

In the Privy Council.

ON APPEAL

FROM THE COURT OF APPEAL FOR WEST AFRICA

38078

UNIVERSITY OF LONDON
W.C.1.

23 MAR 1955

INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN

ALHAJI IBRAHIMAH OF SEKONDI

Appellant

AND

MAMMA GARIBA, MAAZO GARIBA and ADJARA
GARIBA as Children and Successors of the late
MALLAM GARIBA (deceased) OF SEKONDI

Respondents.

10

Case for the Appellant

RECORD.

1. This is an appeal by leave from a judgment of the Court of Appeal for West Africa. The appeal concerns the ownership of a valuable building comprising 35 rooms and known as Nos. 23/19 George Street, Hausa Zongo, Sekondi, Western Province, Gold Coast (hereinafter called "the disputed building"). Briefly summarized the grounds of the appeal are first that the inference drawn in the said judgment as to the ownership of the disputed building was contrary to the weight of the evidence and secondly that the Respondents are estopped by their conduct from disputing the ownership of the Appellant.

pp. 52-55.

p. 9, l. 3.

2. All the parties to this appeal are members of the Hausa tribe and Moslems by religion. The Appellant is the adopted son of one Salamatu (alias Salam Attah Mami Attah or Krama or Kramo Atta) the wife of Mallam Gariba. The Appellant claims that the disputed building belonged to Salamatu and became the property of the Appellant upon her death as her heir under local Moslem law. The first two Respondents are the sons of Mallam Gariba by another wife Fati Wangara and the third Respondent is the daughter of Mallam Gariba by a third wife whose name does not appear in evidence. The Respondents claim that the site of the disputed building belonged to Mallam Gariba and that they became entitled to the same or to share in the same upon his death as his heirs or some of his heirs under local Moslem law.

p. 47, l. 11.

p. 13, . 6.

p. 19, ll. 3, 4.

p. 33, ll. 26-28, 34, 35.

p. 8, ll. 3, 4.

p. 9, ll. 5, 6.

p. 12, ll. 13, 14.

p. 17, ll. 37-38.

3. Upon their marriage at some time prior to the year 1911 Mallam Gariba and Salamatu resided together in a house at Old Zongo in which Salamatu had previously resided and which the Appellant claims belonged to Salamatu but the Respondents claim belonged to Mallam Gariba. Subsequently but still prior to the year 1911 Mallam Gariba left Salamatu and went abroad to "the French Ivory Coast" where he remained until his death leaving Salamatu in the said house at Old Zongo.

p. 15, ll. 14, 15, 22, 23.

p. 33, ll. 4-7.

p. 41, ll. 26-34.

p. 8, ll. 1, 2, 32.

p. 16, ll. 30-32.

p. 33, ll. 2, 3.

p. 10, II. 7-11.
p. 11, I. 19.
p. 33, I. 16.
p. 38, II. 29-32.

4. In or about the year 1911 the Government removed the Hausa tribe from Old Zongo and re-established them in the site now known as Hausa Zongo. New plots of land at Hausa Zongo and compensation moneys for building new houses were given by the Government to the owners of houses at Old Zongo through the agency of the Siriki Zongo or local chief and in particular a new plot of land and a sum of £190 was given to Salamatu in respect of the house at Old Zongo occupied by her. This new plot of land is the site of the disputed building. The Respondents claim that the said plot of land and compensation moneys were given to Salamatu as a caretaker or trustee but the Appellant claims that they were given to her for her own benefit as the owner of the house at Old Zongo. 10

p. 10, I. 9.

p. 16, II. 24-7.
p. 17, I. 9.

p. 13, II. 10-13.
p. 14, II. 9, 10.
Plan "C" in fold.

5. At some time between the years 1911 and 1914 Salamatu engaged a carpenter named Petteh Esson to remove the building materials of the old house at Old Zongo and to build a house consisting of two rooms at Hausa Zongo upon the said new plot. In or about the year 1922 Salamatu pulled down the said two-roomed house and built on the said plot in its place a greatly enlarged "swish" building consisting of 26 rooms.

p. 13, II. 13-23.
p. 16, II. 7, 8, 14, 15.
p. 57, Exhibit "E."
Plan "A."

6. Six rooms of the said building were destroyed between the years 1922 and 1924 and in or about the year 1924 Salamatu entered into a building contract with one Kofi or Koyue Ackon for the further extension of the said building in accordance with a plan prepared by one Andrew Essien at a cost of £354 excluding building materials. About three-quarters of the work pursuant to this contract was completed but Salamatu failed to perform her part of the said contract and was sued for the balance of moneys due of £125 6s. 3d. In view of the fact that the work had not been completed she was ordered to pay the sum of £49 10s. by way of damages which sum was duly paid to the said Kofi Ackon. 20

7. The said new building as later extended and completed by the Appellant as hereinafter mentioned is the disputed building. 30

p. 15, I. 3.
p. 33, II. 31-34.
p. 42, II. 5, 6.
pp. 58, 59, Exhibit "D."

8. In or about the year 1928 Salamatu mortgaged the disputed building for the sum of £300.

p. 8, II. 33, 34.
p. 9, II. 28, 29.
p. 13, II. 27-29.
p. 15, II. 5, 6.
p. 19, I. 2.
p. 33, II. 16, 17.

9. In or about the year 1935 Mallam Gariba died and Salamatu died shortly thereafter. At the salaka or funeral of Salamatu the Appellant according to Moslem custom called for claimants against the estate of Salamatu but the Respondents made no claim. One week after the death of Salamatu the Siriki Zongo and his elders distributed her estate in accordance with Moslem custom and gave the disputed building to the Appellant. According to the evidence of the Siriki Zongo the disputed building was given to the Appellant as caretaker to look after until the Respondents were grown up. In fact the Respondents were born some time before the removal of the Hausa from Old Zongo in 1911 and were therefore not less than 24 years old and probably some years older at the date of the death of Salamatu. The first Respondent was married in the year 1928 some seven or eight years before her death and had children of his own at the time of her death. 40

p. 8, II. 13-15.
p. 10, II. 15-17.
p. 11, II. 17-21.
p. 18, II. 16-19.
p. 33, II. 12-15.

p. 12, II. 20, 21.

10. According to the customary tenure of land among the Hausa tribe the disputed building was held subject to payment of a ground rent to the Siriki Zongo and such ground rent and also the Town Council's rate have at all material times been paid either by Salamatu or by the Appellant. The majority of the rooms in the disputed building have been let to tenants and Salamatu down to the date of her death and the Appellant thereafter have at all times collected such rents from the tenants with the exception of rent during a period of seven months when the Appellant was absent which was collected by the first Respondent. The first Respondent accounted to the Appellant upon his return for such rents collected by him as aforesaid. In or about the year 1942 the Appellant made further additions to the disputed building of a substantial nature at his own expense and in the belief that the disputed building was his property. Such additions were made to the knowledge of the Respondents but they made no claim to the disputed building and by their conduct and acquiescence represented that the disputed building belonged to the Appellant.

p. 11, ll. 14-17.
p. 14, ll. 1, 2.

p. 5, ll. 1, 2.
p. 13, l. 43—p. 14, l. 1.
p. 42, ll. 35, 36.

p. 13, ll. 24, 25.
p. 15, l. 3, 4.
p. 42, ll. 16, 17.
Plan " B " in fold.

11. In or about the year 1947 the Appellant's sister named Suttey claimed that she was entitled to a portion of the estate of her mother Salamatu and Mallam or priest Lemanu Moru distributed the rooms of the house between them. The first Respondent objected to such distribution and reported the matter to the Siriki Zongo who summoned Lemanu Moru before him and ordered that the rooms should be divided between the said Respondent, the Appellant and the Appellant's said sister Suttey in the proportion of 14 rooms, 12 rooms and 4 rooms respectively. The Appellant objected to such distribution but was told by the Siriki Zongo that if he did not pay him £60 the Siriki Zongo would take the disputed building from the Appellant for the first Respondent. The Appellant continued to object to such distribution and no distribution of the rooms was in fact made.

p. 10, ll. 17-19.
p. 13, ll. 30-43.

12. By a summons issued in the Ahautu Confederacy Native Court " B " of Sekondi Western Province Gold Coast (hereinafter called " the Native Court ' B ' ") on the 24th February 1948 the Respondents claimed as children and successors according to Mohammedan law of Mallam Gariba to eject the Appellant from the disputed building and to restrain him his servants agents and workmen from interfering with them in the use and possession thereof. The Respondents were at such date living in rooms in the disputed building by the leave and licence of the Appellant because they were children of Mallam Gariba the late husband of the Appellant's mother.

pp. 1-3.

p. 14, ll. 19, 20.

13. On the 30th March 1948 the Native Court " B " dismissed the said summons but made no order as to costs. After reviewing the evidence the judgment of the said Native Court proceeded as follows :—

pp. 17-19.

" From the evidence adduced on record and from the examinations, it is apparently disclosed that parties are related in one way or the other. The only question for this Court to consider is whether the property is Mallam Gariba's or Salamatu's (both deceased). To this question it has been evident that the

p. 18, l. 42—p. 19, l. 9.

“ compensation of £190 paid for the Old Mallam Gariba’s house
 “ put this new building up by Salamatu. Going strictly into the
 “ question of the right of succession, there is little difficulty in
 “ determining it as Mallam Gariba died before Salamatu, but
 “ since it is admitted by parties that Plaintiffs are children of the
 “ late Mallam Gariba and Defendant an adopted child of Salamatu,
 “ and both had been living in the premises to the present date,
 “ this Court in its opinion find that Plaintiff’s action to oust
 “ Defendant entirely from occupation should fail and in dismissing
 “ the action without costs, orders that parties should continue to 10
 “ live in the premises, and that the rooms should be divided among
 “ themselves. Action therefore dismissed each to pay his own
 “ costs.”

The grounds of the said judgment are not perhaps entirely clear but the Appellant submits that the Court reached the conclusion that the house at Old Zongo and also the disputed building belonged to Mallam Gariba and not to Salamatu but that the Appellant was entitled to a share of the estate of Mallam Gariba through his mother Salamatu since she died after Mallam Gariba and therefore the disputed building ought to be divided among the parties. 20

pp. 19, 20.

14. Both the Appellant and the Respondents appealed from the said judgment to the Ahanta Confederacy Native Appeal Court and by an order of the said Appeal Court dated the 14th October 1948 the said two appeals were consolidated and the case adjourned for hearing on the following day.

p. 30, ll. 6, 7.

p. 31.

15. On the 15th October 1948 the Appellant and the first Respondent gave further evidence on oath before the said Appeal Court and on the following day the said Appeal Court gave judgment setting aside the judgment of the Native Court “ B ” and ordering that the Respondents’ action be dismissed with costs. The said Appeal Court based its judgment upon the conclusion of fact that both the house at Old Zongo and the disputed building belonged to Salamatu who was succeeded on her death by the Appellant. 30

pp. 32, 33.

p. 33, ll. 38-41.

p. 34.

16. The Respondents appealed against the said judgment of the said Appeal Court to the Supreme Court of the Gold Coast Western Judicial Division Land Court Sekondi (hereinafter called “ the Land Court ”) and on the 4th August 1949 the Land Court (Ragnar Hyne, J.) in a reserved judgment after a full review of the evidence reached the same conclusions as the Native Appeal Court and dismissed the appeal with costs. 40

pp. 36-43.

p. 43.

pp. 47-51.

pp. 52-55.

17. The Respondents appealed from the judgment of the Land Court to the Court of Appeal for West Africa and the appeal was heard on the 6th and 7th March 1951. On the 16th March 1951 the Court (Sir Mark Wilson, C.J., Lewey, J.A., and Sir James Coussey, J.) delivered a joint reserved judgment allowing the appeal and remitting the case to the Land Court with a direction to proceed on the basis of the findings of

fact of the Native Court "B" and after taking further evidence and inspecting the premises to partition the disputed building between the Appellant and Respondents. The Court did not review the evidence in its judgment but after referring to the course of the action in the Courts below, proceeded as follows :—

10 " We are of opinion, on full consideration, that the trial Court, p. 53, l. 15—p. 54, l. 21.
 " although its judgment was in a sense inconclusive, was right in
 " its findings, of fact as to the main issue in the case, namely, the
 " respective rights of Mallam Gariba and his ' domestic ' wife
 " Salamatu in the old and new houses with which this case is
 " concerned, and in its conclusion from the evidence that both
 " parties to the present litigation had some rights in the property
 " now in dispute."

20 " The trial Court found, and we agree with their view, that the
 " original house in which the predecessors of the parties resided in
 " the old Zongo at Sekondi was the property of Mallam Gariba and
 " that the later house built by Salamatu in the New Zongo, called
 " the ' swish ' house, was built with the compensation money paid
 " by the Government for the old house on the demolition of the
 " Old Zongo, and that the Plaintiffs (who are the children by other
 " wives of Mallam Gariba) therefore have rights in the property by
 " succession under Mohammedan Law. But the trial Court also
 " found (as we infer from the passage of their judgment quoted
 " above) that Salamatu also had rights in the present property
 " which consists of the ' swish ' house with additions and improve-
 " ments, and that the Defendant as her adopted son succeeded to
 " those rights.

30 " Being in agreement with these findings we should have been
 " disposed to restore the judgment of the Native Court ' B,' subject
 " to its being varied so as to set out clearly and precisely the
 " respective rights of the Plaintiffs and of the Defendant in the
 " property. Unhappily, we are not in a position to make such a
 " variation, since, although it is clear that the Plaintiffs and the
 " Defendant each have some rights in the property, the exact nature
 " and extent of those rights must obviously be governed by
 " Mohammedan Law in its local application. As to this, and any
 " possible variations we have had nothing to assist us, either in the
 " evidence on record or in the arguments of counsel. Nor is there
 " upon the record sufficiently precise evidence as to matters of fact
 " bearing upon the issue regarding the respective rights of the
 " parties. In assessing those rights it will be desirable to have
 " information as to the source and exact amount of the capital
 " expenditure made by Salamatu and the Defendant in building
 " and adding to the original ' swish ' house, thus making it the more
 " durable and valuable property it is to-day, and as to whether any
 " rents were received by them for letting rooms in the house and to
 " what extent these were applied to improvements and addition.
 " This is an aspect of the matter which might considerably affect
 " the extent of the respective rights of the parties in the present
 " property.

“ We feel, therefore, that the only course to follow is to allow
 “ the appeal and send the case back to the Land Court at Sekondi,
 “ so that the Court may take evidence and decide, once and for all,
 “ what are the precise rights of the parties under Mohammedan
 “ Law as locally applied. We therefore make the following Order :—

“ The appeal is allowed and the judgment of the Court below is
 “ set aside and the case is remitted to the Land Court, Sekondi,
 “ with the direction that the Land Court shall proceed on the basis
 “ of the above findings of fact of the Native Court ‘ B ’ as approved
 “ by this Court, and shall—

10

“ (A) after taking evidence, including evidence as to the
 “ capital expenditure on the property as it now stands, define the
 “ respective rights to be enjoyed by the Plaintiffs and the
 “ Defendant in accordance with Mohammedan law, as locally
 “ applied, in House No. 23/19, and the compound thereof, situate
 “ at George Street, Hausa Zongo, Sekondi ;

“ (B) after inspecting the premises, make an appropriate
 “ order partitioning the property between the Plaintiffs and the
 “ Defendant according to those rights, and make and give all
 “ necessary consequential orders and directions.”

20

p. 56, ll. 11-27.

18. By an Order dated the 18th July 1951 Lingley J. sitting as a
 single Judge of Appeal granted the Appellant final leave to appeal from the
 said judgment to Her Majesty in Council.

19. The Appellant therefore humbly submits that this appeal should
 be allowed and that the Order of the Court of Appeal for West Africa
 should be reversed and the Order of the Land Court dismissing the
 Respondents' claim should be restored for the following amongst other

REASONS

(1) BECAUSE the inference drawn of the Native Court “ B ”
 that the disputed building belonged to Mallam Gariba 30
 and his heirs and not to Salamatu and her heir or heirs
 was contrary to the weight of the evidence in view more
 particularly of the following matters :—

(i) The evidence of Lemanu Moru as to the
 possession and ownership by Salamatu of the house
 at Old Zongo.

(ii) The long possession of and control of the
 disputed building by Salamatu and the Appellant
 and the payment by them of all outgoings in connection
 therewith.

40

(iii) The fact that the Native Court “ B ” appears
 to have based its inference as to ownership upon the
 evidence of the first Respondent and of the Siriki
 Zongo that the Respondents were “ little grown ”
 at the date of Salamatu's death whereas in fact the
 Respondents were then of full age and the first
 Respondent was married and with children of his own.

(iv) The fact that Salamatu and the Appellant spent large sums of their own money in erecting and adding to the disputed building which is inconsistent with the suggestion that they held the property as caretakers or trustees.

10

(v) The difficulty of accepting the evidence of the Siriki Zongo that on Salamatu's death he gave the property to the Appellant as caretaker for the Respondents until they grew up in view of the ages at that time of the first two Respondents.

(vi) The fact that the only documentary evidence is consistent with the Appellant's case but very difficult to reconcile with the Respondents' case.

(vii) The fact that the first Respondent on one occasion accounted to the Appellant for rent of tenants of the disputed building collected by the first Respondent.

20

(viii) The fact that none of the Respondents ever made any claim to the disputed building or to an account of the rents thereof until shortly before the commencement of the present proceedings.

(2) BECAUSE the Respondents' claim is in effect a claim against the estate of Salamatu made after her death which might have been made during her lifetime and requires therefore to be regarded with jealous suspicion and established only by the most cogent evidence.

30

(3) BECAUSE the Court of Appeal for West Africa was wrong in law in making an Order on the footing that the respective rights of the parties were to be ascertained or partly ascertained by enquiring how much of the money of each had been spent on the disputed building. The true principle of law applicable is that where one party builds or makes improvements on the land of another either such buildings or improvements accrue for the benefit of the owner of the site or alternatively if the requisite conditions are satisfied the owner of the site is estopped from claiming that it is his.

40

(4) BECAUSE the Respondents stood by and allowed the Appellant to spend money in adding to and improving the disputed building in the belief that it was his own property and are therefore estopped from now asserting the contrary.

(5) BECAUSE the judgment of the Land Court was right and the judgment of the Court of Appeal for West Africa was wrong for the reasons given in the judgment of the Land Court.

MICHAEL ALBERY.

In the Privy Council.

ON APPEAL

from the Court of Appeal for West Africa.

BETWEEN

**ALHAJI IBRAHIMAH OF
SEKONDI** *Appellant*

AND

MAMMA GARIBA and Others *Respondents.*

Case for the Appellant

HERBERT OPPENHEIMER, NATHAN & VANDYK,
20 Copthall Avenue,
London Wall, E.C.2,
Solicitors for the Appellant.