

In the Privy Council.

ON APPEAL

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

46035

BETWEEN

TECHIMANHENE (Defendant) *Appellant*

AND

WENCHIHENE (Plaintiff) *Respondent*

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CASE FOR THE RESPONDENT.

RECORD.

1. This appeal is from a judgment of the West African Court of Appeal (Gold Coast Session), dated the 28th January, 1954, dismissing an appeal from a judgment of S. O. Quashie-Idun J. in the Supreme Court of the Gold Coast, Ashanti, Land Court, dated the 29th May, 1951, ordering a boundary to be fixed under the Boundary, Land, Tribute, and Fishery Disputes (Executive Decisions Validation) Ordinance Cap. 120, Revised Edition (1936), Section 3 (3). p. 28.
pp. 18-19.

2. The issues to be determined on this appeal are : (1) whether the Appellant had any right of appeal from the said judgment of the Supreme Court having regard to the provisions of Section 3 (3) of the said Ordinance Cap. 120 and (2) whether apart from the said provisions the Appellant has any ground of appeal against the said judgment of the Supreme Court.

3. The boundary in question was that between the land of the Stool of Wenchi and that of the Stool of Techiman. It was fixed by an Executive Decision of Captain T. Pamplin Green on the 5th February, 1899, and its subsequent history, so far as relevant to the present suit, was stated in the said judgment of the learned trial judge to be as follows :—

“ On the 19th December, 1904, Sir Donald Stewart, Chief Commissioner of Ashanti, approved of a boundary between the lands of Wenchi and Techiman made by Captain T. Pamplin Green as an Executive Decision. On the 12th August, 1905, the Executive Decision of Captain Green was further approved by Sir Francis Fuller, the Chief Commissioner of Ashanti. This Executive Decision was recorded in the Boundary Book under the Boundary, Land, Tribute, and Fishery Disputes (Executive Decision Validation) (Ashanti) Ordinance Cap. 120. It appears from the evidence that after the demarcation of the boundary, a dispute arose between the respective chiefs and the matter was drastically dealt with by the Authorities and the same recorded in the Boundary Book a copy of which is Exhibit 3 tendered by the Defendant.” p. 19, ll. 1-4.

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pp. 1-2.

4. By a Civil Summons in the Asantehene's Court "A" dated the 22nd August, 1947, the Respondent instituted

THE PRESENT SUIT

whereby he claimed a declaration of title in the following terms :—

p. 1, ll. 21-24.

"The Plaintiff's claim is for declaration of title to that portion of land lying and situate West of a straight line drawn from Wenchi Bonso (The 'Wenchi Hole') southwards to meet the river Tano, such that it crosses Road A.38 at a point 14.3 miles from the Techiman cross-roads."

pp. 2-3.

p. 3, ll. 5-8.

p. 2, ll. 33-35.

p. 3, ll. 1-3.

5. On the 29th December, 1947, in the Chief Commissioner's Court of Ashanti, by Order of W. H. Beeton, Assistant Chief Commissioner, it was ordered that the suit should be transferred, under Section 22 (1) (e) of the Native Courts (Ashanti) Ordinance, Cap. 80, Revised Edition (1936), from the Asantehene's Court "A" to the Court of the Chief Commissioner of Ashanti. As appears from the said Order the reasons for the transfer were expressed to be that the land referred to in the Respondent's said claim is covered by an executive validated decision under Cap. 120 Section 3 (3) and it had been considered desirable to transfer the whole matter to the Chief Commissioner's Court. Section 3 of the said Cap. 120 provides as follows :—

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"3. (1) Any executive decision in a dispute or matter relating to the ownership or boundaries of any land or to tribute or fishery 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.

(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."

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6. On the 7th February, 1949, in the Chief Commissioner's Court before A. C. Spooner, Esquire, Senior District Commissioner, evidence was called in support of the Respondent's claim. There was tendered in evidence a certified true copy of the said Executive Decision of Captain T. Pamplin Green. The hearing was adjourned for the Respondent to

pp. 4-5.

p. 4, l. 30.

p. 6, ll. 1-3.

produce before the Court a plan to be prepared by a qualified surveyor showing the boundary laid down in the Executive Decision as the Respondent interpreted it.

7. On the 5th August, 1949, in the Chief Commissioner's Court before A. C. Spooner, Esquire, Acting Assistant Chief Commissioner, it was stated on behalf of the Appellant that he would raise the following points :—

10 “ (1) The claim is for a declaration of title to a portion of land and it relates to the boundary of that land. An executive decision by the C.C.A. has already been made and if in the hearing of the case a doubt arises as to the correct interpretation of that decision it is submitted that this Court should cause the boundary concerned to be fixed to the best of its ability guided by the previous executive decision in accordance with Sec. 3 ss. 3 of Cap. 120. This will mean that an application will be made to amend the Court order given on 7th February, 1949, so that the Court may appoint a surveyor to cut a line in accordance with the validated decision of Pamplin Green.”

The hearing was adjourned.

p. 7, l. 8.

20 8. On the 28th October, 1949, in the Chief Commissioner's Court before A.C. Russell, Esquire, Administrative Officer, it was submitted by Counsel on behalf of the Respondent that the appeal [*sic*] was not properly before the Court on the ground, inter alia, that the Order transferring the suit to the Chief Commissioner's Court should have been made by the Chief Commissioner and that there is no provision for the Assistant Chief Commissioner to act for the Chief Commissioner in that behalf. Counsel for the Appellant agreed with the said submission. The Court assented to the submission and decided that there was therefore no action before the Court upon which the Court could adjudicate.

p. 8, ll. 13-18.

p. 8, ll. 19-20.

p. 8, ll. 21-23.

30 9. On the 11th November, 1949, by Order of Major C. O. Butler, Chief Commissioner, the suit was ordered to be transferred from the Asantehene's "A" Court to the Court of the Chief Commissioner. The grounds upon which the said Order was made were the same grounds as those upon which the Order of the 29th December, 1947, was made.

p. 9.

p. 9, ll. 16-21.

10. The suit was never heard by the Court of the Chief Commissioner because on the 17th December, 1949, jurisdiction to hear the same was vested in the Supreme Court in place of the Chief Commissioner's Court by virtue of the Courts (Amendment) Ordinance, 1949 (No. 36 of 1949).

40 11. On the 20th November, 1950, in the Supreme Court, before Lingley Ag. J., pleadings were ordered.

p. 10.

12. By his Statement of Claim dated the 11th December, 1950, the Respondent, inter alia, alleged the Executive Decision dated the 5th February, 1899, and the approval thereof dated the 19th December, 1904, and the further approval dated the 12th August, 1905; claimed

pp. 10-11.

p. 10, ll. 30-p. 11, l. 7.

p. 11, ll. 8-10.

p. 11, ll. 11-12.

that the said Executive Decision was validated by the said Cap. 120 ; alleged acts of trespass by the Defendant and stated his claim in the following terms :—

p. 11, ll. 13-18.

“ 5. The Plaintiff claims for and on behalf of the Stool of Wenchi to establish title to the land situate and being to the West of the boundary line as described in paragraph 2 hereof and for the said boundary to be fixed in accordance with the provisions of Section 3 (3) of the said Boundary, Land, Tribute, and Fishery Disputes (Executive Decisions Validation) Ordinance Chapter 120.”

pp. 11-12.

p. 11, ll. 33-35.

p. 12, ll. 1-4.

p. 12, ll. 5-6.

p. 12, ll. 7-9.

p. 13.

p. 13, ll. 10-11.

13. The Appellant by his Statement of Defence, dated the 15th February, 1951, denied the jurisdiction of the Court to entertain the suit on the ground that it was “ one relating to the ownership, possession or occupation of land held under Native tenure ” ; denied the Executive Decision and its alleged validation by the said Cap. 120, and alleged that there was in existence a prior Executive Decision in the Defendant’s favour ; denied the allegation of trespass, and averred that the Respondent was not entitled to the relief sought. By an amended Statement of Defence, dated the 4th May, 1951, the Appellant repeated his denial of the Executive Decision of 5th February, 1899, and of its alleged validation by the said Cap. 120, and averred that the boundary stated in the Statement of Claim was not finally demarcated and was inconclusive ; the Appellant further alleged as follows :—

p. 13, ll. 12-15.

“ 6. That the Defendant according to the findings of Mr. Hull Travelling Commissioner to the Colonial Secretary made in February 1897 Wankyi with its villages was adjudged to be the subjects of Tekyiman and the lands . . . attached to the Stool of Tekyiman occupied by the Defendant.”

pp. 14-17.

p. 15, ll. 6-19.

14. On the 23rd and 26th May, 1951, in the Supreme Court, before Quashie-Idun J., evidence was adduced on behalf of the Respondent and the Appellant. The Respondent’s evidence included that of a Licensed Surveyor who produced a plan (marked “ B ”) which he stated he had prepared from a survey made by him in accordance with Exhibit “ A ” the Executive Decision of Captain T. Pamplin Green.

pp. 18-19.

15. On the 29th May, 1951, in the Supreme Court, judgment was given for the Respondent by Quashie-Idun J. The said judgment contained the following findings of fact and order :—

p. 19, ll. 15-38.

“ The plaintiff has caused a Plan to be made which has been accepted in evidence as Exhibit ‘ B ’. The Surveyor who made the plan has given evidence before me and I am satisfied that the plan conforms with the Executive Decision relied upon by the Plaintiff. It is contended on behalf of the Defendant that the Executive Decision is not conclusive as a quarrel arose over the boundary. According to Exhibit 3, to which I have already referred, it appears that the Wenchis while cutting the boundary by virtue of the Executive Decision went off the line of demarcation and a serious riot would have taken place. This in my view can neither

nullify or modify the legal effect of the Executive Decision. A licensed Surveyor who was called as a witness by the Defendant has testified before me that the particulars of the boundary in Exhibit ' 1 ' which is a copy of the Executive Decision and signed by Sir John Maxwell, Chief Commissioner of Ashanti, agree with the Topographical Sheet on which the Plaintiff's Surveyor has shown the boundary between the parties.

10 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 :—

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

The Respondent submits that the said findings of fact are right and not open to question and that the said order is right.

20 16. The Appellant's Notice of Appeal dated the 17th July, 1951, p. 20. stated the following grounds of appeal—

" 3. Grounds of Appeal.

p. 20, ll. 19-32.

(1) Because the judgment is against the weight of the evidence before the Court.

(2) Because the boundary relied upon by the Plaintiff in his statement of claim before the Court is not a final one and consequently inconclusive.

30 (3) Because the Court wrongly construed the effect of executive decision and other evidence tendered at the trial which clearly prove that the executive decision relied upon by the Plaintiff-Respondent is not final nor conclusive.

(4) Because the Court wrongly construed the effect of the plans tendered in evidence at the trial."

On the 22nd June, 1953, notice of the following additional grounds of appeal was given— p. 21.

" 1. Because the Plans ' B ' and ' C ' tendered in evidence do not conform with the Boundary as laid down in Exhibits ' A ' and ' 1,' and the Court was wrong in deciding that they did. p. 21, ll. 13-25.

40 2. Because the Plans Exhibits ' B ' and ' C ' were wrongly admitted in evidence, seeing that they were originally ordered by a Court which had no jurisdiction in the matter.

3. Because the Plan ' B ' on which the learned trial Judge placed great reliance was one-sided.

4. Because the trial was unsatisfactory.

5. Because the Plan Exhibit 'B' does not show the true state of affairs, as the Surveyor on the ground did not clear and survey the whole line from the Funnel Shape Hole to the Tano River."

p. 22.
pp. 23-25.

17. By Notice of Motion, dated the 22nd June, 1953, supported by an affidavit of the Appellant, dated the 22nd July, 1953, the Appellant gave notice of an intended application for an Order of the Court of Appeal directing a plan to be prepared or alternatively for the appointment of a Surveyor to produce a plan and for the parties to appear on the land 10 to state their respective claims.

p. 26.

18. By Notice, dated the 22nd January, 1954, the Respondent gave notice of a preliminary objection to the appeal on the following grounds:—

p. 26, ll. 13-17.

"1. That the decision in the suit was under section 3 sub-section (3) of Cap. 120.

2. That by section 3 (3) of Cap. 120 no appeal shall lie from a decision of the Supreme Court from such a decision.

The Appellant therefore has no right of Appeal."

p. 28.

19. On the 28th January, 1954, the Court of Appeal (Foster Sutton P., Coussey J.A., and Windsor Aubrey J.) gave judgment in the following 20 terms—

p. 28, ll. 15-21.

"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 £18.2.0."

The Respondent submits that the said judgment is right.

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20. On the 14th June, 1954, the West African Court of Appeal granted to the Appellant final leave to appeal to Her Majesty in Council.

21. The Respondent respectfully submits that this appeal should be dismissed with costs for the following amongst other

REASONS.

- (1) BECAUSE the Appellant had no right of appeal from the judgment of the Supreme Court by reason of the Boundary, Land, Tribute, and Fishery Disputes (Executive Decisions Validation) Ordinance, Cap. 120, Revised Edition (1936), Section 3 (3).

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- (2) BECAUSE the judgment of the West African Court of Appeal, dated the 28th January, 1954, was right for the reasons therein stated and other good and sufficient reasons.
- (3) BECAUSE the judgment of Quashie-Idun J. in the Supreme Court, dated the 29th May, 1951, was right for the reasons therein stated and other good and sufficient reasons.

RALPH MILLNER.

In the Privy Council.

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(GOLD COAST SESSION)

BETWEEN
TECHIMANHENE (Defendant)
Appellant
and
WENCHIHENE (Plaintiff) . *Respondent.*

CASE FOR THE RESPONDENT.

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