

In the Privy Council.

ON APPEAL

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

46034

BETWEEN

TECHIMANHENE (Defendant) . . . . . Appellant

AND

WENCHIHENE (Plaintiff) . . . . . Respondent.

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Case for the Appellant

RECORD.

1. This is an appeal from a judgment of the West African Court of Appeal pronounced on the 28th January, 1954, dismissing with costs an appeal by Techimanhene (Defendant) from a Judgment of the Supreme Court of the Gold Coast, pronounced on the 29th May, 1951, whereby judgment was entered for Wenchihene (Plaintiff) with costs upon such Plaintiff's claim to have a certain boundary line fixed by the Court. It is uncertain whether such judgment comprised a judgment for a declaration of title claimed in the Writ and Statement of Claim. p. 28. p. 18.

2. The Plaintiff Wenchihene was suing on behalf of the Stool of Wenchi and impleaded the Defendant Techimanhene as representing the Stool of Techiman. p. 10, l. 27.

3. The principal matters for determination in this Appeal are :—

(1) Whether the judgment did grant a declaration of title to the Plaintiff ;

(2) Whether, if it did, the declaration of title was proper to be made ;

(3) Whether the order of the Supreme Court ordering the boundary to be fixed was competent under the Ordinance by virtue of which the Court purported to make such Order ;

30 (4) Whether the West African Court of Appeal rightly considered themselves precluded by the Ordinance from entertaining an appeal against the order of the Supreme Court as to fixing the boundary.

p. 1. 4. The present suit, being instituted as a suit relating to the ownership, possession and occupation of lands arising between two Paramount Chiefs of the Ashanti Confederacy, was accordingly instituted in the Asantehene's Court by a Civil Summons dated the 22nd August, 1947, claiming a declaration of title to land described as "that portion of land lying and situate west of a straight line drawn from Wenchi Bonso (the Wenchi Hole) southward to meet the River Tano, such that it crosses Road A.38 at a point 14.3 miles from the Techiman cross roads."

p. 2. On the 29th December, 1947, the Assistant Chief Commissioner of Ashanti purported to transfer the suit to the Chief Commissioner's Court 10 which he had no jurisdiction to do. After certain proceedings in the Chief Commissioner's Court had taken place in consequence of such order,

p. 8. it was discovered that this order of transfer was a nullity, whereupon, by an Order made by the Chief Commissioner on the 11th November, 1949, the whole suit was duly transferred to the Chief Commissioner's Court pursuant to section 22 (1) (e) of the Native Courts (Ashanti) Ordinance, Chapter 80 Laws of the Gold Coast, 1936 Revision as amended.

p. 28, l. 8.

5. Upon the 17th December, 1949, the Courts (Amendment) Ordinance, 1949, came into force which, by section 6, took away the jurisdiction of the Chief Commissioner's Court to hear and determine 20 the suit and by section 7 transferred such jurisdiction to the appropriate Division of the Supreme Court, which was the Divisional Court, Ashanti (Land Court).

p. 10. 6. Pursuant to an Order of the Supreme Court the Plaintiff delivered a Statement of Claim dated the 11th December, 1950, wherein he pleaded an Executive Decision dated the 5th February, 1899, which was put in evidence as Exhibit "A," which he alleged had been validated by the provisions of the Boundary, Land, Tribute and Fishery Disputes (Executive Decisions Validation) Ordinance Chapter 120, Laws of the Gold Coast 1936 Revision. It was further pleaded that the Defendant Stool had 30 trespassed on the Plaintiff's Stool's land by its subjects farming thereon (but no particulars of the alleged trespass were given). The Plaintiff claimed to establish title to the land situate and being to the west of the boundary line described in the said Executive Decision and for the said boundary to be fixed in accordance with the provisions of section 3 (3) of the said Ordinance.

p. 30.

7. The Ordinance commenced on the 30th April, 1929. Section 3 of the Ordinance is as follows :—

" 3. (1) Any executive decision in a dispute or matter relating  
 " to the ownership or boundaries of any land or to tribute or fishery 40  
 " rights in Ashanti given, confirmed, or approved by the Chief  
 " Commissioner prior to the commencement of this Ordinance,  
 " and officially recorded in a Boundary Book is hereby validated  
 " and invested with full and definite legal force and effect for all  
 " purposes whatsoever as against all persons whomsoever the rights  
 " of the Crown alone being reserved.

“ (2) If in any case such confirmation or approval was given  
 “ to a decision subject to any specified variations or modifications,  
 “ such executive decision is hereby validated and invested with full  
 “ and definite legal force and effect as so varied or modified.

10 “ (3) If in any case relating to the boundary of any land  
 “ any doubt or question shall arise as to the correct interpretation  
 “ or application of any such executive decision as aforesaid, the  
 “ Court (which expression does not include a Native Court) may  
 “ cause the boundary concerned to be fixed to the best of its ability,  
 “ guided always by the principle of applying such decision as closely  
 “ and with as much precision as the Court shall consider practicable.  
 “ Where a boundary is, either as of first instance or on appeal, so  
 “ fixed by the Supreme Court, no appeal shall lie from the Court’s  
 “ judgment with respect to such fixing. (Amended by 14 of 1935,  
 “ s. 4).”

8. The Defendant having by his Defence dated the 15th February, 1951 (*inter alia*), denied the alleged trespass, by his Amended Defence dated the 4th May, 1951, also denied the Plaintiff’s allegation of a validated Executive Decision and averred that the boundary stated therein had not  
 20 been finally demarcated and was inconclusive.

And the amended Defence further alleged that according to the findings of Travelling Commissioner Mr. Hull in February, 1897, Wenchi and its villages were adjudged to be the subjects of Techiman and their lands attached to the Stool of Techiman.

9. When, upon the 10th May, 1951, the suit came before the Supreme Court for trial, the learned Judge, Mr. Justice Quashie-Idun, decided to try it without an assessor on the ground that the claim was one for the fixing of a boundary under the Ordinance. The only evidence put forward by the Plaintiff was the alleged Executive Decision he had pleaded  
 30 (Exhibit “ A ”) and the evidence of one E. S. Anoff a licensed surveyor who deposed that he had made a survey and produced a plan (Exhibit “ B ”) which he deposed was in accordance with Exhibit “ A,” but it is clear that this is not so upon the face of the said Exhibits. He also produced a Government map of the area (Exhibit “ C ”) upon which he deposed that he had shown the boundaries appearing upon Exhibit “ B.”

The Plaintiff gave no other evidence of his title and no evidence as to the trespass alleged in the Statement of Claim.

10. The Defendant’s evidence, apart from the evidence of a licensed Surveyor hereinafter mentioned, consisted solely of three Executive  
 40 Decisions (Exhibits 1, 2 and 3) all subsequent in date to Exhibit “ A,” and two letters (Exhibits 4 and 5) which the Defendant had received from the District Commissioner in 1946 and 1947 proposing an arbitration concerning the boundary between Techiman and Wenchi. There was no evidence that any arbitration took place. The evidence of the Surveyor Mr. F. H. Simpson was that the line shown upon the map Exhibit “ C ” agreed with the particulars of the boundary stated in Exhibit 1, but it is clear that this is not so upon the face of the said Exhibits.

p. 30, l. 19.

11. The Executive Decision, Exhibit "A," was made on the 5th February, 1899. The date of the Executive Decision, Exhibit 1, does not appear, but it was after February, 1916. Exhibit 1 elucidated Exhibit "A." The Executive Decision, Exhibit 2, merely referred back to Exhibit 1. The Executive Decision, Exhibit 3, merely shows that, between 1899 and 1905, notwithstanding Executive Decision, Exhibit "A," made in 1899, disputes had continued as to what was the boundary and that in fact the boundary then prescribed had never been fully demarcated upon the ground. It may be doubtful whether this document is an Executive Decision, though certified to be one. It is submitted that, if and so far as any of these Executive Decisions have effect, the decision embodied in Exhibit "A" as elucidated and modified by Exhibit 1, is to be regarded. 10

12. The plain error both in Exhibit "B" and Exhibit "C" in respect of which both plans are contrary to the boundary prescribed by the Executive Decisions Exhibit "A" and Exhibits 1 and 2, is that both plans show the boundary as running from the source of the Ayesu Stream southwards to the north bank of the Tano and not from Wenchi Bonso (the Wenchi Hole) southwards to the north bank of the Tano. According to the plan Exhibit "B," the Wenchi Hole lies nearly due west of the source of the Ayesu Stream at a distance of somewhat over half a mile. The north bank of the Tano according to the plan Exhibit "C," is distant between 10 and 11 miles both from the Wenchi Hole and from the source of the Ayesu Stream. If therefore Exhibit "A" and Exhibits 1 and 2 by force of the Ordinance prescribe a boundary (of some description) between the Appellant and the Respondent, the Appellant being to the East and the Respondent to the West, the plans Exhibits "B" and "C" have shown as appertaining to the Respondent and his Stool an area of approximately 5 square miles which, upon the face of the Executive Decisions, appertains to the Appellant and his Stool. 20 30

p. 18.

13. By a short judgment pronounced upon the 29th May, 1951, the Supreme Court (S.O. Quashie—Idun, J.) particularly referred to Exhibits "A" and 1 and to the evidence of the licensed surveyors and, having stated that he was satisfied that the plan Exhibit "B" conformed with the Executive Decision Exhibit "A" concluded as follows:—

p. 19, ll. 30-42.

"I am satisfied that the boundary demarcated in 1899 and validated in 1904 and 1905 has not been altered, and that the Plaintiff has proved his case and is therefore entitled to judgment.

"I order the boundary between the parties to be fixed and to conform with the boundary as indicated in the plan Exhibit 'B' as follows: 40

"From the source of the Ayesu Stream south-westerly on to a straight line until it reaches the River Tano. North-easterly the boundary follows the Ayesu Stream up to the confluence of the Subin River.

"Judgment is entered for the Plaintiff accordingly with costs to be taxed and to include Counsel's costs of 100 guineas. Plaintiff also to have the cost of the preparation of his plan ordered by the Chief Commissioner's Court."

14. From the said decision of the Supreme Court of the 29th May, 1951, the Defendant duly appealed to the West African Court of Appeal and filed grounds of appeal, dated 17th July, 1951, and 22nd June, 1953, respectively, complaining (*inter alia*) that the judgment was against the weight of the evidence; that Executive Decision relied upon by the Plaintiff was not final nor conclusive, that the Court wrongly construed the plans "B" and "C," that such plans did not conform with the boundary as laid down in Exhibits "A" and 1, that the plan Exhibit "B" did not show the actual boundary, as the whole line from the Hole to the Tano River had not been surveyed and cleared by the Surveyor and that the trial was unsatisfactory.

pp. 20, 21.

p. 20.

p. 21.

15. Upon the 22nd January, 1954, the Plaintiff gave notice of a preliminary objection that the Defendant had no right of appeal at all because "the decision in the suit was under section 3 (3)" of the Ordinance, under which subsection no appeal shall lie from the Court's decision. It is submitted that in effect the basis of this objection must have been and was, that there had been no judgment on the claim in the writ (and in the Statement of Claim) for a declaration of title, but merely the interpretation of the Executive Decision Exhibit "A" as had been prayed in the Statement of Claim. This submission accords with the conduct of the trial by the Plaintiff.

p. 26.

16. Upon the Appeal coming before the West African Court of Appeal upon the 27th and 28th January, 1954, the Plaintiff's Counsel insisted upon the preliminary objection that there was no appeal because the decision appealed from was given under the said subsection of the Ordinance. Defendant's Counsel was in agreement that there had been merely an interpretation of an executive decision and submitted therefore that there had been no judgment on the claim in the Writ (i.e., for a declaration of title) though the whole suit had been transferred to the Land Court to be dealt with, so that the Land Court had been in error in not deciding that claim but in merely interpreting an executive decision and consequently Defendant was not merely appealing against a decision of interpretation of an executive decision but was entitled to complain of that or any error. The Court of Appeal ruled that the appeal could proceed if the Appellant did not call in question the boundary fixed by the Supreme Court, thereby shutting out from examination the error of the Court in accepting Exhibit "B" as correctly showing the boundary prescribed by Exhibits "A" and 1. Defendant's Counsel then submitted that only the question of title had been the subject of the claim in the Writ which had contained no claim for the fixing of a boundary which was a distinct matter which had not *ex facie* a connection with the claim in the Writ, which last-mentioned claim had been ignored by the Court.

p. 27.

p. 27, l. 13.

p. 27, ll. 20-24.

p. 27, l. 34.

p. 28, ll. 4-5.

17. The judgment of the Court of Appeal was delivered upon the said 28th January, 1954, and was as follows:—

p. 28.

"This appears to us to be an attempt to call in question the boundary fixed by the Court below under section 3 (3) of Chapter 120 —which expressly provides that there shall be no appeal from any such decision. If on the other hand, the Appellant's complaint

“ is that no judgment for a declaration of title has been given in  
“ favour of the Plaintiff/Respondent, as to which we express no  
“ opinion, this affords him no ground of appeal.

“ Appeal dismissed with costs fixed at £18.2.0d.”

The Appellant made no complaint that no judgment for a declaration of title had been given in favour of the Plaintiff, but had submitted that, as by common consent no such express judgment had been given, the mere settlement of a boundary line (even if duly made pursuant to the Ordinance) was not conclusive of the title to the land to the west claimed by Respondent.

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18. It is respectfully submitted—

(1) that no doubt or question arose that the *terminus ad quod* and *ex quo* of part of the boundary specified in Exhibit “ A ” was the Wenchi Hole (the position of which was in no doubt) and that the *terminus ad quod* and *ex quo* of the same part of the boundary specified in Exhibit 1 was also the Wenchi Hole and that therefore the Court had no power under the Ordinance to fix any other terminus. The purported fixing of the terminus at the source of the Ayesu was not interpretation or application of an executive decision arising out of any doubt or question but was an alteration 20 of a certain and unquestionable point laid down by both the executive decisions. It is submitted therefore that the purported fixing of the boundary by the Supreme Court in accordance with the plan Exhibit “ B ” was incompetent ;

(2) that the purported fixing by the Supreme Court being incompetent because not justified by any power conferred upon them by the Ordinance, it was not only competent for, but the duty of, the Court of Appeal to allow the Defendant's appeal, to set aside the purported fixing and to enter judgment for the Defendant upon the claims of the Plaintiff as set out in the Statement 30 of Claim.

19. The same submission as in paragraph 18 (2) of this Case is also made and for the same reasons upon the footing that the Supreme Court not only ordered the boundary between the parties to be fixed and to conform with the boundary as indicated in the plan Exhibit “ B ” but also declared that the Stool of Wenchi had established title to the land situate and being to the west of the boundary line so ordered to be fixed. It is submitted that in that case the declaration of title must fall with the order as to the boundary upon which it wholly rested.

20. It is submitted that there are other objections to the making of 40 a declaration of title in this suit. The West African Court of Appeal have repeatedly laid down that the making of a declaration of title is discretionary, that the onus lies on the Plaintiff to satisfy the Court that he is entitled, on the evidence brought by him, to the declaration sought, that the Plaintiff must rely on the strength of his own case and not on the weakness of the Defendant's case and that the area claimed must be

precisely defined by plan or otherwise so that the Court may be able to define it precisely in the judgment. It is submitted that these conditions were not complied with by the Plaintiff or by the declaration of title (if any) made in this suit, which is in respect of an area wholly undefined except upon one side and in respect of which there was no evidence of the Plaintiff's title, at any rate to the west of any line drawn from the Hole to the Tano.

21. A further objection to the grant of a declaration of title in this suit derives from the nature of titles to land in Ashanti, as in other parts of the Gold Coast inhabited by Akans and subject to Akan law. Such titles may be either radical titles (such as is vested in the Golden Stool of Ashanti in respect of all lands in the Kumasi Division) with which there may or may not go the right to the use and occupation of land, or maybe titles giving the right to the use and occupation of land to one Stool and its subjects though a superior title or titles, being or ultimately derived from a radical title, is or are in another Stool or Stools. The common and simplest case is the case of a Paramount Stool in which is the radical title to all the lands occupied both by the direct subjects of the Paramount Chief, the direct subjects of the immediate subordinate chiefs and the direct subjects of chiefs subordinate to the immediately subordinate chiefs. In such a case the Paramount Chief has the radical title to the whole but an occupation title only to part; each immediately subordinate chief has an occupation title, as against the Paramount Chief, to occupy by subjects of his Stool (both his direct subjects and the subjects of his own subordinate Stools) the particular area attached to his Stool, but, as between himself and his own subordinate chiefs, only the title to occupy part of his particular area, the title to occupy the remaining parts being attached to the respective Stools of his own subordinate Chiefs. All such titles, whether radical or subordinate, are communal titles. The mere fact that a boundary has been laid down under the Ordinance or otherwise, or admittedly exists, is therefore inconclusive evidence upon which to found a declaration of title as it leaves it uncertain what is the nature of the title of the parties on either side of such boundary. That title might be declared by the same validated Executive Decision which declares the boundary or by some other validated Executive Decision or might have to be proved by traditional or other evidence. But no evidence was adduced in the present case by the Plaintiff beyond the Executive Decision, Exhibit "A," and the plan, Exhibit "B," which was alleged to represent the boundary prescribed by Exhibit "A."

22. It is clear from the Executive Decision Exhibit "A" itself that the boundary prescribed, running from the Wenchi Hole to the Tano, was an arbitrary boundary not laid down for the purpose of determining title (of any description) to land but intended as a measure to preserve the peace. It is inconceivable that the true political boundary between the jurisdictions of Techimanhene and Wenchiene or the true boundary of the lands attached to their respective Stools either radically or by title to occupation could have been such a compass line or could have been supposed by the Chief Commissioner or any Executive Officer to have been such. Neither the Chief Commissioner of Ashanti nor any subordinate Executive Officer had any lawful power in an executive

capacity to determine questions of title, which properly fell to be decided in the Civil Courts established in Ashanti. It is submitted therefore that an Executive Decision should not be presumed to have purported to determine any question of title to land unless it is clear that it has purported to do so. It is submitted that neither Exhibit " A " nor Exhibit 1 purports to determine any question of title to land but at most to fix the political boundaries which the Administration proposed to recognise between the territorial jurisdictions of Techiman and Wenchi.

p. 29.

23. Upon the 14th June, 1954, the Defendant-Appellant duly obtained from the West African Court of Appeal final leave to appeal to Her Majesty in Council from the said judgment of the West African Court of Appeal. 10

24. The Appellant respectfully submits that this Appeal should be allowed and that the judgments of the Courts below should be set aside and judgment entered for the Appellant with costs before Her Majesty in Council and in the Courts below for the following, amongst other,

## REASONS

- (1) BECAUSE the Supreme Court were not entitled by its Judgment of the 29th May, 1951, to order the boundary described in the Executive Decision Exhibit " A " to be fixed running as indicated in the plan Exhibit " B " from the source of the Ayesu Stream south-westerly in a straight line until it reached the River Tano, when such Executive Decision prescribes that it shall run from the Wenchi Hole in a straight line to the River Tano, as also does the Executive Decision Exhibit 1. 20
- (2) BECAUSE the West African Court of Appeal should have set aside the said order of the Supreme Court as incompetent.

And, if the judgment of the Supreme Court of the 29th May, 1951, granted the Plaintiff-Respondent a declaration of title to the land situate and being to the west of the whole boundary indicated in the Plan Exhibit " B ", 30

- (3) BECAUSE there was no evidence of any title of the Plaintiff to the said land.
- (4) BECAUSE such boundary had been incompetently ordered to be fixed between the source of the Ayesu stream and the Tano instead of between the Wenchi Hole and the Tano.
- (5) BECAUSE, if there was any evidence, it was wholly insufficient to implement any declaration of title. 40
- (6) BECAUSE the declaration of title, if made, was improperly made and ought to be set aside.



And on all points,

- (7) BECAUSE the Supreme Court ought to have given judgment for the Appellant.
- (8) BECAUSE the Court of Appeal ought to have allowed the appeal, reversed the judgment for the Plaintiff, whatever it may have comprehended, and given judgment for the Appellant.

T. B. W. RAMSAY.

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

**TECHIMANHENE** (Defendant)

*Appellant*

AND

**WENCHIHENE** (Plaintiff)

*Respondent*

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**Case for the Appellant.**

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