

Judgment
27, 1956

In the Privy Council.

ON APPEAL

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

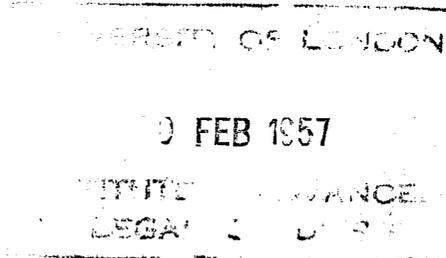
BETWEEN

KWEKU MINTA EBU, KRONTIHENE of Koshea (substituted
for Nana Prah Agyinsaim, Defendant) *Appellant*

AND

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

RECORD OF PROCEEDINGS



A. L. BRYDEN & WILLIAMS,
53 VICTORIA STREET,
LONDON, S.W.1,
Solicitors for the Appellant.

LINKLATERS & PAINES,
6 AUSTIN FRIARS,
LONDON, E.C.2,
Solicitors for the Respondent.

THE HOUSE OF COMMONS
LEAFLET 1965,
25, RUSSELL SQUARE,
LONDON,
W.C.1.

In the Privy Council.

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

BETWEEN

KWEKU MINTA EBU, Krontihene of Koshea (substituted for
NANA PRAH AGYINSAIM, Defendant) *Appellant*

AND

CHIEF KWAMIN ANTRADU ABABIO (substituted for Chief
KOBINA SEI, Plaintiff) *Respondent.*

RECORD OF PROCEEDINGS.

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In the Privy Council.

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

UNIVERSITY OF LONDON
VICI

20 FEB 1957

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.*

46041

RECORD OF PROCEEDINGS

*In the
Provincial
Council
of Chiefs,
Central
Province.*

No. 1.
SUMMONS.

No. 1.
Summons,
12th June,
1930.

THE PROVINCIAL COUNCIL OF CHIEFS CENTRAL PROVINCE.

No. 5/1930.

IN THE PROVINCIAL COUNCIL OF PARAMOUNT CHIEF'S
TRIBUNAL, the President of the Provincial Council of Paramount
Chief's Tribunal, Saltpond Gold Coast Colony.

20 CHIEF KOBINA SEI of Bisiasi-Assin Apimanim . Plaintiff

and

NANA PRAH AGYINSAIM, Ohene of Koshea . Defendant.

To Nana Prah Agyinsaim, Ohene of Koshea-Assin-Attendasu.

You are hereby commanded to attend this Provincial Council of
Paramount of Chiefs' Tribunal at Saltpond on the 26th day of September,
1930, at 9.30 o'clock a.m. to answer a suit of Chief Kobina Sei of Bisiasi,
Assin-Apimanim against you.

30 The Plaintiff claims the ownership of all that Piece or Parcel of Land
Forest and cultivated land commonly known and called the "Swedru"
land, being his Stool property and situate at or near the village of
Essiankyenim and bounded on one side by Kosheahene land, on one side

*In the
Provincial
Council
of Chiefs,
Central
Province.*

by Omanhene Nana Nkyi's land, on one side by Adai's land and one side by Mokwa people's land ; and further claims from the Defendant the sum of One Hundred Pounds (£100) as Damages for trespass upon the said land done to bearing cocoa trees on certain parts of the said land.

Issued at Saltpond the 12th day of June, 1930.

No. 1.
Summons,
12th June,
1930,
continued.

Claim as above

	£	s.	d.	
Tribunal Fee	10	0	0	
Adasuum	0	5	0	
Mileage and Service Fees	3	1	0	10
	<hr/>			
	£13	6	0	
	<hr/>			

TAKE NOTICE: If you do not attend, the Tribunal may give Judgment on your absence.

ADUKU III,
Signature of President.

*In the
Supreme
Court
of the
Gold Coast,
Lands
Division.*

No. 2.
Court Notes
Ordering
Pleadings,
7th June,
1949.

No. 2.

COURT NOTES ORDERING PLEADINGS.

IN THE SUPREME COURT OF THE GOLD COAST LANDS DIVISION,
CAPE COAST. Tuesday the 7th day of June, 1949, before Mr. Justice LINGLEY, Ag. Judge. 20

P. C. CHIEF KOBINA SEI Plaintiff

v.

NANA PRAH AGYINSAIM IV Defendant.

Bannerman-Hyde.

Benjamin.

Pleadings ordered.

21 days Statement of Claim.

21 days Defence.

7 days Reply.

Plan ordered to be filed in 3 months.

(Sgd.) L. G. LINGLEY,
Ag. J. 30

No. 3.

STATEMENT OF CLAIM.

IN THE SUPREME COURT OF THE GOLD COAST.
Central Judicial Division.
Lands Court, Cape Coast.

*In the
Supreme
Court
of the
Gold Coast,
Lands
Division.*

CHIEF KWAMIN ANTRADU ABABIO . . . Plaintiff
v.
NANA PRAH AGYINSAIM Ohene of Koshea . . . Defendant.

No. 3.
Statement
of Claim,
5th July,
1949.

PLAINTIFF'S STATEMENT OF CLAIM.

10 Delivered this 5th day of July, 1949 the time for filing having been extended
by consent of parties.

1. The Plaintiff Chief Kwaminantradu Ababio is the Ohene of Asin Bisiasi, a Divisional Chief of the Omanhene of Asin Apimanim State in the Western Province.

2. The Defendant Nana Prah Agyinsaim IV, is the Ohene of Koshea a Sub-Chief of the Omanehene of Assin Attendaso.

3. This action was instituted in the then Judicial Committee of the Provincial Council of Chiefs in 1930 by Chief Kobina Sei a predecessor of the Plaintiff ; but for various reasons and other causes which intervened,
20 it was not heard till July 1939 and on the 26th of September, 1939, Judgment was delivered in favour of the Plaintiff which was on appeal set aside on technical grounds and the suit was remitted back for a re-trial. It was still pending before the Judicial Committee of the Provincial Council of Chiefs in 1944, when with the coming into force of the Native Courts Ordinance, the Land Court became ceased of it. [sic.]

4. There is attached to the Plaintiff's Stool a large tract of land commonly known and called " Swedru " a portion of which is the subject matter of dispute herein. The boundaries of the whole " Swedru " land being as follows : On one side by Koshea or the Defendant's Stool lands,
30 on one side by Omanhene Nana Nkyi's land, on one side by Adai's land and on one side by Morkwa Stool land.

5. The Plaintiff's ancestors were the Etsis or the aborigines of the land called " Etsi-Swedru " and from time immemorial, possessory rights over this and adjoining lands have been exercised by Plaintiffs predecessors, namely, Otu Sraman, Enyimadu Kokoti, Boaten Petu, Dziawuo, Effuamua Mpimsu, Kwakyi Ponto, Eduakyi Nufu, Kwamin Numa, Kwamin Akyem, Enifor Dadwin, Kwa Saim, Kwamin Antradu and Kobina Sei, after whom came the Plaintiff herein.

6. There are on " Swedru " land the following villages ; Senchiem,
40 Ewusem, Metemanu, Cheikrom, or Kyeikrom, Subunkrom, Senkasu,

*In the
Supreme
Court
of the
Gold Coast,
Lands
Division.*

*No. 3.
Statement
of Claim,
5th July,
1949,
continued.*

Fosu Appia, Foakyia Krome, Akyirebuanda or Adurabuana, Abuanan, Ahyeresu or Akyireso, Asiretoase, Interbirta, Egyey Owamasu, Kotogya or Kotodwa, Kofi Sarbinkrome, Abrofumbratem, Owamase, Kotogya or Kotodaw, Kofi Sarbin Krom, Abrofumbratem, Konfu Mensah Krom, Kojo Nkruma Sarpiah, Yaw Amuah Krom, Abokyikrom, Abrokwakrom, Onyimadu Konfu, Kofi Prah Krom otherwise called Bisiduasi, Appia Krom, Mofakrom, Agyeikrom, Atta Krom, Wombasi, Agyeikrom, Nkotowabassa, and many others. There are also many sites of old or ruined villages, Burial Groves and Fetishes on various parts of the said land.

7. Many years ago, a man called Agyinsaim, a native of Kokoma, 10
near Lake Busumtwi in Ashanti migrated from Ashanti to Swedru land
and on application to Effuamua Mpimsu, a predecessor of the Plaintiff,
he was granted a portion of "Swedru" land on which to live and cultivate
for which £4 16s. as Customary Drink was paid to the Plaintiff's predecessor.
A portion of Swedru land commonly known as Ekueshiam and subsequently
came to be called Koshea by contraction, was pointed out to the said
Agyinsaim and delimited by the following boundaries: On one side by
Breman people's land at Koshea, on to Ninchi Stream, Apotusu Stream
and on to River Prah, then by Omanhene Nana Nkyi's land but not to
go beyond Oyinatuoshi. 20

8. Sometime in 1930 in an alleged demarcation of boundaries by
the Koshea people who are agents and servants of the Defendant, trespass
was committed on a portion of Plaintiff's land known as Senchiem, which
consisted of tracks or boundary lines cut through the Plaintiff's land
extending from Esukessi in the vicinity of Senchiem to Asuensu Stream
resulting in the destruction of a large number of cocoa trees in the farms
situated near Senchiem belonging to Plaintiff and his subjects.

9. Upon a report made by Kobina Sei the predecessor of the Plaintiff
to the District Commissioner of Cape Coast (Norton Jones) in connection
with the trespass, a meeting with the District Commissioner was held at 30
Fosu at which both parties were present, the Defendant claimed the area
in dispute as part or portion of land attached to his Stool.

10. During the period of 19 years in which this action had been
pending before the several Courts the Defendant has permitted people
to occupy portions of the area in dispute as tenants.

11. The Plaintiff and his predecessors have granted to various
Companies, many Concessions on Swedru land, principally the following:—
Inkotwabassa Dredging Concession and Ofin Aboye or Offin South Bank
Concession and recently Timber Concession to J. B. Apprey and Michael
R. Stein and Company. 40

AND THE PLAINTIFF CLAIMS the ownership of all that
Piece or Parcel of Forest and cultivated land commonly known
and called as "Swedru" land, being his Stool property and situate
at or near the village of Essiankyenim and bounded on one side
by Kosheahene's land, on one side by Omanhene Nana Nkyi's land

on one side by Adai's land and on one side by Morkwaa people's land ; AND FURTHER claims from the Defendant the sum of One Hundred Pounds (£100) as Damages for trespass upon the said land done to bearing cocoa trees on certain parts of the said land.

*In the
Supreme
Court
of the
Gold Coast,
Lands
Division.*

Dated at Marmon Chambers, Cape Coast, this 5th day of July, 1949.

(Sgd.) J. BANNERMAN-HYDE,
Solicitor for Plaintiff.
Filed 5.7.49
(Sgd.)
R. D. C.

No. 3.
Statement
of Claim,
5th July,
1949,
continued,

10

To the Registrar,
Land Court,
Cape Coast.
And to the above-named Defendant,
NANA PRAH AGYINSAIM,
Now at Cape Coast.

No. 4.

STATEMENT OF DEFENCE.

(Title as No. 3.)

No. 4.
Statement
of Defence,
26th July,
1949.

20

DEFENDANT'S STATEMENT OF DEFENCE

Delivered this 26th day of July, 1949.

1. Save as hereinafter expressly admitted the Defendant denies all the allegations in the Plaintiff's Writ of Summons herein.

2. The Defendant expressly denies the allegations in paragraphs 4, 5 and 7 of the Statement of Claim and avers that the Defendant's ancestors were the original inhabitants on Owirekyi land ; who having vanquished the Denkyiras eventually settled at the common battle ground naming it Kushia or Koshea.

30 3. The Defendant further avers that the Assins and the ancestors of the Plaintiff having migrated from Ashanti were given land for settlement by the Andoes, Etsis at Assin Mansu and Bisease respectively.

4. The boundaries of the Defendant's Stool land are as follows :—

On one side the Defendant's Stool lands bound with the Stool lands of Adansi from River Prah to the confluence of River Offin (Offin Boye). On one side with Morkwa Stool lands commencing from streams Asensu, Adwasu, Subir to the confluence of Subir with Prah River. On one side with Bosorfi or Bereku Lands from Asensu Stream to Twupia Bipo and on another side with Ekyianu lands from Ashiresua otherwise Samansua to Subir stream.

40

*In the
Supreme
Court
of the
Gold Coast,
Lands
Division.*

No. 4.
Statement
of Defence,
26th July,
1949,
continued.

5. The Defendant avers that on his Stool lands aforesaid are the following villages whose existence dates back to a great antiquity :—

On Kushia land are villages some of which are ruined, streams and cocoa farms. The villages are Owirenkyi, Egyei, Inkuta, Mbaakro, Womasi, Dudiasu, Kyeikrome, Prabonsu, Atwirebuanda, Ashiresu, Diadokum Mofukrome, Buabinkrome, Attechem, Bawarisu, Atwimmansu, Bissiduasi, Fokyiakrom, Abokyikrom, Abrkwakrom, Impunpunsu, Fahiakotwir, Yaw Bronyikrom and many others.

6. The Defendant by himself and his Predecessors had been in long and undisturbed possession of the land in dispute as the owners thereof, made and caused to be made extensive cocoa farms thereon, for example, at Awheresu, Busumpim, Akurasi and Obukrome and other places too numerous to specify. 10

7. The Defendant by himself and/or his predecessors exercised rights of ownership over the said land, such as (A) granting rubber rights to Messrs. J. P. Brown and J. W. de Graft Johnson, (B) granting rights to Mr. Bassa Hudson and others to prospect for gold deposits on the land (C) Allowing certain men as Ashanti men to settle at Bisidua upon payment of yearly tribute (D) In the year 1918 the Wassaw people were granted permission to manufacture canoes on the land in dispute and have continued doing so to this day (E) In 1929 the Defendant sold a portion of the land in dispute to Bereku man of the name of Obu for £1,800 (One thousand eight hundred pounds) and another portion to Donkoh of Larteh for £500 (Five hundred pounds). 20

8. The Defendant denies that the Plaintiff is entitled to any of the Relief he seeks from this Honourable Court or to any other relief in law.

Dated at Cape Coast this 26th day of July, 1949.

(Sgd.) C. F. HAYFROM-BENJAMIN,
" W. ESUMAN-GWIRA SEKYEI, 30
Solicitors for Defendant.

To the Registrar,
Land Court,
Cape Coast.
And to the Above-named Plaintiff,
Chief KWAMIN ANTRADU ABABIO,
His Agent or Solicitor.

Filed 26.7.49
(Intd.)
for R. D. C. 40

No. 4A.
COURT NOTES.

In the
Supreme
Court
of the
Gold Coast,
Lands
Division.

IN THE SUPREME COURT OF THE GOLD COAST, Lands Division,
Cape Coast. Wednesday the 14th day of September, 1949, before
Mr. Justice LINGLEY, Acting Judge.

No. 4A.
Court
Notes,
14th
September,
1949.

P.C. 5/30.

CHIEF KOBINA SEI Plaintiff
V.

NANA PRAH AGYINSAIM IV Defendant.

- 10 Bannerman-Hyde for Plaintiff.
- Sekyi and Benjamin for Defendant.
- Odikro Kweku Danso—Assessor.

Benjamin : Defendant asks for an adjournment to file a Plan on his own.

Court : The case was for mention on 20th August when pleadings were complete. This date was fixed as a definite hearing date, and the best part of a week kept clear for it. Now the Defendant waits until to-day he makes application. I do not propose to grant an adjournment.

- 20 *Sekyi* : Shall not be in a position to cross-examine the Surveyor if called now.

Court : Then he can be called later.

PLAINTIFF'S EVIDENCE.

No. 5.

KWAMIN ANTRADU ABABIO.

Plaintiff's
Evidence.

No. 5.
Kwamin
Antradu
Ababio,
14th
September,
1949.
Examina-
tion.

1st KWAMIN ANTRADU ABABIO sworn :—

- 30 Ohene of Assin Bisiasi, Divisional Chief Assin Apimanim State. This action was instituted by my predecessor Chief Kobina Sei. I know Defendant. This action was originally started in Provincial Council 20 years ago. They gave Judgment, Defendant appealed. It was sent back on ground Tribunal not properly constituted. I have land attached to my Stool. I complained that the Defendant has trespassed on a portion. My original ancestor was Otin Sraman, Korkor Eti, Danquah Ahinsa, Buatin Paitoo, Kwa Essam, Dziewuo, Eframim Mpimsu, Kwakyi Punto, Eduakyi Nufu, Kwamin, Akyem, Kwenin Kuma, Kwenin Eninful, Dadwin, Kwamin Atradu, Kweku Apima, Kwamin Kwa Entwi then Kobina Sei and then myself. We did not migrate. We always lived there. We are called Itsis, the Aborigines. Sraman cleared the forest. My people and people

*In the
Supreme
Court
of the
Gold Coast,
Lands
Division.*

*Plaintiff's
Evidence.*

No. 5.
Kwamin
Antradu
Ababio,
14th
September,
1949,
Examina-
tion,
continued.

of Assin Apimanim belonged to the Nsona Family, all Aborigines. A war came, we called on the Omanhene to assist us. He sent us assistance but war did not take place. Intim Jakari wanted to attack us. We actually fought. Then the ancestors of Defendant came and asked for a place to settle. My ancestor gave him—Ku Eshiem—“meeting place of the people”—now Koshea. The ancestor of Defendant paid £4 and gave rum and sheep. My ancestor told him the land extended to Ninkyi; that is where my land bounds with Defendant. It is a stream. I bound with Asaman Fosu on the North. From Ninkyi to South we go to Nkyikiwura where we bound with Ekyianu Stool lands; to Onyina 10
Tushie a triple boundary with Omanhene and Ekyianu Stool lands. Bediadua then to Asensu Stream—which flows into the Prah. We have boundary with Morkwa State—Bordia. Then up the Kyirekum Stream boundary with Morkwa.

The boundary on the West has been settled by this Court, and the West African Court of Appeal. I started action as Defendant put people on my land—from Ninkyi to Senchien village. He cut a track as a boundary. (This was 19 years ago.) He had never claimed that land before. Senchiem is my village. Kyeikrom is claimed by Defendant. Wobuasi, in ruins is claimed by Defendant. Achurabuanda camp is a hunter's and rubber 20
camp is claimed by Defendant, also Appiakrome, Atakrome, Frimponkrome. Cocoa farms, belonging to people of Senchiem were cut where boundary was cut. They complained to my predecessor who reported to D.C.—Norton Jones. He asked us to meet Defendant at Fosu. Defendant claimed portion and produced a plan. District Commissioner said you must start action to settle matter. My predecessor started action before Provincial Council.

I had a case with Morkwa. The Defendant gave evidence before Fuad, J., to effect that no land in this area. Tsibu Darku of Assin Attendaso supported Defendant, he said the western boundary is with 30
Defendant. Defendant put people on land they are still there. I had granted Concession for Dredging Nkotwabasa Concession etc. The Dredging Concession was granted forty-nine years ago—immediately after Ashanti War. No one else has disturbed us.

*Cross-
examina-
tion.*

Cross-examined: Morkwas are Etsis. Assin Apimanim are from Ashanti. They passed our settlement and came to the south. They had no fight with us. The Andoes, Etsis, granted permission to Assin Apimanim to settle where they are now. We were not originally settled on Morkwa land. We did not migrate from Ashanti and settle there. We have southern boundary with Morkwa—along Asensu. I am not calling 40
Morkwa as Defendant gave evidence for him against me. I have an eastern boundary with Ekyianu and Assin Apimanim.

He is not my witness; Apimanim is.

I am not going to call Ekyianu.

Defendant was not a party in Morkwa litigation but supported Morkwa. As far as I know it is not before Privy Council.

Kyeikrome is mine.

The person now in charge is Kwami Datei and not Kwame Owuoa, he may collect money from people there, he put them there so I started action. Wombuasi was not founded by Kwami Ampah. We built small village for tapping rubber. The boundary with Adansi is the Prah.

He is not concerned as a witness.

Bereku people occupied Nkyi's land.

It was originally Andoe land.

Names in paragraph 5 of Defence—I don't know, Owirenskyi, Egyei is in ruins; not Nkata, Mbaakro. I know Wobuasi, not Dadiasu, Prabonso is a place where Defendant put tenants, Atwirebuanda is in ruins, Defendant has put people there: also at Ashiresu. I don't know Diadokun, he may use it. I know Borfukrome—our hunter camp. Buabinkrome I don't know nor Attachen nor Bawarisu, nor Atwiminasu. I know Bisiduasi and Fokiyakrome, Abokiyakrome—made by one of the Akuapims Defendant has put there. Abrokwakrome I know. Inpunsu I don't know nor Fahiakotwil and Yaw Bronyikrome.

He has not collected tribute for 30 years from this land. I knew J. P. Brown and de Graft Johnson. They did not tap rubber on my land. I don't know Hudson, I know Okra, an Ashanti, he was granted his land by my ancestor, not Defendant—(Bisiduasi) Wassaw people are not manufacturing canoes that I know of; except at Subilsu a long time ago.

Obu from Bereku—I don't know him.

A Larteh man—Donkoh—I don't know him.

I deny Koshea people were Etsi and that we came from Ashanti.

Owirensky—I don't know any predecessor of Defendant of that name. Adinsahen got land from us. I have heard of no battle between Denkyira and Koshea, it was Intim Jakari who fought with me. Koshea is not named because of battle and Denkyiras and Koshea. It is not customary to live on a battle field.

30

No. 6.

KWEKU KYI.

2nd KWEKU KYI who is sworn—

I am headman of Senchien. The village is on Plaintiff's land. My ancestor called Kodjo-Pinkra got land from Kwamin Eninful. I was born there and live there all my life. We paid tribute to Plaintiff. I paid £2 3s. last year. We were shown the extent of land granted to us. We start at junction of Asensu and Prah—along Asensu to Bediadia a hunter's camp—then Onyina Tushia along Subiri—Akyikiwura—Ninkyi river along the Prah—Ahyiresu. The western boundary joins this the starting point. It goes along the Prah to Asensu timber camp.

No one disturbed us up to the present action.

*In the
Supreme
Court
of the
Gold Coast,
Lands
Division.*

*Plaintiff's
Evidence.*

No. 5.
Kwamin
Antradu
Ababio,
14th
September,
1949,
continued.

No. 6.
Kweku
Kyi, 14
September,
1949.

*Examina-
tion.*

*In the
Supreme
Court
of the
Gold Coast,
Lands
Division.*

*Plaintiff's
Evidence.*

No. 6.
Kweku
Kyi, 14
September,
1949,
continued.
Examina-
tion by
Court.

Cross-
examina-
tion.
Examina-
tion by
Court.

Defendant cut a track damaging our cocoa. I cannot give exact date. They cut a track to Esukesi where we get water by outskirts of Senykin—a raffia palm outside of mine. They said Defendant ordered it. Yaw Bedu's Kwame Fah's farms were damaged. I reported to Plaintiff's predecessor with cocoa trees and D.C. Since the action I have not seen anyone on other side of line. Senchiem has 70 people living there with children.

Examined by Court : It is a nominal drink I pay.

Cross-examined : Defendant does not claim Senchien ; nor the people cutting track. It was near outskirts. I pointed it out to the Surveyor ; you could tell where cocoa had been cut. I belong to the same family Nsona. £2 8s. is an allegiance fee. We pay Ebusa too. I have not been born at time of grant. I was told boundaries by my people. I have walked round them. I now say I don't know Ashyiresu. 10

Court : Just giving it in evidence.

Ninkyi—to Asensu (camp) Prah is out boundary. I know Bisidruasi, it is Plaintiff's. Defendant has not collected tribute for past 30 years.

Kyeikrome is not in charge of Kwami Owura.

The people there may belong to Defendant.

Womasi—I don't know it. 20

Paragraph 5 defence : I know Kyeikrome, Atwirebuanda, Bisidruasi, Fokyiakrome (they are hunters who send venison to Plaintiff).

I last went round the land about 10 years ago.

I saw none of these villages whose names were read to me.

Brown and de Graft Johnson I don't know them on land I don't know anything about Owura tapping rubber. I don't know people making canoes there. I don't know any Donkor from Larteh. I know George Grant, he cuts timber on other land belonging to Plaintiff but not mine—north of the Prah.

Re-exami-
nation.

Re-examined : I serve same Omanhene as Defendant—Assin Attendasu. 30

Examina-
tion by
Assessor.

Assessor examines : When I grew up boundaries were pointed out to me. The villages that were pointed out to me—Bisidruasi, Sabenkrom, Abuanu, Sibrisu, Fosu Appia, Nsankasu, Otwi Bediada, Achuabuanda, Kyeikrome. I was told we had boundary with Defendant. We came from Assin Fosu. I don't know where Defendants came from ; I heard Plaintiff was an Etsi man, we were there a long time ; my ancestor said at time of Amankwatia. £2 8s. was always paid. They gave rum, 1 flask. I heard nothing of payment at original grant. Tenants pay tribute to me not for myself ; I pay it to Plaintiff.

No. 7.
YAW KOM.

In the
Supreme
Court
of the
Gold Coast,
Lands
Division.

3rd YAW KOM who is sworn.

Native of Fosu living at SENCHIEM. I serve OHIN of Fosu KOBINA Gyedu and ASSIN ATTENDASU. I have farms at SENCHIEM, I was born there. KOBINA KAI and ABINA BAA were my parents, native of Fosu. They went to SENCHIEM to tap rubber. Then after rubber we started cocoa, then diamonds. I succeeded KWEKU AHIMI—my uncle, he lived at SENCHIEM. He left cocoa farms—6. I am now in charge. I have made 4 myself.

Plaintiff's
Evidence.

10 Plaintiff's predecessors KWAME NIFUL gave land to my parents. We pay £2 8/- and sheep every year to Plaintiff. I have paid it once as my uncle has only just died. He used to pay. We pay this only—no Ebusa. My uncle pointed out the land—PRAH to ASENSU; BEDIADUA, ONYINE TUSHI, SUBIR, AKYIKYI WURA, NINKYI back to the PRAH.

No. 7.
Yaw Kom,
14th/15th
September,
1949.
Examina-
tion.

Examined by Court : What about Nkyi ?

Examina-
tion by
Court.

KYI showed us these boundaries. We were allowed to farm inside this area ; his family gave us permission. We have only farming rights. I know Defendant—he caused a track to be cut through SENCHIEM to the stream where we get our water. He cut trees on my brother's farm (Bedu)
20 I saw a Company carrying on dredging, I saw them pay £150 to Plaintiff. Defendant had never done anything before he cut track. Since then he put tenants on the land—AKWAPIMS. Some are by SUBIR, KYIKROME, WOMBUASI, AMUSUWAKROME. I know AHINSU. My own cocoa was not destroyed.

Cross-examined : Since track cut I have been on east of it. I have bought a cocoa farm there. The track cut Bedu's farm in half.

Cross-
examina-
tion.

Our cocoa were on both sides of the track. On the Subir ruins side we had no cocoa farms. None of our people have cocoa farms, on that side of track. Only some of Bedu's cocoa was cut off. The larger portion was cut off. Since it was cut the cocoa has been in care of my brother
30 still. I can't remember how many trees were cut. Only Bedu's farm was touched. We had very little on east of track. It started from NINKI. It passed between KYIKROME and WOMBOASI. I can't say how it affected APPIAKROME ; ATTAKROME, FRIMPONKROME.

KYEIKROME and WOMBUASI were there before track. I don't know these three villages.

15th September.

(Sgd.) L. G. LINGLEY,
Acting J.

15th September, 1949.

40 Hearing resumed.

3rd WITNESS still on oath :

Cross-examination : There was a plan in *Sei v. Morkwa*. Their boundary was fixed. Koshea did not accept it. They claim down through Subri's ruins and SENCHIEM. I have agreed we only have my brother's farm on East of track.

Cross-
examina-
tion,
continued.

*In the
Supreme
Court
of the
Gold Coast,
Lands
Division.*

*Plaintiff's
Evidence.*

No. 7.
Yaw Kom,
14th/15th
September,
1949,
continued.

There are others farms as well on Defendant's claim. I was not there during survey.

I have two, my late uncle has one on disputed area. Defendant and his tenants have no farms on area in dispute.

Kwamin Duro has one on disputed area.

Kodjo Onemaho ; Kwami Sei ; about seven of us.

The Senchiem people are in control of them.

Paragraph 5 of Defence : I have heard of Adjei. I know Womasi, Kyikrome, Atwirebuanda, Ashiresu, Bisidruasi, Fokyiekrome only.

I don't wander over land as I am not a hunter.

10

When my parents tapped the rubber I was not born. I don't know of Defendant having fetish or burial grove. I don't know of any tolls paid to Defendant.

*Re-exami-
nation.*

Re-examined : We have tolls to Plaintiff for the farms on disputed area. I don't know if there are Akwapims there. These villages I said I know, I don't know who gets the tolls ; I only know the names of some of villages.

No. 8.
Yaw Bredu,
15th
September,
1949.
*Examina-
tion.*

**No. 8.
YAW BREDU.**

4th YAW BREDU : Who is sworn :

20

Cocoa farmer at Senchiem. 3rd Witness is my brother, we are from Fosu-Attendasu. I was born at Senchiem. I was born two years before 1900. Kwami Efa, deceased, was my elder brother. My elder brother died after Morkwa litigation. He had two or three cocoa farms. I succeeded. I have about ten cocoa farms. My parents went to Senchiem for rubber. Yaw Fosu gave them permission on Ebusa system. They started cocoa there. My farms are on land claimed by Defendant. Defendant cut boundary through one of my farms and one of my father's and Duro and Sei's farms. I saw the track. Asosem from Koshea cut the track. They said Defendant sent to cut track. They refused to stop. I reported to Odikro. Defendant had never been on land before. The track went from Ninkyi-Subrisu-Nsukessi.

*Cross-
examina-
tion.*

Cross-examined : I don't know where they got permission to tap rubber. Defendant has put Akwapims on land. There are no villages on area Defendant's people have founded them. There were many villages before. I have not been all over land.

They destroyed many trees.

*Examina-
tion by
Assessor.*

Assessor examines : There may have been hunters.

No. 9.
KOFI KRA.

In the
Supreme
Court
of the
Gold Coast,
Lands
Division.

5th KOFI KRA, who is sworn :

I visit Ewisem. Cocoa farmer. Kumasi is my family town. Born at Bisidruasi and live there. Born before Ashanti War. My family migrated and obtained land from Plaintiffs for cultivation. Kobina Ahin was my father, he made food and cocoa farms at Bisidruasi, south of Prah, around Bisidruasi. I am in charge of them. I have two, one abandoned. Odikro of Bisidruasi is myself. Pay Plaintiff $\frac{1}{3}$ cocoa. No one ever disturbed me. I know Asaretuasi. Yaw Korkor was in charge of it, and put there by Plaintiff's predecessor.

Plaintiff's
Evidence.

No. 9.
Kofi Kra,
15th
September,
1949.

Cross-examined : My father was not Okra ; that is my grand father ; He first came there ; I have his farms. My father did not live at Ashyiresu ; he was not put on land by Defendant. Wi-Asamoah never stayed with my grand father Sinkoran or Tinkoran. We mortgaged cocoa farm to him ; he was a Koshea man.

Examina-
tion.
Cross-
examina-
tion.

Ebusa was not then paid to Defendant. Bisidruasi was not a hunter's camp ; we lived there.

There are about six houses. I called myself Odikro.

20 The people are not from Koshea.

Ashireso people are not under Defendant but I have not been there. Asaretuasi—I don't know Kwami Yaboah. There is no one from Koshea in these villages. I can't say about farms.

I saw no Cape Coast people collecting rubber. People came regularly to make canoes ; when they want one, Plaintiff gave permission.

Assessor examines : I did rubber tapping myself. I mortgaged farm with Plaintiff's permission. I gave none of loan to Plaintiff.

Examina-
tion by
Assessor.

No. 10.
KOBINA KESSIE.

30 6th KOBINA KESSIE : who is sworn :—

I come from Atobiasi in Assin Apimananim State. I am Safuhin and farmer. I now live at Atobiasi. I know Kyeikrome. Kwami Daateh is Odikro there. My ancestor Kyei founded it as a hunting camp. He got land from Plaintiffs— $\frac{1}{3}$ (one-third) of all proceeds.

Plaintiff have a fetish near there—in Subir stream. Defendant and Plaintiff litigated about village of Kyeikrome—when Kyei died I said I would take charge. When I arrived I met Daateh who said he was put

No. 10.
Kobina
Kessie,
15th
September,
1949.
Examina-
tion.

*In the
Supreme
Court
of the
Gold Coast,
Lands
Division.*

*Plaintiff's
Evidence.*

No. 10
Kobina
Kessie,
15th
September,
1949,
continued.
Cross-
examina-
tion
No. 11.
Kofi Wi,
15th
September,
1949.
Examina-
tion.
Cross-
examina-
tion.

there by Defendant. I gave him four days to go at his request for time. Then they burnt the village and said I had done it. I was charged at Assizes. I was acquitted. I have not been back on instructions of Plaintiff.

Cross-examined : My father collected the Ebusa for Plaintiff ; but he also had permission to farm land but paid rum only. He hunted there ; shared meat with Plaintiff. 30 to 40 years ago. Defendant has not been collecting tolls for 30 years or more. I hear he is now.

No. 11.
KOFI WI.

10

7th KOFI WI, who is sworn :—

I live at Ewisam, born there. Yaw Enyen my ancestor founded it. I am an Etsi ; same as Plaintiff. Darko was an ancestor of mine. I hunt across river. I have no farm over that side. Darko founded Nsankasa Village now in ruins. I used to go there in his time, no one from Koshea disturbed us. He founded it 20 to 30 years ago.

Cross-examined : He founded it 20 to 30 years ago. I don't have to look at Plaintiff before answering. Wi Asamoah did not found it as a hunters camp nor Boateng.

No. 12.
KOFI MENSAH.

20

No. 12.
Kofi
Mensah,
15th
September,
1949.
Examina-
tion.

8th KOFI MENSAH, who is sworn :—

I live at Ewisam, farmer, Kofi Suboa was my grandfather from Miransu in Ashanti. My father lived at Ewisam and died there. Suboa founded a village of that name—across river and then $1\frac{1}{2}$ miles. Abuanan is the same ; the name of the rocks there. I have two cocoa farms myself there. I made them about three years ago. No one has disturbed me. Suboa had 12 cocoa farms ; they still there ; I am in possession pay my Ebusa to Plaintiff. Last season I got 15 loads, some are neglected.

I was born at Abuanan. I know villages near. Nsankaso, Bissaduasi, Ashiresu, Kyeikrome, Wombasi, Forkikrom, Asari-Kuasi. 30

Examina-
tion by
Assessor.

Assessor examines : In Morkwa case I was not there during survey —not because we have no farms.

Examina-
tion by
Court.

Court : (Land not then in dispute).

Cross-
examina-
tion.

Cross-examined : There are 3 houses at Subon. It does not mean " deep water." None of these villages belong to Koshea people. I have not seen Koshea people there until dispute started when defendant brought people.

Examina-
tion by
Assessor.

Assessor examines : I paid cocoa Ebusa to plaintiff last season ; he gets share of venison. 40

No. 13.

KWEKU EFILFA.

9th KWEKU EFILFA, who is sworn :

Adontihene of Andoe in Assin Apimanim. Regent of that Paramount Stool. Assin Apimanim became vacant 3 months ago. Nkyi is Stool name of Omanhin. The Stool lands have boundary with Plaintiff on his South-East. Nkyi's people came from Ashanti. He assisted the people of Akoti or the Akropons, they granted land to Nkyi. This is the land. Plaintiff is an Etsi. Aboriginal. The Ekyianus are under Assin
 10 Attendasu. We have boundary with them. Triple boundary is Onyina Tushie.

I know Defendant's land. The boundary with Plaintiff starts from Ninkyi—an ancient boundary. Defendant migrated from Konkoma in Ashanti. I have my own lands elsewhere. My people were Etsis. I have not migrated. Boundary between Plaintiff and the Stool starts at Bediadia to Onyina Tushie.

Cross-examined : Andoes granted Manso to Omanhin. I have not been through land in dispute but have been to our land. We have no boundary with Defendant. Kweku Efinum in 1939 was not Regent by
 20 that name.

Case between Yaw Abewoh and Omanhin. The Regent may have written to Defendant to come and stand on his boundary for the surveyor in that case. I know nothing about it.

I have consulted my elders before giving evidence. They told me of Nyinkyi being boundary. Boundary I have given is original boundary between Akotis and Plaintiff.

In the
Supreme
Court
of the
Gold Coast,
Lands
Division.

Plaintiff's
Evidence.

No. 13.
Kweku
Efilfa,
15th
September,
1949.
Examina-
tion.

Cross-
examina-
tion.

No. 14.

EKOW SELBY.

10th EKOW SELBY : who is sworn, Licensed Surveyor Cape Coast.

30 I prepared plan. I had made an earlier plan in 1941 marked " A " and " B." Pink boundary with Koshea was indicated to me by the Plaintiff—Morkwa.

Cross-examined : I have not been on land for present plan. I copied 1941 plan. I don't know if there is any trace of a track cut 19 years ago. I could not see the traces in 1941 though it was mentioned.

Koshea was not represented when I surveyed the boundary.

No. 14.
Ekow
Selby,
15th
September,
1949.
Examina-
tion.

Cross-
examina-
tion.

No. 15.

JOHN TETTEY ODAMETHEY.

*In the
Supreme
Court
of the
Gold Coast,
Lands
Division.*

*Plaintiff's
Evidence.*

No. 15.
John
Tetty
Odametey,
15th
September,
1949.
Examina-
tion by
Court.

11th JOHN TETTEY ODAMETHEY : Registrar, Divisional Court.

I produce from my custody Exhibits of hearing before Provincial Council which were forwarded when the case was transferred here.

Court : Why can't same witness produce them ?

Bannerman-Hyde : Shall recall them.

I produce Record of Appeal in Morkwa's case.

Sekyi : *Res Inter alios alter.*

Court : Defendant can be cross-examined if he gave evidence in that 10 case.

Plaintiff still on oath : I produce these documents before Provincial Council. I have here authority to receive rents.

Sekyi : Objects to admission.

Court : Considers existence of Concession should be proved first.

Case subject to certified copies.

16th September, 1949.

(Sgd.) L. G. LINGLEY,
Acting Judge.

*Defendant's
Evidence.*

No. 16.
Nana Prah
Agyinsaim,
16th
September,
1949.
Examina-
tion.

DEFENDANT'S EVIDENCE.

20

No. 16.

NANA PRAH AGYINSAIM.

Hearing resumed.

PRAH AGYINSAIM, Defendant : sworn :—

I am Ohene of Koshea. I know the Plaintiff. I was not a party in Morkwa case. I was subpœnæd by Morkwa. He claimed a boundary with me. We agreed on boundary except for a small disputed area. I have marked it in red pencil on Morkwa Plan—then South.

Court : No natural feature then ?

There is a swamp where Womasi people got water and two hills and 30 Sindur trees—not on plan. My boundary goes to Adjesa stream—not the one marked on plan. Then up to the Asensu East to boundary with Omanhin Nkyi.

I caused the track to be made 19 years ago. When my young men went hunting at annual festival Morkwa complained they went on Korkwa land. So I had the boundary cut. They never cut through any cocoa trees. We never went near any Esukesi and interfered with Senchiem water supply. We were not at outskirts of Senchiem. It had not been built then.

*In the
Supreme
Court
of the
Gold Coast,
Lands
Division.*

Our tradition is that we are original inhabitants of that place: It is our custom that where you hunt or cultivate you claim as your property. We have been in possession of our boundary for a very long time—over
10 a 100.

*Defendant's
Evidence.*

No. 16.
Nana Prah
Agyinsaim,
16th
September,
1949,
continued.

Until rubber was collected there was little yielding tribute—hunting snails, Kola nuts were not collected. The boundary is now with Plaintiff as a result of a suit in this Court. On land in dispute we get tribute from villagers. At present there are Prabonso, Wombaso, Asherisu, Kyeikrom, Abokyikrome, Diadokun, Sinduasi (rice growing), Insarka, Owirenkyi was our original village—now in ruins. Inkuta was our next settlement with our burial grove, now deserted. Maakro is now only a hunting camp. Edjei is now occupied by Akwapims. I put them there. About 20 years ago. Dadiasu was a place used by Brown for
20 prospecting for manganese about 40 years ago. Atwirebuanda is my village for hunting; it means that the flint guns cannot rest as there is plenty of game. Prabonso—people live and make cocoa farms and paid tribute to me for about 20 years. They first planted rice. Ashiresu is inhabited with well established cocoa; The Headman is Akweisi Achampong they have been for 38 years or more. Bisidruasi stopped paying tribute when case stopped. Modwakrom is named after one of my predecessors as a camp. Boabinkrome has people growing cocoa and paying tribute. Attechem was used for storing rubber now in ruins. Bawarisu is inhabited. Cocoa farms have been there for 23 years. Atwimansu is a settlement where they
30 get red clay for building plaster. There was an accident and people left the place. Forkyiakrome is a hunting camp. Abokyikrome has cocoa for 19 years. Abrakwakrome there is cocoa—about 21 years. Inpunpunsu is a hunting camp; a winding stream. Fahiakotwi is a hunting camp. Debtors ran away and hid there. Yaw Bronyikrome has a rice industry. His successor no longer lives there.

Paragraph 6: Busumpim is my sub-chief: he made cocoa farm. Ahurasi is a hunting camp. Obaakrome—cocoa.

I knew J. W. de Graft Johnson and Brown and Bassa Hudson. Brown came to prospect for gold: they dug pits or shafts for a long time then they
40 tapped rubber, they called the village Bronyikrome because of the white man with them. They looked for manganese at Adiesu. My ancestors smelted their own iron before. The European surveyed it for manganese Bassa Hudson said he had a Company looking for a gold or diamond Concession. Johnson looked for gold.

We have allowed Ashantis to settle on payment of tribute. They were Aduquayie and Akusombo people. They came for rubber and hunting. They settled at Kyeikrome. Bisidruasi—Okra and Ashanti applied to Wi-Asamoah for permission for cocoa. There was one large kola tree at the place, it was about 30 years ago. He married a woman from Ewisaim.

*In the
Supreme
Court
of the
Gold Coast,
Lands
Division.*

*Defendant's
Evidence.*

No. 16.
Nana Prah
Agyinsaim,
16th
September,
1949,
continued.

He came alone so he was succeeded by his son. In 1918 Wassaw people applied for Wawa trees for canoes. They paid tribute to my ancestor. They came again in my time. I was installed about 23 years ago : Before I was a Schoolmaster at E.C. Mission. In 1929 I sold portion of land to get money for a road. I sold land to Kofi Obu from Awutu Bereku near Winneba. He now lives near Assamankese. The money was not enough, I sold some more to Donkor who only paid £100, he is at Larteh and is Akyiamihene : There are pillars marking land sold. The Plaintiff's account of our getting Ku Esiem from them is untrue. Koshea—we are Etsi : We lived at Owirenkyi, then Inkuta : The Denkyiras passed through it to Elmina in dealing with the Dutch. Gold dust was the currency. Denkyiras quarrelled with people at Inkuta. They sent Kwatia and fought Owirenkyi people. There were battles at various points on land. We defeated them at Koushia where we had fought. Ku-Shia they founded a village there. 10

The Ohene of Andoe gave concocted evidence, there is no triple boundary at Onyina Tushie tree : that is within my land.

This letter 1st June 1933 was sent to me by Regent.

Hyde : Not admissible as irrelevant.

Court : All evidence in land cases is inadmissible : Cannot take 20 responsibility of distinguishing minor variations. Marked " C ".

*Cross-
examina-
tion.*

Cross-examined : I have no plan yet of my village as Plaintiff did not serve me with their plan. On 6th June I did not know plan was ordered. I waited and made my own motion. I only heard pleadings were ordered.

I deny that is because I have no land there. The surveyor is only copying old plan. I should have shown my Western boundary. The natural features from Womboasi South from red line. I gave evidence in Morkwa case for Morkwa as an adjoining land owner.

Q. " My boundary is a stream Adwosu—then along Subiri stream 30 and then to river Prah ? "

A. I said this.

Q. " I have no boundary with Plaintiff " ?

A. I said so as I knew him as a subject of Morkwa. I had a dispute with Plaintiff long before Morkwa case.

I dispute the boundary Morkwa claimed.

I did not say so.

I never attempted to get Assin Confederacy to settle our dispute. I deposited £80 with the Confederacy : an Order that each side should deposit £80. 40

The two Amanhins decided to settle it. I made no application : There were several outstanding cases they thought ought to be settled. The Plaintiff agreed too.

When I instructed my Lawyer to file the defence, I knew Judgment had been given in favour of this Plaintiff in Morkwa's case.

*In the
Supreme
Court
of the
Gold Coast,
Lands
Division.*

Paragraph 4. Sets out my boundaries with Morkwa and sets out as in Morkwa case.

I say this case was long before Morkwa case.

I have taken no action myself to establishing my title as I have been in quiet possession until he cut a track in Morkwa case then this case was pending.

*Defendant's
Evidence.*

10 We never migrated from Lake Busumtwi. We are original inhabitants. The Akotis are my relatives. We are Etsi. I never said we came out of the ground with our Stools in Morkwa case. I said I came from land.

No. 16.
Nana Prah
Agyinsaim,
16th
September,
1949,
continued.

Nana Tsibu Darku never said the same. I only said I came from land, meaning I was an original inhabitant.

I was asked where I originally settled.

Cross-examined by Court: Wouldn't Provincial Council understand you ?

*Cross-
examina-
tion by
Court.*

The clerk may not have.

Cross-examined: I cut track because of hunters. Not because I join forces with Morkwas to take the land.

*Cross-
examina-
tion,
continued.*

20 If Morkwa had succeeded I would have litigated about the small portion.

Any boundary I claim is an ancient boundary. Not one based on any recent agreements or Judgment. Senchien was there when I cut track not during rubber collecting time, the leader of gang cutting was Kwami Asusome—Safuhin of mine.

Since it was cut I have been on it during trial before Provincial Council.

I found that track had been cut according to my boundary on my instructions. Omanene Tsibu Darku gave evidence in Morkwa case. "Koshea came out from bowels of earth; my people came out of a stream."

30 He may have said this.

We did not give this evidence to defeat the claim of Plaintiff that they granted land to us.

I say we always had land in dispute.

I have not been putting people on land and selling land for 19 years to make a case.

I have not heard of any Concession granted by Plaintiff. Confluence of Prah and Offin—I have heard of dredging Concession granted by Plaintiff.

40 I have not granted Stein and Company any Concession on disputed land, I am opposing grant by Plaintiff to Stein.

I deny our land was granted to us by Efuamoa Apimoa, predecessor of Plaintiff.

I deny that the village I mentioned never existed before action.

Assessor examines: I have visited all villages I mentioned.

There are traces of ruins.

*Examina-
tion by
Assessor.*

*In the
Supreme
Court
of the
Gold Coast,
Lands
Division.*

*Defendant's
Evidence.*

No. 17.
Kobina
Abokyi,
16th
September,
1949.
Examina-
tion.
Cross-
examina-
tion.
Examina-
tion by
Assessor.

No. 17.

KOBINA ABOKYI.

2nd KOBINA ABOKYI who is sworn :—

I live at Kyeikrome, farmer, I am an Akwapim—Dawu, I have known Defendant for 20 years. I was looking for land. I was introduced to Defendant who gave me land to cultivate near meeting of Subiri and Prah. I founded Abokyikrome. I have made cocoa farms—11 cocoa farms. I started about 19 years to make them, no one has disturbed me.

Cross-examined : I never bought it, I am a tenant. I was not there when there was trouble about burning Kyeikrome—I was in my own 10 village. When “inspection party” of Provincial Council came it did not come near my village. I never saw any track. I went on land before litigation started. I never heard about track being cut.

I deny I went on land after litigation started.

Assessor examines : The cocoa was spoilt by insects so I got 9 loads only this year.

I grow food too. I pay £1 4/- for cocoa land, so nothing for the food-stuffs farms.

No. 18.
Kwami
Ewuah,
16th
September,
1949.
Examina-
tion.

No. 18.

KWAMI EWUAH.

20

3rd KWAMI EWUAH, who is sworn.

I live at Koshea, I am a farmer, I knew Kyeikrome. It was founded by Kweku Ampoma—my ancestor. When he founded it I had not been born. I inherited. Kweku hunted and tapped rubber. He paid no tribute as he was a native of Koshea. Kyeikrome is a Koshea land, I was born before Prempeh expedition. I was a youth. I remember cocoa starting. I made cocoa farms two years after Ashanti War. The Plaintiff I had not heard of at the time. No one disturbed me. I know witness Abokyi. I introduced him to Defendant to get land as I was in charge of Kyeikrome. He was given land. Abokyi founded a village—Abokyikrome. He has 30 made cocoa farms and will pay tribute when it starts to bear. I know George Grant, he has cut timber from Prah to Kyeikrome : It was given to him by Defendant, no one disturbed him. Wassaw people Kyeikyeyi and Kofi Kere have been to make canoes. I took them to Defendant for permission, it was about 20 years ago. Kyeikrome was burnt. It has been rebuilt. I have seen Ashantis, they came and tapped rubber at Womasi and Kyeikrome. They paid tolls to Koshea.

Cross-
examina-
tion.

Cross-examined : I am linguist of Defendant. I know our tradition. My people are Etsi from the land. Kyeikrome was founded by Kweku

Ampoma, it is called Kyeikrome as Ampomah was succeeded by Kyei. He didn't live long but Kyei lived a long time there. I know this man—Kobina Kesi.

In the Supreme Court of the Gold Coast, Lands Division.

Provincial Council inspected land. Our tenants were there before that : They did not inspect Defendant's land.

Koshea boundary on the West was with Morkwa. I have never heard of any boundary between Plaintiff and Defendant.

Defendant's Evidence.

The boundary with Morkwa still exists. Kwami Datah Akwapim man was not placed on disputed area after case started. I know most of
10 them.

No. 18.

They were there when Provincial Council inspected. I used to visit Kyeikrome myself.

Kwami Ewuah, 16th September, 1949, *continued.*

We never cut a track : Plaintiff cut one and Defendant told us to go and see it.

Koshea people never cut one. I know what the cause of action is—that the Defendant is claiming Plaintiff's land. I heard Plaintiffs were charged with arson of Kyeikrome. This case was pending. I started farming before action was started. Wassaws make canoes near Kyeikrome ; they stay at Kyeikrome.

20 A site near a river is selected.

No Wassaws are here now.

Re-Examined : They worked near Subiri and Prah rivers.

Re-examination.

Examined by Court : We go along Subiri from Kyeikrome to Wombasi then stream Atetekyisu along it to a hill barn, then Adaosu stream head : down it to Asensu : then along Asensu to Krupiwura.

Examination by Court.

No. 19.

KOJO FORJUOR.

No. 19.

4th KOJO FORJUOR who is sworn :

Kojo Forjuor, 16th September, 1949.

I live at Koshea. I am cocoa farmer. My farm is near Ahyiresu—
30 behind the village where I stay when at work I started 15 years ago : still harvesting. When I went there Achempong was living there and had cocoa farms there, large cocoa trees already.

Examination.

Cross-examined : I was born in Koshea. I had cocoa farms near Koshea before ; but it was attacked by disease—Akotia. I had these farms six years. When I started at Ahyiresu, the case before Provincial Council had been finished long before. Appeal had succeeded in Defendant's favour, every one took it land belonged to him ; we then went to farms.

Cross-examination.

I say disease has attacked Koshea farms.

40 *Re-Examined :* The old trees of Achempong were there when I came : he was my elder. Plaintiff had no boundary with Defendant. I didn't tell Defendant I was going to Ahyiresu as I am native.

Re-examination.

No. 20.

KOBINA SEKUYI.

*In the
Supreme
Court
of the
Gold Coast,
Lands
Division.*

21st September, 1949.

Hearing resumed—Defendants.

*Defendant's
Evidence.*

5th KOBINA SEKUYI who is sworn :

I am from Aidokrome. I know the Defendant, he gave me land as tenant about 21 years ago at Abuakwa ; about an hour's walk from Koshea. I have made a hut where I stay when I work. I gave £4 16/- rum I pay £1 4/- a year until cocoa bears. I give sheep every year. I have made two cocoa farms. They have been yielding for 3 years. 10 Insects troubled the trees. No one has disturbed me.

Court : Kwesi Nkyere is Headman of Abuakwa. It would not take an hour to go from Ahyiresu. I am near Prah not Subiri. I do not know the Surveyor.

*Cross-
examina-
tion.*

Cross-examined : I did not know Plaintiff. I know Subiri. I am not near it. The Prah is only river or stream near me. I walk along Prah from Koshea to my farm. My farm is on Koshea's side. I don't cross Prah.

*Examina-
tion by
Court.*

Examined by Court : I cross Ninkyi stream. I am not near Essukuma stream ; I have heard of it, I do not cross it. I have heard of cutting of 20 track. At the time it was cut I was working on the land. I did not go near. I heard of no litigation until after I came on land.

I only heard of litigation about a year ago. Eight years ago I was at Koshea ; after the season I go home to my home town. I was asked to give evidence about a week ago.

I don't know Ntoatwo, Nkwatia Fetish.

No. 21.

No. 21.

KWEKU KUMA.

*No. 21.
Kweku
Kuma,
21st
September,
1949.
Examina-
tion.*

6th KWEKU KUMA who is sworn :

I live at Asempa Naye. I am a farmer. I know Prabonso village. 30 I have tapped rubber for a year. It was two years after Ashanti War. Kwesi Kobe Asafuhin of Koshea, I gave 10/- rum. I was sent with a messenger to Prabonso. I gave $\frac{1}{3}$ of proceeds to Safuhin Kobe. No one disturbed me.

*Cross-
examina-
tion.*

Cross-examined : The Chief of Koshea was Amissah. He lived at Bohumasi. Kobe was in charge of Koshea. Forty-seven years ago I

haven't done it since. I came from Asempa Naye : It is under Attendaso. I was given notice last Friday. I heard of litigation two months ago not that it was any concern of mine.

I never gave evidence before Provincial Council.

Re-examined : Chief's official name was Prah Agyinsaim.

Assessor examines : Prabonso—you go to Ninkyi then Darkwakrome then Prabonso.

Prabonso is a long way from Koshea.

When tapping I knew of no litigation.

*In the
Supreme
Court
of the
Gold Coast,
Lands
Division.*

*Defendant's
Evidence.*

No. 21.
Kweku
Kuma,
21st
September,
1949,
continued.
Re-exami-
nation.
Examina-
tion by
Assessor.

10

No. 22.

KOFI KYEIKYEI.

7th KOFI KYEIKYEI who is sworn :

I live at Enyibirim in Wassaw. I make canoes. I know the Defendant. I went on his land during 'flu—4 Companies. We made canoes. Defendant gave us permissions from Ohene of Koshea : we gave £1 rum first. 16/- for each canoe from Wawa. We took a year as we were attacked by influenza.

My company stayed at Ahyiresu, the others at other villages—I don't remember names ; some at Koshea, Plaintiff never disturbed us.

20

Cross-examined : I had married. I was then a head shorter. I went with my relatives. I have just come from Enyibirim. Defendant sent a bearer for me—Okvir. He said he had a case and I was wanted. I was then doing cocoa farming. I came as I had been on land and it was my duty to come. There was no Wawa left in our part of country.

I don't know name of Koshea then—Ohin Korkor was what we called him.

30

I took part in negotiations : I had to go with my father. The elder men have died. The other Companies were from other parts of Wassaw. From Koshea you go without crossing Prah to Ashyiresu. 19 years ago I had not heard of litigation. I know it now as I have been doing work again.

Re-examined : I was youngest in my company.

I have gone back twice—undisturbed.

No. 22.
Kofi
Kyeikyei,
21st
September,
1949.
Examina-
tion.

Cross-
examina-
tion.

Re-exami-
nation.

No. 23.

KOFI AMUASA.

In the
Supreme
Court
of the
Gold Coast,
Lands
Division.

Defendant's
Evidence.

No. 23.

Kofi
Amuasa,
21st
September,
1949.
Examina-
tion.
Cross-
examina-
tion.

Re-exami-
nation.

8th KOFI AMUASA who is sworn :

I come from Effutu Bereku. I now live at Bawaraso in Koshea for last 25 years. I don't cross Prah from Koshea. I cross the Bawari stream. Ohin of Koshea Defendant's predecessor gave me permission. I have made cocoa farms—15 farms. I paid £2 8/- first for rum. Now I harvest I pay $\frac{1}{3}$ to Ohin. The trees started bearing after 8 years ; until then I paid £1 4/- as sheep. I pay present Defendant : I went on land before his time.

Cross-examined : Ohin was "Korkor" or Prah Agyinsaim III. 10
Okyiami Tawiah took me to land. I am still there in Bawari. I was asked to give evidence about 8 days ago—a bearer came. I heard of case before Provincial Council ; I did not give evidence. I don't know when Defendant came on stool. I have had no dealings with Defendant during 25 years.

Re-examined : Nothing had happened to make it necessary to meet Defendant.

Linguist collects tribute.

No. 24.

Kobina
Ntrakwa,
21st
September,
1949.
Examina-
tion.

Cross-
examina-
tion.

Re-exami-
nation.

Examina-
tion by
Assessor.

No. 24.

KOBINA NTRAKWA.

20

9th KOBINA NTRAKWA who is sworn :

I am the Ohene of Jukwa. I am representing the Omanhene of Denkyira. There has been no wars between Denkyiras and the minor Chiefs of Assin State.

Cross-examined : It's the tradition. We went to war with Koshea, our Safuhene destroyed Koshea. I didn't hear evidence of our representative Kweku Bonsam. I know him. He was Linguist to Benkumhene of Denkyira. I was not sent to say it by Omanhene—it is what I know.

We did not fight with Plaintiffs, we fought with Koshea who then supported Ashanti afterwards. We did not fight Fosu and Swedru. 30
Attendaso and Defendant migrated from Ashanti I don't know where Plaintiff came from or if he is an Etsi. I meant that all met Koshea here. I don't mean Koshea came with Attendaso.

When the war was on the Attendaso had not come. I am giving my tradition not Defendant's. Attendaso never brought the Koshea with them.

Bentum may have said so.

Re-examined : When Ntim Jakare was King the Ashantis were subjects of Denkyiras.

Assessor examines : I have heard of man Amponsem. He was King 40
of Denkyira. The Stool of Denkyira came to Jukwa when we took shelter there.

No. 25.

KOBINA BINFOR.

10th KOBINA BINFOR who is sworn :

I am Ohene of Dompasi in Adansi. I am under Omanhene of Adansi. I am the Border Chief on the Prah. I bound with Attendaso State at Prah, then Koshea at confluence of the Offin and the Prah, from Okorsu, the Kosheas were there all the time, they did not migrate.

Cross-examined : I heard of this tradition a very long time ago. I did not know Plaintiff granted Offin Aboyi Concession. I heard it was
 10 Denkyira and Adansi. Nkotwabasa Concession—I don't know. We did not oppose Nkotwabasa. I say Offin Aboye was granted by Adansi—whatever. The Certificate says there may have been a case before Provincial Council. We have boundary with Koshea as they are in Attendaso. I was told by my predecessor that Defendants did not migrate. I know Koshea have been there all these years. I do not know Plaintiffs granted Koshea to the Defendants.

29th September, 1949.

(Intd.) L. G. L.,
Acting J.

*In the
Supreme
Court of
the Gold
Coast, Lands
Division.*

*Defendant's
Evidence.*

No. 25.
Kobina
Binfor,
21st
September,
1949.
Examina-
tion.
Cross-
examina-
tion.

20

PLAINTIFF'S EVIDENCE (continued).

No. 26.

EKOW SELBY.

29th September, 1949.

EKOW SELBY, still on oath (recalled by Defendant) :—

Cross-examined by Sekyi : I have been on land again and I have had made another plan. I have put in new features underlined in green. I found two burial groves of Defendant. Wawa stumps were pointed out—said to be for canoes. The Defendant also pointed out mahogany stumps. Ashyiresu has cocoa trees claimed by Defendant's tenants. 3¼ feet in
 30 girth. I saw pillars of land purchased by people from Defendant—Pobee and Ogoe (marked " D "). Here there were pillars on the 4 corners. The Defendant pointed out to a stream as boundary at Asenso Bepo. Cocoa farms of Defendant are dotted in green some old some new trees.

Cross-examined by Hyde : About half of Akotwa Basa Concession is on land claimed by Defendant. I compared (marked " B ") Plan in Morkwa's case with my new plan. The boundary now claimed by Defendant is roughly 6,000 feet more to the West than boundary claimed as his by Morkwa.

*Plaintiff's
Evidence
continued.*

No. 26.
Ekow Selby
(recalled),
29th
September,
1949.
Cross-
examina-
tion.

*In the
Supreme
Court of
the Gold
Coast, Lands
Division.*

I saw a new boundary cut. I can't tell if it was an ancient boundary. Defendant said he was having boundary with Morkwa before litigation—the land to the West.

The Defendant said he had no knowledge of existence of concession.

*Plaintiff's
Evidence.
continued*

No. 26.
Ekow Selby
(recalled),
29th
September,
1949,
continued.

*Defendant's
Evidence
continued.*

DEFENDANT'S EVIDENCE (continued).

No. 27.

KOFI ODEE.

No. 27.
Kofi
Odee,
29th
September,
1949.
Examina-
tion.

5th KOFI ODEE who is sworn :—

I live at Bereku. I am a farmer. The Defendant sold me land about 27 years ago. A sale outright. A document was prepared by a Lawyer marked " E ". A year before I was on the land as a tenant. Heard he would claim Ebusa if cocoa started to bear. The cocoa is bearing, I have not been disturbed. It is near Obokrome, and Subiri stream. Pobe is my elder brother—his name is on Exhibit " E ".

Cross-
examina-
tion.

Cross-examined : I saw a tract was cut 19 years ago.

Examina-
tion.

Examined : I asked Defendant who authorised it, he said he did not know.

It touched a small portion of the land I bought. I heard of the litigation but not before Provincial Council of Chiefs. I only heard of this litigation when I was subpoenaed here. I don't know Plaintiff at all, I have not heard of Atradu Ababio.

No one else has cut a track.

I never saw any inspection party of Chiefs of Provincial Council.

Re-exami-
nation.

Re-examined : This track was cut after I had been on land 15 years. I never heard of Plaintiff and Morkwa litigated.

No. 28.
YAW FOSU.

In the
Supreme
Court
of the
Gold Coast,
Lands
Division.

6th YAW FOSU, who is sworn :

I am Chief of Odumase. I also serve Assin Attendaso as linguist. I am here to represent Omanhene. I have been linguist for 25 years. A previous Omanhene made me linguist. I am head Linguist.

Defendant's
Evidence
continued.

Assin Attendaso migrated from Ashanti seven times and returned. They finally settled at Fanti Nyankumasi. The Koshea were at Owirenkyi, they were not migrants—they were original inhabitants known as Etsis.

10 We know nothing of Koshea coming down with us and getting land from Etsis here.

No. 28.
Yaw Fosu,
29th
September,
1949.

Cross-examined : I know Omanhene's personal history to some extent. Defendant never came from Konkomba near Lake Busumtwi. Konkomba is a forest belonging to Omanhene. It was not named after the town from which Defendants migrated. An Omanhene is supposed to know extent of land of his sub-chiefs.

Examina-
tion.
Cross-
examina-
tion.

In fact unless there is a plan made in litigation he cannot know.

The Omanhene may have given boundaries of Koshea in case before Provincial Council. If he said Kosheas came out of bowels of earth, I cannot challenge it. He may have said his people came out of a stream—I cannot challenge him.

The Plaintiff has a triple boundary point with Assin Apimanim and Assin Attendaso. Apimanim and Attendaso met and said there was a boundary between Plaintiff and Defendant ; the Chiefs did not go on land. Attendaso granted a concession called Kwansama Concession 11 years ago.

The Western boundary of the Concession was given as the Offin Aboyi Concession 2103.

I don't know if a notice was served on Plaintiff in this case. I did not hear of it. I did not accompany Omanhene to hearing before Provincial Council. I was in Kumasi. I heard there was an inspection of land.

Seven migrations—we were chased out and returned before the white man came to make peace.

When he came the 7th time he was accompanied by his sub-chiefs, also Omanhene of Assin Apimanim. I deny this was the only time he came down. Plaintiff has boundary with Defendant according to them as stated before Omanhene. I have heard they have boundary.

Previously I did not know. I know the Defendant claimed boundary with Morkwa, I don't know it.

40 *Assessor examines* : There are four other linguists. I know a stream Konkon near Fosu, the forest takes it name from it.

Examina-
tion by
Assessor.

There is a stream Konkon near Akomfudzi with Attendasu State.

I have heard Assins crossed Prah and met at Konkomba and held peace meeting.

*In the
Supreme
Court of
the Gold
Coast, Lands
Division.*

PLAINTIFF'S EVIDENCE (continued).

No. 29.

JOHN TETTEY ODAMETHEY.

JOHN TETTEY ODAMETHEY, still on oath :

*Plaintiff's
Evidence
continued.*

Examined by Hyde : I produce Certificate of Validity of Concession 2099 Cape Coast and Certificate of Validity of Concession 2103.

No. 29.
John
Tetty
Odamey
(recalled),
29th
September,
1949.
Examina-
tion.

Sekyi : Do not relate to land in dispute.

Court : No Certificates but Notices.

Hyde : Will get copies of Certificates.

I produce a Notice of Chief Kwamin Antradu in Kwansama Concession 10 2287, signed by Charles Bannerman, R.D.C. I know his signature.

By Sekyi : Not relevant as does not apply to land in dispute.

Court : I think it proper to allow it as could not be put to witness Yaw Fosu who said he was illiterate (Marked " H ").

Ex. H.

Cross-examination—None.

6th October.

(Intd.) L. G. L.
Ag. J.

No. 30.
Addresses
by Counsel,
10th
October,
1949.

No. 30.

ADDRESSES BY COUNSEL.

20

**IN THE SUPREME COURT OF THE GOLD COAST, LANDS DIVISION
CAPE COAST. MONDAY THE 10TH DAY OF OCTOBER, 1949 BEFORE
MR. JUSTICE LINGLEY, ACTING JUDGE.**

P.C. 5/30. Chief Kobina Sei

v.

Nana Prah Agyinsaim IV.

Hearing resumed.

Exs. F. &
G.

Hyde : Puts in Certificate of Validity 191, 192 (marked F, and G).

Sekyi : Defendant proved his case. The plan left out particulars of Defendant's case. Necessary to put in new plan.

30

(1) Tradition.

(2) Acts of ownership.

Evidence of concession not conclusive. Plaintiff bases his claim on Defendants being strangers and getting grant of land.

“ Came out of Earth ” only means original inhabitants.

Occupation : (1) Girth of cocoa trees.

(2) Exhibit “ E ” 29th September 1945 recitals show arrangement made in 1927 : payment in 1939.

(3) Canoe manufacture.

Hyde : Action in 1930 before Provincial Council.

10 Though Plaintiff has to prove case why did Defendant do nothing. Morkwa brought in their own action.

Paragraph 4 Defence : Claim boundary with Morkwa West African Court of Appeal has declared Morkwa no land there : although Defendant gave evidence in that case : now in box says with Plaintiff. Tradition of no value when in entire conflict with evidence of present day acts.

Anyway most of Exhibit “ E ” land is outside area in dispute £1,600 paid without any other witnesses ?

Defendant only started putting people on land after action to try and establish case.

20 Exhibit “ H ” gives notice to the Plaintiff by Paramount Chief of Defendant. Defendant says he did not know of concessions. Could not give boundary in box.

Court : I notice red mark made by Defendant has been added to since.

Gives reason for cutting boundary as hunting rights.

15th October.

(Sgd.) L. G. LINGLEY,
Ag. J.

No. 31.

OPINION OF ASSESSOR.

30 15th October, 1949.

Hearing resumed.

Assessor : We have seen witnesses, some are tenants : Plaintiff maintains Defendant migrated from somewhere ; there was only one witness from Assin Apimanim who gave evidence for Plaintiff on that point. The Defendant had two independent witnesses to support his case—Denkyira and Adansi. I agree that Defendant is an Etsi. My

*In the
Supreme
Court of
the Gold
Coast, Lands
Division.*

No. 30.
Addresses
by Counsel,
10th
October,
1949,
continued.

No. 31.
Opinion of
Assessor,
15th
October,
1949.

*In the
Supreme
Court of
the Gold
Coast, Lands
Division.*

difficulty is that Plaintiff and Defendant and Morkwa are aborigines—two had litigation and I don't know if Defendant lost his rights to contest his claim as he gave evidence in that case.

Court : I thought I had made that point quite clear to you.

No. 31.
Opinion of
Assessor,
15th
October,
1949,
continued.

Both sides filed a plan : Defendant is not claiming Senchiem so I see no reason why there should be any dispute at all.

Court : Is there any matter of native law and custom on which you feel disposed to assist Court.

Etsi were original inhabitants and consider Plaintiff could only succeed if he called more witnesses to support his tradition that the Defendant migrated there ; so I consider each party has a right to his land. 10

No. 32.
Judgment,
15th
October,
1949.

**No. 32.
JUDGMENT.**

IN THE SUPREME COURT OF THE GOLD COAST, Saturday, the 15th day of October, 1949, before Mr. Justice LINGLEY, Acting Judge.

P.C. 5/1930.

CHIEF KOBINA SEI now substituted by KWAMIN
INTRADU ABABIO Plaintiff

v.

20

NANA PRAH AGYINSAIM IV, Ohene of Koshea . Defendant.

JUDGMENT

I will deal first with the question of tradition as to the history of the Defendant and Koshea people : whether they came from some other part of the country or not. I am not prepared to arrive at a finding on a matter of a historical fact of this kind on the limited evidence permitted at the trial of a land case. In my opinion to decide a question of that kind would require research of a different nature and therefore I am not prepared to make any finding. I consider Plaintiff's evidence as reasonable as that of the Defendant's. But I do not attach the same importance to the question as the assessor who appears to think that the whole case can be disposed of by deciding whether Defendant's people were or were not from Ashanti. 30

I prefer to rely on the evidence of witnesses to more recent events : one has to use the phrase " recent events " but the matter is some 20 years old and one naturally does not find the oral evidence has quite the same freshness as might be expected of witnesses speaking of events that have only recently happened.

I am satisfied, that after hearing all the evidence, that the evidence of the Plaintiff and those of the witnesses he called and his tenants from the land were giving reliable evidence and I accept their evidence as satisfactory.

In my opinion the Defendant and his witnesses who came from the land were not giving satisfactory evidence. In my opinion all those giving evidence for the Defendant as tenants came on the land after this dispute had started.

10 I consider the Defendant's evidence unsatisfactory when describing his boundaries even though one does not expect a chief of a considerable area to give evidence of the minute details of the physical features of his boundary : One notices the discrepancy between the Defendant's present claim and the boundary drawn on the plan in the Mokwa case : he was a witness though not a party.

I consider the evidence about the concession is most material. In my opinion there was no proper attempt by the Defendant to explain it.

In my opinion Exhibit "E" the Conveyance exhibited by the Defendant is of no assistance to the Court.

20 The Defendant called or subpoenaed as witnesses various chiefs of imposing name, but at the hearing only various representatives gave evidence. I am compelled to say that their evidence is not satisfactory.

In my opinion, after hearing all the evidence in the case, the Plaintiff is entitled to the declaration asked for and in my opinion he is entitled to the £100 that he claims in the nature of nominal damages—I have no doubt the actual damage suffered is much greater.

I assess counsel costs at 100 guineas. Other costs to be taxed.

(Sgd.) L. G. LINGLEY,
Acting Judge.

Counsel :

30 Hyde for Plaintiff.
Sekyi and Benjamin for Defendant.

*In the
Supreme
Court
of the
Gold Coast,
Lands
Division.*
No. 32.
Judgment,
15th
October,
1949,
continued.

*In the
West
African
Court of
Appeal.*

No. 33.

GROUNDS OF APPEAL.

IN THE WEST AFRICAN COURT OF APPEAL, Accra.

No. 33.
Grounds of
Appeal,
6th
January,
1950.

Between CHIEF KOBINA SEI, now substituted by
CHIEF KWAMIN ANTRADU ABABIO . . . Respondent
and
NANA PRAH AGYINSAIM . . . Appellant.

The Appellant, being dissatisfied with the Judgment delivered herein on Saturday the 15th day of October, 1949, and having obtained Final Leave to appeal therefrom dated the 30th day of December, 1949, hereby 10
appeals to the West African Court of Appeal upon the grounds hereinafter set forth.

GROUNDS OF APPEAL.

Because

1. Judgment was against the weight of the evidence.
2. The Court did not properly consider the Defendant-Appellant's acts of ownership and long undisturbed possession.
3. The Court was wrong in holding that the Defendant-Appellant's tenants settled on the land after the dispute herein had started.
4. The Defendant-Appellant was able to prove the boundaries of the 20
land he claims in this suit.
5. Both Plaintiff-Respondent and Defendant-Appellant being in possession of the land it was the duty of the trial Judge to have arrived at an affirmative finding on the issue of tradition.
6. The trial Judge overlooked the well-established principle of law that in an action for declaration of title a plaintiff should succeed on the strength of his case and not on the weakness of the case for the defence.

Dated at Cape Coast this 6th day of January, 1950.

(Sgd.) C. F. HAYFRON-BENJAMIN,
,, W. ESUMAN-GWIRA SEKYE,
Solicitors for the Appellant. 30

To the Registrar,
West African Court of Appeal, Accra
and to

The above-named Respondent, ASIN BISIASI.

No. 34.

MOTION for the Substitution of the Name of Kweka Minta Ebu for that of Nana Prah Agyinsaim.

In the West African Court of Appeal.

Filed 17.12.51
at 8.20 a.m.
A. K. T.
for Repr. W.A.C.A.

No. 34.
Motion for the Substitution of the name of Kweku Minta Ebu for that of Nana Prah Agyinsaim, 15th December, 1951.

IN THE WEST AFRICAN COURT OF APPEAL, Victoriaborg, Accra.

IN THE MATTER OF :

10 CHIEF KOBINA SEI, now substituted by
CHIEF KWAMIN ANTRADU ABABIO . Plaintiff-Respondent
V.
NANA PRAH AGYINSAIM IV, Ohene of
Koshea Defendant-Appellant.

APPLICATION

under Rule 42 of the West African Court of Appeal Rules, 1950.

20 MOTION ON NOTICE by Mr. C. F. Hayfron-Benjamin of Counsel on behalf of the Defendant-Appellant herein for an Order of this Honourable Court substituting the name of Kweku Minta Edu, Krontihene of Koshea for that of Nana Prah Agyinsaim as Defendant-Appellant herein and for such further or other Order as to this Honourable Court may seem meet in the premises.

COURT TO BE MOVED on Monday the 17th day of December, 1951, at the hour of 8.30 a.m. of the clock or so soon thereafter as Counsel on behalf of the Defendant-Appellant or the Defendant-Appellant in person can be heard.

Dated at Cape Coast this 15th day of December, 1951.

(Sgd.) C. F. H. BENJAMIN,
Solicitor for Defendant-Appellant.

30 To the Registrar,
West African Court of Appeal, Victoriaborg, Accra,
and

To the above-named Plaintiff-Respondent his Agent or Solicitor.

AFFIDAVIT of Kweku Minta Ebu in Support of Motion.

*In the
West
African
Court of
Appeal.*

No. 35.
Affidavit
of Kweku
Minta Ebu
in support
of Motion,
17th
December,
1951.

Filed 17.12.51
at 8.20 a.m.
A. K. T.
for Regr. W.A.C.A.

IN THE WEST AFRICAN COURT OF APPEAL, Victoriaborg, Accra.

IN THE MATTER OF :

**CHIEF KOBINA SEI, now substituted by
CHIEF KWAMIN ANTRADU ABABIO Plaintiff-Respondent 10**

V.

**NANA PRAH AGYINSAIM IV, Ohene of
Koshea Defendant-Appellant.**

**I, KWEKU MINTA EBU, Krontihene of Koshea in the Assin Attandasu
State of the Western Province of the Gold Coast Colony make oath
and say as follows :—**

1. That Nana Prah Agyinsaim IV, Ohene of Koshea in the Assin Attandasu State aforesaid, the Defendant-Appellant in the above-named Appeal now pending before the West African Court of Appeal, Accra, abdicated about three months ago, and no successor has as yet been 20 appointed.

2. That in and by virtue of my office as the Krontihene of Koshea, I have been appointed Regent of Koshea with the consent and concurrence of the whole Oman of Koshea aforesaid.

3. That by reason of the abdication of Nana Prah Agyinsaim IV the Defendant-Appellant herein, the above-named Appeal has become defective for want of the proper Defendant-Appellant to prosecute the same before this Honourable Court.

4. That I have been duly appointed and authorised by the Oman of Koshea together with the Stool Elders to represent the Stool of Koshea 30 which claims ownership of the land in dispute herein in the above suit in place of Nana Prah Agyinsaim IV.

5. That in the circumstances I swear to this Affidavit in support of the application for an Order of this Honourable Court substituting my name

for that of Nana Prah Agyinsaim IV as Defendant-Appellant herein and for such further or other Order as to this Honourable Court may seem fit in the premises.

In the West African Court of Appeal.

10 Sworn at Accra this 17th day of December 1951, this Affidavit having been first read over interpreted and explained to the Deponent herein who cannot read and write in the Fanti Language by A. A. Nunoo of Accra when he appeared perfectly to understand the same before touching pen and making his mark thereto

KWEKU MINTA EBU

his X mark

No. 35. Affidavit of Kweku Minta Ebu in support of Motion, 17th December, 1951, continued.

Before Me,
(Sgd.) JOHN HAIZEL,
Commissioner for Oaths.

Int. W./M
A. A. NUNOO.

2nd January, 1952.

No. 36.

COURT NOTES granting Substitution.

No. 36. Court Notes granting Substitution, 2nd January, 1952.

IN THE WEST AFRICAN COURT OF APPEAL, Gold Coast Session :

20 *Coram* : FOSTER SUTTON, P., COUSSEY and MANYO PLANGE, JJ.
Motion No. 5.

2.1.52.

CHIEF KWAMIN ANTRADU ABABIO
(Substituted) Plaintiff-Respondent

V.

NANA PRAH AGYINSAIM Defendant-Appellant.

Mr. Benjamin for Applicant.
Mr. Bannerman Hyde for Respondent.

Benjamin—moves—

30 *Bannerman Hyde* : No objection.

Costs—*Bannerman Hyde* : I pointed out when this came before Court on last occasion—they had four months in which to apply for substitution—but they failed to do so.

Application granted. If Respondent successful on appeal costs of to-day fixed at £5.5.0. to him. If Appellant successful on appeal no order as to costs.

(Intd.) S. F. S.
P.

2.1.52.

*In the
West
African
Court of
Appeal.*

No. 37.
Court Notes
of
Arguments,
2nd and 3rd
January,
1952.

No. 37.

COURT NOTES of Arguments.

2.1.52.

CHIEF KWAMIN ANTRADU ABABIO Plaintiff-Respondent

v.

KWEKU MINTA EBU, Krontihene of Koshea
Defendant-Appellant.

Mr. Benjamin for Appellant.

Mr. Bannerman Hyde for Respondent.

Benjamin—

10

Appeal from Judgment of Lingley, J. pages 30–31. Refers to Summons
—and Statement of Claim paragraph 7. paragraph 8.

3.1.52.

Counsel as before.

Benjamin—

Refers to Statement of Claim paragraph 10. Why did they not take
some action about the trespass—

Page 6 of Record Statement of Defence paragraph 6. Evidence of
Surveyor page 15.

Ekow Selby.

20

If two persons are proved to be in possession the person who succeeds
must be the one who can prove a superior title.

Page 30. Judgment—The assessor approached matter from correct
angle page 29.

Omanhene Kewku Dua III v. Omanhene Kwamin Tandoh 1874–1928
P.C. page 109. Reads from Judgment page 110.

*Court—*Page 43. “ maintenance of Concession.” 1 and 2.

We do not call upon Bannerman Hyde.

Appeal dismissed with costs fixed at £24.2.0.

Written Judgment to be filed.

S.F.S.
P.

30

3.1.52.

I concur.

J.H.C.

I concur.

J.S.M.P.

No. 38.
JUDGMENT.

*In the
West
African
Court of
Appeal.*

WEST AFRICAN COURT OF APPEAL General Sitting held at Accra,
5th January, 1952. Cor : FOSTER SUTTON, P., COUSSEY, and MANYO
PLANGE, JJ.

Civil Appeal
No. 7/1950

No. 38.
Judgment,
5th
January,
1952.

CHIEF KWAMIN ANTRADU ABABIO (substituted)
Plaintiff-Respondent

10

v.

KWEKU MINTA EBU, Krontihene of Koshea
(substituted) Defendant-Appellant.

JUDGMENT.

FOSTER SUTTON, P.: In this case the Plaintiff-Respondent claimed for a declaration that he is the owner of certain Forest and cultivated land commonly known as the "Swedru" land, which he alleged was his Stool property. He further claimed the sum of £100 as damages for trespass to the land in question.

20 The Defendant-Appellant denied that the land in dispute was the Plaintiff's Stool land and claimed that he and his predecessors had been in long and undisputed possession of the land in question as owners, and that they had made, and caused to have made, extensive cocoa farms on the land.

The Summons in the suit was issued on the 12th June, 1930, by the Plaintiff's immediate predecessor.

The case was heard about 22 years ago in the Provincial Council of Paramount Chiefs' Tribunal which gave judgment for the Plaintiff. The Defendant appealed and a retrial was ordered on the ground that the Tribunal was not properly constituted.

30 The case eventually came before the Land Court in 1949, and Judgment was given in favour of the Respondent, for the declaration prayed for and "nominal damages" of £100.

In delivering Judgment the learned trial Judge said, inter alia, that he was satisfied, after hearing all the evidence, that the Plaintiff and his witnesses had given "reliable evidence" and that he accepted it, and he went on to say

40 "In my opinion the Defendant and his witnesses who came from the land were not giving satisfactory evidence. In my opinion all those giving evidence for the Defendant as tenants came on the land after this dispute had started."

Clear findings of fact, based on the impression he had formed of the various witnesses when they gave evidence before him.

The learned trial Judge also regarded evidence given by the Respondent of a "Dredging Concession," the Certificate of Validity for which was

*In the
West
African
Court of
Appeal.*

No. 38.
Judgment,
5th
January,
1952,
continued.

admitted in evidence as Exhibit " F," granted by the Plaintiff's predecessor to one William Joseph Crook, on the 10th February, 1907 as " most material." Since the Concession covered a portion of the area in dispute, and was granted by the Respondent's predecessor in 1907, it is hardly surprising that the trial Judge treated it as most material evidence in support of the Respondent's case.

Upon a review of the whole case the trial Judge came to the conclusion that the respondent had established his right to the declaration asked for and I can see no good reason to differ from that view. It follows, therefore, that in my opinion this appeal should be dismissed with costs fixed at 10 £24.2.0d.

COUSSEY, J. : I concur.

MANYO-PLANGE, J. : I concur.



No. 39.
Motion for
Final Leave
to Appeal
to the
Privy
Council,
3rd June,
1952.

No. 39.
MOTION for Final Leave to Appeal to the Privy Council.

Filed 4.6.52
at 8.5 a.m.
A. K. T.
for Regr. W.A.C.A.

**IN THE WEST AFRICAN COURT OF APPEAL, Gold Coast Session, 20
Victoriaborg, Accra.**

A.D. 1952.
W.A.C.A. Civil Appeal No. 7/1950.

CHIEF KWAMIN ANTRADU ABABIO . Plaintiff (Respondent
to Privy Council)

V.

**KWEKU MINTA EBU, Krontihene of
Koshea substituted for NANA PRAH
AGYINSAIM** Defendant (Appellant
to Privy Council). **30**

MOTION
**on Notice for Final Leave to Appeal to Judicial Committee of the Privy
Council.**



TAKE NOTICE that this Honourable Court will be moved by C. F. Hayfron-Benjamin of Counsel for and on behalf of the Appellant herein on Monday the 30th day of June, 1952, at 8.30 a.m. of the clock in the

forenoon or so soon thereafter as Counsel on behalf of the Appellant herein can be heard for Final Leave to appeal from the Judgment of this Honourable Court delivered herein on the 3rd day of January, 1952, to the Judicial Committee of the Privy Council all the Conditions of Appeal imposed by this Honourable Court having been fulfilled within the prescribed time.

Dated at Scos Chambers, Cape Coast, this 3rd day of June, 1952.

(Sgd.) C. F. H. BENJAMIN,
Solicitor for Defendant-Appellant.

10 To the Registrar,
West African Court of Appeal, Victoriaborg, Accra,
and to
The Respondent CHIEF KWAMIN ANTRADU ABABIO of Assin Besease.

*In the
West
African
Court of
Appeal.*

No. 39.
Motion for
Final Leave
to Appeal
to the
Privy
Council,
3rd June,
1952,
continued.

No. 40.

COURT NOTES granting Final Leave to Appeal to the Privy Council.

26th June, 1952.

IN THE WEST AFRICAN COURT OF APPEAL, Gold Coast Session :
CORAM: FOSTER SUTTON, P., COUSSEY, J.A. and WINDSOR-
AUBREY, J.

No. 40.
Court Notes
granting
Final Leave
to Appeal
to the
Privy
Council,
26th June,
1952.

20 Motion :
(13) CHIEF KWAMIN A. ABABIO
V.
KWEKU MINTA EBU.

Motion for final leave to appeal.

Mr. Benjamin for Appellant.

Mr. Bannerman Hyde for Respondent.

Order in terms of motion.

26.6.52.

S. F. S.
P.

Exhibits.

“ F ”
 Certificate
 of Validity
 No. 191,
 21st
 August,
 1907.

EXHIBITS.

Plaintiff's Exhibit “ F.”—**CERTIFICATE of Validity No. 191.**

CERTIFICATE OF VALIDITY.

No. 191. Certificate of Validity.

**IN THE SUPREME COURT OF THE GOLD COAST COLONY,
 CENTRAL PROVINCE, Concession Division (Cape Coast).
 Concession Enquiry No. 2105 (Cape Coast)**

“ **INKOTWABASA DREDGING CONCESSION.**”

Persons at present entitled to the benefit of the said Concession and of
 this Certificate of Validity : 10

William Joseph Crook of Westgate Blundellsands in the County
 of Lancaster, England.

Subject as below the Concession of Chief Kwamin Intredo of Assin
 Bisiasie in the District of Denkerah in the Gold Coast Colony to William Joseph
 Crook aforesaid dated the 10th day of February, 1907, and registered at
 Accra on the 8th day of April, 1907, as No. 29 on pages 413 to 418, Convey-
 ance and Leases Register Book, Volume XVII, to which this Certificate
 is attached and which is signed as relative hereto is hereby declared to be
 valid.

**BOUNDARIES, EXTENT AND SITUATION OF LAND IN RESPECT 20
 OF WHICH THIS CERTIFICATE IS GIVEN.**

The land is situate in the District of Denkerah commonly called
 Upper Wassaw and is known as the “ Inkotwabasa Dredging Concession.”

The boundaries extent and area of the said land are shewn on the plan
 attached hereto and signed as relative hereto.

NATURE OF CONCESSION.

Dredging and Mining with liberty to cut down timber or trees to be
 used for dredging and mining purposes only.

LIMITATIONS IMPOSED BY THE COURT.

The Concession shall not be read and construed so as to deprive any 30
 native of his customary rights as regards shifting cultivation the collection
 of firewood hunting and snaring game on the land or any part thereof and
 such shall be exercised as if the same had been secured by the Concession
 but without prejudice to the rights conferred on the person or persons for
 the time being entitled to the benefit of the Concession and this Certificate
 of Validity.

The Concession shall be read and construed as if the following had
 been therein inserted :—

“ Provided always that if the Lessee shall require in the exercise
 “ of the powers conferred on him by the Concession or for the purpose 40

“ of dredging or mining operations any land or plot under cultivation
 “ he shall make compensation to the owner or owners thereof such
 “ compensation to be ascertained by any two indifferent persons
 “ as arbitrators one of them to be chosen by the owner or owners
 “ and the other by the lessee and in case either of the parties shall
 “ neglect or refuse to name an arbitrator then the party willing to
 “ name an arbitrator shall choose two indifferent persons who if they
 “ cannot agree upon a sum shall appoint an Umpire whose decision
 “ shall be final.”

Exhibits.
 “ F ”
 Certificate
 of Validity
 No. 191,
 21st
 August,
 1907,
continued.

10

RENT.

The rent payable in respect of the Concession shall be £12 per annum and such rent shall continue to be payable until the dredging or mining rent as hereinafter mentioned becomes payable.

The dredging or mining rent shall be two hundred pounds (£200) per annum and shall become payable as soon as the Lessee shall commence actual gold winning operations by means of crushing or other extracting machinery.

All rent of whatsoever kind payable in respect of the said concession shall be paid by quarterly payments on the usual quarter days.

20

MAINTENANCE OF BOUNDARIES.

The Concession shall be read and construed as if the following had been agreed upon between the parties and had been inserted therein.

The Holders of the Concession for the time being shall :—

1. Keep the pillars marking the boundaries in good condition and repair.
2. Keep the name of the Concession or the Holders thereof for the time being legible on each pillar.

Date of final order for issue of Certificate.

20th August, 1907.

30

Given under my hand and the Seal of the said Court at Cape Coast this 21st day of August, 1907.

(Sgd.) A. R. PENNINGTON,
 Judge.

(L.S.)

This Instrument was delivered to me for registration by F. Giles Hunt, Esquire, of Sekondi, this 22nd day of August, 1907, at 10 of the clock in the forenoon.

(Sgd.) FRANK VARDON,
 Registrar of Deeds.

40

This Instrument is registered as No. 24 and is engrossed on pages 60 to 62 of the Register of Certificates of Validity, Volume 3, of November 1906 at Cape Coast.

(Sgd.) FRANK VARDON,
 Registrar of Deeds.

Exhibits.

Plaintiff's Exhibit "G."—CERTIFICATE of Validity No. 192.

"G"
 Certificate
 of Validity
 No. 192,
 21st
 August,
 1907.

No. 192.

CERTIFICATE OF VALIDITY.

IN THE SUPREME COURT OF THE GOLD COAST COLONY, Central
 Province, Concessions Division (Cape Coast).
 Concession Enquiry No. 2106 (Cape Coast)

"OFIN ABOYI OR OFIN SOUTHERN BANK CONCESSION."

Person at present entitled to the benefit of the said Concession and
 of this Certificate of Validity :—

William Joseph Crook of Westgate Blundellsands in the County of 10
 Lancaster, England.

SUBJECT as below the Concession of Chief Kwamin Intreedo of
 Assin Bisiassie in the District of Denkerah in the Gold Coast Colony to
 William Joseph Crook aforesaid dated the 10th day of February, 1907,
 and registered at Accra on the 8th day of April 1907 as No. 28 on pages 406
 to 412, Conveyance and Leases Register Book Volume XVII, to which
 this certificate is attached and which is signed as relative hereto is HEREBY

DECLARED TO BE VALID.

Boundaries, Extent and Situation of land in respect of which this
 Certificate is given. 20

The Land is situate in the District of Denkerah commonly called Upper
 Wassaw and is known as the Ofin Aboyi or the Ofin Southern Bank
 Concession.

The Boundaries, Extent and Area of the said Land are shewn on the
 Plan attached hereto and signed as relative hereto.

NATURE OF CONCESSION.

Mining with liberty to cut down timber or trees to be used for mining
 purposes only.

LIMITATION IMPOSED BY THE COURT

The Concession shall not be read and construed so as to deprive 30
 any native of his customary rights as regards shifting cultivation, the
 collection of firewood, hunting and snaring game on the land or any part
 thereof and such shall be exercised as if the same had been secured by the
 Concession but without prejudice to the rights conferred on the person
 or persons for the time being entitled to the benefit of the Concession and
 this Certificate of Validity.

The Concession shall be read and construed as if the following had been
 therein inserted :—

" Provided always that if the Lessee shall require in the
 " exercise of the powers conferred on him by the Concession or for 40
 " the purpose of mining operations any land or plot under cultivation

“ he shall make compensation to the owner or owners thereof
 “ such compensation to be ascertained by any two indifferent
 “ persons as arbitrators one of them to be chosen by the owner or
 “ owners and the other by the Lessee and in case either of the
 “ parties shall neglect or refuses to name an arbitrator then the
 “ party willing to name an arbitrator shall choose two indifferent
 “ persons who if they cannot agree upon a sum shall appoint an
 “ Umpire whose decision shall be final.”

Exhibits.
 “ G ”
 Certificate
 of Validity
 No. 192,
 21st
 August,
 1907,
continued.

RENTS.

10 The Rent payable in respect of the Concession shall be £12 per annum and such rent shall continue to be payable until the Mining Rent as hereinafter mentioned become payable.

The Mining Rent shall be Two Hundred Pounds (£200) per annum and shall become payable as soon as the Lessee shall commence actual gold winning operations by means of crushing or other extracting machinery.

All rents of whatsoever kind payable in respect of the said Concession shall be paid by quarterly payments on the usual quarter days.

MAINTENANCE OF CONCESSION.

20 The Concession shall be read and construed as if the following had been agreed upon between the parties and had been inserted therein.

The Holders of the Concession for the time being shall :—

1. Keep the Pillars marking the boundaries in good condition and repair.
2. Keep the name of the Concession or the Holders thereof for the time being legible on each pillar.

Date of Final Order for issue of Certificate.

20th August, 1907.

30 Given under my hand and the seal of the said court at Cape Coast this 21st day of August 1907.

(L.S.) A. R. PENNINGTON,
 Judge.

This Instrument was delivered to me for registration by F. Giles Hunt, Esquire, of Sekondi this 22nd day of August 1907 at 10 of the clock in the forenoon.

(Sgd.) FRANK VARDON,
 Registrar of Deeds.

40 This Instrument is registered as No. 25 and is engrossed on pages 63 to 65 of the Register of Certificates of Validity Volume 3 of November, 1906 at Cape Coast.

(Sgd.) FRANK VARDON,
 Registrar of Deeds.

Exhibits. Defendant's Exhibit "C."—LETTER from Chief K. Efikura to Chief Prah Agyinsaim.

"C"

Letter from
Chief
K. Efikura
to Chief
Prah
Agyinsaim,
1st June,
1931.

Omanhene's Office,
Apimanyim State,
Assin Manso.
1st June, 1931.

Recd. 4 June, 1933.

(Sgd.) ? ?
Asst. Regr.
Koshea.

Dear Sir,

10

Please take notice that a Surveyor is appointed by the order of the Divisional Court Cape Coast to survey the Bereku Land which is in dispute between Omanhene of Apimanyim State and Yaw Amuah of Dansami.

I therefore beg to ask you to be ready at the time when exact date will be given you in order that you might be present at the boundary of your property during the proceeding of the survey.

I remain,
Yours Nana
CHIEF KWEKU EFIKURA
Regent,
Apimanim State.

his
X
mark 20

Witness to mark,

(Sgd.) P. R. B. Enchill,
Asst. T. Registrar.

To Chief Prah Agyinsaim,
Assin Koshea,
Attendasu State.



Plaintiff's Exhibit "H."—NOTICE—Concession Enquiry No. 2287 (Cape Coast).

Exhibits.

FORM E.—NOTICE TO PERSONS INTERESTED (Rule 9).

IN THE SUPREME COURT OF THE GOLD COAST, Concessions
Division (Cape Coast).

Concession Enquiry No. 2287 (Cape Coast).

"H"
Notice—
Concession
Enquiry
No. 2287
(Cape
Coast),
17th June,
1938.

To Chief Quamin Intredoo of Assin Bisiasie.

NOTICE of a concession was on the 24th day of November, 1937, filed in the Supreme Court at Cape Coast by Giles Hunt & Co., Solicitors and Agents for Claimant at Sekondi.

10 The concession was with respect to all that piece or parcel of land including the body of all rivers and streams thereon situate south of the Offin River in the Cape Coast District of the Central Province of the Gold Coast Colony containing an approximate area of 1.27 square miles the boundary whereof is as follows :—

20 Commencing at the confluence of the Shedua Stream with the Offin River, approximately Latitude 50 55' N. Longitude 1 34' W., thence along the right or east bank of the Shedua Stream being the eastern boundary of the Kwansama Dredging Concession—Concession Enquiry No. 2274 (Cape Coast) to a point on the said bank distant 1500 feet, measured direct from the nearest point on the Offin River. Thence in an easterly direction parallel to and at no point less than 1,500 feet from the South or right bank of the Offin River aforesaid till it meets the western boundary of the Offin-Aboyi Concession, Certificate of Validity No. 192. Thence in a northerly direction along the boundary of the said Offin-Aboyi Concession till it meets the south or right bank of the Offin River aforesaid. Thence in a westerly direction along the south or right bank of the Offin River to the point of commencement as the same is for purposes of identification only delineated on the plan

30 hereunto and thereon edged pink.

NATURE OF CONCESSION.

The concession confers mining and dredging rights together with other right subsidiary and ancillary thereto.

The terms under which the concession was granted are :—

Term—99 years from 10/10/1937.

Occupation Rent—£67 10/- p.a. by equal quarterly payments on the usual quarter days in each year.

Consideration Money—£100.0.0.

40 Mining Rent—£225 for winning gold metals and minerals by means of dredging or other alluvial mining operations and £225 by means of reef or deep shaft and £375 for diamond and other precious stones.

Exhibits.

“ H ”

Notice—
Concession
Enquiry
No. 2287
(Cape
Coast),
17th June,
1938,
continued.

The concession was granted by Nana Tsibu Darku IX Omanhene of Assin Attandasu and others.

The concession was granted to Gold Coast Selection Trust Limited, Finsbury Pavement House, Moorgate, London, E.C.2.

The Enquiry has been set down for hearing at Cape Coast on the 9th day of July, 1938, at 8.30 a.m.

Dated this 17th day of June, 1938.

(Sgd.) CHARLES A. BANNERMAN,
Registrar,
Divisional Court, Cape Coast. 10

N.B.—You need not attend unless you wish to oppose.

“ E ”

Indenture
between
(1) Nana
Prah
Agyinsaim
and (2)
K. Pobee
and
Another,
29th
September,
1945.

Defendant's Exhibit “ E.”—INDENTURE between (1) Nana Prah Agyinsaim and (2) K. Pobee and Another.

Deeds Registry No. 95/1946.			401745./
Gold Coast	Gold Coast	Gold Coast	Gold Coast
Ten Pounds	Five Pounds	One Pound	One Pound
Stamp Duties	Stamp Duties	Stamp Duties	Stamp Duties
	Gold Coast	Gold Coast	
	One Pound	One Pound	
	Stamp Duties	Stamp Duties	

20

THIS INDENTURE made the 29th day of September in the year of our Lord One thousand nine hundred and fortyfive (1945) Between NANA PRAH AGYINSAIM IV Ohene or Chief and Occupant at date hereof of the Stool of Koshea in the Assin Attandaso State of the Eastern Province of the Gold Coast with the knowledge concurrence and consent of his Principal Subchiefs KWABENA BUSUMPIM, AKWESI ACHIAMPONG, KWAMI APPIAGYAE and some of his Elders and Councillors KWAMI EBBU, KOJO AMPONG, KWAMI EWUAH, KWESI TINKURANG and KOJO DARKWA all of Koshea aforesaid whose knowledge concurrence and consent are required or necessary according to Native Customary Law for the valid alienation or transfer of any land or other property of the Stool of Koshea aforesaid and which knowledge concurrence and consent is testified by the signing of these presents by the said Principal Subchiefs and Elders and Councillors as Witnesses (hereinafter called the Vendor which expression where the context so admits or otherwise requires shall include his successors in office and his assigns) of the One Part and KWESI POBEE and KOFIE OBOE both

30

This is the Instrument marked “A” referred to in the Oath of the withinnamed Paul Buaben Pobee sworn before me this 13th day of February, 1945.

(Sgd.) P. N. DALTON,
Ag. Registrar of Deeds, Accra.

of Awutu Bereku in the Eastern Province of the Colony aforesaid (hereinafter called the Purchasers which expression where the context so admits or otherwise requires shall include the heirs successors according to Native Custom and Assigns of each and both of them) Of the Other Part WHEREAS the Stool of Koshea aforesaid being seized for an Estate in fee simple in possession free from all incumbrances of and being otherwise properly entitled to all that Piece or Parcel of Land hereinafter more accurately described in the Schedule at the end hereof sometime on or about the 14th day of May 1927 through the said Stools then duly appointed and lawful Representative the Vendor herein agreed with the Purchasers herein for the Sale and Conveyance unto the said Purchasers of the Piece or Parcel of Land aforesaid in accordance with Native Customary Law at the price of One thousand eight hundred and eighty-one pounds (£1881) AND IN PURSUANCE of the said agreement and in consideration of Part-payment of the sum of One thousand eight hundred and eighty-one pounds (£1,881) made or paid to the said Vendor by the said Purchasers the said Vendor for and on behalf of the said Stool of Koshea which is the Beneficial Owner and with the knowledge and concurrence of his Principal Sub-chiefs and Elders and Councillors aforementioned Did with the necessary Rites and Ceremonies prevailing according to Native Custom and Usage convey and Gave Possession of the said Piece or Parcel of Land Unto the Purchasers AND the said Vendor at the same time undertook to sign and/or Execute any document deed or instrument that may thereafter be required by the Purchasers to be signed or executed for the better and more perfect assurance of the said Piece or Parcel of Land unto and to the Use of the said Purchasers AND WHEREAS the said Purchasers have remained in undisputed and undisturbed occupation and possession of the said Piece or Parcel of Land from the date of the said Sale and Conveyance of the same to them in accordance with Native Customary Law and having completed the payment of the full Purchase Price as per Receipt annexed to these presents bearing date the 18th day of August 1939 and signed by the Vendor and his said Subchiefs and Elders and Councillors have Now Required and Requested this Formal Deed of Conveyance to be executed by the Vendor for the more perfect assurance of the said Piece or Parcel of Land unto and to the use of the said Purchasers and to perpetuate the sale and conveyance thereof in accordance with Native Custom and Usage NOW THEREFORE THIS INDENTURE WITNESSETH that in pursuance of the said Agreement and in consideration of the said Agreement and in consideration of the said sum of One Thousand Eight Hundred and Eighty-one Pounds (£1,881) paid to the Vendor by the said Purchasers the Vendor for and on behalf of the said Stool of Koshea which is the Beneficial Owner DO HEREBY GRANT AND CONVEY OR CONFIRM the Sale and Conveyance according to Native Custom and Usage already made as aforesaid unto the Purchasers the heirs successors according to Native Custom and Assigns of each and both of them of ALL THAT PIECE OR PARCEL OF LAND situate lying and being at Koshea in the Assin Attendaso State aforesaid the Boundaries Dimensions and Measurements whereof are hereinafter more accurately set out in the Schedule at the end hereof and which are more particularly delineated in the Plan annexed to these presents and are therein edged red TOGETHER with all easements rights liberties rights of way advantages and appurtenances whatsoever to the said Piece or Parcel of Land belonging or appertaining or with the same usually held occupied and enjoyed or reputed

Exhibits.
 " E "
 Indenture
 between
 (1) Nana
 Prah
 Agyinsaim
 and (2)
 K. Pobe
 and
 Another,
 29th
 September,
 1945,
continued.

Exhibits. as part thereof or appurtenant thereto AND ALL THE ESTATE right title
 " E " interest claim and demand whatsoever of the said Stool of Koshea into or
 Indenture upon the same Save and Excepting all Rights to Minerals and precious
 between stones herein Reserved AND ALL THE ESTATE right title interest claim and
 (1) Nana demand whatsoever of the Stool of Koshea aforesaid in to and upon the
 Prah same to HAVE AND TO HOLD the said Land hereby granted or expressed
 Agyinsain so to be unto and to the use of the Purchasers the heirs Successors according
 and (2) to Native Custom and Assigns of each and both of them for ever subject
 K. Pobee however to the Reservation of all rights to Minerals or Precious Stones
 and which may be found upon or under the said Land which shall be held by the 10
 Another, said Purchasers as to One-Third (1/3rd) Share thereof in trust for the
 29th Vendor and the remaining Two-Thirds (2/3rd) Share thereof unto the said
 September, Purchasers and the Vendor doth hereby for himself his Successors in office
 1945, covenant with the Purchasers herein the heirs Successors according to
continued. Native Custom and Assigns of each and both of them that NOTWITH-
 STANDING any act deed or thing by him or by his Predecessors in title done
 or executed or knowingly suffered to be done to the contrary He the
 Vendor now hath good title and right to grant the land hereby granted or
 expressed so to be unto and to the use of the Purchasers the heirs personal
 Representatives and Assigns of each and both of them in manner aforesaid 20
 AND that the Purchasers the heirs Successors according to Native Custom
 and Assigns of each and both of them shall and may at all times hereafter
 peaceably and quietly hold possess occupy and enjoy the said Land and
 receive the rents and profits thereof without any lawful eviction
 interruption claim or demand whatsoever from or by the Vendor or any
 person or persons lawfully or equitably claiming from under or in trust for
 him or from or under his Predecessors in title and that free from all
 incumbrances whatsoever made or suffered by the Vendor or his successors
 in office or any person or persons lawfully or equitably claiming any estate
 or interest in the said land or any part thereof from under or in trust for him 30
 the Vendor prior to these presents and that the Vendor shall and will from
 time to time and at all times hereafter at the request and cost of the
 Purchasers the heirs Successors according to Native Custom and Assigns
 of each and both of them do and execute or cause to be done and executed
 all such acts deeds and things whatsoever for further and more perfectly
 assuring the said land and every part thereof unto and to the use of the
 Purchasers and heirs Successors according to Native Custom and Assigns
 of each and both of them in manner aforesaid as shall or may be reasonably
 required IN WITNESS WHEREOF the parties hereto have hereunto set their
 respective hands and seals the day and year first above written. 40

SCHEDULE hereinbefore referred to.

ALL THAT Piece or Parcel of Forest Land situate lying and being at
 Koshea in the Assin Attendaso State aforesaid and bounded on the North
 by property belonging to the Vendor Stool herein admeasuring One decimal
 point nine six miles (1.96 miles) more or less on the South by the Subri
 Stream admeasuring Two decimal point one Two miles (2.12 miles) more
 or less on the East by Property belonging to Odonkor & Co. and the
 Ahyiresu Stream measuring One decimal point nine eight miles (1.98 miles)
 more or less and on the West by property belonging to the Vendor Stool
 herein admeasuring Two decimal point three one miles (2.31 miles) more 50

or less howsoever otherwise the same may be bounded known described or distinguished and is more particularly delineated on the Plan hereto attached and therein edged Pink and dated 23rd August 1944.

Exhibits.

“ E ”

Indenture
between
(1) Nana
Prah
Agyinsaim
and (2)
K. Pobee
and
Another,
29th
September,
1945,
continued.

SIGNED SEALED MARKED and DELIVERED
by the said Nana Prah Agyinsaim IV for
and on behalf of and as the act and deed
of the Stool of Koshea aforesaid the
foregoing having been first read over
interpreted and explained by Paul B.
Pobee in the Fanti Language to him
when he seemed perfectly to under-
stand the same before making his
mark thereto in the presence of his
Principal Subchiefs Kwabena Busumpim,
Akvesi Achiampong, Kwame Appiagyae
and Elders and Councillors Kwami Ebbu,
Kojo Ampong, Kwami Ewuah, Kwesi
Tinkurang, and Kojo Darkwa as witnesses :—

PRAH AGYINSAIM IV
(L.S.)

20

	Their	
	KWABENA BUSUMPIM	x
	AKWESI ACHIAMPONG	x
	KWAMI APPIAGYAE	x
	KWAMI EBBU	x
	KOJO AMPONG	x
	KWAMI EWUAH	x
	KWESI TINKURANG	x
	KOJO DARKWA	x

30

Witness to marks :
(Sgd.) PAUL B. POBEE
F.O.C.

SIGNED or MARKED SEALED and
DELIVERED by the said Kwesi Pobee
and Kofie Oboe the foregoing having
been first read over interpreted and
explained to them in the Fanti Lan-
guage by Paul B. Pobee when they
seemed perfectly to understand the
same before making their marks
thereto in the presence of

	Their	
}	KWESI POBEE	x (L.S.)
	KOFIE OBOE	x (L.S.)
	Marks	

40

	Their
	KWAW BUABENG x
	KOFI AMONSAH x
	KOFI ANAI x
	Marks

Witness to marks :
(Sgd.) PAUL B. POBEE,
F.O.C.

Exhibits.
 " E "
 Indenture
 between
 (1) Nana
 Prah
 Agyinsaim
 and (2)
 K. Pobe
 and
 Another,
 29th
 September,
 1945,
continued.

On the 13th day of February 1946 at 10.30 o'clock in the forenoon this Instrument was proved before me by the Oath of the withinnamed Paul Buaben Pobe to have been duly executed by the withinnamed Nana Prah Agyinsaim IV.

(Sgd.) P. N. DALTON,
 Ag. Registrar of Deeds, Accra.

(Gold Coast Land Registry)
 Registered as No. 95/1946.

(Sgd.) P. N. DALTON,
 Ag. Registrar of Deeds. 10

In accordance with Section 18 of 179, I certify that in the opinion of the Commissioners of Stamps this Instrument is chargeable with a duty of Nineteen pounds.

Commissioner of Stamps Office
 Accra 20-11-1945.
 (Sgd.) P. L. ADWIN,
 Commissioner of Stamps.

Gold Coast
 Stamp
 Commissioner of
 Stamp Duties.

In the Privy Council.

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

BETWEEN

KWEKU MINTA EBU, KRONTIHENE of Koshea (substituted
for Nana Prah Agyinsaim, Defendant) *Appellant*

AND

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

RECORD OF PROCEEDINGS

A. L. BRYDEN & WILLIAMS,
53 VICTORIA STREET,
LONDON, S.W.1,
Solicitors for the Appellant.

LINKLATERS & PAINES,
6 AUSTIN FRIARS,
LONDON, E.C.2,
Solicitors for the Respondent.