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In the Privy Council.

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 LEGAL STUDIES

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ON APPEAL

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

BETWEEN

WUDANU KWASI, Acting Chief of Atipradaa, and
 MANKRADO KWASI ANSAH, Acting Chief
 of Wusuta (Defendants) *Appellants* its

AND

NANA OSEI TWUM, Ohene of Bukuruwa (sub-
 stituted for YAW NKANSAH II, Dsasehene of
 Bukuruwa-Kwahu) (Plaintiff) and NANA
 AKWAMOA AKYEAMPONG, Omanhene of
 Kwahu (Co-Plaintiff) *Respondents.* ts.

CASE FOR THE RESPONDENTS.

1. This is an appeal from a Judgment of the West African Court of Appeal (Gold Coast Session) dated the 1st March 1948 (dismissing an appeal by the Appellants from a judgment of His Honour Acting Chief Justice McCarthy in the Lands Division of the Supreme Court of the Gold Coast dated the 2nd May 1947. RECORD.
p. 82.
p. 69.

2. This action was instituted on the 13th March 1940 by civil summons in the Tribunal of the Paramount Chief of Kwahu State, Gold Coast Colony. By order dated the 21st March 1942 the action was transferred to the Supreme Court of the Gold Coast. p. 1.
p. 3.

10 3. There have been numerous substitutions and variations of the parties to this action. When the action came on for trial the Plaintiffs were the Omanhene or Paramount Chief of Kwahu and his subordinate Chief the Dsasehene of Bukuruwa. The Defendants to the action as originally brought were Chief Tawia of Atipradaa, a sub-chief of the Stool of Wusuta, the second Defendant one David Akumoa alias Yaw Koi of Adukrom, who did not appeal to the Supreme Court of the Gold Coast, and who is not a party to the present appeal. By Order dated the 8th July 1942 the Ohene of Wusuta was added as a Defendant to the action. p. 6.

CASE FOR THE RESPONDENTS

RECORD.

p. 6.
p. 21.

4. By their statements of claim the Plaintiffs claimed (inter alia) declarations of their title to all that piece or parcel of land situate in Kwahu, Gold Coast Colony, and bounded on the North by the River Obosom, on the South by the River Afram, and on the East by the River Volta and on the West by the Abetifi, Nkwatia, Pitiku and Kwahu Tafo Stool lands.

p. 90.

5. By Order dated the 11th April 1949 Nana Yaw Nkansa Gyasehene of Bukuruwa was substituted as Plaintiff Respondent herein for Nana Baadu III Ohene of Bukuruwa Kwahu now destooled.

p. 82.

6. The Plaintiffs' claim related to an area of land (erroneously described in the judgment of the West African Court of Appeal as being about twenty square miles in extent but in fact of much greater size) having as its eastern boundary the River Volta, the principal river in the Gold Coast Colony and which, until the expulsion of the Germans in about the year 1915, was the international boundary between British Territory and German Togoland. The Plaintiffs' contention was that the said land was attached to and possessed by the stool of Bukuruwa under the Kwahu Stool, the ultimate owners. 10

7. The Defendants did not claim title to the whole of the said land. They contended that a large part thereof was the property of the Wusuta Stool and that various sub-Chiefs including the first Defendant the Chief of Atipraada held parts of it under the said stool and that the second Defendant was a tenant thereof. It was contended that such portion of the land as did not belong to the Wusuta Stool belonged to certain other stools whose representatives were not parties to the action. 20

p. 69.
p. 82.

8. There are concurrent judgments of the Supreme Court, delivered on the 2nd May 1947, and of the West African Court of Appeal, delivered on the 1st March 1948, by which it has been determined that the Plaintiffs had established that the said land was attached to the Bukuruwa and Kwahu Stools and were accordingly entitled to succeed in the action. The only questions of law raised during the course of the proceedings related to the admissibility of certain evidence: these questions were resolved by the West African Court of Appeal in favour of the Defendants (Appellants) but the Court of Appeal nevertheless held, affirming the decision of the trial judge, that the Plaintiffs had proved their title to the land. It is submitted that the Privy Council will not go behind these Judgments upon such a question of fact for which Judgments there was ample supporting evidence. 30

9. The evidence adduced at the trial largely comprised evidence of traditional history and evidence of present and past occupation of the land in dispute and payment of tribute and other acts indicative of the ownership of the land. It is submitted that if the traditional history and other evidence adduced by the Plaintiffs was accepted as being true, the Plaintiffs title was plainly established, and that it was essentially a matter for the trial judge, who 40

saw and heard the witnesses, to determine this question, and that the learned judge having determined this question, which was peculiarly one for a tribunal of fact experienced in this class of case, in favour of the Plaintiffs and his decision having been affirmed by the West African Court of Appeal, it would be contrary to the practice of the Privy Council to reconsider the evidence or to reverse the said Judgments.

10 The learned trial judge after considering the effect of a certain award (to which reference will hereinafter be made) said “But having weighed the evidence outside the award my view is that the balance is slightly in favour of the Kwahu Stools.” p. 73.
l. 14.

In their judgment the West African Court of Appeal said:—

“During the four days that this appeal has been argued before us, it has been increasingly clear to us that the evidence is far from slightly in favour of the Plaintiffs’ Stools as the learned Judge found. We are satisfied upon a review of all the evidence that the Plaintiffs are entitled to the declaration. The traditional evidence as found by the trial Court is consistent in our view with the conditions existing today.” p. 85.
l. 37.

and at a later stage:—

20 “Taking therefore the evidence as a whole and giving due weight to the documentary evidence admissible, we have come to the conclusion that the Plaintiffs are the owners of the land claimed: that they did discharge the onus of proof; that the Plaintiffs’ case was not answered satisfactorily by the evidence offered by the Defence and that there is therefore no reason for interfering with the decision arrived at by the trial judge after a patient hearing during which he must have formed his own estimate of the various witnesses.” p. 88.
l. 14.

30 11. The Plaintiffs tendered in evidence a document (hereinafter referred to as exhibit “F”) being an extract from a report dated the 8th November 1903 of one J. T. Crabb, Travelling Commissioner, to the Secretary for Native Affairs, Accra, in relation to a land dispute concerning substantially the same land as that the subject matter of this action. The Defendants objected to the admissibility of the said document, but the learned trial Judge ruled that it was admissible. p. 92.
p. 35.

40 12. In the course of his judgment the learned trial Judge said:— p. 71.
“It is against this background that it is necessary to view a dispute between Wasutu Chiefs established on the British side” (of the international Line, *i.e.*: the River Volta) “and the Kwahus, which came to a head in 1903. The dispute concerned the ownership of much of the land now in dispute. On the one hand were the Kwahu Stool, (represented by its linguist, the Chief of Bukuruwa, the Chief of Asabi, whose Stool was l. 36.

RECORD.

alleged to hold the land under Bukuruwa, and the Chief of Nkami, another local Chief at that time under Asabi. On the other hand were Kwasi Kumah, who claimed to be a Chief of Ourisita (Wasutu) on the German side and to be the Chief of Nframa on the land in dispute. He claimed in effect to be the senior Wasutu Chief on the British side and stated that most of the Wasutu settlements on that side were under him. With him were ranged the other local Wasutu Chiefs.

The dispute in many essentials was much the same as in the present case. Much the same traditions were given before the Arbitrator, the Travelling Commissioner, to whom the dispute was referred for settlement." 10
The learned trial Judge referred to Exhibit F and continued:

p. 72.
l. 19.

"The one important respect in which the Arbitration may be distinguished from the present proceedings is the fact that the principal Wasutu Chief, who lived under the Germans, was for obvious reasons unable to appear or be officially represented.

On this ground Mr. Bossman, Counsel for the Defendants, maintains that the award is not evidence against the 3rd Defendant, the Chief of Wusuta (whose territory is now part of Togoland under British Mandate). His argument is that there has been nothing to deprive him of his rights of property in British territory. 20

p. 73.
l. 4.

Mr. Sawyer (who appeared for the Plaintiffs) does not contend that the award operates as an estoppel, but he does contend that it is evidence against the Defendants, and I agree with him.

It seems to be highly relevant that the Travelling Commissioner, who dealt with the dispute on a town in the land in dispute, and heard a large number of witnesses who could speak as to relevant matters within their own knowledge, should have decided in favour of Kwahus. He obviously was in a far better position than I to find out the truth of the matter."

13. The West African Court of Appeal dealing in their judgment with the question of the admissibility of Exhibit F said:— 30

p. 84.
l. 36.

"The submission to arbitration is in writing. It does not provide that an award shall be in writing and therefore a parol award is not excluded, although a written award is more usual.

According to the report of the Commissioner it appears that a parol award was in fact made. The fact that a parol award appears to have been made, in our view, rules out Exhibit F as the award of the Commissioner, it is in fact a report to the Governor of the effect of the award delivered. There is no evidence therefore before the Court as to the terms of the actual award made, although there is evidence in the Plaintiffs' case that it was in favour of the Chief of Nkami and the Kwahus." 40

14. It is submitted that the conclusion of the West African Court of Appeal that there was no evidence before the Court as to the terms of the actual award made was (unless the Court merely intended to find that there was no evidence of the precise language of the award) erroneous. The award being a parol one, it is submitted that Exhibit F was admissible as evidence of its terms. It is further submitted that as the award was made in an arbitration between representatives of the Kwahu and Wusuta Stools the learned trial Judge was entitled to consider it in arriving at his decision in favour of the Plaintiffs.

15. The Respondents humbly submit that this Appeal should be dismissed
10 with costs for the following among other

REASONS.

(1) BECAUSE the Respondents discharged the onus upon them of proving that the lands in dispute were attached to and the property of the Bukuruwa and Kwaha Stools.

(2) BECAUSE the said lands were not the property of the Wusuta Stool.

(3) BECAUSE the award of Mr. J. T. Crabb and the document exhibit F were admissible in evidence.

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(4) BECAUSE the judgments of the Supreme Court of the Gold Coast and of the West African Court of Appeal were concurrent judgments on the facts and ought not to be disturbed.

(5) BECAUSE the judgment of the Supreme Court was right.

(6) BECAUSE the judgment of the West African Court of Appeal was right.

P. COLIN DUNCAN.

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AKWAMOA AKYEAMPONG, Omanhene of
Kwahu (Co-Plaintiff) *Respondents.*

Case for the Respondents.

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