

In the Privy Council

UNIVERSITY OF LONDON
W.C.1
20 FEB 1957
INSTITUTE OF JURISPRUDENCE
LEGAL STUDIES

On Appeal from
The West African Court of Appeal
(GOLD COAST SESSION)

46043

BETWEEN KWEKU MINTA EBU, KRONTIHENE
OF KOSHEA (substituted for Nana Prah
Agyinsaim, Defendant) *Appellant*

AND

10 CHIEF KWAMIN ANTRADU ABABIO
(substituted for Chief Kobina Sei, Plaintiff) ... *Respondent.*

Case for the Respondent

1. This is an appeal from the judgment of the West African Court of Appeal (Foster Sutton, P., Coussey and Manyo-Plange, J.J.) affirming the judgment of the Supreme Court of the Gold Coast (Lingley, J.) declaring that the respondent was entitled to certain lands and awarding the respondent damages in the sum of £100 for trespass committed to those lands by the original defendant, for whom the appellant was substituted by order of the West African Court of Appeal dated January 20 2nd, 1952. RECORD. p. 35.

2. The respondent is the Ohene of Asin Bisiasi and a Divisional Chief of the Omanhene of Asin Apimanim State in the Western Province, and the successor of Chief Kobina Sei, who started this action as plaintiff. The appellant is the Ohene of Koshea (occupying land adjoining that of the Respondent) in the Assin Attendaso State of the Eastern Province and is the successor of Chief Nana Prah Agyinsaim, the original defendant to this action.

RECORD.

3. This action was started by summons issued on 12th June 1930 in the Provincial Council of Paramount Chief's Tribunal, where judgment was given for the original plaintiff. On appeal a re-trial was ordered on the ground that the tribunal was not properly constituted and the action was heard in the Supreme Court of the Gold Coast in September 1949 before Lingley, J., sitting with an assessor.

pp. 3-5

4. The respondent claimed that he was entitled as owner to certain lands (hereinafter called "the disputed area") as being part of his stool lands and that the defendant or his agents in 1930 had cut tracks through the disputed area and damaged cocoa trees growing there and had claimed to be entitled to grant and had granted tenancies of land in the disputed area to various persons. 10

5. The respondent contended that his tribe were aborigines of the land and had always occupied the disputed area, whereas the defendant's tribe were immigrants from Ashanti whose ancestor had been given land (which came to be known as Koshea) by the respondent's predecessors. The respondent further contended that he and his predecessors had continuously exercised the rights of ownership over the disputed lands by granting tenancies and concessions in respect of it.

pp. 5-6.

6. It was common ground that the defendant had in fact cut the tracks complained of by the respondent and that he had claimed to be entitled to exercise the rights of ownership over the disputed area. The only issue was whether the respondent or the defendant was properly the owner of the disputed area, and the defendant contended that his tribe were aborigines and that he and his predecessors had long been in possession of and exercised the rights of ownership over the disputed area. 20

7. The disputed area is shown on the Plan *Ex. D*: the respondent claimed that the pink line shows the eastern boundary of his land, while the defendant claimed that the green line shows the western boundary of his land. The disputed area is that enclosed between the pink and green lines. 30

pp. 7, 8.

8. The respondent gave evidence and said that the tradition of his tribe was that they were aborigines, and that the defendant's tribe had come from Ashanti and had been given the land now known as Koshea by one of the respondent's predecessors. He further said that the eastern boundary of this land was as shown by the pink line. In this he was supported by the evidence of the witnesses Kweku Kyi, Yaw Kom and Kweku Efilfa.

pp. 9, 10, 11,
15.

9. The respondent also stated that certain villages in the disputed area were his and adduced the evidence of a number of inhabitants from those villages, who said they always paid tribute to the respondent or his predecessors. RECORD pp. 8, 11, 13.

10. The respondent further said (and it was not disputed) that in 1930 the defendant cut tracks through the disputed area and put people into occupation and damaged cocoa trees; this latter complaint was supported by the evidence of Kweku Kyi and Yaw Bredu. p. 8. pp. 10, 12.

11. The respondent's predecessor granted dredging concessions to one Crook in respect of part of the disputed area on 10th February, 1903. The relevant certificates of validity were produced and proved: Exhibits G and F. pp. 28, 40.

12. The defendant gave evidence and stated that his tradition was that his tribe were aborigines of the district and that they had been in possession of the disputed area for over 100 years; that his boundary was as claimed in the Statement of Defence, and that the villages in the disputed area were his and that tribute had been paid in respect of them to himself and his predecessors since before this action was started. The defendant admitted cutting the track complained of. The defendant also stated that in an action (heard before the present action) between the respondent's predecessor and a chief of adjoining land—called the Morkwa Stool lands—the defendant had given evidence without then indicating that his western boundary was the one now claimed. It would appear from the notes of his evidence at page 18 of the Record and from the judgment of Lingley J. that a discrepancy existed between the boundary he said was his in the Morkwa case and that claimed by him herein. p. 17. p. 16. p. 17. pp. 17, 19. p. 16. p. 18. p. 31.

13. The defendant's evidence as to his tradition, boundaries and long occupation was supported by a number of witnesses, who also stated that they had paid tribute to him or his predecessors at various times both before and after this action was started. pp. 20, 21, 22, 23, 24, 25, 26, 27.

14. The defendant produced a conveyance (Ex. E) of lands including part of the disputed area made between himself and one Kwesi Pobee and another dated 29th September 1945. This conveyance recited an agreement made between the parties in May 1927 whereby the defendant had agreed at that date to sell to the purchasers the land referred to in the conveyance. p. 46.

RECORD
pp. 29, 30.

15. The assessor sitting with Lingley J. expressed his opinion that the tribes of both parties were aborigines and that the respondent could only have succeeded if he had called more witnesses to support his tradition that the defendant's tribes were immigrants ; on these grounds both parties were, in the assessor's opinion, entitled to the disputed area.

pp. 30, 31.

16. Lingley J. was unable to decide on the evidence whether the defendant's tribe were immigrants or aborigines. He accepted the respondent's evidence and that of his witnesses on more recent events and preferred it to that of the defendant and his witnesses. He found as a fact that all those purporting to be the defendant's tenants had come on to the disputed area since the action started and he accepted the concessions granted by the respondent's predecessor (Exs. F and G) as being most material. For these reasons he found that the respondent had proved his case ; he accordingly granted the respondent the declaration asked for and awarded him £100 nominal damages. 10

p. 36.

17. The defendant appealed and his appeal was heard by the West African Court of Appeal (Foster Sutton, P., Coussey and Manyo-Plange, J.J.) on 2nd January 1952, by which time the appellant had been substituted for the defendant. The appeal was dismissed on 3rd January 1952. 20

p. 35.

p. 37.

18. The Court delivered judgment in writing on 5th January 1952. Foster Sutton, P., expressed the opinion that the trial judge's assessment of the witnesses was a clear finding of fact and that his reliance on the concessions of 1907 was justified, and that there was no good reason to differ from the trial judge's conclusion that the respondent had proved his case. The other members of the Court concurred but delivered no separate judgments.

p. 38.

19. On behalf of the respondent it will be contended that the judgment granting him the declaration asked for and awarding him £100 damages should be upheld for the following and other 30

REASONS

- (1) Because there was adduced on behalf of the plaintiff before the trial judge strong traditional evidence that the disputed area formed part of the stool lands of the plaintiff and his predecessors, which was supported by evidence of possession and other acts of ownership done in relation to the disputed area before the action was started.

- (2) Because the trial judge found as a fact that this evidence was reliable and, having seen the witnesses, was entitled, as he did, to prefer it to that of the defendant or his witnesses, and to reject the evidence that the defendant or his predecessors had any title to the disputed area and had been in possession of it before the action started. RECORD.
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- 10 (3) Because it was a pure question of fact whether the respondent had proved his title and because there was evidence on which the trial judge and the West African Court of Appeal could find that he had done so, and because the trial judge and the West African Court of Appeal did so find.
- (4) And upon the grounds stated by the trial judge in the Supreme Court of the Gold Coast and by the President in the West African Court of Appeal.

MAURICE LYELL.

L. G. SCARMAN.

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Case for the Respondent

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