Toasehene. I knew five of my predecessors who lived and farmed the 1st Defendant's parcel of land where the 2nd Defendant's cottage is to-day. It was I who stationed the 2nd Defendant at where his cottage is. It is thirty years now since I put him there on the parcel of land and he has never paid tribute or fees of any kind to anybody before. Where the 2nd Defendant's cottage is, the 1st Defendant, Toasehene, has a boundary with the Odikro of Wiredu only ; I always claim from the 2nd Defendant for the 1st Defendant any valuable thing got from the land. In the olden days the Otumfuo Nana Bonsu requested my predecessor called Ampofo for a place for palmwine to be tapped for him, my predecessor gave a portion of the land which is to-day known and called as Nthinkwaa-krom. Later on, one man called Kojo Anim went and lived there and I used to collect dues from him to the 1st Defendant. Some time too, one Akwasi Kokor and his sister Ayiwa went and lived there for hunting purposes and I used to get 1st Defendant's share for him. In the olden days, one Atta Twiaday of Besiasi came to Fwudiesu and requested Nana Antwiwa to inform Nana Ampofo to find her a place to stay. Nana Ampofo allotted her a portion of his land she settled there and so that place is to-day called Attaa Krom. At the end of each year, Attaa used to send yams and palm oil to Nana Ampofo. When Attaa died it was my predecessor Adjoa Antwiwa who buried her. From Fwudiesu to Nkwaakom the 2nd Defendant's predecessor farmed the right hand side, the property of the 1st Defendant and I am the caretaker for the 1st Defendant. This is all that I know.

*Examina-  
tion by 1st  
Defendant.*

*1st Defendant questions the witness :*

Q. Where do the peoples of Nkuran and Nkwaakom farm to meet ?

A. They meet at a certain portion called Obuahu.

Q. Do you know the portion called Apatrapah ?

A. Yes, I do.

Q. What is there ?

A. There is a Fetish called Tano Kofi where your cemetery is.

Q. Do they farm that parcel of land ?

A. No.

Q. Is there a certain uncultivated forest ?

A. Yes.

Q. Was the Apatrapah land included when some time ago there was a litigation about the Nkwaakom land ?

A. No.

Q. Was where the 2nd Defendant's cottage is also included ?

A. No.

Q. Have you been to the stream called Asua Kwasi before ?

A. Yes.

Q. Where does it lie ?

A. It lies on Apatrapa land.

Q. Have you heard of the name of a pool called Modwiasu before ?

A. Yes.

Q. Does it flow ?

A. No, it is a pool.

*No questions by 2nd Defendant.*

*Witness XXd. by Plaintiff :*

10 Q. Do you remember that I used to get my shares of rubber tapped at where Kojo Ahin lived ?

A. No.

Q. Do not you remember that I used to collect my customary share of rubber from where Kwaku Anfwire lived ?

A. No. I do not know where Kwaku Anfwire lived.

Q. Where did his mother Abina Poh live ?

A. She lived at Fwidiesu.

Q. Did you know where Kwabena Nimoh lived ?

A. Yes, he lived at Fwidiesu.

20 Q. How much was Kwaku Anfwire or Kwabena Nimoh paying you yearly in respect of the land ?

A. They paid no tribute through me to 1st Defendant because they were his stool subjects.

Q. What have you ever asked or questioned me about my charging Kwaku Anfwire £10 a year ?

A. I have no knowledge of your charging him £10.

Q. How much do you charge from Amankwa and Kropah for the 1st Defendant ?

A. They farm Nkwaakuom land over which I am not the caretaker.

30 Q. Do not Kropah and the 2nd Defendant farm one and the same land ?

A. No, where Kropah farms is different, it was not I who gave him a portion.

Q. Have we not litigated over the Nkwaakuom land before ?

A. I have heard so.

Q. Against whom was judgment given ?

A. I heard that judgment was given for you but Chief Gyawu, 1st Defendant's predecessor, appealed from that judgment to the Chief Commissioner's Court. The case was not determined and Chief Gyawu felt sick and died.

40 Q. Do not you remember that Mr. Wheatley, the then D. C. Kumasi demarcated the boundary from Esuwin to Modwiasu ?

A. I do not remember.

Q. What was his judgment then ?

A. I did not hear what boundary he pointed.

Q. In respect of which portion did Mr. Wheatley give judgment in my favour ?

A. He said from Nkuran to Nkwaakuom to Kobirim, the left-hand side, and the right-hand side for the Toasehene, 1st Defendant.

Q. Did Mr. Wheatley make any stream or pool a boundary ?

A. I do not know.

*In the  
Asante-  
hene's  
" B "  
Court.*

*Defendants'  
Evidence.*

No. 13.

Osei  
Kwame,  
1st witness  
for  
Defendants,  
19th  
February  
1942,  
Examina-  
tion by 1st  
Defendant,  
*continued.*

Cross-  
examina-  
tion.



*In the  
Asante-  
hene's  
" B "  
Court.*

*Q. Do not you remember that he fixed the boundary at Esuowin to Modwiwasu to Kobri ?*

*A. No.*

*No more questions by the Plaintiff to the Witness.*

*Defendants'  
Evidence.*

*Witness XXd. by Etipinhene :*

*Q. Did the Plaintiff and 1st Defendant's predecessor late Chief Gyawu go with Mr. Wheatley to demarcate the said boundary ?*

*A. No.*

*Q. Do you say Modwiwasu is a pool ?*

*A. Yes.*

*Q. Do you know Yaw Berku ?*

*A. Yes, I do.*

*No more questions by Etipinhene.*

No. 13.  
Osei  
Kwame,  
1st witness  
for  
Defendants,  
19th  
February  
1942,  
Examina-  
tion by  
Court.

10

*Witness XXd. by Gyasehene :*

*Q. What is the 1st Defendant's boundary with the Plaintiff at the portion where you are the 1st Defendant's caretaker ?*

*A. Subonpan.*

*Q. Where is his boundary with Kojo Fah ?*

*A. It is called Nitiwa-Dasuor.*

*No more questions.*

20

*Further hearing adjourned to Saturday, 21st February, 1942, at 9.30 a.m.*

(Sgd.) BUACHI YAM,  
President.

Witness to Signature :

(Sgd.) I. K. AGYEMAN,  
Registrar,

19.2.42.

No. 14.  
Odikro  
Kojo Fah,  
2nd witness  
for  
Defendants,  
26th  
February  
1942,  
Statement.

No. 14.

**EVIDENCE of Odikro Kojo Fah, 2nd witness for Defendants.**

26.2.42.

30

*All parties in Court.*

Defendant's 2nd witness, KOJO FAH, Odikro of Wiredu Village, swore the Great Oath and stated as follows :

What I know is that I overtook my predecessor in office called by the name of Kofi Agyei who told me that the parcel of land lying from Wiredu village to Kojokrom belongs to Wiredu and that Wiredu boundary with the Toasehene, 1st Defendant herein, is at a stream called Penipah Amitowadasuor. The left-hand side is for the Toasehene and the right side is mine. My portion ends at a group of stones in that stream and from there going the Plaintiff has a boundary with the Toasehene on the left-hand side. This is all that I know.

40

*Witness XXd. by 1st Defendant :*

Q. Do you know the portion of the land where the 2nd Defendant's cottage is ?

A. Yes, I know it and it is your land.

Q. Does Yao Tarku pay any tribute ?

A. Yes, he does because he farms a portion of my land. He and his sister pay £3 every year in respect of my land which they farm.

*No more questions by Defendants.*

*Witness XXd. by the Plaintiff.*

10 Q. Who gave your predecessors a land to occupy or farm ?

A. It was the Otumfuo Nana Osei Tutu.

Q. Do not you remember that my boundary with your portion is at Abuabu ?

A. No.

Q. Is not Abuabuagya my boundary with Esumadu ?

A. Yes, I should think so.

Q. I put it to you that the stream you call Penipah is called Ayankama ?

A. No, as far as my portion is concerned it is called Penipah.

20 Q. Why is a portion of the stream called Amitewa ?

A. It was in the olden days that my predecessor called Abina Amponsaa overtook a princess called Akaadom and others fishing in that stream and my Nana Amponsaa unknowingly insulted them. The Princess was *enranged* thereby and so Nana Amponsaa elected to remain there and so that place was called as such. [sic]

Q. Was it not your Nana called Adjoa Abasa who insulted my Nana Akyeamaa and so she your Nana Adjoa Abasa was brought to Kumasi and beheaded ?

A. No.

30 Q. Do not you know that I collected tribute in respect of Kojokrom land ?

A. No. I do not remember, Kojokrom is mine.

Q. Do you collect tribute in respect of Kwame Nsiakrome ?

A. Kwame Nsiakrom is my land but nobody has farmed there.

Q. What about Kwame Numkrom ?

A. It is the same as Kwame Nsiakrom.

Q. Do you remember I had an Oath Case with your elder called Amankwa in respect of the Kojokrom land and your said elder could not contest the case with me and he begged ?

40 A. Never, I do not remember.

Q. Do you not remember that when I was litigating with Chief Gyawu for the Nkwaakuom land Ama Oma gave evidence that she had no land there ?

A. No.

*No more questions by Plaintiff.*

*Witness XXd. by Etutuohene :*

Q. Is it where the 2nd Defendant's cottage is that you have a boundary with 1st Defendant ?

A. Yes.

50 *No more questions.*

*In the Asante-hene's " B " Court.*

*Defendants' Evidence.*

No. 14.

Odikro  
Kojo Fah,  
2nd witness  
for  
Defendants,  
26th  
February  
1942,  
Examina-  
tion.

Cross-  
examina-  
tion.

Examina-  
tion by  
Court.

*In the  
Asante-  
hene's  
" B "*  
*Court.*

No. 15.

**EVIDENCE of Odikro Poku Sraha 3rd witness for Defendants.**

26.2.42.

Defendant's 3rd witness, POKU SRAHA, Odikro of Mansasu, swore Great Oath and stated as follows :

*Defendants'  
Evidence.*

No. 15.  
Odikro  
Poku  
Sraha, 3rd  
witness for  
Defendants,  
26th  
February  
1942,  
Statement.

It was Nana Awere who founded the village of Nkuran while Tarku Ofori also founded the Apatrapa village. The Apatrapa watering place or drinking water was called Asuakwasi which used to get dried up in dry seasons. Consequently, Nana Tarkwa Ofori decided to remove bag and baggage to live at Nkuran village where water was not scarce. His fetish called Tano Kofi refused to go and so it remained at Apatrapa but the occupant of the Awere Stool i.e. Toasehene sends sheep to me at Apatrapa for sacrifice for the fetish every year. The forest in which the fetish is, is marked by Ntomeh and other shrubs. Recently, the Plaintiff has cut a path round it to say that it belongs to him. I have been subpoenaed a witness in this case and this is what I know.

*No questions by Defendants.*

*Cross-  
examina-  
tion.*

*Witness XXd. by Plaintiff :*

*Q.* Do you remember I litigated for this land of Nkwaakuom with Chief Gwayu before ?

*A.* Yes.

*Q.* For whom judgment was given ?

*A.* D.C. Wheatley gave judgment for you but Chief Gwayu appealed to the Chief Commissioner and judgment was given for Chief Gwayu.

*Q.* Where did the Chief Commissioner demarcate the boundary between Chief Gwayu's portion and mine ?

*A.* He demarcated it at Kunubrahu, thence to Bonbunum thence to the Nkawie and Afari lorry road.

*Q.* Who paid the costs in the Chief Commissioner's Court ?

*A.* You paid same to Chief Gyawu because you lost the case.

*Q.* How much did I pay ?

*A.* I do not remember.

*Q.* Do you not know I collect tribute in respect of Nkwaakuom ?

*A.* I do not know, I do not live there.

*No more questions by Plaintiff.*

*Defendants have no more witnesses to call.*

*Parties close their case.*

No. 16.  
Court  
Order for  
Inspection  
of area,  
26th  
February  
1942.

No. 16.

**COURT ORDER for Inspection of Area.**

*By the Court :*

Let the Court depute the following members of the Court and messengers to go and view the land in dispute and report before judgment be given :—

Gyasehene Ofori Khan II,  
Etutuohene Oppon Waddish,  
Linguist Kwabena Kwaaku,  
Atipinhene Boakyi Yam and  
Registrar Mr. I. K. Agyeman.

40

Each of the parties to the case i.e. the Plaintiff and the Defendants to deposit £15 into Court.

(Sgd.) BUACHI YAM,  
President.

*In the  
Asante-  
hene's  
"B"  
Court.*

Witness to signature :

(Sgd.) I. K. AGYEMAN,

Registrar.

26.2.42.

No. 16.  
Court  
Order for  
Inspection  
of area,  
26th  
February  
1942,  
*continued.*

No. 17.

**JUDGMENT.**

10

IN THE KUMASI DIVISIONAL NATIVE COURT held at Kumasi  
on Monday, the 7th day of December, 1942

No. 17.  
Judgment,  
7th  
December  
1942.

Before :

The ETIPINHENE  
The ETUTUOHENE  
The GYASEHENE.

CHIEF KWAME DAPAAH OF AFARI for and on behalf  
of himself and of the stool of Afari . . . . . Plaintiff

*Vs.*

20 1. CHIEF KOFI OWUSU  
2. YAO TARKU . . . . . Defendants.

*All parties present in Court.*

Members of the Court and messengers deputed to view the parcel of the land in dispute submit their written report per Linguist Kwarku, sworn :

Report dated 30th September, 1942, accepted by the Court and marked as Exhibit "K."

No questions by either side. Members of the Court returned from consultation and delivered the following judgment.

30 In this Civil Case, Chief Kwame Dapaah of Afari for himself and on behalf of the stool *vs.* Chief Kofi Owusu of Toase and his stool subject Yao Tarko as follows :—

“ The Plaintiff claims :—

(1) As against both defendants that he as representing the Afari stool is the owner of all that piece or parcel of land situate lying and being at Nkwakom and bounded on the north by Nerebehin

*In the  
Asante-  
hene's  
" B "*  
*Court.*  
—  
No. 17.  
Judgment,  
7th  
December  
1942,  
*continued.*

and Akrofuomhene's lands, on the south by Esuowinsu and Noduasu stream on the East by Aboabo stream and Wherekesiam and on the West by Kobri stream known as Kobrisu.

(2) As against the 2nd defendant damages or mesne profits for the use of portion of the said plaintiff's land for the last 24 years for the cultivation of cocoa and

(3) For an injunction to restrain the defendants from committing any acts of trespass on or entering upon the said land in the absence of payment of recognised Native Customary tribute by the defendants to the plaintiff for their occupation and use of 10 the said plaintiff's stool land."

In giving his version of the case the Plaintiff stated, among other things, that, in about January, 1917, he sued the 1st Defendant's predecessor in office the late Chief Akwesi Jewu in respect of this parcel of land in dispute and had judgment signed by Mr. L. H. Wheatley then District Commissioner in Kumasi, Ashanti, and that Chief Akwesi Jewu appeared aggrieved and dissatisfied and therefore appealed from that judgment to His Honour the Chief Commissioner's Court, Kumasi, when the Chief Commissioner, Sir F. C. Fuller upheld the judgment of Mr. Wheatley. The Plaintiff tendered in evidence and in support of his 20 case a copy of the two judgments to which reference has been made, the same was accepted by this Court and together with a sketch, purporting to be the area then in dispute marked as Exhibits " A " and " B " respectively. In addition to these two Exhibits the Plaintiff tendered other documents being agreements made between him and certain people farming the portion of the land in dispute. The Court accepted all the exhibits and had them marked accordingly. The case of the 1st Defendant was also this, that the parcel of the land in dispute is his stool property and that in the case referred to the judgment of His Honour the Chief Commissioner's Court was entered in favour of his predecessor in office, 30 Chief Akwasi Jewu, who was Defendant in the said case. He, 1st Defendant added that, where the 2nd Defendant lives and farms belongs to his stool and that the Plaintiff has no business on that area. After hearing both sides of the case, the members of the Otumfuo Asantehene's Native Court " B " proceeded on and viewed the land and their written report has been submitted and marked as Exhibit " K." Now, as the Court was informed by the Plaintiff of a previous judgment having been entered in his favour by His Honour the Chief Commissioner's Court, this Court paid a particular attention to the copy of that judgment as put in evidence by the Plaintiff. The text of the said judgment is as follows :— 40

" Case appealed to the Chief Commissioner by Chief Akwasi Jewu of Tuasie. M.P. No. P.50/1917.

Final decision of C.C.A.

Plaintiff has no right to the Nkawie Penin lands.

this case is therefore dismissed.

Signed F. C. Fuller, C.C.A. 17.4.1917."

In the case referred to Chief Kwame Dapaa, the Plaintiff in this case was the Plaintiff while the late Chief Akwasi Jewu, 1st Defendant's predecessor was the Defendant. Nkawie Panin lands are distinct from

Toase lands. In the opinion of this Court therefore, the judgment of His Honour the Chief Commissioner's Court as cited above was rather in favour of Chief Akwesi Jewu, 1st Defendant's predecessor in office and therefore the Plaintiff was and is still bound by the said judgment.

*In the  
Asante-  
hene's  
" B "  
Court.*

10 With regard to the other exhibits being agreements made between the Plaintiff and certain farmers, this Court finds that the Defendants were not parties to those agreements and, in the opinion of this Court, the Defendants are not bound by them. Exhibit " A " on which is shown the respective Judgments of Mr. L. H. Wheatley and Sir F. C. Fuller, Chief Commissioner, Ashanti, was put in evidence by the Plaintiff in this case and it appears surprising that the Plaintiff does not appear to admit that His Honour the Chief Commissioner's Court reversed Mr. Wheatley's judgment against the Plaintiff.

No. 17.  
Judgment,  
7th  
December  
1942,  
*continued.*

In the opinion of this Court, as far as Sir Fuller's judgment, Exhibit " A " is concerned, the Plaintiff has no claim to the parcel of the land in dispute and the Court therefore enters its judgment for the Defendants and against the Plaintiff with costs to be taxed.

(Sgd.) BUACHI YAM,  
Etipinhene,

President.

20

Witness to signature :

(Sgd.) I. K. AGYEMAN,  
Registrar,

December 7, 1942.

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GROUNDS OF APPEAL.

In the  
Asante-  
hene's  
"A" Court.  
—  
No. 18.  
Grounds of  
Appeal,  
24th  
March 1943.

IN THE ASANTEHENE'S DIVISIONAL COURT "A."

Kumasi.

CHIEF KWAME DAPAAH for and on behalf of Aferi  
Stool . . . . .

Plaintiff-  
Appellant

vs.

1. CHIEF KOFI OWUSU for and on behalf of Toase Stool  
2. YAW TARKU . . . . .

Defendants- 10  
Respondents.

1. The judgment is wrong in law.
2. The judgment is against weight of evidence.
3. The judgment is contrary to law, equity and good conscience.
4. Inadmissible evidence was wrongly received by the Court.
5. Admissible evidence was wrongly rejected by the Court.
6. That judgment is otherwise erroneous and should be reversed.

Dated at Kumasi this 24th day of March, 1943.

Plaintiff-Appellant,

CHIEF KWAME DAPAAH

his 20  
X  
mark.

Writer & witness to mark :

(Sgd.) F. K. DAPPAH.

The Registrar,

Asantehene's Divisional Court "A,"  
Kumasi.

And to above-named Defendants-Respondents, CHIEF KOFI OWUSU and  
YAW TARKU all of Kumasi.



## SUPPLEMENTARY GROUNDS OF APPEAL.

*In the  
Asante-  
hene's  
"A" Court.*

1. The Viewers Report Exhibit " K " is not in accordance with the facts elicited during the course of inspection.

2. In view of the Exhibit " A," the judgment given by Commissioner Wheatley in favour of the Plaintiff, Chief Anapa as against the 1st Defendant's predecessor, Chief Jewu, judgment in the present action should have been given in favour of Plaintiff.

No. 19.  
Supple-  
mentary  
Grounds of  
Appeal,  
28th April  
1943.

10 3. The claim before Commissioner Wheatley was one for trespass and the judgment being clear in its terms should have been accepted by Court " B."

4. That Chief Jewu having lost the action appealed to the Chief Commissioner's Court. It is submitted that the Chief Commissioner's judgment when properly construed meant that the appeal had been dismissed. The word " case " used in the judgment obviously referred to the appeal. If this construction be not placed on the judgment, it becomes unintelligible and meaningless. There are only two ways of dealing with an appeal.

(A) It is either allowed or

20 (B) It is dismissed.

If the appeal is allowed it is submitted that it means the Appellant has succeeded. If the appeal is dismissed it means the Appellant has not succeeded. Court " B " therefore should have accepted the contention of Plaintiff that the Appellant in the case before the Chief Commissioner's Court namely Chief Jewu lost as the " case was dismissed."

Court " B " took too literal a view of the Chief Commissioner's judgment to the detriment of the Plaintiff.

5. The contention that the Plaintiff is the owner of the land in dispute is also borne out by the fact that he has been exercising acts of ownership. 30 He has been in possession and others have been placed in possession by his leave and licence as is shown by the various agreements entered into between him and them. Exhibits " C " and " D." Court " B " ignored the effect of these agreements by merely saying in its judgment that the Defendant was no party to these agreements. But therein lies the strongest point in Plaintiff's favour. The people in the neighbourhood of the land in dispute must know the owner thereof to enter into agreements with him. These persons must have been seen farming on the land. Why did not the Defendant query them at any time as to their possession? They have been in possession without disturbance by Defendant, although 40 they were placed there by Plaintiff.

The Defendant is even estopped from claiming ownership of the land by his acquiescence in another person's exercise of rights of ownership to his knowledge.



*In the Asantehene's "A" Court.* On these grounds it is respectfully submitted that the judgment of Court " B " should be set aside and judgment entered for the Plaintiff herein.

No. 19.  
Supple-  
mentary  
Grounds of  
Appeal,  
28th April  
1943,  
*continued.*

Dated at Kumasi this 28th day of April, 1943.

CHIEF KWAME DAPAAH,

his  
X

Plaintiff-Appellant. mark

Writer & Witness to mark :

(Sgd.) F. K. DAPPA,  
Gratis.

10

The Registrar,  
Asantehene's Divisional Court " A,"  
Kumasi.

And to above-named Defendants-Respondents,  
Chief KOFI OWUSU & YAW TARKU all of Kumasi.

No. 20.  
Evidence of  
C. E.  
Newman,  
Licensed  
Surveyor,  
5th August  
1947.

No. 20.

**EVIDENCE of C. E. Newman, Licensed Surveyor.**

5.8.47.

*Parties present in person.*

*By Court:* Case to be heard *de novo* owing to change of former 20 constitution.

CHARLES EMMANUEL NEWMAN, Licensed Surveyor, Kumasi, sworn and states :

I received instructions from this Court to undertake a survey of the disputed land. I proceeded to the area in dispute with the parties. I undertook the survey and made a Plan. Chief Kwame Dapaah, the Appellant, first showed me all his boundaries and pointed out to me all features and particulars he wished to be inserted in the Plan. The Respondents did likewise. This is the Plan I made. It is signed by me and I have sworn as to its correctness and had further been approved by 30 the Provincial Surveyor. I tender it in evidence (no objection by parties) accepted and marked Exhibit " L."

Examina-  
tion by  
Appellant

*XXd. by Appellant :*

*Q.* When we started inspecting the land did I not say my boundary with Nkawie Kuma was the Kobi stream ?

*A.* Yes, you said so and I inserted it on the Plan.

*Q.* What did Chief Owusu say ?

*A.* Chief Owusu denied that fact.

Q. Do you remember when the Nkawie Kumahene was sent for and he came he stated that the Kobi stream was his boundary with me ?

A. Yes, he said so that Kobi stream formed the boundary between Aferi and Nkawie Kuma.

Q. From Kobi stream on the main motor road to Nkwakuom and thence to Esuowin stream is there any other stream ?

A. I was shown the source of a stream Chiraya. It does not cross the path from Kobi to Esuowin.

*XXd. by 1st Respondent :*

10 Q. From Nkwakuom to Nkuran main path, do you remember I told you all farms in that area belonged to Nkuran people which statement the Appellant admitted ?

A. From Nkwakuom to Nkuran contained farms owned by Nkuran people and this was admitted by Appellant. The owners of farms were present and showed their portions.

Q. You remember they said they paid no tribute to Appellant ?

A. Yes.

20 Q. The Owiredu Odikro was also present and showed our respective boundaries, i.e., boundaries between myself (Respondent), the Appellant and Owiredu ?

A. Yes.

Q. Do you remember I showed you Yaw Tarku, 2nd Respondent's village and told you he paid no tribute to Appellant ?

A. Yes.

*XXd. by Court :*

Q. Did you insert on the Plan everything shown you by the parties ?

A. Yes, I did.

30 Q. How many miles will it be from Nkwakuom to the footpath crossing the Esuowin stream ?

A. About  $1\frac{1}{2}$  miles approximately.

Q. Is it where the farmers stated they paid no tribute ?

A. Yes, but the Appellant claimed the land.

*Re-xxd. by Respondent :*

Q. From peg 63 to peg 89 do you remember it was here that the Respondent said he had a boundary with me ?

A. Yes.

*By Court :* This case was first before this Court but in view of the change of constitution it is necessary to read to the new members the appeal record from the Court below.

40 The record of appeal is read to the member of the Court, covering the evidence of the Plaintiff and his witnesses.

*Case adjourned to to-morrow 6.8.47.*

(Sgd.) O. Y. AKOTO,  
Nsutahene,  
President.

W/signature :

(Sgd.) JNO. W. POKU,  
Regr. " A " Crt. 1.

*In the  
Asante-  
hene's  
" A " Court.*

No. 20.  
Evidence of  
C. E.  
Newman,  
Licensed  
Surveyor,  
5th August  
1947,  
*continued.*  
Examina-  
tion by 1st  
Respon-  
dent.

Examina-  
tion by  
Court.

Re-exami-  
nation by  
Respon-  
dent.

Examina-  
tion by  
Court.

## COURT NOTES.

*In the  
Asante-  
hene's  
"A" Court.* 23.8.47.

No. 21.  
Court  
Notes,  
23rd  
August  
1947.

*Parties present.*

*Grounds of appeal read to the members of the Court.*

*The Plaintiff-Appellant* : Tenders in evidence, two documents namely copy of Validated Executive Decision in the case *Chief Kwame Anopah vs. Chief Akwasi Jewu* reference "Inkwa Kuom Land Dispute and also a certified copy of Bill of Costs allowed by the C.C.A's Court in the case against the defendant, Chief Jewu, the predecessor of 1st Defendant- 10 Respondent."

*1st Defendant-Respondent* : I object to these documents being accepted in evidence because they should have been tendered before the Court below.

*By Court* : Objection overruled. The Appeal Court has power to accept such evidence. It explains the situation clearly. Validated Executive Decision tendered, accepted in evidence and marked Exhibit "M."

Bill of Costs tendered, accepted in evidence and marked Exhibit "N." 20

*Plaintiff-Appellant Xxd. by Court* :

*Q.* Are you claiming the Nkuran lands as well ?

*A.* I am not claiming the Nkuran lands.

*Q.* Where is Yaw Tarku's farm and village ?

*A.* On Nkwakuom land.

*Q.* Have you any agreement with Yaw Tarku ?

*A.* I asked him to enter into an agreement but he refused, hence I sued him in the Divisional Court from where the suit was referred to the Native Court.

*Q.* How long has Yaw Tarku been on this land ?

*A.* After Wheatley's judgment. 30

*Q.* Why did you not enter into agreement with Yaw Tarku since he went on the land after the Wheatley judgment ?

*A.* That is why I took action against him in the Divisional Court. He was not present when I first entered into agreement with others. He had gone to the N.Ts.

*Q.* What is your boundary between Nkwakuom and Nkuran ?

*A.* Esuowin to Ayankama stream.

*Q.* Do you own the left or right-hand side ?

*A.* I own the left-hand side.

*Q.* What sort of tribute did you collect before cocoa came into being ? 40

*A.* I used to collect tribute of rubber from Nkwakuom people and Kojo-krom people. Attas Twiraday who used to be on the land also sent me palm oil and Mushroom (Sibire). I also used to collect legs of game from these people.

*Q.* When you asked the inhabitants to enter into agreement with you did they tell you the land belonged to the 1st Defendant-Respondent ?

*A.* No.

*Chief Kwame Dapaah :*

Q. You want the Court to believe that you have not trespassed on the 1st Defendant-Respondent's boundary with you ?

A. Yes, I have not.

Q. Before this action had the 1st Defendant-Respondent made any protest as to your having taken his land ?

A. No.

Q. Whose subjects are the Nkwakuoms ?

A. The 1st Defendant-Respondent's.

10 Q. How did they come to live on the land ?

A. By leave and licence of my predecessor Akyeampong Akwasi.

Q. Who was the first to beg and settle at Nkwakuom ?

A. Afoaduwa.

Q. Before this action had there been any litigation over the ownership of the Nkwakuom lands ?

A. Yes, during the time of my predecessor Brobbey, he litigated with Toasehene Ampofi before the Asantehene Nana Agyeman and my stool got judgment.

*By Court to Chief Owusu, 1st Defendant-Respondent :*

20 Q. Do you own the people of both Nkwakuom and Nkuran ?

A. Yes.

Q. What is the boundary between Nkwakuom and Nkuran ?

A. From Nkuran to Nkwakuom the boundary is Obuohu thence towards the left to Sankori. From Obuohu to Abotanso the land is mine.

Q. You stated that your predecessor never paid costs to the Plaintiff-Appellant, how do you reconcile this with Exhibit " N. "

A. I cannot answer because of my objection to this exhibit being accepted in evidence.

30 *Plaintiff-Appellant has nothing further to add to his grounds of appeal.*

*Submissions by 1st Defendant-Respondent :*

40 Exhibit " M " tendered by Plaintiff-Appellant states the boundary with Nkawie Panin starts from Assuowinsu to Modwiaso to Kobrim but the Plaintiff-Appellant now claims that the Essuowin itself pass the Nkuran-Nkwakuom path to Subonpan or Ayankama is the boundary but the Assuowinsu is on the left on the way from Nkuran village to Nkwakuom. This shows that the Plaintiff-Appellant wishes the Court to believe that he owns the right and left of the Nkuran-Nkwakuom footpath. During the survey the Plaintiff-Appellant stated he had a boundary with one Kwame Senyah at the place where the Essuowin and Subonpan streams meet, but nobody corroborated this allegation. I also wish the Court to consider whether Mr. Wheatley's judgment mentioned Ayankama or Subonpan stream. Reference Yaw Tarko, 2nd Defendant-Respondent's village, Yaw Tarko's predecessor had lived there for a long time. This shows that the Plaintiff-Appellant wishes to claim my Nkuran lands from me. I think the action against Yaw Tarko was wrong.

*By Court :* Judgment reserved till Monday, the 25th August, 1947.

W/S :  
(Sgd.) JNO. W. POKU,  
Registrar.

(Sgd.) O. Y. AKOTO,  
Nsutahene,  
P.

*In the  
Asante-  
hene's  
" A " Court.*

No. 21.  
Court  
Notes,  
23rd  
August  
1947,  
*continued.*

JUDGMENT.

In the  
Asante-  
hene's  
"A" Court.

No. 22.  
Judgment,  
25th  
August  
1947.

THE ASANTEHENE'S " A " COURT I, held at Kumasi on the 25th day of August, 1947, before the NSUTAHENE, presiding, the KRONTIHENE, the AKWAMUHENE and the AKYEMPIMHENE.

CHIEF KWAME DAPAAH OF AFERI . . . . Plaintiff-Appellant

vs.

1. CHIEF KOFI OWUSU OF TOASE  
2. YAW TARKU . . . . . Defendants- 10  
Respondents.

*Parties present.*

JUDGMENT.

In this case, the Plaintiff-Appellant, the Ohene of Aferi, claims (1) as against the Defendants-Respondents the ownership of all that piece or parcel of land situate, lying and being at Nkakuom and bounded on the north by Nerebehin and Akrofuomhene's lands, on the south by the Essuwin and Modwiasu streams, on the east by Aboabo stream and Wherekesiam and on the west by Kobri stream.

(2) As against the 2nd Defendant-Respondent, damages or mesne 20 profits for the use of a portion of the said Plaintiff-Appellant's land for the last 24 years (calculated up to the date of this Summons, namely 27th May, 1941) which land 2nd Defendant-Respondent has used for the cultivation of cocoa, and

(3) For an injunction to restrain the Defendants-Respondents from committing any acts of trespass on or entering upon the said land, and in the absence of payment of recognised native customary tribute by the Defendants-Respondents to the Plaintiff-Appellant for their occupation and use of the said Plaintiff-Appellant's Stool land.

The case went before the Asantehene's Divisional Native Court " B " 30 on the 14th July, 1941, which Court after trial and inspection of the *locus in quo* delivered judgment against the Plaintiff-Appellant on the 7th December, 1942.

From this judgment, the Plaintiff appealed to this Court.

The hearing of this appeal started on 1st April, 1943, and after several adjournments a survey of the area in dispute was ordered by the Court on the 27th November, 1944.

On the completion of the survey, the membership of the Court which gave the order for the survey had changed and so on the 5th August, 1947, the hearing started with a new panel of members. 40

The " B " Court based its judgment solely on Exhibit " A " which was tendered in evidence by the Plaintiff-Appellant. This Exhibit " A " is a Judgment by the District Commissioner—Kumasi, dated the 17th January, 1917, which was in favour of the Plaintiff-Appellant, against

which an appeal was lodged to the Chief Commissioner's Court by the immediate predecessor of the 1st Defendant-Respondent.

The wording of the Chief Commissioner's decision is hard to understand, but Exhibit "N" which was tendered by the Plaintiff-Appellant before this Court helps to clarify it. The judgment reads as follows :—

"Plff. has no right to the Nkawie Panin lands.

"This case is therefore dismissed."

At first sight, one would come to the conclusion that the "Plaintiff" referred to is the Plaintiff-Appellant herein, but it will be seen from Exhibit "N" that in referring to Plaintiff, the Chief Commissioner meant the Appellant, because the appeal was dismissed and the proper Plaintiff who is the Ohene of Aferi was awarded costs of £13 14s. vide Exhibit "N."

All along the proceedings in the Court below, the 1st Defendant-Respondent stated that he never paid costs to the Plaintiff-Appellant, because the Chief Commissioner's judgment was in his favour, but Exhibit "N" contradicts that piece of evidence. If, as was interpreted by the "B" Court, the Chief Commissioner's judgment was in his favour, why did the 1st Defendant-Respondent's predecessor pay costs to the Plaintiff-Appellant. The 1st Defendant-Respondent's argument to the effect that his predecessor never paid costs to the Plaintiff-Appellant in the Chief Commissioner's Court therefore fails. Exhibit "M" is similar to Exhibit "A" save that the Chief Commissioner's decision referred to in Exhibit "A" does not appear, but it has been validated under the Boundary, Land, Tribute and Fishery Disputes (Executive Decisions Validation (Ashanti) Ordinance). This is a further proof that the Chief Commissioner's decision was in favour of the Plaintiff-Appellant.

The Plaintiff-Appellant, in opening his case before the Court below, stated that the land in dispute was given to his stool by the then Asantehene Otumfuo Oti Akenten. This is definitely untrue, because it is a well-known fact that during the reign of this Ashanti Monarch, land was not so much valued and people owned it in common. It was during Nana Osei Tutu's reign when Wars with neighbouring States started that several lands in Ashanti were apportioned. In this case, the time given by the 1st Defendant-Respondent would appear to be the correct one. Incorrect dates, however, should not defeat actual facts and so the Court does not consider this wrong date as a material point.

Now turning to the case itself, the evidence of Yaw Berku, 1st Witness for Plaintiff-Appellant, is significant. He admits that he knew the land belonged to the 1st Defendant-Respondent; but he signed an agreement (Exhibit "C") with the Plaintiff-Appellant to pay tribute to the said Plaintiff-Appellant thereby acknowledging the Plaintiff-Appellant as the owner of the land. Yaw Berku also admits that the judgment of Sir Francis Fuller, late Chief Commissioner, was in favour of the Plaintiff-Appellant. The agreement entered into by Kwaku Anwhire with Plaintiff-Appellant is also worthy of note.

In cross-examination, the Plaintiff-Appellant stated before the Court below that his claim included the Nkuran lands, but before this Court he stated to the contrary, but the indictment even is clear. No mention of Nkuran was made. This Court is therefore bound to come to the

*In the  
Asante-  
hene's  
"A" Court.*

—  
No. 22.  
Judgment,  
25th  
August  
1947,  
*continued.*

*In the  
Asante-  
hene's  
"A" Court.*

No. 22.  
Judgment,  
25th  
August  
1947,  
*continued.*

conclusion that the Nkuran lands on which are several farms admitted to belong to subjects of the 1st Defendant-Respondent should belong to the 1st Defendant-Respondent's stool. If Yaw Tarku's village formed part of the Nkakuom land, why did the Plaintiff-Appellant not collect tribute from Yaw Tarku for 24 long years or enter into agreement with him as in the case of Yaw Berku and Kwaku Anwhire.

The boundary as between the Plaintiff-Appellant and the Nkawie Panin stool was defined in Mr. Wheatley's judgment (Exhibits "A" and "M"). It will be noticed, however, that the dispute was between Aferi and Toase. It is for this Court therefore to define the boundary as between Aferi and Toase and this shall be from the Essuowinso in a straight line northwards to Obuohu and from that point to Abutanso. The land on the left to belong to Aferi (Plaintiff-Appellant) and that on the right to belong to Toase (1st Defendant-Respondent). The latter having his easterly boundary with the Odikro of Wiredu. 10

As regards the second claim, it is clear from the boundary defined as between the Plaintiff-Appellant and the 1st Defendant-Respondent that Yaw Tarku (2nd Defendant-Respondent's) village and farm do not fall within the Nkwakuom lands claimed by the Plaintiff-Appellant. We are at a loss to understand why the 2nd Defendant-Respondent was joined as co-defendant, since the ownership of the land was concerned. In our opinion, the ownership of the land as between the Plaintiff-Appellant and the 1st Defendant-Respondent should have been first determined before any action for damages or mesne profits could have been taken against the 2nd Defendant-Respondent. 20

In the light of the above facts, therefore, we allow the appeal as against the 1st Defendant-Respondent and set aside the judgment of the Asantehene's Divisional Court "B" and declare the Plaintiff-Appellant the owner of the Nkakuom lands, the boundaries of which are as defined in Mr. Wheatley's judgment as between Afari and Nkawie Panin and in this judgment as between Aferi and Toase. The Plaintiff-Appellant is awarded costs in this Court and in the Court below such costs to be borne by the 1st Defendant-Respondent. Costs to be taxed. 30

As regards the 2nd claim, we decide for the 2nd Defendant-Respondent as against the Plaintiff-Appellant and order that the Plaintiff-Appellant should pay the 2nd Defendant-Respondent's costs both in this Court and in the Court below. Costs to be taxed.

(Sgd.) O. Y. AKOTO,  
Nsutahene,  
P. 40

We concur.

(Sgd.) KWAKU GYAWU III,  
Krontihene.

(Sgd.) ADJAYE TWUM,  
Akwamuhene.

(Sgd.) BOAKYE DANKWA,  
Akyempimhene.

W/Sigres :  
(Sgd.) JNO. W. POKU,  
Registrar.

No. 23.

COURT NOTES granting Final Leave to appeal to Chief Commissioner's Court.

IN THE CHIEF COMMISSIONER'S COURT OF ASHANTI, held at Kumasi, on Friday, the 31st day of October, 1947, before His Worship W. H. BEETON, esquire, Assistant Chief Commissioner, appointed to preside over the Chief Commissioner's Court.

CHIEF KWAME DAPAAH, etc. . . . Plaintiffs-Appellants-Appellants

*versus*

10 CHIEF KOFI OWUSU, etc. and 1 Or. . . Defendants-Respondents-Respondents.

*In the Chief Commissioner's Court.*

No. 23.  
Court Notes granting Final Leave to appeal to Chief Commissioner's Court, 31st October 1947.

Motion *Ex-parte* by Chief Kwame Dapaah for and on behalf of Aferi Stool, the Plaintiffs-Appellants-Appellants herein, respectfully asking for Final Leave to Appeal from the Judgment of the Asantehene's "A1" Court Kumasi delivered herein on or about the 25th day of August, 1947, to the Chief Commissioner's Court of Ashanti Kumasi.

Motion filed on 27.10.47.

Affidavit in support filed on 27.10.47.

Mover Chief Kwame Dapaah in person, present.

20 *Court*: The Registrar reports that all conditions imposed by this Court on the 26th September, 1947, have been fulfilled within the prescribed time. Final Leave granted. Appellants are to file Grounds of Appeal within seven days from to-day and copies thereof to be served on the Respondents.

(Sgd.) W. H. BEETON,  
Asst. C.C.



In the  
Chief  
Commissioner's  
Court.

No. 24.  
Grounds of  
Appeal, 5th  
November  
1947.

No. 24.

GROUND OF APPEAL.

The Plaintiff-Appellants being aggrieved by and dissatisfied with the *portion* of the *Judgment* and the *Award* of the Asantehene's "A1" Court delivered herein on or about 25th day of August, 1947, and having obtained "*final leave*" to appeal on the 31st day of October, 1947, hereby Appeal to the Chief Commissioner's Court of Ashanti upon questions of "*law & facts*" as set forth in the Grounds hereinafter.

GROUND OF APPEAL.

ERROR IN LAW

10

1. Because the Asantehene's "A1" Court has no jurisdiction to have laid new boundary between the parties herein, since the boundary has already laid down by Mr. Wheatley in his Executive Decision in a dispute relating to the land now in dispute, and that this was duly recorded in the boundary book in pursuance of section 3 of the Ordinance—shortly entitled "The Boundary Land, Tribute, and Fishery Disputes (Executive Decisions Validation) Ordinance" (cap. 120).

This being so, the boundary was fixed by law and it cannot be removed by the Asantehene's "A1" Court and that the question was in effect *res judicata*.

20

2. Because the Court below should not have awarded a portion of Plaintiffs-Appellants' land to 1st Defendant-Respondent as follows:—

\* \* \* \* \*

"This Court is therefore bound to come to the conclusion that  
"the Nkuran lands on which are several farms admitted to belong  
"to the subjects of the 1st Defendant-Respondent should belong to  
"the 1st Defendant-Respondent's Stool. If Yaw Tarku's village  
"formed part of the Nkakuom land, why did the Plaintiff-Appellant  
"not collect Tribute from Yaw Tarku for 24 long years or enter  
"into agreement with him as in the case of Yaw Yaw Berku and  
"Kwaku Anwhere."

[sic]

30

Since 1st Defendant-Respondent's subjects' refusal to pay tribute to Plaintiff-Appellant as land owner, is the sole cause of this present action. The award is therefore bad and should be amended by this Appellate Court.

3. Because the Court below gave judgment for the declaration sought by Plaintiff-Appellant in his writ of summons, yet the Court awarded a portion of the land to 1st Defendant-Respondent, which is inconsistency to Plaintiff-Appellant's claim upon which has obtained Judgment.

4. Because the Court below should not have found for 2nd Defendant-Respondent with costs upon Plaintiff-Appellant's *second claim*, inasmuch as 2nd Defendant-Respondent is a subject to 1st Defendant-Respondent and he farms on the land in dispute by the licence and permission of 1st Defendant-Respondent who has failed his claim to the land in dispute.

40

GENERAL REMARKS AND PRINCIPLES OF APPEAL

(A) Because the award of a portion of Plaintiff-Appellant's land is against the weight of evidence.

(B) Because the award of a portion of Plaintiff-Appellant's land, to the 1st Defendant-Respondent, is contrary to law, equity, good conscience and principles of justice.

(C) Because the award of a portion of Plaintiff-Appellant's land to 1st Defendant-Appellant amounts in law to *res judicata*.

Dated at Kumasi this 5th day of November, 1947.

*In the  
Chief  
Commissioner's  
Court.*

No. 24.  
Grounds of  
Appeal, 5th  
November  
1947,  
*continued.*

10 Filed at Kumasi this            day of November, 1947.

By CHIEF KWAME DAPAA        his  
  X  
  mark

Plaintiff-Appellant-Appellant  
for and on behalf of Aferi Stool.

W/W to Mark :

(Sgd.) ? ? ?

Lic. No. 22724/47/Ksi.

Manhyis-Kumasi.

20                 fee 10/- Orig. & copies.

To,

The Registrar,  
Chief Commissioner's Court,  
Kumasi-Ashanti.

And Copy to,

Chief Kofi Owusu (1st Respondent)  
&  
Yaw Tarku (2nd Respondent)  
Toase & Nkuran.

\_\_\_\_\_

## REPLY to Grounds of Appeal.

## REPLY TO GROUND ONE

No. 25.  
Reply to  
Grounds of  
Appeal,  
17th April  
1948.

Under this head, Plaintiff-Appellant contends loosely and frivolously that the Asantehene's "A 1" Court has no jurisdiction to have laid new boundary between the parties herein on an alleged ground that such boundary had already been laid by Mr. Wheatley in his Executive Decision in a previous land dispute between the parties herein.

In reply to this, I say Sir, that the Asantehene's "A 1" Court was justified thoroughly in setting up a boundary between the lands of Aferi 10 and that of Toase.

According to Exhibit "M" page 65 of the Record, it is manifest that Mr. Wheatley only set up or defined the boundary between Plaintiff-Appellant and Nkawie Panin Stool and that the boundary between Aferi and Toase was not defined in his Executive Decision (Exhibits "A" and "M" refer). The setting up of the boundary between Aferi and Toase by the Asantehene's "A 1" Court does not therefore constitute one of "*res judicata*" as the Appellant is feverishly contending. Appellant's argument under this ground one is therefore baseless and it is submitted that this Honourable Court may not waste its precious time to dispose of it. 20

## REPLY TO GROUND TWO

Appellant's ground two is similarly baseless and futile. There is not a particle of truth that the Court Below awarded a portion of his land to 1st Defendant-Respondent herein. According to Plaintiff-Appellant's own indictment for the summons (pages 1 and 3 of the Record) supported by his own admission made at the Asantehene's "A 1" Court in his answer to cross-examination, page of the Record, it is without gainsay that Plaintiff-Appellant's claim did not include the Nkuran lands, but that his claim was specifically laid on Nkwakuom land. There can be no truth that Yaw Tarku (2nd Defendant's) Village forms part of the Nkwakuom 30 land adjudged to Plaintiff-Appellant by Mr. Wheatley in his Executive Decision dated the 17th January, 1917. If Yaw Tarku's Village formed part of the Nkwakuom land as Appellant is hopelessly contending, why should Appellant sit tight for good 24 years after the decision of Mr. Wheatley without executing any tenancy-Agreement with him for the payment of tribute or why Appellant had not collected tribute from Yaw Tarku for good 24 years as done in the case of Yaw Berku and Kwaku Anfwire.

All these are strong evidence to support Defendants-Respondents' case. The Asantehene's "A 1" Court in finding for Plaintiff-Appellant 40 on the strength of Exhibits "M" and "N" did so justly and favourably for him (Plaintiff-Appellant) and according to the proceedings from the "A 1" Court, this Honourable Appellate Court will doubtless find out that the Asantehene's "A 1" Court did everything fairly and equitably for Plaintiff-Appellant and that apparently he has no *locus standi* in lodging this appeal.

3. Plaintiff-Appellant's ground three is only a repetition of his ground two which has been adequately and fittingly rebutted in the preceding paragraph. In any case the reply to it is that the Asantehene's "A 1" Court did not award a portion of Plaintiff-Appellant's land claimed under his Indictment to the Defendants-Respondents.

*In the  
Chief  
Commissioner's  
Court.*

The Plaintiff-Appellant in his Indictment (pages 1 and 3 of the Record) claimed the Nkwakuom land and it is that land which had been adjudged to him by the Asantehene's "A 1" Court in confirmation of Mr. Wheatley's Executive Decision dated the 17th day of January, 1917.

No. 26.  
Reply to  
Grounds of  
Appeal,  
17th April  
1948,  
*continued.*

10 Appellant's ground three therefore fails *in toto* and should be waived of from any definite action.

4. The Court Below in finding for the 2nd Respondent herein also came to the only just conclusion that any other Court of Justice could have come to. Apparently there was no justification on the part of Plaintiff-Appellant herein to have joined up 2nd Respondent to the suit since the ownership of the land is concerned. The ownership of the disputed land as between Plaintiff-Appellant and 1st Defendant-Respondent should have first been contested for and a decision given by the competent Court adjudicating upon it and if after the trial it was found that the area where 2nd Respondent's cottage or farm is falls within Plaintiff-Appellant's portion of the land there and then Plaintiff-Appellant would have right to bring an action against 2nd Respondent for mesne profits. It is obvious that Plaintiff-Appellant sued 2nd Respondent (1st Respondent's subject) for nothing and that the Asantehene's "A 1" Court in finding for 2nd Defendant-Respondent in the 2nd claim did so justly and fairly. It is without gainsay that Appellant has failed to put up any convincing grounds to warrant this Honourable Court to disturb the just and fair decision of Asantehene's "A 1" Court. The Appeal is therefore bound to be dismissed for lack of substance with costs for Respondents herein in the interest of Justice.

Dated at Kumasi, this 17th day of April, 1948.

Filed at Kumasi, this        day of April, 1948.

(Sgd.) CHIEF KOFI OWUSU (Toasehene).

For myself and on behalf of  
2nd Defendant-Respondent  
herein (Respondents).

The Registrar,  
Chief Commissioner's Court,  
Kumasi,  
Ashanti.

40

And copy for service on Plaintiff-Appellant herein at Aferi.

APPELLANTS' SUPPLEMENTARY GROUNDS OF APPEAL.

*Misdirection*

That the issue in dispute reads as follows :—

“ The Plaintiff claims :—

1. As against both Defendants that he as representing the Afari Stool is the owner of all that piece or parcel of land situate lying and being at Nkwakom and bounded on the North by Nerebehin and Akrofuomhene's lands on the South by Esuowinsu and Moduasu stream on the East by Aboabo Stream and Wherekesiem and on the West by Kobri Stream known as Kobri. 10

2. As against the 2nd Defendant damages or mesne profits for the use of portion of the said Plaintiff's land for the last 24 years for the cultivation of cocoa.

And 3. For an Injunction to restrain the Defendants from committing any acts of trespass on or entering upon the said land in the absence of payment of recognised Native customary Tribute by the Defendants to the Plaintiff for their occupation and use of the said Plaintiff's Stool land.” 20

Upon the above indictments, they are clear that the issues are divisible into (3) three major points namely :—

(A) Appellants having succeeded on their first writ of summons for the declaration sought, the Asantehene's “ A1 ” Court may be right to award a portion of Appellant's lands to 1st Respondent or not ?

(B) Whether the new boundary made by “ A1 ” Court does not destroy or interfere the old boundary demarcation made or laid down by Mr. Wheatley in his judgment ? And if it does not, was the “ A1 ” Court justified upon the evidences adduced to lay the boundary given a portion of Appellant's land to 1st Respondent ? 30

And (C) Are the Appellants not entitled to sue 2nd Respondent for arrears of Tributes in respect of 2nd Respondent's occupation on Appellant's lands at Nkwakom, since by virtue of the Judgment of Mr. Wheatley, the other farmers have entered into agreements with Appellants paying Tributes ?

Now turning to the evidences on Record to decide this point or question as follows :—

(A) The Asantehene's “ A1 ” Court having given judgment for Appellants on the strength of Mr. Wheatley's Judgment, for the declaration sought by Appellants on their first claim on the summons, the Asantehene's “ A1 ” Court should not have cut a portion of Appellant's Nkwakom Land to 1st Respondent to destroy the judgment of Mr. Wheatley which there has been no Appeal against. 40

(B) Once Wheatley's judgment says that Appellants should own the whole of Nkwakom Lands, in the eyes of law, the Asantehene's “ A1 ” Court acted *ultra vires* in awarding this portion of Nkwakom lands to 1st Respondent as owner. Whereas

Nkwakom formed complete boundary with Nkurang according to 1st Respondent's own statement (see Appeal Record as supported by the "Plan").

This being so, the Asantehene's "A1" Court was wrong in their judgment when they stated as follows:—

\* \* \* \* \*

10 It is for this Court therefore to define the boundary as between Aferi and Toase and this shall be from the Esauwinso in a straight line Northwards to Obuohu and from that point to Abutanso. The land on the left to belong to Aferi (Plaintiff-Appellant) and that on the right to belong to Toase (1st Defendant-Respondent) the latter having his Easterly boundary with the Odikro of Wiredu.

And that this Appellate Court is respectfully asked to allow the Appeal by amending this portion of the Judgment of the "A1" Court to give the entire lands of Nkwakom to Appellants on the strength of Wheatley's judgment, supported by the evidences adduced by Appellants and his witnesses.

20 (c) Inasmuch as Appellants have obtained Judgment against Respondent's immediate predecessor (Chief Kwasi *Jewi*) about the land in dispute, and on the strength of the Judgment obtained by Appellants, so the other neighbouring farmers whose lands at the Area in dispute have entered into agreement with Appellants, paying Tributes (see exhibits "A," "C" and "D") in the eyes of Native Law and custom, Appellants are entitled to sue anybody whose farms on the land in dispute and refuses to pay the customary Tributes. [sic]

This being so, the Asantehene's "A1" Court came to a wrong conclusion upon law and evidence in holding as follows against Appellant (see Appeal Record):—

\* \* \* \* \*

30 "If Yaw Tarku's village formed part of the Nkwakom land why did the Plaintiff Appellant not collect Tribute from Tarku for 24 long years or enter into Agreement with him as in the case of Yaw Berku and Kwaku Anwhire."

Whilst according to Mr. Wheatley's judgment Nkwakom lands belong to Appellants and whilst 2nd Respondent's refusal to pay the customary tributes to Appellants whilst his farms on the said Nkwakom land, has given cause or birth to this present action or litigation (see claim 2 in the indictment).

40 In view of the foregoing grounds, Appellants submit that the appeal be allowed or upheld with costs by *amending* the Judgment of the Asantehene's "A1" Court to give the entire lands of Nkwakom to

*In the  
Chief  
Commissioner's  
Court.*

No. 26.  
Supple-  
mentary  
Grounds of  
Appeal,  
12th May  
1948,  
*continued.*

*In the  
Chief  
Commissioner's  
Court.*

Appellants by virtue of Mr. Wheatley's judgment, followed by Tenancy Agreement with other farmers, the "Plan" and Respondent's own admissions on Record that Nkwakom lands belong to Appellants.

Dated at Kumasi this 12th day of May, 1948.

No. 26.  
Supple-  
mentary  
Grounds of  
Appeal,  
12th May  
1948,  
*continued.*

By CHIEF KWAME DAPAA his  
Plaintiff-Appellant X  
for and on behalf of mark  
Aferi-Stool

W/W to Mark

(Sgd.) ? ? ?

10

Lic. No. 23966/48/Ksi  
Manyis-Kumasi  
fee 10/- Orig & copies

To,

The Registrar,  
Chief Commissioner's Court,  
Kumasi, Ashanti.

And to

1. CHIEF KWAME OWUSU  
for and on behalf of Toase-Stool
- „ „ 2. YAO TARKU  
Bantama-Kumasi.

20

No. 27.  
Reply to  
Supple-  
mentary  
Grounds of  
Appeal,  
19th May  
1948.

No. 27.

**RESPONDENTS' REPLY to Appellant's Supplementary Grounds of Appeal.**

1. Appellant's grounds submitted later besides his main grounds are almost the same as his primary grounds of appeal which bear no substance. In scrutinizing Appellant's own argument in his main grounds and in his supplementary grounds of appeal, it is without gainsay that Appellant's action was based upon an entirely new claim beyond the decision given by Mr. Wheatley on the 17th day of January, 1917.

30

That according to Appellant's Supplementary Ground one, he has gone beyond the Nkwakom land for which Mr. Wheatley gave an Executive decision by alleging that the Nkwakom land has boundaries as follows :—

North by Nerebehin and Akrofuomhene's lands ; on the south by Esuowinsu and Moduasu stream ; on the east by Aboabo Stream and Wherekesiem and on the West by Kobri Stream known as Kobri. Nerebehin, Akrofuom and Aboabo Stream and Wherekesiem which Appellant claims to have boundary with the

10 Nkwakom land are completely outside the disputed "Nkwakom" land and do not therefore appear on the "Plan" drawn on the disputed land. According to Mr. Wheatley's Executive decision—Exhibit "M" page 65 of the Record, it is explicit that no mention was made of Nerebehin Village, Akrofuom and Aboabo-Stream as well as Wherekesiem and this supports the fact that Appellant has exceeded his claim in terms of Mr. Wheatley's executive decision. The Asantehene's "A1" Court in giving its Judgment on the strength of Mr. Wheatley's Executive decision came to the only just conclusion that any other Court of Justice could have come to.

*In the  
Chief  
Commissioner's  
Court.*

No. 27.  
Reply to  
Supple-  
mentary  
Grounds of  
Appeal,  
19th May  
1948,  
*continued.*

2. That since Mr. Wheatley's Judgment—some many years ago, Respondents have been using the Nkoran lands without any molestation or interference from any quarter, and if it is true that the Nkoran land forms part of the Nkwakom land which had been adjudged to Appellant's predecessor since 1917, why should Appellant have slept on his rights for several years without resorting to any action to recover that part of the land. All these facts go to show the futility in Appellant's appeal. Appellant throughout his grounds depends solely on Mr. Wheatley's Judgment (Exhibit "M") but his *indictment* and his arguments in his  
20 primary and Supplementary Grounds differ entirely from Mr. Wheatley's Executive decision. Apparently, Appellant sued on a new claim beyond Mr. Wheatley's Executive decision. The Executive decision given by Mr. Wheatley was the basis of Judgment by the Court Below and that the decision of the Asantehene's "A1" Court does not in any way destroy Mr. Wheatley's Judgment as hopelessly contended by the Appellant. It is further not true that Appellant had Judgment for his first claim as appearing on his Indictment for the Summons. The Asantehene's "A1" Court did not enter Judgment for him to possess the whole area described in Appellant's Writ of Summons but only gave judgment for Appellant to  
30 possess the Nkwakom land the boundaries of which were clearly delineated in Exhibit "M". Appellant's argument to the effect that the Asantehene's "A1" Court awarded a portion of the Nkwakom land to 1st Respondent is without foundation and it is submitted that this Honourable Court may not waste its precious time to dispose of it as it is meaningless.

3. The claim against the 2nd Defendant-Respondent herein is apparently irregular and uncalled for. Appellant's claim is for ownership of the Nkwakom land and since that was not determined for Appellant to know that where 2nd Respondent's village is situated formed part of the disputed land, it is manifest that Appellant's claim against 2nd Respondent  
40 is premature and illegal. The Asantehene's "A1" Court therefore came to a very just and equitable conclusion. One reason that makes Appellant's claim to be fantastic is that if 2nd Respondent's village forms part of the Nkwakom land adjudged to Appellant's predecessor by Mr. Wheatley in his Executive decision dated the 17th day of January, 1917, why should Appellant had sat tight for good 24 years before the institution of his action without entering into any Tenancy-Agreement with 2nd Respondent or to collect any tribute from him as a token of the ownership of that part of the land. Appellant is obviously embarking upon a frivolous litigation and it is submitted that his appeal which is without an iota of substance  
50 be dismissed and the Judgment of the Court Below upheld with costs for



*In the  
Chief  
Commissioner's  
Court.*

Respondents herein throughout in the interest of Justice as there's nothing wrong in the Judgment to warrant this Honourable Court to dissent with it.

Dated at Kumasi, this 19th day of May, 1948.

Filed at Kumasi, this 20th day of May, 1948.

No. 27.  
Reply to  
Supple-  
mentary  
Grounds of  
Appeal,  
19th May  
1948,  
*continued.*

(Sgd.) CHIEF KOFI OWUSU—Toasehene,

For myself and on behalf of the 2nd Defendant-  
Respondent herein.  
(Respondents.)

The Registrar,  
Chief Commissioner's Court,  
Kumasi, Ashanti.

10

And to the Plaintiff-Appellant herein at Kumasi.

No. 28.  
Court  
Notes on  
Appeal,  
21st May  
1948.

No. 28.

**COURT NOTES ON APPEAL.**

Appellant and 1st Respondent present.

2nd Respondent said to be sick.

Appeal from the decision of the Asantehene's "A" Court.

Record of appeal before the Court read.

Appellant's Grounds and Supplementary Grounds of Appeal as well as Respondents' Replies thereto are before the Court and noted. 20

1st Respondent says he is representing 2nd Respondent as well as himself.

*Appellant* : I am appealing against the Judgment of the Court below in giving part of the land adjudged to be mine by this Court and the Asantehene's Court to the Respondent.

There is a plan on the land in dispute. Respondent has shown his boundary on that plan. The "A" Court in their decision have gone beyond the boundary of the Respondent cutting part of my land to him (Respondent). This is reason why I appeal.

*Respondent* : I have filed reply to the Grounds and would add that it is rather I who should have taken action because Appellant has encroached on my land. When the Appellant encroached on my land he did not assert ownership to it and because he has not claimed it as his property I did not take action against him. Quite recently he has claimed this part of my land on which he has encroached and brought action before this Court.

In 1917 Kwakom lands were awarded to Appellant. At that time I had my land abutting that of Appellant and called Nkuran land. Village of Nkuran is my own village that used to be my H.Qs.

I do not wish to add anything further as it is all in the record of proceedings. 40

No. 29.

JUDGMENT.

In the  
Chief  
Commissioner's  
Court.

Having read the copy of proceedings and submissions of parties I see no reason to interfere with the judgment of the Asantehene's "A1" Court who in their judgment appear to have dealt fully with the points at issue.

No. 29.  
Judgment,  
21st May  
1948.

The only relevant ground of appeal is contained in the supplementary ground of appeal, i.e. the second point referred to in (b).

10 The answer to the first part is in my opinion in the negative and the second part in the affirmative. The ultimate and penultimate paragraphs of the "A1" Court sum up the situation clearly.

Appeal is therefore dismissed.

Costs to be taxed and paid by Appellant to Respondent.

(Intd.) H.V.W.

Ag. A.C.C.

No. 30.

COURT NOTES granting Final Leave to appeal to West African Court of Appeal.

No. 30.  
Court  
Notes  
Granting  
Final  
Leave to  
appeal to  
West  
African  
Court of  
Appeal,  
27th  
August  
1948.

20 IN THE CHIEF COMMISSIONER'S COURT OF ASHANTI, held at Kumasi on Friday the 27th day of August, 1948, before his Worship A. C. SPOONER, Esquire, Acting Assistant Chief Commissioner, appointed to preside over the Chief Commissioner's Court.

CHIEF KWAME DAPAAH for and on behalf of Aferi Stool . . . . . Plaintiffs Appellants.

versus

1. CHIEF KOFI OWUSU for and on behalf of Taose Stool . . . . . Defendants Respondents.  
2. YAW TARKU : : : : : Defendants Respondents.

30 Motion *ex-parte* by Chief Kwame Dapaah for and on behalf of Aferi Stool, the Plaintiffs Appellants herein, respectfully asking this Honourable Court to grant "Final Leave" to appeal from the judgment of the Chief Commissioner's Court of Ashanti delivered herein on or about the 21st day of May, 1948.

Motion with affidavit in support filed on 6.8.48.

Mover—present in person.

40 Court: The Registrar informs Court that the conditions imposed by this Court on the applicant 2nd July, 1948, have been fulfilled within the prescribed period. Final Leave is therefore granted. Appeal and grounds of appeal to be filed within seven days from to-day and copies thereof served on the Respondents.

(Sgd.) A. C. SPOONER,  
Ag. Asst. C.C.A.,  
27.8.48.

*In the West African Court of Appeal.*

No. 31.  
Grounds of Appeal,  
1st  
September  
1948.

No. 31.

**GROUND OF APPEAL.**

IN THE WEST AFRICAN COURT OF APPEAL.

Filed on 2.9.48.  
(Intd.) E.  
Regr.

Between CHIEF KWAME DAPAAH OF AFERI for  
and on behalf of himself and of the Stool of  
Aferi . . . . . Appellant

and

- 1. CHIEF KOFI OWUSU on behalf of Toase Stool & 10
- 2. YAO TARKU . . . . . Respondents.

The Appellant, being dissatisfied with the judgment of the Chief Commissioner's Court of Ashanti delivered on the 21st May, 1948, and having obtained final leave to appeal therefrom dated the 27th day of August, 1948, hereby appeals to the West African Court of Appeal upon the grounds hereinafter set forth.

**GROUND OF APPEAL.**

1. That the new boundary demarcation laid from Obuoho to Obotanso by the Asantehene's " A " Court in its judgment was inconsistent with Wheatley's Findings, and should have been amended by Chief Commissioner's Court to give the whole Inkwa-krom land to Appellant in terms of Wheatley's findings. 20

2. The Learned Asst. Chief Commissioner misdirected himself in holding that the Judgment of the Asantehene's " A " Court awarded a portion of Inkwa-krom land to Respondents, did not over-ride Wheatley's findings.

3. The Judgment of the Asantehene's " A " Court and that of the Chief Commissioner's Court awarded a portion of Inkwa-krom land to Respondents went counter to Wheatley's findings. 30

4. Judgment against the weight of evidence.

Dated this 1st day of September, 1948.

Writer & Witness to mark : CHIEF KWAME DAPAA his  
(Sgd.) ? ? ? Appellant. X  
mark

Lic : No : 23966/48/Ksi  
Menhyia-Kumasi  
Fee 4/- Orig : & copies.

The Registrar, 40  
Chief Commissioner's Court,  
Kumasi-Ashanti

- And to
- 1. CHIEF KOFI OWUSU  
on behalf of Toase Stool
  - 2. YAO TARKU (Respondents)  
Toase-Ashanti.

COURT NOTES of Arguments.

*In the West  
African  
Court of  
Appeal.*

No. 32.  
Court  
Notes of  
Arguments,  
31st  
January  
and 21st  
February  
1949.

A. Adjaye for Appellant.

C. F. H. Benjamin for Respondents.

Benjamin asks to have Grounds 5 & 6 struck out for vagueness.

*Order :*

To be struck out accordingly.

Adjaye does not propose to apply for leave to file Additional Grounds.

*Benjamin :* Preliminary objection. Conditions of Appeal at Page 127  
10 not fulfilled by Bond at Page 129.

*Ex parte Markham.* Stone's Justice 1946 Edition Page 190.

2 Renner 764.

1922 Full Court Judgments Page 24.

Objection overruled.

Adjaye states his clients would be satisfied with the area north of  
the blue line and west of the river to that point and would relinquish  
claim to area south of the blue line awarded to Respondents by Asantehene's  
" A " Court.

Benjamin asks for adjournment to consult his clients about a  
20 settlement on these lines.

Hearing adjourned to 7 February.

(Sgd.) H. W. B. BLACKALL,

7.2.49.

President.

98/48

KWAME DAPAAH

V.

KOFI OWUSU

Parties as before.

Adjourned to be heard on 21 February.

(Sgd.) H. W. B. BLACKALL,

30 21.2.49.

President.

98/48

DAPAAH

V.

CHIEF K. OWUSU & Anr.

Parties as before.

Counsel inform Court their clients have been unable reach a settlement.

*Benjamin :* Blue line on Plan is bush path.

If doubt about boundaries Chief Commissioner of Ashanti or Supreme  
Court may fix boundary if dispute re Chief Commissioner's decision

*In the West African Court of Appeal.*

No. 32.  
Court  
Notes of  
Arguments,  
31st  
January  
and 21st  
February  
1949,  
*continued.*

Cap. 120 Section 3 (3) but Native Court cannot. 2 WACA at 48, 50. *Foli versus Akese*. Burden on Appellant to show boundaries of Nkwaakoom land. We called Chief on east of stream who said he did not adjoin Appellant (Page 94). Page 7. Page 160. Page 25. Wheatley only demarcated south and north-west boundary therefore Native Court did not contravene Cap. 120.

Redwar Page 87.

*Adjaye in reply:*

Plan shows boundary between Nkwaakom and Nkurang as pointed out by Respondent to Surveyor. It is the Blue Line, Page 122, 123. At 10 inspection going north to Abutansu Respondent pointed out farms from which he collected tribute were on Nkwaakom Land. Court "A" had no grounds for carrying their new boundary line from Obuohu to Abutansu.

No. 33.  
Judgment,  
21st  
February  
1949.

No. 33.  
**JUDGMENT.**

Appeal allowed. Judgment of Court "A" varied by deleting the words "*and from that point to Abutanso*" and substituting therefor the words "*and thence from Obuohu eastward along the Blue Line on Plan Exhibit 'L' to the Stream Asubompan alias Anyankama and thence northward along the said Stream to Obotanso*" and deleting the words "*the latter having his easterly boundary with the Odekro of Wiredu.*" The Judgment of Court "A" to be read throughout in the light of this variation. 20

Judgment of Chief Commissioner of Ashanti's Court to be set aside with costs to Appellant to be taxed therein.

Costs of this Appeal to Appellant assessed at £53.16.6.

(Sgd.) H. W. B. BLACKALL,  
President.

(Sgd.) A. C. SMITH,  
Ag. Chief Justice,  
Gold Coast. 30

(Sgd.) ARTHUR LEWEY,  
Justice of Appeal.

*Counsel—*

Mr. E. O. Asafu-Adjaye for Plaintiff-Appellant-Appellant.

Mr. C. F. Hayfron-Benjamin for Defendant-Respondent-Respondent.

No. 34.

COURT NOTES granting Final Leave to appeal to Privy Council.

IN THE WEST AFRICAN COURT OF APPEAL, Gold Coast Session,  
held at Accra, on Saturday the 25th day of June, 1949, before His  
Honour ALLAN CHALMERS SMITH, Judge, Gold Coast, sitting as  
a Single Judge of Appeal.

Civil Motion.

CHIEF KWAME DAPAAH for and on behalf of Aferi Stool,  
Plaintiff-Appellant-Appellant-Respondent

10

V.

CHIEF KOFI OWUSU for and on behalf of Toase Stool,  
Defendant-Respondent-Respondent-Appellant.

Motion on Notice for Final Leave to appeal to the Privy Council.

Crabbe for Benjamin for Appellant.

Affidavit read. Conditions fulfilled.

*Court* : Final Leave granted.

(Sgd.) A. C. SMITH,  
Judge.

*In the West  
African  
Court of  
Appeal.*

No. 34.  
Court  
Notes  
granting  
Final Leave  
to Appeal  
to Privy  
Council,  
25th June  
1949.

EXHIBITS.

*Plaintiff's Exhibits.*

In "B"  
Court.

Exhibit "A."  
Finding of L. H. Wheatley, District Commissioner, 17th January 1917.

EXHIBIT "A."

Finding of L. H. Wheatley, District Commissioner.

Exhibit "A" tendered in evidence by Chief Kwame Dapaah.

(Intd.) I. K. A.,

Regr. 15.8.41.

15.1.1917.

COURT held at Nkawie Kuma on the 15th day of January, 1917, before His Worship L. H. WHEATLEY, Esquire, District Commissioner.

CHIEF KWAME ANAPAH	{	Plaintiff claims £100 damages for trespass, receiving tribute and the stirring of the inhabitants of Inkwa Krome against Plaintiff.	10
Vs.			
CHIEF AKWESI JEWU			

\* \* \* \* \*

FINDING :

That the village of Inkwa Krom belongs to the stool of Aferi and that his boundary with the Nkawe Panin lands shall be as follows :—

From the Essuawinsu to the source of the Moduasu thence to its junction with the Kobiri thence the Kobiri.

(Sgd.) L. H. WHEATLEY,

District Commissioner. 20

17th January, 1917.

(Vide Palaver Book 71).

EXHIBIT "M."

Validated decision of L. H. Wheatley, District Commissioner.

Tendered in evidence by Plaintiff-Appellant accepted and marked Exhibit "M" in case *Chief Kwame Dapaah vs. Chief Kofi Owusu & anr.*

(Intd.) J. W. P.,  
Regr. "A" Crt.  
23.8.47.

Reference Ashanti.  
M.P.N. 71/1911A.

Plaintiff's Exhibits.

In "A" Court.

Exhibit "M."  
Validated Decision of L. H. Wheatley, District Commissioner, 17th January 1917.

10

CHIEF KWAME ANAPAH Vs. CHIEF AKWESI JEWU :  
INKWA KROM LAND DISPUTE :

\* \* \* \* \*

17.1.1917.

FINDING :

That the village of Inkwa Krom belongs to the Stool of Afere and that his boundary with the Nkawe Panin lands shall be as follows :—

From the Esuawinsu to the source of the Morduasu thence to its junction with the Kobire thence the Kobire.

(Sgd.) L. H. WHEATLEY,

17th January, 1917.

District Commissioner.

I hereby certify that the above is a copy of Executive Decision made by L. H. Wheatley District Commissioner on the 17th day of January, 1917, and approved by me on the 6th day of September, 1928.

Dated at Kumasi this 22nd day of October, 1929.

(Sgd.) JOHN MAXWELL,

Chief Commissioner Ashanti.

I hereby certify that the foregoing is a true copy of an Executive decision given confirmed or approved by the Chief Commissioner and officially recorded in the Boundary Book.

(Sgd.) REYNOLDS B. KWAKWA,

Registrar & Custodian of the Boundary Book.

30

15.8.47.

WARRANT OR WRIT No.  
REGISTRAR'S RECEIPT No. Q 268/43  
TREASURY RECEIPT No.  
REGISTRAR'S INITIAL

Certified true copy.

(Sgd.) JNO. W. POKU,

Registrar,  
Asantehene's "A" Court.



*Plaintiff's  
Exhibits.*

*In "B"  
Court.*

*Exhibit  
"B."*

Judgment  
of Chief  
Commis-  
sioner,  
17th April  
1917.

**EXHIBIT "B."**

**Judgment of Chief Commissioner.**

**CASE APPEALED TO THE CHIEF COMMISSIONER BY CHIEF  
AKWESI JEWU OF TUASIE. M.P. 50/1917.**

**FINAL DECISION OF C.C.A. :**

**" Plaintiff has no right to the Nkawe Penin lands this case is therefore  
dismissed."**

(Sgd.) F. C. FULLER,  
C.C.A.

17.4.1917. 10

Certified true copy.

(Sgd.) JNO. ARTHUR,

Registrar,

D.C.'s Court.

*Plaintiff's  
Exhibits.*

*In "A"  
Court.*

*Exhibit  
"N."*

Bill of  
Costs,  
18th April  
1917.

**EXHIBIT "N."**

**Bill of Costs.**

**Tendered in evidence by Plaintiff-Appellant, accepted and marked  
Exhibit "N" in case *Chief Kwame Dapaah vs. Chief Kofi Owusu & anr.***

(Intd.) J. W. P.,

Regr. "A" Crt.

20

23.8.47.

Coomassie.

18th April, 1917.

**The Chief Commr.,  
Coomassie.**

Sir,

I have the honour to apply through you for permission to claim  
from Chief Akwesi Jaiwoo my expenses in respect of the case decided in  
my favour as under :—

	£	s.	d.	30
Chief Kobina Kufuor 3 days at 20s. .. .. .	3	0	0	
„ Kwamin Akomia 3 „ at 10s. .. .. .	1	10	0	
„ Aikwuah Tawiah 3 „ at 5s. .. .. .	0	15	0	
Personal expenses of myself .. .. .	8	0	0	
	<hr/>			
	£13	5	0	
Plus 9s. for 3 witness Summons .. .. .	0	9	0	
	<hr/>			
	£13	14	0	
	<hr/>			

I have the honour to be,

Sir,

Your obedient Servant,

40

**CHIEF KWAMIN DAPAAH X his mark.**

Writer :

(Sgd.) GABRIAL HARRISON SAM,  
Lie. No. 1506,  
191 Claude Road.

*Plaintiff's  
Exhibits.*

*In "A"  
Court.*

*Exhibit  
"N."*

*Bill of  
Costs,  
18th April  
1917,  
continued.*

Fee 2s.

		Costs allowed :			
		£	s.	d.	
		3	0	0	
		1	10	0	
10			15	0	
	Total costs .. ..		9	0	(cost of 3 sups. vide Receipt 41690 of 10.3.17)
	Personal expenses ..	8	0	0	
		<hr/>			
		£13	14	0	
		<hr/> <hr/>			

(Intd.) F. C. F.

19.IV.17.

D.C., C.P.A.,

Please have these costs paid out of Jewu's appeal deposit and  
20 return him the balance.

(Intd.) F. C. F.

C.C.A.

19.IV.17.

<p>WARRANT OR WRIT NO. REGISTRAR'S RECEIPT NO. Q.268144 TREASURY RECEIPT NO. REGISTRAR'S INITIAL</p>
--

Certified true copy,

(Sgd.) REYNOLDS B. KWAKWA,

Registrar,

Chief Commissioner's Court, Ashanti.

EXHIBIT "C."

Plaintiff's Exhibits.

Indenture between Chief Kwame Dapah and Yaw Berku.

In "B" Court.

Exhibit "C."

Indenture between Chief Kwame Dapah and Yaw Berku, 16th January 1924.

THIS INDENTURE made the 16th day of January, 1924, between YAW BERKU of Nkwakom hereinafter called the Tenant which phrase shall where the context so admits include his heirs executors administrators and assigns of the one part and CHIEF KWAME DAPAH of Aferi village hereinafter called the Landlord which phrase shall where the context so admits include his successors in title of the other part Witnesseth as follows :—

1. That the Landlord has agreed and had given a piece or parcel 10 of land situate at Nkwaakuom village to the Tenant for the purpose of cocoa farm.

2. That the Tenant has agreed to pay to the Landlord the sum of (£20) Twenty Pounds ground rent per year.

3. That the Tenant have no right to take any other land in addition to what has already been given to him in bestowing to the Landlord and if the Tenant wishes to do so he should first report to the Landlord for his intention so to do.

4. That if any stranger that will lodge to the Tenant and wishes to make cocoa farm, the Tenant has to report to the Landlord and the 20 Landlord to fix his own arrangement.

5. That in case the Tenant shall fail to pay rents due, the Landlord has full power to sue for recovery of all rents due.

In witness whereof the parties hereto have hereunder set their hands and marks the day and year first above written.

[sic] Signed sealed and delivered by the said Yaw Berku after same was read and interpreted to him in the Twi language by J. R. Garben. } YAW BERKU his X mark

[sic] Signed sealed and delivered by the said Chief Kwamin Dapah after same was read and interpreted to him in the Twi language by J. R. Garher. } CHIEF KWAMI DAPAH his X mark 30

Witnesses :

	Their	
Linguist Kweku Yebosh	X	
Linguist Kobina Apreku	X	
Yaw Dei	X	
Kweku Quansah	X	
Kweku Gyewbini	X	40
Yaw Mainoo	X	
Kweku Fokuo	X	
	marks	

Indenture made in Head Chief Kwami Kyem's Court in Bantama.

Writer and witness to marks :

(Sgd.) ? ? ? GARBER,

Licd. No. 3158/24,  
Bantama.

Fee 4s.

EXHIBIT "D."

Indenture between Chief Kwame Dapah and Kweku Anwhere.

Plaintiff's Exhibits.

In "B" Court.

Exhibit "D."

Indenture between Chief Kwame Dapah and Kweku Anwhere, 16th January 1924.

THIS INDENTURE made the 16th day of January, 1924, Between KWEKU ANWHERE of Nkwakom hereinafter called the Tenant which phrase shall where the context so admits include his heirs executors administrators and assigns of the one part and CHIEF KWAMI DAPAH of Aferi village hereinafter called the Landlord which phrase shall where the context so admits include his successors in title of the other part Witnesseth as follows :—

- 10 1. That the Landlord has agreed and had given a piece or parcel of land situate at Nkwakom village to the Tenant for the purpose of cocoa farm.
- 2. That the Tenant has agreed to pay to the Landlord the sum of (£10) Ten pounds ground rent per year.
- 3. That the Tenant have no right to take any other land in addition to what has already been given to him in bestowing to the Landlord and if the Tenant wishes to do so he should first report to the Landlord for his intention so to do.
- 20 4. That if any stranger that will lodge to the Tenant and wishes to make cocoa farm the Tenant has to report to the Landlord and the landlord to fix his own arrangement.
- 5. That in case the Tenant shall fail to pay ground rents due, the Landlord has full power to sue for recovery of all rents due.

In witness whereof the parties hereto have hereunder set their hands and marks the day and year first above written.

30	Signed Sealed and Delivered by the said Kweku Anwhere after same was read and interpreted to him in the Twi language by	}	KWEKU ANWHERE	His X mark
			T.R.G.	
	Signed Sealed and Delivered by the said Chief Kwami Dapah after same was read and interpreted to him in the Twi language by	}	KWAMI DAPAH	His X mark

40	Witnesses :	Their
	Linguist KWEKU YEBOAH	X
	Linguist KWABINA APREKU	X
	YAW DEI	X
	KWEKU GYEWBIN	X
	KOBINA NIMO	X
		marks

Writer & witness to marks :  
 (Sgd.) J. R. GARBER,  
 Lic. No. 3158/24.  
 Bantama.

Fee : 4s.

Indenture made in Head Chief Kwame Kyem's Court in Bantama.

EXHIBIT "G."

1st  
Defendant's  
Exhibits.

Writ of Summons, Chief Kwame Dapah to Yao Tarku.

In "B"  
Court.  
Exhibit  
"G."

Office copy.

(Sgd.)

? ?  
Registrar.

Writ of  
Summons,  
Chief  
Kwame  
Dapah to  
Yao Tarku,  
28th  
January  
1941.

Divisional Court, Ksi. Exhibit "G."

(Intd.) I. K. A.,

11.2.42.

No. 9.

Writ of Summons.

Suit No. 3/1941.

Office.

(Intd.)

(O. 2 r. 2. Schedule 3).

10

Registrar, Divisional Court,  
Kumasi.

IN THE SUPREME COURT OF THE GOLD COAST ASHANTI

Tendered in evidence by Chief Kofi Owusu.

Divisional Court holden at Kumasi.

Between CHIEF KWAME DAPAH for himself and on  
behalf of the Elders and Councillors of the  
Stool of Aferi . . . . . Plaintiff

YAO TARKU . . . . . Defendant.

To : Yao Tarku of Yao Tarku-Krome.

20

You are hereby commanded in His Majesty's name to attend before this Court at Kumasi on Friday, the 28th day of February, 1941, at 8.30 a.m. o'clock in the forenoon, then and there to answer a suit by Chief Kwame Dapah of Aferi against you. The Plaintiff claims from the Defendant the sum of Two Hundred and Forty pounds (£240) being land and cocoa tribute for 24 years at the rate of ten pounds (£10) per annum as per Affidavit attached.

Issued at Kumasi the 28th day of January, 1941.

Sum claimed	..	..	..	£240	
Court Fees	..	..	..	5	2 0
Bailiff's Fees	..	..	..		9 6

30

£245 11 6d.

(Sgd.) M. FUAD,  
Judge.

EXHIBIT "H."  
Affidavit of Yao Tarku.

1st  
Defendant's  
Exhibits.

Exhibit "H" tendered in evidence by Chief Kofi Owusu.

In "B"  
Court.

(Intd.) I. K. A.

Regr. 11.2.42.

Exhibit  
"H."  
Affidavit  
of Yao  
Tarku,  
14th  
February  
1941.

IN THE SUPREME COURT OF THE GOLD COAST (ASHANTI)  
Divisional Court Kumasi.

CHIEF KWAME DAPAH and Elders of Aferi Stool . Plaintiffs

vs.

10 YAO TARKU . . . . . Defendant.

I, Yao Tarku of Yao Tarku-Krome now at Kumasi make oath and say as follows :—

1. That I am the Defendant in the above cited case and have had read and interpreted to me a copy of Affidavit sworn to by Joseph Kwame Dapah on behalf of the Plaintiffs herein.

2. That the Plaintiffs have taken action against me at the Divisional Court, Kumasi, claiming the sum of £240 said to be due and owing by me for occupying, and farming on the Stool land of the Plaintiffs for a period of 24 years (since 1917), at the rate of £10 per annum.

20 3. It is not true that I am indebted to the Plaintiffs in the amount claimed nor any portion thereof.

4. With regard to paragraph 5 of Plaintiffs affidavit I do not know of any existing judgment dated 15th January, 1917 or 17th April, 1917, and I was never a party to the said suit in question.

5. That paragraph 6 of Plaintiffs affidavit is not correct as customary law exists in Ashanti which gives them the right to claim annual tribute of £10 from me.

30 6. That it is true that only about two months ago 1st Plaintiff approached me and asked me to make an agreement with his stool to pay a fixed sum as yearly tribute on the portion of land which I am occupying and which he alleged belonged to his stool.

7. That I asked leave of the 1st Plaintiff to go and inform my Chief at Kumasi about this and he agreed but when I returned to my village I was served with a writ of summons.

8. That I have been occupying the said land since 1925 that is when the late Nana Asantehene (Kumasihene) returned from the Seychelles and not 1917 as stated in Plaintiffs affidavit.

9. That I have never one day paid tribute to or been demanded tribute by anyone.

*1st Defendant's Exhibits.* 10. That I swear to this affidavit craving leave of this Honourable Court to defend the action, since the Defendant has a valid defence to the same in the interests of justice.

*In "B" Court.*  
*Exhibit "H."*  
Affidavit of Yao Tarku, 14th February 1941, *continued.*

Sworn at Kumasi this 14th day of February, 1941, after the foregoing had been read over and interpreted to the deponent in Twi language by (sgd.) . . . when he seemed perfectly to understand same before he touched the pen hereto

YAW TARKU  
His X mark

10

Before me,  
(Sgd.) NUNNO BADDOO,  
Commissioner for Oaths.

(Sgd.) H. ALAITEY,  
Interpreter and witness to mark.

Writer and wit. to mk :

(Sgd.) J. W. KOFI,  
Lic. No. 17472/41,  
Ankobeah Kumasi.

Fee : 4/- orig. and 2 copies.

20

*Plaintiff's Exhibits.*

*In "B" Court.*

*Exhibit "E."*

Letter from Registrar, Divisional Court, Kumasi, to Yao Tarku re visit of Surveyor to land in question, 8th April 1941.

**EXHIBIT "E."**

**Letter from Registrar, Divisional Court, Kumasi, to Yao Tarku re visit of Surveyor to land in question.**

No. 347/43/1941. In case of reply the number and date of this letter should be quoted.

Supreme Court,  
P.O. Box 3,  
Kumasi,  
Gold Coast,  
8th April, 1941. 30

Sir,

Chief Kwame Dapah, Etc.

*Vs :*

Yao Tarku of Yao Tarkukrome.

I have the honour to inform you that Mr. Asafu-Adjaye Counsel for the Plaintiff has got Mr. Kufuor, Surveyor, to go on the land in question and to notify you to be present there on next Thursday, the 10th instant.

I have the honour to be,

Sir,

Your obedient Servant,  
(Sgd.) B. CROXBY-DAVIES, 40

Mr. YAO TARKU,  
Tarku-Krome.

Registrar,  
Divl. Court.

## EXHIBIT " F. "

Letter in Reply to " Exhibit E " from Solicitor to Yao Tarku.

Copy :

Kumasi,  
9th April, 1941.

Sir,

Chief Kwame Dapah, etc. :

Vs :

Yao Tarku of Yao Tarkukrome.

Our client, Yao Tarku, has requested us to acknowledge the receipt  
10 of your letter No. 347/43/1941, dated the 8th instant.

He says that he received the letter under reply only today and it  
gives him no time to prepare to go on the land. He has therefore requested  
us to write you to be good enough to grant him two weeks to get himself  
in readiness to go on the land.

We have the honour to be,

Sir,

Your obedient Servants,

(Sgd.) H. A. HAYFRON-BENJAMIN,  
Solicitors for the Defendant.

20 The Registrar,  
Divisional Court,  
Kumasi.

*Plaintiff's  
Exhibits.*

*In " B "*  
*Court.*

*Exhibit  
" F. "*

Letter in  
reply to  
Exhibit  
" E " from  
Solicitor to  
Yao  
Tarku,  
9th April  
1941.



EXHIBIT " I. "
Affidavit of Chief Kofi Owusu.

1st
Defendant's
Exhibits.

In " B "
Court.

Exhibit
" I. "
Affidavit
of Chief
Kofi
Owusu,
25th April
1941.

Copy. Exhibit " I " tendered in evidence by Chief Kofi Owusu.

(Intd.) I. K. A., Regr.,

11.2.42.

IN THE SUPREME COURT OF THE GOLD COAST ASHANTI.
Divisional Court—Kumasi :

In the matter of :

CHIEF KWAME DAPAH, for himself and on
behalf of the elders and Councillors of the Stool
of Aferi . . . . . Plaintiff.

10

Vs :

YAO TARKU of Yao Tarku-Krom . . . . . Defendant.

I, CHIEF KOFI OWUSU of Kumasi for myself and on behalf of my stool
make oath and say as follows :—

- 1. That Yao Tarku the Defendant in the above-named case is one of
my subjects.
2. That the land on which he lives and has his cocoa farms is a portion
of my stool lands.
3. That the Defendant is not liable to pay any tribute to the Plaintiff
as the land on which he lives does not belong to the Plaintiff.
4. That I am swearing to this affidavit respectfully asking this
Honourable Court to join me as a co-defendant and for any such further
or other order as to this Honourable Court may seem just in the premises.

Sworn at Kumasi this 25th day of April, } (Sgd.) CHIEF KOFI
1941, in my presence and before me } OWUSU.

(Sgd.) NUMO BADOO,
Commissioner for Oaths.



**EXHIBIT "J."**  
**Ruling by Judge Doorly.**

1st  
Defendant's  
Exhibits.  
—  
In "B"  
Court.  
—  
Exhibit  
"J."  
Ruling  
by Judge  
Doorly,  
5th May  
1941.

Exhibit " J " tendered in evidence by Chief Kofi Owusu.

(Intd.) I. K. A.

11.2.42.

IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI.

At a DIVISIONAL COURT held at Kumasi on Monday the 5th day of  
May, 1941, before His Honour Mr. Justice DOORLY.

10 CHIEF KWAME DAPAH, for himself and on behalf of  
the Elders and Councillors of the Stool of Aferi Plaintiff

*Versus*

YAO TARKU of Tarku-Krome Defendant.

Asafu Adjaye for Plaintiff.

Benjamin for Defendant.

\* \* \* \* \*

**RULING :**

20 There can be no doubt that this suit is of exactly the same nature  
as *Odikro Osafo Agyeman and others versus Kwame Panin*. In that action  
West African Court of Appeal held that the correct procedure in this Court  
should have been to stop the proceedings and refer the parties to the  
competent Native Court. I am bound by that decision. I therefore stop  
the further proceedings in this Court and refer the parties to the Asantehene's  
Divisional Court for the Kumasi Division with costs to Defendant assessed  
at £3 inclusive of the Order of 28.2.41.

[sic]

(Sgd.) A. N. DOORLY,  
Judge.

Certified true copy.

(Sgd.) B. CROSBY DAVIES,  
Registrar,  
Divisional Court, Kumasi.

*Exhibits.*Exhibit  
"K."Report of  
Inspection,  
30th  
September  
1942.**EXHIBIT "K."****Report of Inspection.****REPORT OF DELEGATE SENT TO VIEW THE PARCEL OF LAND  
IN DISPUTE IN THE FOLLOWING CASE :****CHIEF KWAME DAPAAH**

Plaintiff

Vs.

1. **CHIEF KOFI OWUSU**2. **YAW TARKU**

Defendants.

In connection with the above-named case, we the undersigned Chiefs of the Asantehene's Divisional Court hearing this case proceeded to the land in respect of which this case arose and the following is our Report and finding :— 10

We left Kumasi in the afternoon of the 16th of September, 1942, and overtook the Plaintiff at his village Aferi while the Defendants were at their respective villages of Toase and Yao Tarkukrom. After the usual courtesies we passed off to Nkuran village where the parties had arranged accommodation for us. On the following day, 17th September, 1942, we left Nkuran at 8.35 a.m. and proceeded on to the land in dispute. After 15 minutes' walk from the Nkuran village, the 1st Defendant showed us his old and deserted village called Fwudiesu where one Attaa Twaaday 20 settled in the olden days and was buried.

At 9.5 a.m. the Plaintiff showed a point called Esuowinsu where he said the D.C. Mr. Wheatley demarcated as boundary. Chief Owusu (1st Defendant) swore the G.O. that Mr. Wheatley did not touch or go as far as to the streams Ayankama and Subonpan which are on his portion. The Plaintiff did not reply to the Oath. We went further and at 9.30 a.m. the Plaintiff showed a small stream which he said is called Ayankama and into which Esuowin flows. The 1st Defendant said that that small stream is not Ayankama but Subonpan. At 9.45 a.m. we retired to Esuowin again and continuing the Plaintiff took us to a point where he said 30 called Esuowinti in cocoa farms said to belong to the people of Nkuran, one of the 1st Defendant's villages. 1st Defendant disputed this area being the Esuowinti and took us to where it is. We questioned the Plaintiff as to whether he was showing his portion or boundary as decided by Mr. Wheatley and he answered in the affirmative. We further enquired as to whether Mr. Wheatley trod round the area in dispute and he said no, Mr. Wheatley stood at Esuowinti and demarcated the boundary. We following the Plaintiff to another point in a cocoa farm where the Plaintiff pointed a small hole to us and said that that was Modwiwasuti. The 1st Defendant said that was not Modwiwasuti but a digging made by the 40 farmers there for water and one Zumani Moshie stepped forward and explained it that he was engaged as farm labourer and it was he who dug the hole in quest of water and that he had been resident at Nkuran village for six years. The width of this hole is about 6 feet. The Plaintiff then remarked that what he had described as Modwiwasuti was not it adding that he had no portion on that area. We followed him to another point and at 11.40 a.m. the 1st Defendant took us to a point and showed us his fetish grove, Tanokofi at a point called "Apatrapa" founded by his

ancestor called Takwa Fori and this portion is within the area claimed by the Plaintiff. From this point, at 12.50 p.m. the Plaintiff took us to another point and showed where the correct Modwiwasu, the watering place of Nkwakuom is and he said that he had no boundary at this point with the 1st Defendant. The 1st Defendant retorted that, in his statement, he said that this Modwiwasu was a stagnant water or pool which when flooded flowed into stream called Asua-Kwasi lying on the left-hand side of that portion.

We left this area at 1.5 p.m. and reached the village of Nkwakuom at 10 1.20 p.m. and the Plaintiff said that this is the village where £20 is paid him every year by the people living and farming there.

We left Nkwaakuom village at 1.42 p.m. and the Plaintiff took us thence to Yao Tarku, 2nd Defendant's cottage, arriving there at 2.5 p.m. when the Plaintiff alleged that that cottage is on his land and that 2nd Defendant refused to pay annual tribute on his cocoa farms to the Plaintiff. Hence this action. From this point the Plaintiff took us to another cottage called Senkodi where having finished what he wished to point out to us we left at 2.25 p.m. and returned to Nkuram village reaching there at 3.10 p.m.

20 We continued our work on Saturday, the 19th September, 1942, starting from Nkuran-Nkwaakuom path at 8.20 a.m. and after about three-quarters of a mile's walk, the 1st Defendant (Chief Kofi Owusu) showed the portion called Nhinkwa-krom which his ancestor allotted to certain Nhinkwaa (attendants) of the Asantehene to settle in the olden days to tap palm wine. We saw old latrine pits and several places where the settlers erected their huts. From this point the 1st Defendant took us back to 2nd Defendant's cottage and before reaching there he showed us Abuhu (group of stones) in the 2nd Defendant's cocoa farm and said that that was where Nkwaakuom and Nkuran villages have their boundary.

30 The plaintiff stated this is the farm in respect of which he wanted the 2nd Defendant to pay him tribute and he refused and that this portion of the land belongs to him (Plaintiff). The Plaintiff added that there was a man named Kropah living on this area who pays him £1 tribute every year. From this point the 1st Defendant took us to the point where he said his boundary with one Kojo Fah of Mim, demarcated by a stream called Subonpan, alias Nitiwadasuor, is. The Plaintiff alleged that one Kwame Nsiah pays him £6 every year in respect of his farm on this area, and that that was the farm in respect of which he wanted tribute on cocoa to be paid him and the 2nd Defendant refused consequently this action was  
40 taken. The Plaintiff added that that portion of the stretch of land belongs to him for there was a man called Kropah who pays him £1 in respect of cocoa tribute every year.

From this point the 1st Defendant took us to another portion and showed his boundary with one Kojo Fah of Mim, demarcated by a stream called Subonpan alias Ntiwadasuo.

The Plaintiff alleged that one Kwame Nsiah pays him £6 yearly in respect of his farm on this area. He added that the farm lying on a portion called Dankwasiwa belongs to one Kwame Kobi of Kyiawu who pays him £1 3s. 6d. and a bottle of gin every year. 1st Defendant said  
50 this is part of Nkwaakuom land and that one Ofi of Edwumakasi has a cottage there and pays him £1 3s. 6d. every year in respect of his farm.

*Exhibits.*

—  
Exhibit  
"K."

Report of  
Inspection,  
30th  
September  
1942,  
*continued.*

*Exhibits.*  
 Exhibit  
 "K."  
 Report of  
 Inspection,  
 30th  
 September  
 1942,  
*continued.*

At 10.35 a.m. we reached the portion called Abutansu and the 1st Defendant said that he has his head boundary there with the Odikro of Wiredu called Kojo Fah. Chief Kwame Dapaah, Plaintiff herein, retorted that Kojo Fah had no land there. Kojo Fah then stepped forward and swore to the Great Oath that the parcel of the land at the other side of the stream called Pempa belongs to him and that it was the Otumfuo Nana Osei Tutu who gave it to his ancestors in the olden days, and that he has a boundary with the Toasehene, 1st Defendant, in this case.

The Plaintiff replied to the Oath to the contrary and both were arrested accordingly. 10

The 1st Defendant continued to show his boundary from this point to Wawapupuo tree where a cement pillar marked 100 had been erected. Thence to another pillar No. 105 on an old path, thence to another pillar No. 115. The Plaintiff said that those cement pillars were erected by Government and that the path was not an old one. We continued to pillar No. 125 thence to a portion called Sutrey and to Krubenahu, as called by 1st Defendant, who told us that was where Nkwaakuom and Afari used to meet. Here the 1st Defendant stated that he owns the portion on the left-hand side and the Plaintiff owns the right-hand side but the Plaintiff said that both left and right portions belong to him. We 20 proceeded to pillars Nos. 140, 145 and at 11.50 a.m. we reached a portion called Bonhunum on the Nkawie-Kumasi lorry road when the 1st Defendant concluded his boundary with the Plaintiff and that it was he who constructed that portion of the lorry road. The Plaintiff admitted that this portion is called Bonhunum but that it belongs to him. All sides having finished what they got to show us at 12.15 p.m. we repaired to Nkuran reaching there at 2.5 p.m. got ourselves in readiness and boarded our lorries for Kumasi.

	Their	
President, GYASEHENE OFORI KHAN	X	30
Etutuohene, OPPON WADDIEH	X	
Etipinhene, BUACHI YAM (Sgd.)		
Linguist, KWABENA KWAAKU	X	
Registrar (Sgd.) I. K. AGYEMAN		
		marks.

Witness to marks & signatures :

(Sgd.) I. K. AGYEMAN,  
 Registrar,

Asantehene's Divisional Native Court,  
 30th September, 1942.

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# In the Privy Council.

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## ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL (Gold Coast Session)

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BETWEEN

1. CHIEF KOFI OWUSU for and on behalf of Toase Stool
2. YAW TARKU (Defendants) - - - - - *Appellants*

AND

CHIEF KWAME DAPAAH for and on behalf of Aferi  
Stool (Plaintiff) - - - - - *Respondent*

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# RECORD OF PROCEEDINGS

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BURCHELLS,  
9 BISHOPSGATE, E.C.2,  
*Solicitors for the Appellants.*

A. L. BRYDEN & WILLIAMS,  
53 VICTORIA STREET,  
LONDON, S.W.1,  
*Solicitors for the Respondent.*