39/1956

No. 5 of 1953.

In the Privy Council.

ON APPEAL

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

BETWEEN

NANA KWEI GYARKU III, Odikro of Ayinasu (substituted for EBUSUAPANYIN KWEKU ABAKA, applicant for substitution in place of the deceased Plaintiff, ODIKRO KOJO ESIAM) . . . *Appellant*

AND

JOSEPH SAM BREW and NANA OBU II, Mankradu of Esiam (substituted for EBUSUAPANYIN KWEKU EDUFUL, deceased, who had been substituted for the Co-Defendant MANKRADU KWAMIN AYEBUAH, deceased) . . . . . *Respondents.*

Case for the Appellant.

RECORD.

1. This is an Appeal from a Judgment of the West African Court of Appeal, dated the 21st December, 1951, in which it was held that there was p. 54. nothing "pending" in a Native Court which was capable of being transferred to the Land Court for adjudication. The appeal came from the Lands p. 47. Division of the Supreme Court at Cape Coast where Mr. Justice Lingley gave judgment on the 17th September, 1949, in these words: "In my opinion this Court has no power to hear the appeal. Appeal dismissed with 7 guineas costs."

2. Proceedings originated in the Native Court "B" of Ayan Denchira and Breman Esiam in the Gold Coast Colony upon some date which does not appear in the Record, the first proceeding recorded being a sitting of the Court on the 11th February, 1947. On that date it is recorded that the then Plaintiff, Odikro Kojo Esiam of Ayinasu, claimed from Joseph Sam Brew of Asafa as Defendant and the then Co-Defendant, Mankradu p. 1. Kwamin Ayebuah of Esiam, the sum of £50 damages for interfering with the Plaintiff's tenants on Plaintiff's land called Ntabilta and the Defendants pleaded that they were not liable.

On the 28th July, 1947, the said Court after hearing the evidence adduced by the parties and their witnesses, found that the land Ntabilta p. 3. in dispute belonged to the Plaintiff.

p. 4. 3. On the 19th September, 1947, the Defendants obtained Final Leave to Appeal to the Native Appeal Court of Ayan-Na-Breman Confederacy
p. 7. which, on the 14th April, 1948, substituted Ebusuapanyin Kweku Eduful of Esiam in place of the said Mankradu Kwamin Ayebuah, deceased, the original Co-Defendant.

p. 7. On the same date the Court set down the case for hearing on the
p. 9, l. 5. 27th April, 1948. A notice and Order of the Court was to be served on the
p. 8. parties accordingly. But in the proceedings of the 27th April, 1948, the Bailiff of the Court in evidence stated that he had been unable to serve the Notice of the Court on the Plaintiff-Respondent who according to the wife and nephew had gone to some place unknown to them for medical treatment.

p. 9. The Court cancelled the Order made on the 14th April, 1948, for the serving of a fresh Hearing Notice on the ground that the Respondent's application for adjournment following the previous notice served on him, dated the 30th March, 1948, was not attached with a medical certificate to prove that he is indeed sick, and his representative, Kweku Essuman, could not prove this at the time he appeared for the Respondent. The
p. 10. Court proceeded with the hearing and on the 3rd May, 1948, allowed the Appeal with costs for both Defendants.

4. On the 7th June, 1948, there was filed a Notice of Motion dated
p. 11. 27th May, 1948, by Odikro Kojo Esiam asking in terms of an affidavit
p. 12. sworn by him on the same date, for the discharge of the decision of the 3rd May, 1948, in his absence and the fixing of a date for the rehearing of the Appeal in terms of Section 51 of the Native Courts (Colony) Ordinance No. 22 of 1944 and for any further order for relief deemed fit in the circumstances.

p. 13. On the 26th June, 1948, an affidavit of Defendant Brew in opposition to the Motion to discharge the Judgment, dated the 3rd May, 1948, was filed.

5. The Native Appeal Court, on the 28th June, 1948, discharged the Judgment, dated the 3rd May, 1948, in consequence of the facts disclosed
p. 17. (A) that the adjournment fee paid by the Plaintiff-Respondent had been accepted by the Registrar and had not been returned for almost two months, and (B) that no hearing notice was served on him. The case was fixed for a rehearing on the 27th July, 1948, by a fresh panel.

p. 20, l. 15. The Plaintiff-Respondent, however, died on the 23rd July, 1948.

An *ex parte* Motion Paper by the Defendants to discharge the Order
p. 17. for rehearing made on the 28th June, 1948, was filed on the 26th July, 1948.

6. On the 27th July, 1948, four days after the Plaintiff-Respondent
p. 19. had died, the Native Appeal Court on hearing the *ex parte* Motion of the Defendants, and purporting to act in view of Section 51 of the Native Courts (Colony) Ordinance, No. 22 of 1944, discharged its Order made on the 28th June, 1948, restored the said Motion of the 27th May, 1948 (i.e., the Notice of which had been so dated), and fixed a hearing for the 14th September, 1948, with Notice to be given to both parties.

7. On the 21st August, 1948, one Kobina Ghan on the authority of his uncle, Kweku Abaka, who was administering the estate of the deceased Odikro Kojo Esiam, swore to an affidavit for the substitution of Kweku Abaka for the said deceased in terms of Section 22 of the Native Court (Colony) Ordinance, No. 22 of 1944. p. 20.

On the same date he swore to an affidavit in support of a Motion to discharge the Order made on the 27th July, 1948. p. 21.

On the 23rd August, 1948, a Motion Paper for the substitution of Kweku Abaka was made by himself. p. 23.

On the 23rd August, 1948, Kweku Abaka also signed a Motion Paper to discharge the Order made on the 27th July, 1948. p. 24.

When the Native Court of Appeal met on the 14th September, 1948, no substitution of Kweku Abaka had been, or was then made, in place of the deceased, who was described as " Plaintiff-Respondent absent." The Native Appeal Court adjourned the case until the 18th September, 1948, and ordered a hearing Notice to be served on the Plaintiff-Respondent. p. 25. p. 26.

When the Court resumed the hearing on the 18th September, 1948, the Court Bailiff in evidence swore that he was unable to find Kweku Abaka and serve him with a hearing Notice either on the 14th or 15th September, 1948.

The Native Appeal Court, however, proceeded to consider (1) Notice of Motion, 23rd August, 1948, by Kweku Abaka, in terms of the affidavit filed, for an Order for his substitution in place of Odikro Kojo Esiam, deceased; (2) Notice of Motion, 23rd August, 1948, by Kweku Abaka, in terms of the affidavit filed, for an Order discharging the Order, made on the 27th July, 1948, for this appeal to be heard and determined by the old panel who are now out of office and not personnel of the Native Appeal Court at this time; (3) Motion on Notice, 28th May, 1948, by Odikro Kojo Esiam, deceased, in terms of affidavit filed, to discharge the Judgment of the 3rd May, 1948. p. 26. p. 20. p. 23. p. 27. p. 24. p. 27. p. 11.

The decision of the Native Appeal Court was in these words :—

> " The Court under these circumstances, finds it expedient to strike out above Motions without costs, and therefore the Judgment delivered by this Court on the 3rd May, 1948, still holds good and firm." p. 28.

8. On the 27th January, 1949, Kweku Abaka filed, in the Land Court of the Supreme Court of the Gold Coast for the Central Judicial Division of the Gold Coast Colony, an *ex parte* Motion Paper for directions that the Appeal pending in the Native Court should be relisted in the Land Court, or alternatively, for an Order or directions to be given (by the Land Court) to the District Commissioner, Cape Coast, to transfer the appeal to the Land Court in order that the application for substitution of the Applicant (Kweku Abaka) might be heard and the appeal might be heard or for both of these directions to be given or for any other order the Land Court might consider expedient. In an Affidavit in support he stated, *inter alia*, p. 29.

p. 30. p. 31. p. 32. p. 31. that Odikro Kojo Esiam had died on the 23rd July, 1948; that no order for his substitution had been made; that he had not been served or given any notice for the hearing of his application for substitution; that the District Commissioner in a letter dated the 24th November, 1948, had declined to transfer the case to the Land Court on the alleged ground that the case had been disposed of by the Native Appeal Court on the 18th September, 1948 (when the Plaintiff-Respondent was not alive and no substitution had been made); that the Order for rehearing made by the Native Appeal Court on the 28th June, 1948, had not been carried out; and that the subject matter being a land case the Land Judge was the proper person to exercise jurisdiction, and not the District Commissioner.

p. 33 to p. 35. p. 36. p. 37. 9. After proceedings in the Land Division of the Supreme Court on the 5th and 19th February, the 5th and 18th March, 1949, Mr. Justice Jackson delivered Judgment on the 18th March, 1949, in which he held that he had no jurisdiction in the circumstances he described to transfer the proceedings in the matter from the Native Appeal Court to the Land Court and so he dismissed the Motion.

p. 37. 10. On the 29th March, 1949, the District Commissioner, sitting in the Magistrate's Court, Cape Coast, on his own Motion, ordered the hearing of the case to be stopped before any Native Court, and as it was a land cause he reported its pendency and circumstances to the Land Judge and sought directions as to the mode and where the case shall be heard and determined.

p. 38. p. 39. On the 2nd May, 1949, Mr. Justice Lingley, under Section 54 (1) (*c*) of the Native Courts (Colony) Ordinance No. 22 of 1944, directed that the cause be transferred by the Magistrate's Court to the Lands Division of the Supreme Court of the Gold Coast for hearing, and an Order of Transfer was made in the Magistrate's Court on the 7th May, 1949.

p. 40. p. 41. 11. On the 10th August, 1949, Counsel for Kweku Abaka, with an Affidavit in support of the same date, signed a Motion Paper for the substitution of Kweku Abaka in place of the deceased original Plaintiff.

p. 42. p. 43. p. 38. p. 45. By a Motion Paper dated the 25th August, and an Affidavit in support, dated the 26th August, 1949, the Defendants asked for the Discharge of the direction of the 2nd May, 1949, made by Mr. Justice Lingley, while on the 2nd September, 1949, the Defendant Brew swore to an Affidavit opposing the substitution of Kweku Abaka.

p. 47. On the 17th September, 1949, Mr. Justice Lingley ruled that he had no power to hear the appeal and dismissed the case with costs.

p. 51. p. 52. p. 54. 12. The West African Court of Appeal, on considering the Grounds of Appeal, and hearing the arguments, on the 21st December, 1951, held that once the Native Appeal Court had dismissed the Appeal [*sic*] it was *functus officio*, Section 51 of the Native Courts (Colony) Ordinance, No. 22 of 1944, did not apply and that the Court therefore had no power to re-open the matter. It was further held that there was nothing "*pending*" which was capable of being transferred to the Land Court for adjudication.

13. On the 26th June, 1952, Final Leave to Appeal to Her Majesty in Council was granted. p. 56.

By an Order in Council dated the 21st June, 1955, Nana Kwei Gyarku III, Odikro of Ayinasu, was substituted in place of Ebusuapanyin Kweku Abaka, applicant, as Appellant and for the Plaintiff, Odikro Kojo Esiam, deceased, and Nana Obu II, Mankradu of Esiam was substituted in place of Ebusuapanyin Kweku Eduful, deceased. p. 57.

14. The humble submissions of the Appellant upon the proceedings hereinbefore set out are summarised in the next four paragraphs.

Paragraphs 15 and 16 deal with the proceedings in the Native Court.

Paragraph 17 deals with the proceedings in the Magistrate's Court and the Supreme Court (Land Court).

Paragraph 18 deals with the proceedings in the West African Court of Appeal.

SUBMISSIONS.

15. On or about the 19th September, 1947, the appeal of the Defendants became a pending appeal in the Native Court and was still pending on the 14th April, 1948, when the Court directed the case to be set down for hearing on the 27th April, 1948, and notice of hearing to be served on the parties to the appeal. p. 4. p. 7.

The appeal could not lawfully be heard until such notice had been served upon the Plaintiff.

Regulations 44, 45 and 49 and 118 and 120 of the Native Courts (Colony) Procedure Regulations.

The Native Court had no power (as it purported to do on the 27th April, 1948) to cancel the order it had made on the 14th April, 1948, directing service of notice of hearing and had no jurisdiction to hear the appeal when it was proved that the Plaintiff had not been duly served with notice of hearing and consequently their purported allowance of the appeal on the 3rd May, 1948, was a nullity (which the Plaintiff was entitled *ex debito justitiæ* to have set aside) and in law the appeal remained unheard. The Court was not *functus officio* (as the Court of Appeal held it was) for it had never made any valid decision. p. 9, l. 5. p. 9, l. 5. p. 8, ll. 20–28. p. 10. p. 55, l. 27.

Furthermore, if the allowance of the appeal were valid, it was not final for, being in the absence of the Respondent, it could not be enforced until a certified true copy had been served on the Plaintiff. There is no evidence that such copy was served.

Native Courts (Colony) Ordinance 1944, s. 51, and Regulations 45 and 49.

If and when such certified copy were served the Plaintiff had the right, under s. 51 of the said Ordinance, to apply to set it aside.

p. 11. The Plaintiff duly made application to set aside the judgment of
p. 17. 3rd May, 1948, allowing the appeal and on the 28th June, 1948, the Court properly and necessarily set it aside and at the same time the Court fixed the 27th July, 1948, for a rehearing.

Upon the death of the Plaintiff on the 23rd July, 1948, the then pending appeal became abated and no further proceedings could be had therein until it had been revived. It could neither be proceeded with nor dismissed before revivor, consequently the Defendants' *ex parte* application of the 26th July, 1948, and the order of the Court thereon
p. 19. of the 27th July, 1948, were incompetent and ineffective to discharge the order of the 28th June, 1948, and to restore the Plaintiff's application of the 27th May, 1948, or for any other purpose. Furthermore, *ex parte* hearing of such application was (if it had been otherwise competent) prohibited by Regulation 37 and the order thereon also on that ground a nullity.

p. 23. The Notice of Motion filed by Kweku Abaka on or about the
p. 24. 23rd August, 1948, asking that he might be substituted for the deceased Plaintiff was necessary and proper and the subsequent notice of motion to set aside the purported order of the 27th July, 1948, was proper to be heard after an order of substitution had been made. Both motions ought to have been granted if Kweku Abaka had appeared to support them.
p. 31, l. 4. But, as he did not, no notice of the hearing of the 18th September, 1948,
p. 26, l. 21. having been duly given, the appeal remained abated. The Native Court
p. 28. l. 12. had no power thereupon to purport to deal again with the deceased Plaintiff's application of the 27th May, 1948, which they had allowed on the 28th June, 1948, or to declare that the judgment (allowing the appeal) of the 3rd May, 1948, still held good and firm.

Notwithstanding these pronouncements the pending appeal still stood abated as from the death of the Plaintiff and it was the order of the 28th June, 1948, setting aside the judgment of the 3rd May, 1948, which in
p. 35, l. 29 and law stood good and firm upon the date when the appellate powers of the
p. 44, l. 4. Native Court were affected, on or about the 2nd October, 1948, by Governor's Order No. 129 of 1948 hereinafter referred to.

16. The history of the jurisdiction of the Native Court is that the Native Court seized of the appeal had been constituted, and jurisdiction allotted to it, under sections 3, 4, 13 and 46 of the Native Courts (Colony) Ordinance, 1944, by Order of the Governor No. 26 of 1945, entitled the Native Courts (Colony) (Constitution of Native Courts) (No. 3) Order, 1945. This Order had the effect of conferring the appellate jurisdiction specified in Section 46 of the Ordinance by the insertion in column 4 of the Schedule of the words " Native Appeal Court." There is no provision in the last-mentioned Ordinance for altering or taking away the appellate jurisdiction so conferred, but the appropriate provision is Section 9 of the Interpretation Ordinance, which provides that any Governor's Order may be amended, varied, rescinded or revoked. The power of variation was exercised by Order No. 129 of 1948 (dated 30th August, 1948, and gazetted on or about 2nd October, 1948), entitled the Native Courts (Colony) (Constitution of

Native Courts) (Variation) (No. 2) Order, 1948, which, in paragraph 3, varies the former Order No. 26 of 1945 by substituting in the said column 4 for the words "Native Appeal Courts" the letter "B" but the Court itself was not abolished though it was to be thereafter not called "Appeal Court." Order No. 129 of 1948 makes no provision for pending appeals but Section 8 (2) (*e*) of the Interpretation Ordinance permits such appeals to proceed, the right of appeal being a right or privilege acquired under Order 26 of 1945 and the actual pending appeal being a legal proceeding or remedy in respect of such right, which this subsection enacts may be continued as if the variation of the Order had not been made. The appeal therefore continued pending but abated in the Native Court. As a pending proceeding it was therefore capable of being transferred to the Supreme Court pursuant to Section 54 of the said Native Courts (Colony) Ordinance.

17. With regard to the proceedings in the Supreme Court before Mr. Justice Jackson, he correctly ruled on the 18th March, 1949, that the Supreme Court had in the circumstances no jurisdiction to transfer the proceeding into the Supreme Court. Though his reason for so ruling is not clear, yet under Section 54 (1) (*c*) of the said Native Courts Ordinance the initiative to lead to such a transfer lies with the Magistrate's Court so that, until that initiative has been exercised, the Supreme Court is not empowered by the Ordinance to direct a transfer to itself. Such initiative was duly exercised by the Magistrate's Court on the 29th March, 1949, and the matter was duly transferred to the Supreme Court by directions given by the Land Judge pursuant to Section 54 (1) (*c*) of the said Natve Courts (Colony) Ordinance. The Ordinance confers no power to question any such Order nor is it appealable under any provision in the West African Court of Appeal Ordinance. It was therefore the duty of the Land Court to act upon such order. The Land Judge was in error in face of that order in holding that the Land Court had no power to hear the appeal and in further error in dismissing the appeal, but should have heard and acceded to the application of Kweku Abaka that he be substituted for the deceased Plaintiff and thereafter the Land Court should have dealt with the appeal according to law. The appeal could not be dismissed until it had been revived and it had not been revived.

p. 29.
p. 37.
p. 47, l. 24.

18. The West African Court of Appeal should have allowed the appeal to them. The Order of Transfer was conclusive that there was a transferable pending appeal, which the Land Court was bound to hear and determine in accordance with the said order of transfer and it was not open to the Land Judge thereafter to question such pendency. Further or alternatively, if that question were not concluded by the said order of transfer, there was actually a pending unheard but abated appeal in the Native Court at all material times, which appeal was a land cause, the hearing of which was duly stopped by the Magistrate's Court and its pendency and circumstances were properly reported to the Land Judge by the Magistrate's Court on the 29th March, 1949, whereupon the Land Judge on the 2nd May, 1949, duly and properly directed the Magistrate to transfer the cause to the Land Court and the Magistrate's Court duly did so, whereupon the abated appeal became pending in the Land Court.

p. 51.
p. 37, l. 35.
p. 38.
p. 39.

p. 54, l. 35 to p. 55, l. 67.

The Appeal Court mistook the facts, for they overlooked the fact that the Plaintiff died on 23rd July, 1948, so that the appeal then abated. This appears from the paragraph in the judgment in which it is stated that on the 28th June, 1948, the unsuccessful Respondent (i.e., the Plaintiff) applied for a rehearing, which was granted and fixed for the 27th July, 1948, and that on two occasions after that the appeal came before the Court on neither of which did the Respondent (i.e., the Plaintiff) put in an appearance, in which circumstances the Native Court withdrew its consent to the rehearing at the same time intimating that the judgment appealed against of the 3rd May, 1948, remained effective. The two occasions referred to in this paragraph were the 14th and 18th September, 1948, when the Plaintiff was dead but the Appeal Court treated him as being capable of putting in an appearance at Court.

p. 55, ll. 9 to 20.

The Appeal Court appear also to be confused as to material dates in the next paragraph but one of their judgment, in which they deal with the question whether it was competent for the Native Court to re-open the case after their judgment of the 3rd May, 1948.

The Court appears to take the view that this was not competent because the Plaintiff was aware that the hearing of the appeal had been fixed for the 27th April, 1948, for which knowledge by the Plaintiff the Court relies upon the Plaintiff having " filed a detailed Reply to Appellant's Grounds of Appeal, pages 54 and 55 of the Record." The reference is to pages of the manuscript record. This Reply has not been printed for the present appeal. It was however dated 21st July, 1948, so the filing has no relevance to whether the Plaintiff in April, 1948, knew the date of the adjourned hearing.

p. iv, index.

On this same point of whether it was competent to re-open the case after the judgment of the 3rd May, 1948, the judgment contains the following as a final reason against such competency :—

> " In my opinion once the Native Appeal Court had dismissed the appeal it was *functus officio*, section 51 of the Native Courts (Colony) Ordinance, 1944, does not apply and the Court, therefore had no power to re-open the matter."

If the Native Court had dismissed the appeal with costs on the 3rd May, 1948, Section 51 would not have applied. But in fact the Native Court had allowed the appeal, and had done so in the absence of the Plaintiff-Respondent, so Section 51 clearly applied, if the decision of the 3rd May, 1948, was otherwise competent and possibly if it were not, but if it were not, the Plaintiff-Respondent would not need to resort to Section 51.

The Court of Appeal do not appear to have observed that the hearing was not competent by reason of the other matters hereinbefore mentioned whereby the decision of the 3rd May, 1948, was a nullity.

p. 55, ll. 30 to 33.

By reason (*inter alia*) of the errors in the judgment of the Court of Appeal, their opinion that there was nothing pending in the Native Court which was capable of being transferred to the Land Court for adjudication is wrong and their consequent decision to dismiss the appeal is also wrong.

19. The Appellant humbly submits that the Judgment of the West African Court of Appeal, dated the 21st December, 1951, which affirmed the Judgment of Mr. Justice Lingley, dated the 17th September, 1949, is erroneous and should be reversed and this Appeal allowed with costs, throughout, for the following, among other,

REASONS

(1) BECAUSE the hearing of the 27th April, 1948, was a complete nullity and the Plaintiff was entitled *ex debito justitiæ* to have it set aside apart from Section 51 of the Ordinance, No. 22 of 1944 :

(2) BECAUSE the Native Appeal Court was not *functus officio*, for it had not made any valid decision :

(3) BECAUSE there is no evidence on the Record that the decision of the 3rd May, 1948, was ever served upon the Plaintiff :

(4) BECAUSE, when he heard that the Appeal hearing was in progress and had gone against him, the Plaintiff rightfully launched his Motion of the 27th May, 1948, asking for relief under Section 51 of the Ordinance, No. 22 of 1944, or such other relief as he was entitled to :

(5) BECAUSE the Native Court of Appeal was bound in the circumstances to set aside the decision of the 3rd May, 1948, and properly did so on the 28th June, 1948, when the hearing was fixed for the 27th July, 1948 :

(6) BECAUSE on the 23rd July, 1948, when the Plaintiff died, the Appeal thereupon abated, but, being pending, proceedings could be taken to revive it and thereafter to proceed to a proper hearing of the Appeal :

(7) BECAUSE, in the absence of revivor, the *ex parte* application of the Defendants on the 26th July, 1948, and the Order made thereon by the Native Appeal Court on the 27th July, 1948, were ineffective to discharge the Order of the 28th June, 1948, and restore the Plaintiff's application of the 27th May, 1948 :

(8) BECAUSE, in the absence of revivor and otherwise, on the 18th September, 1948, the Native Appeal Court after dealing with three motions wrongly decided that the Judgment of the 3rd May, 1948, which had been discharged on the 28th June, 1948, still held good and firm :

(9) BECAUSE the ruling of the West African Court of Appeal, so far as it decided that there was nothing pending after the Judgment of the 3rd May, 1948, was wrong :

(10) BECAUSE the Courts below failed to appreciate, and apply, the relevant Sections and Regulations in the Ordinances which govern procedure and transfers :

(11) BECAUSE there was on the 23rd July, 1948, the date of the Plaintiff's death, a pending Appeal in the Native Appeal Court and such abated Appeal was still pending upon the date when the Native Courts (Colony) (Constitution of Native Courts) (Variation) (No. 2) Order, 1948, came into force and was then awaiting rehearing :

(12) BECAUSE the matter of the said Appeal was duly ordered to be transferred to the Land Court by the direction or order of Mr. Justice Lingley of the 2nd May, 1949 :

(13) BECAUSE it was the duty of the Land Court to determine the Appeal in accordance with the tenor of the Order of transfer of the 2nd May, 1949 :

(14) BECAUSE the Order of transfer could not be set aside nor has it been set aside :

(15) BECAUSE the Land Court had no jurisdiction to dismiss the Appeal upon the 17th September, 1949, as Mr. Justice Lingley purported them to do :

(16) BECAUSE the Land Court upon the said 17th September, 1949, ought, on the application of the Plaintiff by Notice of Motion dated the 10th August, 1949, to have revived the matter by substituting Kweku Abaka for the original Plaintiff Kojo Esiam, so that the Appeal might be determined in accordance with Section 52 (2) of the Native Courts (Colony) Ordinance, 1944.

T. B. W. RAMSAY.

J. T. WOODHOUSE.

No. 5 of 1953.

In the Privy Council.

ON APPEAL

from the West African Court of Appeal
(Gold Coast Session)

BETWEEN

NANA KWEI GYARKU III, Odikro of Ayinasu (substituted for Ebusuapanyin Kweku Abaka, applicant for substitution in place of deceased Plaintiff, Odikro Kojo Esiam) . . . . *Appellant*

AND

JOSEPH SAM BREW and NANA OBU II, Mankradu of Esiam (substituted for Ebusuapanyin Kweku Eduful, deceased, who had been substituted for the Co-Defendant Mankradu Kwamin Ayebuah, deceased) . . . *Respondents.*

Case for the Appellant

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6 Victoria Street, S.W.1. WL5661–17928