

Judgment
39, 1956

In the Privy Council.

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

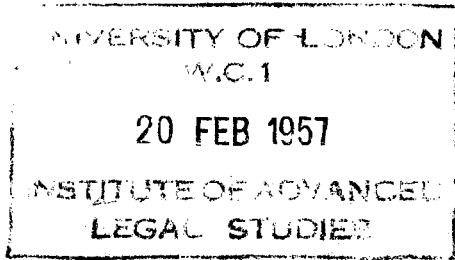
BETWEEN

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.

RECORD OF PROCEEDINGS



A. L. BRYDEN & WILLIAMS,
53 Victoria Street,
London, S.W.1,
Solicitors for the Appellant.

ASHURST, MORRIS, CRISP & CO.,
17 Throgmorton Avenue,
London, E.C.2,
Solicitors for the Respondents.

20 FEB 1957

46081

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.*

RECORD OF PROCEEDINGS

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In the Privy Council.

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

BETWEEN

10 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.*

RECORD OF PROCEEDINGS

No. 1.

CLAIM AND PROCEEDINGS.

20 IN THE NATIVE COURT " B " OF AYAN DENCHIRA AND BREMAN
ESIAM CAPE COAST DISTRICT, Western Province, Gold Coast
Colony, held at Nkwantanum, on the 11th February, 1947.

Present :—

ADONTEHENE EWUSI KWANSA III, President.
KOJO ANAN, Councillor.
KOFI MANSU, Linguist.

ODIKRO KOJO ESIAM of Ayinasu Plaintiff

v.

JOSEPH SAM BREW of Asafa Defendant

30

and

MANKRADU KWAMI AYEBUAH for himself and
on behalf of NSONA FAMILY of Esiam Co-Defendant.

Plaintiff claims from the Defendant the sum of £50 damages for
enterfering with the Plaintiff's tenants on Plaintiff's land called Ntabilta. [sic]

*In the
Native
Court " B "*
*of Ayam
Denchira
and Breman
Esiam.*

No. 1.
Claim and
Proceed-
ings, 11th
February
1947.

*In the
Native
Court "B"
of Ayan
Denchira
and Bremen
Esiam.*

No. 1.
Claim and
Proceed-
ings, 11th
February
1947,
continued.

Plaintiff present.

Defendant present.

Co-Defendant present.

Plea :—Not liable by Defendant and Co-Defendant. Co-Defendant Kwami Ayebuah represented by his nephew G. K. Appiah raised the following preliminary objections.

1. That the suit herein has connection with Ntabilta land.

2. That the word interference used by the Plaintiff knows that the Defendant Joseph Sam Brew has no interest of the *of the* land Ntabilta.

3. That according to the affidavit sworn by Odikro Kojo Esiam the 10 Plaintiff herein paragraph 8 thereof Plaintiff claims ownership of the land Ntabilta.

4. That there is no specific boundary shown on the writ of the summons.

5. In view of the above I pray that the action be struck off with cost.

Plaintiff contra on replies as follows :—

1. That the land Ntabilta is my own land.

2. That my cause of suing for interfering with tenants my land is based on the oath sworn upon my tenants by the Defendant Joseph Sam Brew to enter into agreement with him. 20

3. I affirm again in support of my affidavit that the land is mine.

4. I sued the Defendant Joseph Sam Brew for interfering with my tenants on my land Ntabilta because the Defendant herein has no land in that vicinity that I should point out those with whom I form *boundary*. That in view of the evidences above my action should not be struck off. 20

Ruling :

After due examinations of the points raised by the Co-Defendant and the replies given by the Plaintiff this Court sees no reason why the case *what* has something to do with the interference of Plaintiff's tenants should not be heard submissions by Co-Defendant are therefore overruled and 30 case is set down for hearing on Friday the 14th February, 1947, at 8.30 a.m. by the order of the Court.

(Marked) ADONTEHENE EWUSI KWANSA II,

President.

Witness to Mark

(Sgd.) D. F. YANKSON,

Registrar.

[sic]

[sic]

[sic]

[sic]

No. 2.

JUDGMENT.

*In the
Native
Court " B "*
*of Ayan
Denchira
and Breaman
Esiam.*

No. 2.
Judgment,
28th July
1947.

Judgment :

This Court after hearing the evidence adduced by the parties and their witnesses found that the land Ntabilta in dispute belongs to Plaintiff, on the reason that if the land alleged to have been sold by Co-Defendant Kwami Ayebua to Joseph Sam Brew is really true the Ebusa usually collected from tenants working on the land would be paid to Joseph Sam Brew the Defendant herein, or reference would be made by Joseph Sam
10 Brew to Mankradu Kwami Ayebuah (Co-Defendant) to resort to action if the workmen were doubt of the outright sale of the land to him.

The £50 paid by Defendant Joseph Sam Brew to the Plaintiff for delivery of Plaintiff's portion of the land to him upon arrangement effected between themselves apparently shows that Plaintiff is the possessor of Ntabilta land in dispute and not owned by Mankradu Kwami Ayebuah (Co-Defendant). If the land in dispute *if* owned by Co-Defendant Kwami Ayebuah he would have taken an action for trespass or declaration of title or otherwise since land rents Ebusa etc. are not paid to him over 40 years ago. [sic]

Plans tendered in evidence are not plans between Plaintiff and
20 Defendants but are plans between Efilfa and Okroo which Court places no reliance.

This Court enters judgment for Plaintiff with costs to be taxed, and orders that every amount collected as Ebusa by Official Receivers under Injunction Order and deposited with the Treasury be withdrawn by the Plaintiff.

(Marked) ADONTENHENE EWUSI KWANSAH II, [sic]
President.

28.7.47.

Witness to mark

30 (Sgd.) D. F. YANKSON,
Registrar.

GRANT OF FINAL LEAVE TO APPEAL.

*In the
Native
Appeal
Court of
Ayan-na-
Bremam
Confederacy.*

IN THE NATIVE APPEAL COURT OF AYAN-NA-BREMAN CONFEDERACY, Cape Coast District, Western Province, Gold Coast Colony, held at Bremam Esiam Ahinfié this 19th September, 1947.

No. 3.
Grant of
Final Leave
to appeal,
19th
September
1947.

Present :

- Nana KWA BOM III, President.
- „ HAMMAH III, Councillor.
- „ YANFUL II, „
- „ KOBINA ESIEDU, Regent, Ayanmaim State, „ 10
- W. A. MENSAH, Omankyeame.

IN THE MATTER of :—

ODIKRO KOJO ESIAM of Ayinasu . . . Plaintiff-Respondent
v.
 JOSEPH SAM BREW of Asafa . . . Defendant-Appellant
 and
 MANKRADO KWAMIN AYEBUAH for himself and
 on behalf of NSONA FAMILY of Esiam Co-Defendant-Appellant.

Movers present.

Motion Exparte by Defendants herein or by their representative for an order granting leave to appeal from the judgment delivered herein on the 28th day of July 1947, as on under Regulation 118 of the Native Courts Regulation No. 22 of 1944, conditions imposed upon Appellants as under Regulation 117 of the same Regulation having been duly fulfilled by the Appellants within the specified time. 20

By the Court :—

As Conditional leave to appeal is completed with within time, Final leave to appeal from the judgment delivered by the Native Court “ B ” of Ayan-Denchira and Bremam Esiam on the 28th July 1947, is hereby granted and the case is fixed for hearing on the 27th October 1947, at 8.30 a.m. 30

(Sgd.) KWA BOM III,
President.



PROCEEDINGS.

IN THE NATIVE APPEAL COURT OF AYAN-NA-BREMAN CONFEDERACY, Cape Coast District, Western Province, Gold Coast Colony, held at Breman Esiam Ahinfie this 27th October, 1947.

In the Native Appeal Court of Ayan-na-Breman Confederacy.

No. 4. Proceedings, 27th October 1947.

Present :—

Nana KWA BOM III, President.

„ HAMMAH III, Councillor.

„ YANFUL II, „

10 Regent KOBINA ESIEDU, „

W. A. MENSAH, Omankyeame.

IN THE MATTER of :—

ODIKRO KOJO ESIAM of Ayinasu, Plaintiff-Respondent-Appellant

v.

JOSEPH SAM BREW of Asafa Defendant-Appellant-Respondent

MANKRADO KWAMIN AYEBUAH for himself and on behalf NSONA FAMILY of Esiam Co-Defendant-Appellant-Respondent.

20

MOTION ON NOTICE.

PLEASE TAKE NOTICE that the Native Appeal Court Ayan Na Breman Confederacy will be moved by the Plaintiff-Respondent herein for an order reversing, varying or discharging its order made herein granting interim Injunction and appointing Official Receivers herein and for such further or other order as to the Native Appeal Court may seem fit in the premises.

Mover present.

Opposers present.

30 Defendants-Appellants-Respondents represented by George Kojo Appiah raised the following preliminary objections.

1. That the application by Plaintiff-Appellant herein or mover for an order discharging the Interim Injunction Order granted on the 28th August, 1947, should have been filed within time as under Section 51 of the Native Courts (Colony) Ordinance in view of the fact that a copy of the said Order was served on the mover on the 2nd September, 1947, by Police of this Court by name Samuel Akyirefie, and Application to set aside such order should have been filed within one month's time, from date

December, 1947, the Co-Defendant Mankrado Kwamin Ayebuah passed away and as his successor Kwamina Esie III has not yet been Gazetted he as head of Co-Defendant's family prays that his name be substituted as legal representative of the Co-Defendant to enable him to prosecute the appeal pending before this Court.

*In the
Native
Appeal
Court of
Ayan-na-
Bremam
Confederacy.*

By the Court :—

Upon hearing Kweku Eduful in person this *Courts* finds it expedient and necessary that while Co-Defendant's successor Kwamina Essie III is not yet Gazetted, Kweku Eduful who is the recognise head of the
10 Co-Defendant's Family be substituted and the title of this case should now read as follows :—

No. 5.
Proceed- [sic]
ings, 14th
April 1948, [sic]
continued.

Odikro Kojo Esiam of Ayinasu . . . Plaintiff-Respondent

v.

Joseph Sam Brew of Asafa . . . Defendant-Appellant

and

Ebusuapenin Kweku Eduful for himself and on
behalf of Mankrado's Nsona Family of Esiam
Co-Defendant-Appellant.

George Kojo Appiah is hereby allowed to represent present
20 Co-Defendant in prosecuting the appeal as before.

This case is set down for hearing on the 27th April, 1948, at 8.30 a.m.

Notice and the order of this Court to be served on the parties accordingly.

(Sgd.) KWA BOMM III,
President.

W/Signature,
(Sgd.) D. F. YANKSON,
Registrar.

PROCEEDINGS.

*In the
Native
Appeal
Court of
Ayan-na-
Bremam
Confederacy.*

—
No. 6.
Proceed-
ings, 27th
April 1948.

IN THE NATIVE APPEAL COURT OF AYAN-NA-BREMAN
CONFEDERACY, Cape Coast District, Western Province, Gold Coast
Colony, held at Esiam Ahinfié this 27th April 1948.

Present :—

Nana KWA BOM III, Omanhene, President.
KOJO KURANTSIN II, Nkyidomhene, Councillor.
W. A. MENSAH, Omankyeame, ”

IN THE MATTER of :—

10

ODIKRO KOJO ESAM of Ayinasu . . . Plaintiff-Respondent

v.

JOSEPH SAM BREW of Asafa . . . Defendant-Appellant

and

EBUSUAPENIN KWEKU EDUFUL for himself and
on behalf of MANKRADO NSONA FAMILY of Esiam
Co-Defendant-Appellant.

Plaintiff-Respondent absent—both Appellants present.

By the Bailiff of this Court :

On the 22nd April, 1948, I was sent to serve the order of this Court 20
made in the above case together with hearing notice but owing to heavy
fall of rain I slept at Esupa village and reached Ayinasu the village of
Plaintiff-Respondent on the 23rd April, 1948. I went to the Respondent's
house and met his wife Adjuah Beduah and his nephew Kwesi Nkrumah
who told me that Plaintiff-Respondent had been away to a place unknown
to them for medical treatment under the circumstance I returned to the
Office with the order and the notice attached with Official receipt for 5/-
being adjournment fee.

By George Kojo Appiah representing Defendants-Appellants :

I submit that Plaintiff-Respondent letter dated 9th April 1948, 30
applying for adjournment was not supported with medical Certificate
proving that he is sick.

[sic] 2. That if it impossible for Plaintiff-Respondent to secure medical
Certificate in prove of his illhealth or indisposition vide his letter of the
9th April 1948, he should be in his house for the bailiff of this Court to
personally witness and thereupon make his report to this Court to take
effect.

[sic] 3. Plaintiff-Respondent intentional applied for an adjournment with
intent to defeat the cause of justice or delay delivery of judgment. In

view of the above I submit that order made by this Court instructing that fresh notice be served on the Plaintiff-Respondent should be rescinded to enable this Court to hear the Appeal *exparte*.

By the Court :

The order made by this Court on the 14th April 1948, that a fresh hearing notice should be served on Respondent before the appeal could be heard is hereby cancelled on the ground that as the Respondent's application for adjournment following the previous notice served on him that is notice dated 30th March, 1948 was not attached with medical
 10 Certificate to prove that he is indeed sick and moreover as his representative Kweku Essuman could not prove that Respondent was at the time he appeared on his behalf, there is nothing to support Respondent's application. And as fact reveals now the Respondent's whereabouts could not be traced this Court is convinced that there is no *true* in his application for adjournment, and there is no reason why hearing of the appeal should be suspended indefinitely hearing of the appeal must therefore *proceeds* forthwith.

*In the
Native
Appeal
Court of
Ayan-na-
Breman
Confederacy.*

No. 6.
Proceed-
ings, 27th
April 1948,
continued.

[sic]

[sic]

1. Application for leave to appeal dated 28th July, 1947, filed on 26th July, 1947.

2. Conditions of appeal granted 28th August, 1947 fulfilled within
 20 time allowed.

3. Final Leave to appeal granted 19th September 1947 Appellants filed 17 grounds.

(George Kojo Appiah representing Defendant-Appellants submits arguments.)

No. 7.

PROCEEDINGS.

(Title and Judges as in No. 6.)

No. 7.
Proceed-
ings, 28th
April and
3rd May
1948.

Plaintiff-Respondent absent.

Both Appellants present.

30 (Hearing resumed from adjournment and George Kojo Appiah representing both Appellants continues his arguments.)

JUDGMENT (Extract).

In the
Native
Appeal
Court of
Ayan-na-
Bremen
Confederacy.

Judgment :

No. 8.
Judgment
(Extract),
3rd May
1948.

This is an Appeal from the judgment of Native Court " B " of Ayan Denchira and Bremen Esiam dated 28th July 1947 wherein the Plaintiff-Respondent claims from the Defendant the sum of £50 damages for interfering with the Plaintiff's tenants on Plaintiff's land called Ntabilta.

* * * * *

[sic]

This Court is satisfied that Efilfa whose name is repeatedly mentioned in this dispute had never litigated with the Co-Defendant over the land in dispute and won which would have given him right to *allineate* his title to Plaintiff and this Court wonders why Plaintiff did not subpoena such a man to corroborate his allegation. This Court is also satisfied that Plaintiff himself had not ever litigated with Co-Defendant or with the Defendant Joseph Sam Brew over this land and won which would have given him right to make his claim. There is therefore no evidence on record supporting him in any way. In the absence of any proof from the Plaintiff as the onus was on him and not on the Defendant. This Court is fully convinced and satisfied that in-as-much as he himself had not placed a *simple tenants* on Ntabilta land to work for him prior to M'Carthy's settlement he had no right to collect Ebusa as he did notwithstanding Efilfa had left the land as M'Carthy's settlement has no effect on that land nor does it empower Plaintiff to seize upon it as his own.

[sic]

This action therefore must fail.

It was necessary therefore for Defendants evidence to be adduced as the Plaintiff himself failed to make a case against them. In view of Plaintiff's own admission there was nothing more needed for Court below to believe that Co-Defendant was the owner of the land in dispute and what prevents him from conveying a portion of this land to Defendant Joseph Sam Brew and for the Defendant Joseph Sam Brew to hold a portion as Beneficial *owners*. This Court fails to find on record.

[sic]

On the whole the inferences made by Court below as this Court finds, were all wrong. In the circumstances appeal is allowed with costs for both Defendants, i.e. costs in this Court and Court below to be taxed. Court below to carry.

This Court orders that all Ebusa collected and deposited with Court below must be withdrawn by Appellants. Injunction Order granted by this Court is hereby discharged.

(Sgd.) KWA BOM III,
President.

Witness to Signature,
(Sgd.) D. F. YANKSON,
Registrar.

40

No. 9.

MOTION PAPER BY PLAINTIFF TO DISCHARGE JUDGMENT.

Filed 7/6/48.

Fee paid C.R.

(Sgd.) M. Anthony Taylor,
Registrar.*In the
Native
Appeal
Court of
Ayan-na-
Bremam
Confederacy.*No. 9.
Motion
paper by
Plaintiff to
discharge
judgment,
27th May
1948.IN THE NATIVE APPEAL COURT OF AYAN-NA-BREMAN
CONFEDERACY, Western Province, Gold Coast.

IN THE MATTER of :—

10 ODIKRO KOJO ESLAM of Ayinasu . . . Plaintiff-Respondent
v.
JOSEPH SAM BREW of Asafa . . . Defendant-Appellant
and
EBUSUAPANYIN KWEKU EDUFUL substituted
for MANKRADO KWAMIN AYEBUAH, deceased
Co-Defendant-Appellant.

MOTION ON NOTICE.

MOTION ON NOTICE by Odikro Kojo Esiam the Respondent-Applicant herein asking in terms of the Affidavit filed in support of this
20 Motion that this Native Appeal Court may be pleased to discharge the decision delivered herein in the absence of the Respondent herein and a date to be fixed for the re-hearing of the Appeal in terms of Section 51 of the Native Courts (Colony) Ordinance No. 22 of 1944, and for any further order or relief as to this Native Appeal Court may seem fit to make in the circumstances.

Court to be moved on Monday the 28th day of June 1948 at 9 of the Clock in the forenoon or so soon thereafter as the Applicant can be heard.

Dated at Cape Coast this 27th day of May, 1948.

(Marked) ODIKRO KOJO ESLAM,

Respondent-Applicant herein.

30

The Registrar,
Native Appeal Court, Ayan-Na-Bremam Confederacy,
Western Province,
Gold Coast.

(2) To the above-named Defendant-Appellant Joseph Sam Brew,
Asaafa.

(3) Ebusuapanyin Kweku Eduful,
Esiam.

Witness to mark,
(Sgd.) J. AKYIR MENSU,
Licensed Letter Writer
No. 22850.

40 W/W

*In the
Native
Appeal
Court of
Ayan-na-
Breman
Confederacy.*

**AFFIDAVIT OF PLAINTIFF IN SUPPORT OF MOTION TO DISCHARGE
JUDGMENT.**

(Title as No. 9.)

No. 10.
Affidavit
of Plaintiff
in support
of Motion
to discharge
judgment,
27th May
1948.

AFFIDAVIT OF ODIKRO KOJO ESIAM THE PLAINTIFF-RESPONDENT HEREIN
IN SUPPORT OF MOTION ASKING THIS APPEAL COURT TO DISCHARGE
THE DECISION MADE HEREIN IN THE ABSENCE OF THE RESPONDENT
HEREIN IN TERMS OF SECTION 51 OF THE NATIVE COURT (COLONY)
ORDINANCE No. 22 OF 1944, AND FOR A DATE TO BE FIXED FOR
RE-HEARING OF THE SAID APPEAL.

10

I, ODIKRO KOJO ESIAM of Ayinasu in the Ajumaku State of the
Western Province of the Gold Coast Colony now at Cape Coast,
make oath and say as follows :—

1. That I am the Respondent in the above appeal suit which was
determined by the Appeal Court in my absence.

2. That when the date was fixed for hearing of the appeal in the
first instance I applied for an adjournment with the prescribed fee of 5/-
on grounds of ill-health.

3. That the application for an adjournment was entertained and
my bearer was informed that due notification of the next hearing date
would in due course of time be notified to me.

20

4. That owing to my ill-health I have travelled to this town for
medical treatment and I have been still under treatment as I am being
attended to by Doctor Mercer Ricketts, Medical practitioner.

5. That no further Hearing Notice was served on me since my
application for an adjournment.

6. That information reached me on Friday the 30th day of April
1948, that the appeal case was being heard by the Appeal Court when I
had received no Hearing Notice from the Registrar of the said Appeal
Court, and I immediately sent a special bearer with Medical Certificate
from Doctor Mercer Ricketts testifying to my inability to attend the
Appeal Court on health reasons even though no previous notice had been
served on me.

30

7. Information reached me afterwards that the Appeal had been
heard and determined in my absence and judgment had been delivered
against me.

8. That I am aggrieved by the decision delivered herein in my
absence.

9. That I swear to this Affidavit in support of Motion asking this
Native Appeal Court to be pleased to make an order to discharge the

40

said decision in terms of Section 51 of the Native Courts (Colony) Ordinance No. 22 of 1944, and a date fixed for the re-hearing of the appeal and for any further order or relief as to this Native Appeal Court may seem fit to make in the circumstances.

In the Native Appeal Court of Ayan-na-Breman Confederacy.

10 Sworn at Cape Coast by the said Odikro Kojo ESIAM this 27th day of May, 1948, after the contents of this affidavit had been read over and interpreted to him in the Fanti Language by Joseph Ashong of Cape Coast, first duly sworn to interpret the same to him and whom seemed perfectly to understand the same before making his mark thereto in my presence

(Marked)
ODIKRO KOJO ESIAM

No. 10. Affidavit of Plaintiff in support of Motion to discharge judgment, 27th May 1948, *continued.*

Before Me,

(Sgd.) CHARLES A. BANNERMAN,

Commissioner for Oaths.

No. 11.

AFFIDAVIT OF DEFENDANT BREW IN OPPOSITION TO MOTION TO DISCHARGE JUDGMENT.

20

Filed 26/6/48.

Fee pd. C/R 442.

(Sgd.) D. F. Yankson,

Registrar.

No. 11. Affidavit of Defendant Brew in opposition to Motion to discharge judgment, 26th June 1948.

(Title as No. 9.)

AFFIDAVIT OF JOSEPH SAM BREW IN REPLY TO RESPONDENT'S APPLICATION FOR ORDER OF RE-HEARING OF APPEAL AS ABOVE.

I, JOSEPH SAM BREW otherwise Annobil II of Asaafa in the Ekumfi State in the Western province of the Gold Coast make Oath and say :—

30 1. That I am the Defendant-Appellant in the above appeal from the Native Court "B," Nkwantanum, which was heard before the Native Appeal Court of Ayan-Na-Breman Confederacy, at ESIAM and judgment was delivered on the 3rd day of May, 1948.

2. That the appeal was set down for hearing on the 13th April 1948, and was adjourned to 27th April 1948, at the open Court when the

*In the
Native
Appeal
Court of
Ayan-na-
Bremen
Confederacy.*

Respondent's representative Kweku Esuman was present, and latter, I was served with a Hearing Notice as final confirming the same date, although Respondent applied for adjournment as per his application dated 9th April, 1948, when he was notified to appear on the 13th April, 1948, but his application was refused as no medical certificate was attached to that application.

No. 11.
Affidavit
of
Defendant
Brew in
opposition
to Motion
to discharge
judgment,
26th June
1948,
continued.

3. That fresh hearing notice issued for 27th April, 1948, and that the Court Bailiff attempted to serve same on the Respondent but he did not succeed as although he visited his village Ayinasu, and he was not found for the purpose, whereas he had then notified the Court, vide his letter dated 9th April, 1948 and Respondent had emphatically stated in it that " he could not move at present " as actual words expressed by him. 10

4. That hearing actually commenced on 27th April, 1948, and continued up to 3rd May, 1948, when an envelope was received by the Registrar of the Court enclosing a medical certificate from Dr. Ricketts concerning one Chief Assam but as there was no Chief Assam in any cause or matter pending before the Appeal Court, the certificate was ordered to be returned to Dr. Richetts.

5. That judgment in the appeal was delivered on the 3rd May, 1948, and a copy was served on Respondent on the 8th June, 1948, or thereabouts 20 by the Police of the Court.

6. That I swear to this affidavit for myself and on behalf of the Co-Defendant Abusuapenin Kweku Eduful, opposing the application for re-hearing on the grounds—

(A) That the Respondent deceived the Court that he was lying down and could not move from his village as vide his letter dated 9th April, 1948, whereas it was not true ; and that this is a second time that Respondent had told a lie to the Court since this action began from the Court " B " as he once deceived the Court " B " that he was having a case at the Supreme Court, Cape Coast, for 30 hearing on the same date when this was to be heard at the Court " B " whereas there was no such case pending before that Court in which Respondent was a party and a record of such incidence is in custody of Court " B " now, and were brought to the notice of the Appeal Court when Respondent applied to the Court that he was sick and there was no medical certificate to prove same.

(B) That Respondent knew the appeal was to be heard on 27th April, 1948, as the adjournment was made at the open Court and his representative Kweku Esuman was present. 40

(C) That if Respondent did not pretend to be ill and refrained from attending the Appeal Court when he was served with notice to appear as he thought that that would prevent the appeal Court from hearing the appeal, he would have notified the Court of his whereabouts when he left his village for medical treatment as stated

in his Affidavit if it was really true that he was sick and he was indeed expecting a fresh hearing notice from the Court pending his application for adjournment.

*In the
Native
Appeal
Court of
Ayan-na-
Bremen
Confederacy.*

10 (D) That the Bailiff who attempted to serve a hearing Notice on Respondent thus confirming the open Court adjournment reported to the Court that when he visited Respondent's village, Ayinasu for the purpose, his wife and nephews emphatically told him that they did not know the whereabouts of the Respondent and how he left the village whereas they were living together with him in the same village.

No. 11.
Affidavit of
Defendant
Brew in
opposition
to Motion
to discharge
judgment,
26th June
1948,
continued.
[sic]

(E) That if the alleged medical certificate issued by Dr. Richetts concerning one Chief Assam was for the Respondent then it simply proves that the statement in Respondent's letter dated 9th April, 1948, that he was ill is not true, as the medical certificate disclose of a person suffering from general debility and not a person who *had had* a fracture or a serious wound and could not move owing to accidental fall.

20 (F) That there is no truth in Respondent's application for adjournment and the ground for doing so is best known to himself, and as law permits the Court to hear the appeal *exparte* and to refuse applications for adjournment without proof in case of illness and without proper grounds.

(G) That the appeal could not be re-heard on the grounds as above, and the application must be refused with costs for Appellants, as nothing in this case could be made than to grant Respondent a review if he had applied for same.

Sworn at Saltpond this 26th day of June 1948.

(Sgd.) J. S. BREW.

Before me,

30 (Sgd.) ALBION MENDES,
Commissioner for Oaths.

PROCEEDINGS ON MOTION TO DISCHARGE JUDGMENT.

In the Native Appeal Court of Ayan-na-Breman Confederacy.

No. 12. Proceedings on Motion to discharge judgment, 28th June 1948.

IN THE NATIVE APPEAL COURT OF AYAN-NA-BREMAN CONFEDERACY, Cape Coast District, Western Province, Gold Coast Colony, held at Ayan Abasa Ahenfie this 28th day of June, 1948.

Present

Nana YANFUL II, Omanhene, Abasa, President
Nana KWA BOM III, Omanhene, Esiam, Councillor
T. A. ABBAN, ,

10

IN THE MATTER of :—

ODIKRO KOJO ESIAM of Ayinasu . Plaintiff-Respondent

v.

J. SAM BREW of Asafa

and

EBUSUAPENIN KWEKU EDUFUL Co-Defendant
Substituted for MANKRADO KWAMIN AYEBUAH
(Deceased) Defendants-Appellants.

MOTION ON NOTICE by Odikro Kojo Esiam the Respondent Applicant herein asking in terms of the affidavit filed in support of this Motion that this Native Appeal Court may be pleased to discharge the decision delivered herein in the absence of the Respondent herein and a date to be fixed for the re-hearing of the Appeal in terms of Section 51 of the Native Courts (Colony) Ordinance No. 22 of 1944, and for any further Order or relief as to this Native Appeal Court may seem fit to make in the circumstances. 20

Court to be moved on Monday the 28th day of June 1948, at 9 of the Clock in the forenoon or so soon thereafter as the applicant can be heard.

Parties present in person with exception of Defendant-Appellant.

Affidavit of Odikro Kojo Esiam the Plaintiff-Respondent herein in support of Motion asking this Appeal Court to discharge the decision made herein in the absence of the Respondent herein in terms of Section 51 of the Native Court (Colony) Ordinance No. 22 of 1944, and for a date to be fixed for re-hearing of the said Appeal dated 27/5/48, read and interpreted. 30

Affidavit of J. S. Brew in reply to Respondent's application for Order of re-hearing of Appeal opposing the application for re-hearing dated 26th June, 1948, read and interpreted.

Mover Plaintiff-Respondent supports his affidavit and insist on it.

Co-Defendant-Appellant lays stress on grounds set forth in the Affidavit of J. S. Brew opposing the re-hearing of the case.

In the Native Appeal Court of Ayan-na-Breman Confederacy.

By Court :

In consequence of the facts disclosed that when adjournment fee from Plaintiff-Respondent was paid to the Registrar if it was not going to be accepted, should have been returned immediately but it was not done until for almost two months, secondly it has been disclosed that no hearing notice was served on Plaintiff-Respondent, under the circumstances applicant, Plaintiff-Respondent's application is granted and the case is fixed for re-hearing on the 27th day of July, 1948, by fresh panel.

No. 12. Proceedings on Motion to discharge judgment, 28th June 1948, continued.

(Sgd.) CWA YANFUL II,
President.

Witness to Signature,
(Sgd.) A. J. HAGAN,
Recorder.

No. 13.

EX PARTE MOTION PAPER BY DEFENDANTS TO DISCHARGE ORDER FOR REHEARING made 28th June 1948.

No. 13. Ex parte Motion Paper by Defendants to discharge order for rehearing made 28th June 1948, 26th July 1948.

Fee 10/-
20 Filed 26/7/48.
(Sgd.) ?

IN THE NATIVE APPEAL COURT OF AYAN-NA-BREMAN CONFEDERACY, Western Province of the Gold Coast Colony, Nkwantanum.

IN THE MATTER of :—

ODIKRO KOJO ESIAM of Ayinasu . Plaintiff-Respondent

v.

JOSEPH SAM BREW of Asaafa . Defendant-Appellant

and

30 EBUSUAPENIN KWEKU EDUFUL as head for himself and on behalf of MANKRADO'S NSONA FAMILY of Esiem . Co-Defendant-Appellant.

MOTION EX-PARTE.*

MOTION Exparte by Defendants Appellants or their Representatives for an Order under Regulation 40 of the Native Courts Regulations discharging the order made herein for rehearing of the above appeal on the 28th day of June, 1948, and to direct itself to the terms of Section 51

* The Plaintiff had died on 23rd July 1948 as appears from Item 15, page 20, line 15.

*In the
Native
Appeal
Court of
Ayan-na-
Breman
Confederacy.*

[sic] No. 13.
Ex parte
Motion
Paper by
Defendants
to discharge
order for
rehearing
made 28th
June 1948,
26th July
1948,
continued.

of the Native Courts Ordinance, as the order was wrongly made and not being in terms and compliance of Section 51 of the Ordinance above, and for an order restoring the Motion dated 27th May, 1948, and filed by Respondent on 7th June, 1948, praying for an order of the Appeal Court as under Section 51 of the Ordinance above, so as to enable the same Court meaning the same panel that made the decision herein dated 3rd May, 1948, against which Respondent filed the above Motion dated 27th May, 1948, and as the said panel, having initial jurisdiction to hear the Respondent's Motion, to hear the Respondent's Motion as above in terms of Section 51 of the above Ordinance, and for such other order or relief as the justice in the matter demands. 10

Court to be moved on Tuesday the 27th day of July, 1948, at 9 of the clock in the forenoon or so soon thereafter as the applicants herein or their Representative can be heard.

Dated at Esiam this 26th day of July, 1948.

(Marked) KWEKU EDUFUL,
For himself and on behalf of Defendant-Appellant.

Witness to mark,

(Sgd.) G. K. APPIAH,

Lic. No. 25862/CC.

Free of charge.

20

To the Registrar,

Native Appeal Court,

Ayan-Na-Breman Confederacy,

Nkwantanum.

PROCEEDINGS ON EX PARTE MOTION TO DISCHARGE ORDER FOR REHEARING.

IN THE NATIVE APPEAL COURT OF AYAN-NA-BREMAN CONFEDERACY, Cape Coast District, Western Province Gold Coast Colony, held at Ayan Abasa Ahinfie this 27th day of July, 1948.

*In the
Native
Appeal
Court of
Ayan-na-
Bremen
Confederacy.*

No. 14.
Proceed-
ings on
ex parte
motion to
discharge
order for
rehearing,
27th July
1948.

Present :—

- Nana YANFUL II, President
- „ KWA BOM III, Member
- „ HAMMAH III, „

10

(Title as No. 13.)

Defendant-Appellant in person.

Co- „ „ „ „

(The notice ex parte is here set out.)

Co-Defendant-Appellant represented by G. K. Appiah argues upon the point that according to Section 51 of N.A.O. the order made on the 28th day of June 1948, should be discharged and the case to be reviewed by the same Court which gave and made decision in the case.

By Court Order :

20 Upon hearing the motion of Co-Defendant-Appellant, and in view of Section 51 of the Native Courts Ordinance his application is granted, and in consequence the Court discharges its order made on the 28th June 1948, and motion of 27/5/48 restored, case fixed for hearing to 14th September 1948 at Esiam and notice given to both parties in Court.

(Sgd.) CWA YANFUL II,
President.

W/Signature,

(Sgd.) A. J. HAGAN.



In the
Native
Appeal
Court of
Ayan-na-
Bremam
Confederacy.
—
No. 15.
Affidavit of
K. Ghan
for sub-
stitution of
Appellant
for
deceased
original
Plaintiff,
21st August
1948.

AFFIDAVIT of K. Ghan for substitution of Appellant for deceased original Plaintiff.

(Title as No. 13. *Substitute Abasa for Nkwantanum.*)

AFFIDAVIT OF KOBINA GHAN OF AYINASU DULY AUTHORISED AND EMPOWERED BY ABUSUAPENIN KWEKU ABAKA OF AYINASU TO SWEAR TO THIS AFFIDAVIT ON HIS BEHALF AS THE PERSON TEMPORARILY ADMINISTERING THE ESTATE OF THE LATE ODIKRO KOJO ESIAM, DECEASED, IN SUPPORT OF MOTION PRAYING FOR SUBSTITUTION OF THE NAME OF KWEKU ABAKAH IN PLACE OF THE LATE ODIKRO KOJO ESIAM, DECEASED. 10

I, KOBINA GHAN of Ayinasu in the Ajumako State of the Western province of the Gold Coast Colony now at Cape Coast make Oath and say as follows :—

1. That I am the nephew of the late Odikro Kojo Esiam, (Deceased) who died at Bisease on Friday the 23rd day of July, 1948, and the nephew of Abusuapenin Kweku Abakah of Ayinasu the person temporarily administering the estate of the late Kojo Esiam, deceased, by the appointment and election duly made by the family of the deceased to occupy the position of administrator in accordance with Native Custom, and to substitute his name in the place of Odikro Kojo Esiam, now deceased, and defend the above appeal as Respondent accordingly in terms of Section 22 of the Native Court (Colony) Ordinance No. 22 of 1944. 20

2. That the said Abusuapenin Kweku Abakah is unable to travel to Cape Coast to prepare and swear to this Affidavit and has delegated and appointed me to come to this Town and prepare and swear to this Affidavit in his behalf.

3. That the Abusuapenin Kweku Abaka has authorised me to apply in his behalf for the substitution of his name as the Respondent in this Appeal in place of Odikro Kojo Esiam, now deceased.

4. That I swear to this Affidavit in support of Motion of Kweku Abakah aforesaid asking the Native Appeal Court of Ayan-Na-Bremam Confederacy to be pleased to substitute the name of Abusuapenin Kweku Abaka as the Respondent in place of Odikro Kojo Esiam, now deceased, and for any order or relief as to this Native Appeal Court may seem fit to make in the circumstances. 30

SWORN at Cape Coast by the said Kobina Ghan this 21st day of August 1948, after the contents of this Affidavit had been read over and interpreted to him in the Fanti Language by Andrew Okru of Cape [*sic*] first duly sworn to interpret the same to him and who seemed perfectly to understand the same before making his [*sic*] thereto in my presence } (Marked) KOBINA GHAN. 40

Before Me,
(Sgd.) CHARLES A. BANNERMAN,
Commissioner for Oaths.

No. 16.

AFFIDAVIT of K. Ghan in support of Motion to discharge Order made 27th July 1948.

Filing 2/-
Service 1/-
(Sgd.) ? 26/8/48.

Swearing fee 4/- is collected.
(Sgd.) ?
Comm. for oaths.
21/8/48.

*In the
Native
Appeal
Court of
Ayan-na-
Bremam
Confederacy.*

No. 16.
Affidavit of
K. Ghan in
support of
Motion to
discharge
Order made
27th July
1948,
21st August
1948.

10 IN THE NATIVE APPEAL COURT OF AYAN-NA-BREMAN
CONFEDERACY, Western Province, Gold Coast Colony, Abasa.

IN THE MATTER of :—

ODIKRO KOJO ESIAM of Ayinasu now Deceased
substituted by ABUSUAPENIN KWEKU ABAKAH
of Ayinasu Plaintiff-Respondent

v.

JOSEPH SAM BREW of Asaafa

and

20 MANKRADO KWAMIN AYEBUH for himself and
on behalf of NSONA FAMILY of Esiam Defendants-Appellants

AFFIDAVIT OF KOBINA GHAN REPRESENTATIVE OF ABUSUAPENIN KWEKU
ABAKAH DULY AUTHORISED TO SWEAR TO THIS AFFIDAVIT ON BEHALF
OF KWEKU ABAKAH, AND IN SUPPORT OF MOTION PRAYING FOR THE
NATIVE APPEAL COURT HEREIN TO DISCHARGE THE ORDER MADE
HEREIN FOR THIS APPEAL TO BE HEARD BY THE OLD PANEL WHO ARE
NOW OUT OF OFFICE *Personal* OF THE NATIVE APPEAL COURT. [sic]

I, KOBINA GHAN of Ayinasu in the Ajumako State of the Western
province of the Gold Coast Colony, now at Cape Coast, make Oath
and say as follows :—

30 1. That I am the nephew of Abusuapenin Kweku Abakah who has
authorised me to swear to this affidavit on his behalf.

2. That this Native Appeal Court was misdirected by one G. K. Appiah
who *misintrepreted* a Section in the Ordinance touching appeals to the [sic]
effect that the decision of the Native Appeal Court which had been
discharged under Section 51 should be sent for re-hearing before the old
panel which constituted the Native Appeal Court at the time but who are
now out of office as personnel of the Native Appeal Court, whereas in

In the Native Appeal Court of Ayan-na-Breman Confederacy. truth and in fact no such ordinance exists which reads as such ; the decision having been set aside it had become null and void and a new panel has the jurisdiction to hear and determine the appeal *de novo* in terms of Section 50.

[sic] ———
No. 16.
[sic] Affidavit of K. Ghan in support of Motion to discharge Order made 27th July 1948, 21st August 1948, continued.

3. I therefore swear to this Affidavit in support of Motion praying this Native Appeal Court to discharge the order made for the *ord* panel who are now out of office to continue the appeal which had been declared null and void and that the new panel are *seized* with the necessary jurisdiction to hear the appeal in compliance with procedure of hearing appeals.

10

Sworn at Cape Coast by the said Kobina Ghan this 21st day of August 1948, after the contents of this Affidavit had been read over and interpreted to him in the Fanti Language by Andrew Okru of Cape Coast first duly sworn to interpret the same and who seemed perfectly to understand the same before making his mark thereto in my presence :

(Marked)
KOBINA GHAN.

Before Me,

(Sgd.) CHARLES A. BANNERMAN,
Commissioner for Oaths.

20

Prepared by S. Takyi-Menson,
L.L.W. No. 22850.
D.234/Coronation Street,
Cape Coast.

Fee 3/ 4 Copies.



No. 17.

MOTION PAPER for substitution of Appellant for deceased original Plaintiff.

Filing 10/-
(Sgd.) ?
25/8/48.

*In the
Native
Appeal
Court of
Ayan-na-
Bremam
Confederacy.*

IN THE NATIVE APPEAL COURT OF AYAN-NA-BREMAN
CONFEDERACY AREA, Western Province, Gold Coast Colony
Abasa.

No. 17.
Motion
Paper for
substitu-
tion of
Appellant
for
deceased
original
Plaintiff,
23rd
August
1948.

IN THE MATTER OF :—

10 ODIKRO KOJO ESIAM of Ayinasu . Plaintiff-Respondent
v.
JOSEPH SAM BREW of Asafa, and
MANKRADO KWAMIN AYEBUAH
for himself and on behalf of NSONA
FAMILY of Esiam . . . Defendants-Appellants.

MOTION ON NOTICE.

20 MOTION ON NOTICE by Abusuapenin Kweku Abakah of Ayinasu
the Applicant herein in terms of the Affidavit filed in support of this
Motion that this Native Court may be pleased to make an Order for
substitution of my name as Respondent in the above appeal in place of
Odikro Kojo Esiam, now deceased, to enable this Appeal Court to hear
the above appeal and for any such Order or relief by reason of the fact
that I Kweku Abakah have been duly appointed and elected by the
family of the late Odikro Kojo Esiam, deceased, as an administrator of
the estate of the deceased Kojo Esiam, Odikro of Ayinasu, temporarily,
until the final obsequies, and for any further Order or relief as to this
Native Court of Appeal may seem fit to make in the circumstances.

30 Court to be moved on Tuesday the 14th day of September, 1948,
at 9 of the clock in the forenoon or so soon thereafter as the applicant can
be heard.

Dated at Cape Coast this 23rd day of August, 1948.

Mover
(Marked) KWEKU ABAKAH.

The Registrar,

Native Appeal Court of Ayan-Na-Bremam Confederacy Area, Abasa.

(2) To the above-named Defendants-Appellants Joseph Sam Brew,
Asafa, or his Agent or Representative, and

(3) Mankrado Kwamin Ayebuah, his Agent or Representative, Esiam.

Witness to mark.

(Sgd.) J. W. ODOOM.

FREE.

No. 18.

MOTION PAPER TO DISCHARGE ORDER made 27th July 1948.

*In the
Native
Appeal
Court of
Ayan-na-
Bremam
Confederacy.*

Original Filing 10/-.

Service 1/-

No. 18. (Sgd.) ? 26/8/48.

Motion
Paper to
discharge
order made
27th July
1948,
23rd August
1948.

*(Title as No. 16.)***MOTION ON NOTICE.**

[sic]

MOTION ON NOTICE by Abusuapenin Kweku Abakah the applicant herein asking in terms of the Affidavit filed in support of this motion that this Native Court may be pleased to make an Order discharging the order made herein 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, and which previous order was made by the misdirection of the Native Appeal Court by one G. K. Appiah who misinterpreted a Section on Appeals and asked the Native Appeal Court to refer the appeal back to the old panel to continue the hearing, when in truth and in fact the decision delivered by the old panel had been set aside and declared null and void in terms of Section 51 of the Native Courts (Colony) Ordinance No. 22 of 1944, which now requires the appeal to be heard afresh and this panel of the Native Appeal Court is *seized* with the necessary jurisdiction to do so, and pray this Native Appeal Court to discharge the said order and hear this Appeal composed of the new panel as the personnel and for any further order or relief as to this Native Appeal Court may seem fit to make in the circumstances.

Court to be moved on Tuesday 14th day of September, 1948, at 9 of the clock in the forenoon or so soon thereafter as the applicant can be heard.

Dated at Cape Coast this 23rd day of August, 1948.

Mover

(Marked) KWEKU ABAKAH. 30

Witness to mark

(Sgd.) J. W. ODOOM.

The Registrar,
Native Appeal Court,
Ayan-na-Bremam Confederacy,
Abasa.

No. 19.

PROCEEDINGS.

IN THE NATIVE APPEAL COURT OF AYAN-NA-BREMAN
CONFEDERACY, Cape Coast District, Western Province, Gold
Coast Colony, held at Esiam this 14th day of September, 1948.

*In the
Native
Appeal
Court of
Ayan-na-
Bremen
Confederacy.*

Present :

Nana KWA BOM III, President.
" KOJO KURANTSIN II, Councillor.
W. A. MENSAH, "

No. 19.
Proceed-
ings, 14th
and 18th
September
1948.

10 ODIKRO KOJO ESAM of Ayinasu . Plaintiff-Respondent.

V.

J. SAM BREW of Asafa and EBUSUAPENIN
KWEKU EDUFUL for himself and on behalf
of MANKRADO NSONA FAMILY of Esiam Defendant-Appellant.

14th
September
1948.

Plaintiff-Respondent absent in Court.

Defendant-Appellant in person.

Co-Defendant-Appellant in person.

Review in accordance with order made on the 27th day of July, 1948.

20 Owing to non-appearance of any representative of Plaintiff-Respondent
and the time of the clock has gone past 10 o'clock, the Court upon its own
motion adjourns the Court to 2 o'clock p.m. to give chance to a repre-
sentative of Respondent to appear in Court.

(Sgd.) KWA BOM III,
President.

W/Signature,
(Sgd.) A. J. HAGAN,
Recorder.

At 2 o'clock p.m.

14th
September
1948.

Present :

30 Nana KWA BOM III, President.
Nana KOJO KURANTSIN II, Councillor.
W. A. MENSAH "

(Title as above.)

Plaintiff-Respondent absent.

Both Defendant-Appellants present.

Hearing resumed from adjournment made at page 157 of Record
Book.

*In the
Native
Appeal
Court of
Ayan-na-
Bremam
Confederacy.*

Owing to a further absence of Plaintiff-Respondent the case is adjourned to Saturday the 18th September, 1948, and hearing notice to be served on Plaintiff-Respondent to appear on that date.

(Sgd.) KWA BOM III,
President, A.B.C.

No. 19.
Proceed-
ings, 14th
and 18th
September
1948,
continued.

W/Signature,
(Sgd.) A. J. HAGAN,
Recorder.

IN THE NATIVE APPEAL COURT OF AYAN-NA-BREMAN
CONFEDERACY, Cape Coast District, Western Province, Gold Coast Colony, held at Esiam Ahinfie this 18th day of September, 1948. 10

18th
September
1948.

Present :

Nana KWA BOM III, President.

„ KOJO KURANTSIN III, Councillor

W. A. MENSAH,

„

(Title as above.)

Plaintiff-Respondent absent.

Defendants-Appellants present in person.

Hearing resumed from adjournment made on the 14 day of September, 1948. 20

Bailiff Stephen Kofi Eyipey Peterson sworn on Bible states, I am a Bailiff in the Native Court of the Ayan-Na-Bremam Confederacy, N.A. On the 14th September 1948, I was given a hearing Notice from the Native Appeal Court Registrar to serve on Kweku Abaka of Beseasi, regarding motion paper he filed in the Appeal Court. When I reached Beseasi I went to one Arku's house where I was informed Abaka lives. I did not meet Abaka in the house and one Badu late Kojo Esiam's nephew informed me that Abaka had gone to Sefwi early in the morning of that day. I returned to Esiam. On the next day I heard that Abaka had not gone to anywhere but was at Beseasi, I therefore returned to Beseasi on that day also which was the 15th September 1948, but I did not find him, and I returned and informed the Registrar. 30

MOTION ON NOTICE.

(1) Motion on notice by Ebusuapenin Kweku Abaka of Ayinasu the applicant herein in terms of the Affidavit filed in support of this motion that this Native Court of Appeal may be pleased to make an order for substitution of my name as Respondent in the above Appeal

in place of Odikro Kojo Esiam, now deceased to enable this Appeal Court to hear the above Appeal and for any such order or relief by reason of the fact that I Kweku Abaka have been duly appointed and elected by the family of the late Odikro Kojo Esiam, deceased, as an administrator of the estate of the deceased Kojo Esiam, Odikro of Ayinasu, temporarily until the final obsequies, and for any further order or relief as to this Native Court of Appeal may seem fit to make in the circumstances.

*In the
Native
Appeal
Court of
Ayan-na-
Bremam
Confederacy.*

In support of an Affidavit dated 21st August, 1948, at Cape Coast.

No. 19.
Proceed-
ings, 14th
and 18th
September
1948,
continued.

MOTION ON NOTICE.

- 10 (2) Motion on Notice by Abusuapening Kweku Abaka the Applicant herein asking in terms of the affidavit filed in support of this Motion that this Native Appeal Court may be pleased to make an order discharging the order made herein 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, and which previous order was made by the misdirection of the Native Appeal Court by one G. K. Appiah who misinterpreted a Section on Appeals and asked the Native Appeal Court to refer the Appeal back to the old panel to continue the hearing, when in truth and in fact the decision delivered by the old panel had been set aside and declared
- 20 null and void in terms of Section 51 of the Native Courts (Colony) Ordinance No. 22 of 1944, which now requires the Appeal to be heard afresh, and this panel of the Native Appeal Court is seized with the necessary jurisdiction to do so, and pray this Native Appeal Court to discharge the said order and hear this Appeal composed of the new panel as the personnel, and for any further order or relief as to this Native Appeal Court may seem fit to make in the circumstance.

In support of an affidavit dated the 21/8/48, at Cape Coast.

MOTION ON NOTICE.

- 30 (3) Motion on notice by Odikro Kojo Esiam the Respondent Applicant herein asking in terms of affidavit filed in support of this motion that this Native Appeal Court may be pleased to discharge the decision delivered herein in the absence of the Respondent herein and a date to be fixed for the re-hearing of the Appeal in terms of Section 51 of the Native Courts (Colony) Ordinance No. 22 of 1944, and for any further order or relief as to this Native Appeal Court may seem fit in the circumstance.

Dated at Cape Coast this 27th day of May, 1948.

In support of an affidavit dated the 27th May, 1948.

By Court :—

- 40 Before dealing with motions 1 and 2 filed by Kweku Abaka on the 26th August, 1948, what is properly before the Court is the (3) third Motion filed by Plaintiff-Respondent herein, dated the 27th May, 1948, and filed on the 7th June, 1948, and for which an order was made by this Court on the 27th July, 1948, at Abasa to be heard at Esiam, on the

*In the
Native
Appeal
Court of
Ayan-na-
Breman
Confederacy.*

[sic]

No. 19.
Proceed-
ings, 14th
and 18th
September
1948,
continued.

14th September, 1948, of which notices were given to both Defendants-Appellants, and the relatives of the Plaintiff-Respondent, Odikro Kojo Esiam (Deceased) who were then present in the Court.

Consequently, one Kweku Abaka, alleged to be a relative of late *Odikro's* Kojo Esiam applied to this Court for orders as stated in motions 1 and 2, and were fixed for hearing on the same date 14/9/48.

On the hearing day this party did not appear and the Court therefore adjourned the case to Saturday the 18th September, 1948, with a view to effect the service of the hearing notice on the said Kweku Abakah.

The Bailiff of this Court made two attempts to effect service, but on 10 each occasion Kweku Abaka could not be found.

[sic] The Court under these circumstances finds it expedient to strike out *this* above motions without costs, and therefore the judgment delivered by this Court on the 3rd May, 1948, still holds good and firm.

(Sgd.) KWA BOM III,
President.

W/Signature

(Sgd.) A. J. HAGAN,
Recorder.

EX PARTE MOTION PAPER FOR DIRECTIONS.

IN THE SUPREME COURT OF THE GOLD COAST, WESTERN PROVINCE, Central Judicial Division, Land Court, Cape Coast.

ODIKRO KOJO ESLAM of Ayinasu . Plaintiff-Respondent

v.

JOSEPH SAM BREW of Asafa and
ABUSUAPENIN KWEKU EDUFUL . Defendants-Appellants.

*In the
Supreme
Court of
the Gold
Coast.*

No. 20.
Ex parte
Motion
Paper for
directions,
27th
January
1949.

EX PARTE MOTION for an order for the re-listing of the above-
10 named appeal pending before the Native Appeal Court "A" of the
Ayan-Na-Breman Confederacy, in the Land Court and/or for an order
or directions on the District Commissioner Cape Coast to remove or transfer
the above-named appeal to the Land Court for the hearing of an Application
for substitution of the Applicant's name for that of Kojo Esiam now
deceased and for the hearing of the appeal herein. And for any other
Order the Land Court may seem expedient in the circumstances.

Court to be moved by the Applicant Kweku Abaka on the 5th day of
February, 1949, at 8.30 o'clock in the forenoon or so soon thereafter as
the Applicant can be heard.

20 Dated at Cape Coast this 27th day of January, 1949.

KWEKU ABAKA
Applicant.

his
X
mark

Witness to mark.
(Sgd.) C. CHRISTIAN,
Anibok Chambers, C. Coast.

To the Registrar,
Land Court, Cape Coast.

30

Filed 27/1/49
(Intd.) K.E.J.
for R.D.C.

R/.
Any convenient day.
(Intd.) L.
29/1.

*In the
Supreme
Court of
the Gold
Coast.*

No. 21.
Affidavit
of
Appellant
in support
of Motion
for
directions,
27th
January
1949.

AFFIDAVIT OF APPELLANT IN SUPPORT OF MOTION FOR DIRECTIONS.

IN THE SUPREME COURT OF THE GOLD COAST, Western
Province, Central Judicial Division, Land Court, Cape Coast.

ODIKRO KOJO ESIAM of Ayinasu . Plaintiff-Respondent

v.

JOSEPH SAM BREW of Asaafa . Defendant-Appellant

and

ABUSUAPENHIN KWEKU EDUFUL . Co-Defendant-Appellant.

I, KWEKU ABAKAH of Ayinasu, make oath and say as follows:— 10

1. That I am the nephew of the Plaintiff-Respondent of the above-named appeal pending before the Native Appeal Court "A" of Ayan-na-Breman Confederacy.

2. That I am also the Applicant before the said Native Appeal Court for an order substituting my name for that of Kojo Esiam now deceased.

3. That the suit herein was in respect of a land situate at Ayinasu attaching to my family stool.

4. That the Native Court "B" of Nkwantanum gave judgment for the Plaintiff-Respondent in respect of the land in dispute herein. 20

5. That the Defendant-Appellants started appeal proceedings from the said judgment to the Native Appeal Court "A" of Ayan-na-Breman Confederacy.

6. That the Native Appeal Court, on the 3rd day of May, 1948, heard the appeal and reversed the judgment of the Native Court "B" without serving hearing notice on the Plaintiff-Respondent before the appeal was heard by the said Court.

7. That on the 28th day of June, 1948, upon the application of the Plaintiff-Respondent herein the said Native Appeal Court "A" set aside the said judgment of the 3rd day of May, 1948, and ordered a re-hearing on the 29th day of July, 1948. Certified copy of the order dated 28th June, 1948, is hereto annexed and marked "A." 30

8. That the Plaintiff-Respondent herein died on the 23rd day of July, 1948, before the date fixed for the re-hearing of the appeal on the 29th of July, 1948, by the said Native Appeal Court "A."

9. That I, having been appointed successor of the Plaintiff-Respondent deceased by the family, filed a Motion in the said Native

*(Exhibit A
is printed
above
as Item
No. 12
p. 16.)*

Appeal Court " A " on the 26th day of August, 1948, for an order substituting my name for that of Odikro Kojo Esiam deceased as Plaintiff-Respondent in the above-named case.

In the Supreme Court of the Gold Coast.

10. That after filing my said application for the substitution, I was not served or given any notice for the hearing of my said application.

No. 21.
Affidavit
of
Appellant
in support
of Motion
for
directions,
27th
January
1949,
continued.

11. That I was later informed by the President of the said Native Appeal Court " A " that the said Native Appeal [*sic*] had ceased to function and that all the land cases including the above-named Land Appeal were being removed or transferred by the District Commissioner to the
10 Land Court for hearing.

12. That I received a letter No. 0133/22 of the 29th November, 1948, from the District Commissioner declining to take action in the matter of the removing or transferring the above-named appeal to the Land Court for hearing, giving as his reason that the appeal was finally disposed of by the Native Appeal Court on the 18th day of September, 1948. Copy of the said letter is hereto annexed and marked " B."

13. That the Plaintiff-Respondent was not alive on the 18th day of September, 1948, referred to in the District Commissioner's letter and that
20 to re-hear the appeal on that day.

14. That the order for the re-hearing of the above-named appeal, made by the said Native Appeal Court on the 28th of June, 1948, has not been carried out, and that the subject matter in dispute herein being a land case, the Land Judge would be the proper person having jurisdiction to deal with the matter and not the District Commissioner.

15. That I swear to this affidavit in support of an application for the re-listing of the above-named appeal in the Land Court and or for an order or directions on the District Commissioner to remove or transfer the above-named appeal to the Land Court for the hearing of my motion
30 and the appeal.

Sworn by the said Kweku Abaka at Cape Coast this 27th day of January, 1949, this affidavit having been first read over explained to him in the Fanti Language by Andrew E. Okru of Cape Coast first sworn duly to interpret the same to him who seemed perfectly to understand the same and made his mark thereto in my presence

his
KWEKU ABAKA X
mark

40 Before me,
(Sgd.) CHAS. A. BANNERMAN,
Commissioner for Oaths.

*In the
Supreme
Court of
the Gold
Coast.*

No. 21A.

EXHIBIT " B " to No. 21 (Copy Letter, District Commissioner to Appellant).

" B "

No. 21A.
Exhibit
" B " to
No. 21
(Copy
Letter,
District
Commis-
sioner to
Appellant),
24th
November
1948.

No. 0133/22

District Commissioner's Office,
Cape Coast.

24th November, 1948.

Sir,

Odikro Kojo Esiam *v.* Joseph Sam Brew.

I have to refer to your affidavit dated the 28th September concerning 10 the substitution of your name for that of the late Odikro Kojo Esiam and concerning certain orders as to the panel which should sit to consider an application for the Native Appeal Court to reconsider a decision delivered *ex parte*.

After investigating this case with all the papers available and after reading the records of various hearing I am satisfied that the case was finally disposed of on 18th September and I am not prepared to take any further action in the matter.

I have the honour to be,

Sir,

20

Your obedient Servant,

J. A. R. FORSTER,

for District Commissioner.

Kweku Abaka,
Abusuapayin, Ayinasu,
via Esiam.

PROCEEDINGS.

IN THE SUPREME COURT OF THE GOLD COAST, Lands Division,
Cape Coast, Saturday the 5th day of February 1949, before Mr. Justice
Jackson.

KOJO ESIAM *v.* J. S. BREW.

Sackeyfio for Plaintiff.

Court :

Under the provision of what law is this matter before me ?

10 *Sackeyfio :*

Appeal Court was closed down by Order in Council on 30.8.48.
Appeal was set down for hearing on the 29th September, 1948.

Court :

I wish to know how you got the matter before me at all ?

Sackeyfio :

Section 53 of the Native Courts (Colony) Ordinance, 1944.

Court :

That section refers to appeals pending immediately from the
commencement of that Ordinance.

20 *Decision :*

Judgment was entered for Odikro Kojo Esiam, the Plaintiff, in the
Native Court of Nkwantanum for land. Brew and Kweku *Afful* the [sic]
Defendants commenced appeal proceedings in the Native Appeal Court
of the Ayan-Na-Breman Confederacy which reversed the judgment of the
Native Court of Nkwantanum, on the 3rd May, 1948, in the absence of the
Respondent.

On the 28th June, 1948, upon the application of the Plaintiff-
Respondent the Native Appeal Court set aside the judgment given on the
3rd May, 1948 and ordered a re-hearing on the 29th July, 1948. The
30 Plaintiff-Respondent died on the 23rd July, 1948.

Court :

Mr. Sackeyfio have you got a copy of the judgment referred to by
your client dated 18th September ?

*In the
Supreme
Court of
the Gold
Coast.*

No. 22.
Proceed-
ings, 5th
and 19th
February,
5th and
18th
March 1949.

5th
February
1949.

*In the
Supreme
Court of
the Gold
Coast.*

Sackeyfio :

I have not.

Court :

Then perhaps you will take steps to see that it is before me on Saturday the 19th instant.

(Sgd.) J. JACKSON, Judge.

No. 22.
Proceed-
ings, 5th
and 19th
February,
5th and
18th
March 1949,
continued.
19th
February
1949.

19.2.49

Sackeyfio for Plaintiff-Respondent-Applicant.

Court :

Under what provision of the law does this application come before me ?

Sackeyfio :

Under section 53 of Native Courts Ordinance.

Court :

Such application can only come to me through the Magistrate and I can find no provision in the law to meet the present circumstances but I will adjourn this motion for a further two weeks to enable further consideration to be given to this point. Adjourned to 5.3.49.

(Sgd.) J. JACKSON,

Judge. 20

5th March
1949.

5.3.49.

IN THE SUPREME COURT OF THE GOLD COAST, Lands Division,
Cape Coast, Saturday, the 5th day of March, 1949, before Mr. Justice
JACKSON.

KOJO ESIAM *v.* J. S. BREW & ANOR.

Sackeyfio for Kweku Abaka (Applicant).

Sackeyfio :

Kweku Abaka is the Head of the Family. Odikro Kojo Esiam died on 23.7.48. Appeal was then pending in Native Appeal Court of Ayan-Na-Breman. Application made by applicant for substitution. 30
Native Authority Court closed down as from 26.8.48.

Court :

List again for 18.3.49 when other matters of a similar nature are before me.

(Sgd.) J. JACKSON,

Judge.

18.3.49.

Sackeyfio for Kweku Abaka—Applicant.

Motion to list in the Land Court an appeal pending in the Native Appeal Court of Ayan-Na-Breman.

Sackeyfio :

Judgment given in Native Court Ayan-Denkyira and Breman Esiam (" B ") on 28th July, 1947. From that decision the appellants-applicants appealed to the Native Appeal Court of Ayan-Na-Breman. The Native Appeal Court gave judgment on the 3rd May, 1948, setting aside the judgment of the Native Court (" B ") given on the 28th July, 1947.

From the decision given on 3rd May, 1948, the Plaintiff-Respondent applied to the Native Appeal Court for a re-hearing on the grounds that the judgment delivered was one given *ex parte*. The Native Appeal Court on 28th July, 1948, granted the application for re-hearing.

Court :

Did they set aside the previous judgment ?

Sackeyfio :

No they gave an order for re-hearing. The date for re-hearing was fixed for the 29th July, 1948. The Native Appeal Court sat again on the 18th September, 1948, after adjourning from the 14th September. The Plaintiff Kojo Esiam died on the 23rd July, 1948, and the Court was moved for an order for substitution and the motion was struck out on the 18th September, 1948, holding that the decision given on the 3rd May stood.

Court :

Was any notice of intention to appeal filed in the Native Appeal Court in respect of the decision given on the 18th September, 1948.

Sackeyfio :

I can find none. The Native Court was closed down on 2nd October, 1948, by the provision of Order No. 129/of 1948 made under Section 3 of the Native Courts (Colony) Ordinance.

Court :

How can you proceed in the matter unless someone is substituted for the Kojo Esiam who is now dead ?

Sackeyfio :

My application to the Court on appeal by way of re-hearing as pending and which has been closed down.

Court :

But how do you propose to transfer the proceedings in that Court to this Court ?

Sackeyfio :

I think we may have to go to the judicial Adviser for him to review.

Court :

Yes, but to review what ?

*In the
Supreme
Court of
the Gold
Coast.*

No. 22.
Proceed-
ings, 5th
and 19th
February,
5th and
18th
March 1949,
continued.
18th
March
1949.

DECISION of Mr. Justice Jackson.

*In the
Supreme
Court of
the Gold
Coast.*

Decision :

No. 23.
Decision of
Mr. Justice
Jackson,
18th
March 1949.

The Defendants-Appellants have moved this Court for an order to transfer the proceedings which were in the Native Appeal Court of Ayan-Na-Breman to the Land Court on the grounds that the Native Appeal has been disestablished by an Order made under Section 3 of the Native Courts (Colony) Ordinance, 1944.

The facts are as follows :—

On the 28th July, 1947, the Native Court of Ayan-Denkyira and Breman Esiam entered judgment for the Plaintiff, Kojo Esiam, in a claim relating to land ; the nature of which has not been disclosed to me by a copy of the Writ but which is said to have been a claim for £50 damages for trespass to land. 10

From that decision the Defendants J. S. Brew and Kweku Eduful (substituted for Kwamin Ayebuah) appealed to the Native Appeal Court of Ayan-Na-Breman and which Court on the 3rd May, 1948, in absence of the Plaintiff-Respondent heard the appeal and allowed it. Upon an application made by the Plaintiff-Respondent under Section 51 of the Native Courts (Colony) Ordinance, 1944, to discharge the decision given on the 3rd May, 1948, the application was granted, and the appeal was ordered to be set down for re-hearing on the 29th July, 1948, by a fresh panel. But on the 23rd July, Kojo Esiam the Plaintiff-Respondent died. On the 18th September, 1948, a motion was set down for hearing in the name of the applicant Kweku Abakah for the substitution of his name for that of Kojo Esiam (Deceased). Kweku Abaka on the appointed day did not appear and the motion was struck out in his absence. He now seeks to have the proceedings removed from the Native Appeal Court which has been disestablished to this Court in order to obtain an order for substitution to enable him to prosecute the appeal. 20 30

Mr. Sackeyfio who appears for the applicant says he is in difficulty as to the manner in which proceedings can be taken out of a Native Appeal Court which has been disestablished in the circumstances disclosed. I can appreciate that difficulty.

Although by the terms of Section 53 of the Native Courts (Colony) Ordinance provision has been made in respect of appeals pending in Native Tribunals which ceased to exist upon the Ordinance coming into operation, I can find nothing in that Ordinance as to appeals pending in Native Courts which cease to exist by reason of orders made by the Governor under Section 3. 40

The only provision by which all the proceedings pending in a Native Court may be transferred to the Land Court are those contained in Section 54, but it is difficult at first sight to see how they can be operative in the circumstances now disclosed since a Magistrate cannot, it would appear, by order stop the hearing of any matter which has already been stopped by operation of law under Section 3.

But by the provisions of Section 8 (2) of the Interpretation Ordinance :

In the Supreme Court of the Gold Coast.

(2) when an ordinance (and by Section 3 (28) it includes any Order) repeals an Ordinance, then unless the contrary intention appears, the repeal shall not—

(e) affect any investigation, legal proceedings or remedy . . . and any such investigation, legal proceeding or remedy may be instituted, continued or enforced . . . as if the repealing Ordinance had not been passed (the underlining is mine).

No. 23.
Decision of Mr. Justice Jackson, 18th March 1949, continued.

10 Now “if the repealing order had not been passed” the remedy of the application lay by way of listing a motion in the Native Appeal Court for an order substituting his name for that of Kojo Esiam.

These provisions apply “unless the contrary intention appears.” Now Section 53 of the Ordinance did show a contrary intention as to where the right or remedy was to be pursued or a matter pending on the day on which this Ordinance came onto force, but, as I have said before, it did not provide for appeals pending in Native Courts which were closed down by the operation of Order made under Section 3.

20 A Court and more especially an appeal Court will not construe itself into the exercise of a jurisdiction and for the reasons already given I find I have no jurisdiction in the circumstances described to transfer the proceedings in the matter from the Native Appeal Court to this Court. The motion is dismissed.

(Sgd.) J. JACKSON,
Judge.

No. 24.

STOP ORDER AND REPORT.

In the Magistrate's Court, Cape Coast.

30 IN THE MAGISTRATE'S COURT, CAPE COAST constituted by the District Commissioner, Cape Coast. Before M. M. MILN, District Commissioner on Tuesday 29th March, 1949, at Cape Coast.

No. 24.
Stop Order and Report, 29th March 1949.

KOJO ESIAM Plaintiff-Respondent
against

J. S. BREW Defendant-Appellant.
Native Court of Ayan Denchira. Damages £50. Trespass Appeal.

UPON MY OWN MOTION I order that the hearing of this case be stopped before any Native Court.

40 In my opinion this is a land cause and I must and hereby do report its pendency and circumstances to His Honour the Land Judge and I seek directions as to the mode and where the case shall be heard and determined.

(Sgd.) M. M. MILN,
District Commissioner.

*In the
Supreme
Court.*

DIRECTION FOR TRANSFER.

No. 25.
Direction
for transfer,
2nd May
1949.

**IN THE SUPREME COURT OF THE GOLD COAST, Lands Division,
Cape Coast.**

**DIRECTIONS MADE UNDER SECTION 54 (1) (c) OF THE NATIVE
COURTS (COLONY) ORDINANCE, 1944.**

(Sgd.) L. G. Lingley,
Judge.

In accordance with the provisions of Section 54 (1) (c) of the Native Courts (Colony) Ordinance, 1944, I do direct that the cause as shown in the Schedule hereunder shall be transferred to the Lands Division of the Supreme Court of the Gold Coast for hearing : 10

And that the Magistrate at Cape Coast do transfer the said cause to this Court :

And that the original Writ of Summons and any proceedings in the said cause now pending in the Native Court " A " of the Ayan Breman Confederacy shall be forwarded to this Court.

SCHEDULE.

PLAINTIFF	DEFENDANT
Odikro Kojo Esiam of Ayinasu	Joseph Sam Brew of Asafa and 20 Ebusuapenin Kweku Eduful.

Dated at Cape Coast this 2nd day of May, 1949.

(Sgd.) J. T. ODAMETEY,
Registrar.

ORDER OF TRANSFER.

*In the
Magistrate's
Court.*

IN THE MAGISTRATE'S COURT CAPE COAST, Western Province.

No. 26.
Order of
transfer,
7th May
1949.

ODIKRO KOJO ESIAM of Ayinasu Plaintiff

V.

JOSEPH SAM BREW of Asafa and EBUSUAPENIN
KWEKU EDUFUL Defendants.

L.S.

(Sgd.) M. M. Miln,

10 Magistrate.

WHEREAS the above-named case is pending before the Native Court " A " of the Ayan-Na-Breman of the Western Province of the Gold Coast.

AND WHEREAS it has been desirable to transfer the whole of the said appeal to the Lands Division of Supreme Court, Cape Coast in view of the closing down of Ayan-Na-Breman Native Appeal Court by order No. 128 dated 2nd October, 1948.

20 NOW in accordance with the order of His Honour the Land Judge given on the 2nd day of May, 1949, I hereby order that the said appeal case be transferred from the Native Court " A " of Ayan-Na-Breman, Cape Coast District of the Gold Coast to the Lands Division of the Supreme Court, Cape Coast.

AND IT IS ORDERED that the original summons and all proceedings in the said cause now pending in the Native Appeal Court of Ayan-Na-Breman be forwarded to the Lands Division of the Supreme Court of the Gold Coast, Cape Coast.

Dated at Cape Coast this 7th day of May, 1949.

(Sgd.) R. R. WILLIAMS,
Registrar.



*In the
Supreme
Court.*

MOTION PAPER for substitution of Appellant for original Plaintiff deceased.

No. 27.
Motion
Paper for
substitu-
tion of
Appellant
for original
Plaintiff,
deceased,
10th
August
1949.

IN THE SUPREME COURT OF THE GOLD COAST, Central Judicial
Division, Western Province, Land Court, Cape Coast.

Trans. Suit No. 8/1949.

Between ODIKRO KOJO ESIAM of Ayinasu . Plaintiff-Respondent

and

JOSEPH SAM BREW of Asafa and
ABUSUAPENIN K. EDUFUL . Defendants-Appellants

PLEASE TAKE NOTICE that this Honourable Court will be moved 10
by Mr. C. F. Hayfron-Benjamin of Counsel on behalf of Kweku Abaka
for an Order of this Honourable Court substituting his name as Plaintiff-
Respondent herein for that of Odikro Kojo Esiam of Ayinasu, Deceased,
and for such further or other Order as to this Honourable Court may seem
meet in the premises.

Court to be moved on Saturday the 20th day of August, 1949, at the
hour of 8.30 a.m. of the clock in so soon thereafter as Counsel on behalf
of the applicant may be heard.

Dated at Cape Coast, this 10th day of August, 1949.

(Sgd.) C. F. H. BENJAMIN, 20
Solicitor for Kweku Abaka.

To the Registrar,
Divisional Court,
Cape Coast.

And to the above-named Defendants-Appellants JOSEPH SAM BREW of
Asafa & ABUSUAPENIN K. EDUFUL of Esiam, their Solicitor or Agent.

Filed 11/8/49.
(Intd.) N.N.A.
for R. D. C.

Upon the 16th day of August, 1949, I attempted to serve copies of 30
this Motion paper on Joseph Sam Brew and Abusuapenin K. Eduful of
Asafa but I was told by Sam Brew's wife that both had gone to Ajumaku
Besease.

(Sgd.) J. K. BILSON,
Bailiff.

AFFIDAVIT of Appellant in support of No. 27.

(Title as No. 27.)

In the
Supreme
Court.

No. 28.
Affidavit of
Appellant
in support
of No. 27,
10th
August
1949.

I, KWEKU ABAKA of Aiyinassu in the Ajumaku State of the Western province of the Gold Coast Colony, Farmer, make oath and say as follows :—

1. That the Odikro Kojo Esiam the Plaintiff-Respondent herein was my elder brother.

2. That the said Odikro Kojo Esiam died on the 23rd of July, 1948, when the above case was pending and undetermined.

3. That I have been unanimously elected by the members of the Yoko (Anona) Family of Aiyinasu to which the said Odikro Kojo Esiam belonged as the Abusuapanin or head of the said family in succession to Odikro Kojo Esiam aforesaid.

4. That the claim herein is in respect of a large tract of land belonging to the Yoko family of Aiyinasu to which the late Odikro Kojo Esiam belonged.

5. That as the Head of the said Yoko family of Aiyinasu I have an interest in the subject matter of the suit herein.

6. That in the circumstances, I have been deputed and authorised by the members of the Yoko family of Aiyinasu aforesaid to swear to this affidavit in support of the application for the substitution of my name as Plaintiff-Respondent herein in the place of Odikro Kojo Esiam and for such further or other Order as to this Honourable Court may seem meet in the premises.

Sworn at Cape Coast this 10th day of August, 1949, this affidavit having been first read over interpreted and explained to the deponent herein who cannot read and write in the Fanti language by Andrew E. Okru of Cape Coast and he seemed perfectly to understand the same before touching pen and making his mark hereto.

30

KWEKU ABAKA his
X
mark

Before me,
(Sgd.) CHARLES A. BANNERMAN,
Commissioner for Oaths.

*In the
Supreme
Court.*

MOTION PAPER by Defendants to discharge direction of 2nd May 1949.

No. 29.
Motion
Paper by
Defendants
to discharge
direction of
2nd May
1949,
25th August
1949.

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

IN THE MATTER :

ODIKRO KOJO ESIAM Plaintiff

V.

JOSEPH SAM BREW Defendant

EBUSUAPENIN KWEKU EDUFUL Co-Defendant.

MOTION ON NOTICE TO DISCHARGE ORDER. 10

PLEASE TAKE NOTICE that this Honourable Court will be moved by the Defendant and Co-Defendant for an Order discharging the order said to have been made by the Court on or about the 2nd day of May, 1949, transferring or purporting to transfer the above matter from the Ayan-Na-Breman Confederacy Native Appeal Court to the Land Court.

Affidavit of George Kojo Appiah, Co-Defendant's representative, in support attached.

Court to be moved on Saturday, the 27th day of August, 1949, at 9 o'clock in the forenoon or so soon thereafter as Applicants or their Counsel may be heard. 20

Dated at Cape Coast the 25th day of August, 1949.

(Sgd.) G. K. APPIAH,
for Defendant & Co-Defendant.

The Registrar,
Land Court,
Cape Coast.

To the above-named Kojo Esiam,
now replaced by Kweku Abeka.



No. 30.

AFFIDAVIT of G. K. Appiah in support of No. 29.

(Title as No. 29.)

AFFIDAVIT OF GEORGE KOJO APPIAH OF ESIAM IN THE WESTERN PROVINCE
OF THE GOLD COAST COLONY IN SUPPORT OF APPLICATION ON BEHALF
OF DEFENDANTS TO DISMISS THE SUIT.

*In the
Supreme
Court.*

No. 30.
Affidavit of
G. K.
Appiah in
support of
No. 29,
26th
August
1949.

I, GEORGE KOJO APPIAH of Esiam in the Western Province of the
Gold Coast Colony, make oath and say :

10 1. That I am the nephew of Kweku Eduful the Co-Defendant herein
and represented him at the hearing at the Courts first and second instance,
and that I swear to this affidavit by the Authority of both Defendants and
on their behalf.

2. That the suit was originally heard by the Native Court " B " of
Ayan-Na-Breman Confederacy where judgment was given in favour of
Plaintiff on the 28th July, 1947.

3. That Defendants appealed from the said judgment to the Native
Appeal Court of the said Confederacy which heard the appeal ex parte
in the absence of the Plaintiff and set aside the judgment of the Court
below on 3rd May, 1948.

20 4. That the Plaintiff then moved the Native Appeal Court for
re-hearing of the Appeal and the application was granted on the 28th June,
1948, and date for re-hearing fixed for 27th July, 1948.

5. That the Plaintiff died on the 23rd July, 1948, and one Kweku
Abeka applied to be substituted and the application, dated 23rd August,
1948, was listed for hearing on 14th September, 1948.

6. That the said Abeka failed to put in appearance before the Native
Appeal Court on the 14th September, 1948, and Court adjourned the
Motion to 18th September, 1948, when upon his failing again to put in
appearance, the application for substitution was struck out.

30 7. That on the same date, 18th September, 1948, two other motions
filed by the said Kweku Abeka were also for the same reason struck out,
the motions being—

(A) Motion on Notice dated 23rd August, 1948, relative to the
discharge of an Order appointing Panel to hear the appeal denovo.

(B) Motion of Kojo Esiam dated 27th May, 1948, for re-hearing
of appeal restored for hearing afresh as the result of order made
on 27th July, 1948, discharging previous Order made on 28th June,
1948, as referred to in paragraph 4 above.

*In the
Supreme
Court.*

8. That upon striking out of the Motion for re-hearing as stated in the preceding paragraph 7 (B), the Judgment of the Appeal Court dated 3rd May, 1948 was re-affirmed.

No. 30.
Affidavit of
G. K.
Appiah in
support of
No. 29,
26th
August
1949,
continued.

9. The Native Appeal Court was disestablished by Order under Section 3 of the Native Courts (Colony) Ordinance which appeared in the Gazette on or about the 2nd October, 1948, and the said Court ceased to exist.

10. That at the date of the disestablishment of the said Appeal Court there was nothing pending in the Appeal Court which could be transferred nor was there any application before it giving Notice of Intention to Appeal to the Land Court. 10

11. That Ex Parte proceedings before the Land Court were then taken by the said Kweku Abeka for substitution in place of Plaintiff, Kojo Esiam and for the proceedings in the closed Native Appeal Court to be transferred to the Land Court for prosecution.

12. That the matter came before Mr. Justice Jackson, who on the 18th March, 1949, held that he had no power to Order transfer of the proceedings or to make the substitution on the grounds disclosed in his judgment which is on the record of the Court and from this decision there was no appeal. 20

13. That it would appear from the Magistrate's Order of Transfer made herein dated 7th May, 1949, that His Honour the Judge made an Order on the 2nd day of May, 1949, directing the transfer of the said matter to the Land Court.

14. That in view of the history of the case as disclosed herein the Order made by His Honour the Judge on the 2nd May, 1949, was ultra vires, because,

[sic]

(A) There *as* no pending proceedings before the Native Appeal Court or Native Court "A" of Ayan-Na-Breman Confederacy entitled *as* as above which could be the subject of transfer. 30

[sic]

(B) The Order made on the 2nd May, 1949, appears to be a Review of the decision given by Jackson, J., on the 18th March, 1949.

(C) The decision given in similar circumstances in the case of *Kofi Ebiri and Another* versus *Kobina Entsiful and another* by Jackson J. on the same date of 18th September, 1949, has a similar effect on the present matter as the Learned Judge specifically referred to the above-named matter in that decision.

Sworn at Cape Coast this 26th day of August, 1949.

Before me
(Sgd.) J. T. ODAMETEV,
Commissioner for Oaths.

(Sgd.) G. K. APPIAH. 40

Filed 26.8.49
(Intd.) K.E.G.
for R.D.C.

AFFIDAVIT of Defendant Brew in opposition to No. 27.*(Title as No. 29)*

AFFIDAVIT OF JOSEPH SAM BREW ON BEHALF OF DEFENDANTS OPPOSING APPLICATION FOR SUBSTITUTION OF PLAINTIFF HEREIN.

I, JOSEPH SAM BREW otherwise Ohene Annobil II of Asaafa in the Ekumfi State within the jurisdiction of the Central Judicial Division make oath and say :—

*In the
Supreme
Court.*

No. 31.
Affidavit of
Defendant
Brew in
opposition
to No. 27,
2nd
September
1949.

1. That I am the Principal Defendant in the above Suit which was
10 heard and determined by the Ayan-Na-Breman Native Court " B " against the Defendants but which judgment on Appeal to the Native Appeal Court of Ayan-Na-Breman Confederacy was reversed in our favour on the 3rd day of May, 1948, and that I swear to this Affidavit on behalf of both Defendants.

2. That I have been served with a copy of the application of one Kweku Abeka asking that he be substituted for the Plaintiff Kojo Esiam who died on the 23rd July, 1948.

3. That in reply to the Affidavit of the said Kweku Abaka sworn
20 on the 10th August, 1949, in support of his said application I say as follows :

(A) That the Suit was originally heard by the Native Court " B " of Ayan-Na-Breman Confederacy where judgment was given in favour of Plaintiff on the 28th July, 1947.

(B) That Defendants appealed from the said judgment to the Native Appeal Court of the said Confederacy which heard the Appeal Ex parte in the absence of the Plaintiff and set aside the judgment of the Court below on 3rd May, 1948.

(C) That the Plaintiff then moved the Native Appeal Court
30 for rehearing of the Appeal and the application was granted on the 28th June, 1948, and date for re-hearing fixed for 27th July, 1948.

(D) That the Plaintiff died on the 23rd July, 1948, and one Kweku Abaka applied to be substituted and the application dated 23rd August, 1948, was listed for hearing on 14th September, 1948.

(E) That the said Abaka failed to put in appearance before the
40 Native Appeal Court on the 14th September, 1948, and Court adjourned the Motion to 18th September, 1948, when upon his failing again to put in appearance, the application for substitution was struck out.

(F) That on the same date, 18th September, 1948, two other Motions filed by the said Kweku Abaka were also for the same reasons struck out, the Motions being :

(1) Motion on Notice dated 23rd August, 1948, relative to the discharge of an Order appointing Panel to hear the Appeal de novo.

*In the
Supreme
Court.*

No. 31.
Affidavit of
Defendant
Brew in
opposition
to No. 27,
2nd
September
1949,
continued.

(2) Motion of Kojo Esiam dated 27th May, 1948, for re-hearing of Appeal restored for hearing afresh as the result of Order made on 27th July, 1948, discharging previous Order made on 28th June, 1948, as referred to in paragraph 3 (c) above.

(G) That upon the striking out of the Motion for re-hearing as stated in the preceding paragraph (3) (F), the judgment of the Appeal Court dated 3rd May, 1948, was re-affirmed.

(H) The Native Appeal Court was disestablished by Order under Section 3 of the Native Courts (Colony) Ordinance which appeared in the Gazette on or about the 2nd October, 1948, and 10 the said Court ceased to exist.

(I) That at the date of the disestablishment of the said Appeal Court there was nothing pending in the Appeal Court which could be transferred nor was there any application before it giving Notice of Intention to Appeal to the Land Court.

(J) That ex parte proceedings before the Land Court were then taken by the said Kweku Abaka for substitution in place of Plaintiff, Kojo Esiam and for the proceedings in the closed Native Appeal Court to be transferred to the Land Court for prosecution.

(K) That the matter came before Mr. Justice Jackson, who 20 on the 18th March, 1949, held that he had no power to Order transfer of the proceedings or to make the substitution on the grounds disclosed in his judgment which is on the Record of the Court and from this decision there was no Appeal.

(L) That it would appear from the Magistrate's Order of transfer made herein dated 7th May, 1949, that His Honour the Judge made an Order on the 2nd day of May, 1949, directing the transfer of the said matter to the Land Court.

4. That in view of the history of the case, there was nothing pending before the Native Appeal Court which could be transferred to this 30 Honourable Court and that this Court therefore has no jurisdiction to make the Order sought for.

5. That in the circumstances, I swear to this Affidavit on behalf of both Defendants opposing the application for Substitution and I attach hereto copy of the Judgment of Jackson, J., dated the 18th day of March, 1949, referred to in paragraph 3 (K) above (Exhibit "A").

*(Exhibit A
is printed
before as
Item
No. 23.)*

Sworn at Cape Coast the 2nd day of }
September, 1949 } (Sgd.) J. SAM BREW.

(Sgd.) J. T. ODAMETEY,
Commissioner for Oaths.

The Registrar, Land Court, Cape Coast,
and the above Applicant Kweku Abaka
or his Solicitor, Barrister Benjamin.

40

Filed 2.9.49
(Intd.) K.E.G.
for R.D.C.

No. 32.

PROCEEDINGS with Ruling of Mr. Justice Lingley.

*In the
Supreme
Court.*

IN THE SUPREME COURT OF THE GOLD COAST, Lands Division,
Cape Coast, Saturday, the 10th day of September, 1949, before
Mr. Justice LINGLEY, Acting Judge.

No. 32.
Proceed-
ings with
Ruling of
Mr. Justice
Lingley,
10th and
17th
September
1949.

8/49.

ODIKRO KOJO ESIAM *v.* J. S. BREW.*Benjamin :*

An order of transfer made : properly before Court : and if objecting
10 to transfer should have gone before Magistrate.

Johnson :

Entitled to question regularity of transfer. "Stop the hearing" here nothing pending. Already dealt with by Jackson, J. Interpretation Ordinance Section 9. 14th September, 1948, and failed to attend : three motions adjourned to 18th September : not served struck out. No motion to review : no notice of appeal. 2nd October order to close down Court there was nothing pending. Notice to Appeal must be within one month. Ordered motion Court "A"—no Court "A" but an appeal Court.

10th
September
1949.

Benjamin :

20 30th August, 1948—a right to appeal.

(Intd.) L. G. L.,

Ag. J

17.9.49.

Ruling :

In my opinion this Court has no power to hear the appeal. Appeal dismissed with 7 guineas costs.

17th
September
1949.

(Intd.) L. G. L.,

Ag. J.

*In the
Supreme
Court.*

MOTION PAPER for grant of Special Leave to Appeal.

No. 33.
Motion
Paper for
grant of
Special
Leave to
Appeal,
23rd
September
1949.

**IN THE SUPREME COURT OF THE GOLD COAST, Central Judicial
Division, Western Province, Land Court, Cape Coast.**

**ODIKRO KOJO ESLAM Plaintiff-
Respondent**

V.

**JOSEPH SAM BREW Defendant-
Appellant**

**EBUSUAPANIN KWEKU EDUFUL substituted
for NANA MANKRADU KWAMIN AYEBUAH
Deceased Co-Defendant-
Appellant. 10**

**MOTION EX PARTE for Special leave to appeal from the decision
given by the Land Court, Cape Coast on the 17th day of September, 1949,
in the above-named case.**

**Court to be moved by Mr. C. F. Hayfron Benjamin of Counsel for the
Applicant Kweku Abaka on day of September, 1949, at the hour of
8.30 a.m. of the clock or so soon thereafter as Counsel can be heard.**

Dated at Cape Coast this 23rd day of September, 1949. 20

**(Sgd.) C. F. H. BENJAMIN,
Solicitor for Applicant.**

**The Registrar,
Land Court Cape Coast.**



No. 33A.

AFFIDAVIT of Appellant in support of Motion (Item 33).

(Title as No. 33.)

In the
Supreme
Court.

No. 33A.
Affidavit of
Appellant
in support
of Motion
(Item 33),
24th
September
1949.

I, KWEKU ABAKA of Ayinasu, make oath and say as follows :—

1. That I am the Head of the Family of the above-named Plaintiff-Respondent in the above-named Appeal which was pending in the Ayan-Na-Breman Native Appeal Court.

2. That I am the applicant in the Land Court, Cape Coast for an Order of the said Court to substitute my name in place of Odikro Kojo Esiam deceased, who died on the 23rd day of July, 1948.

3. That on the 17th day of September, 1949, the Land Court did not entertain my application for the substitution sought for herein.

4. That I am aggrieved by the said decision and desire to appeal therefrom to the West African Court of Appeal.

5. That I swear to this affidavit in support of a Motion for Special Leave to appeal from the decision given by the Land Court on the 17th day of September, 1949, in the above-named case on the following grounds, that is to say :—

(A) The Appeal proceedings having been transferred to the Court by the Magistrate of Cape Coast, the Land Court was bound in Law to hear and determine the said Appeal.

(B) Because the Learned Judge of the Land Court was wrong in holding that there was no Appeal before him since the above case was one of the Appeal cases pending before him immediately prior to the abolition of the Native Court of Appeal of the Ayan-Na-Breman Confederacy and that the same was properly transferred to the Land Court of competent jurisdiction.

Sworn at Cape Coast this 24th day of September, 1949, this affidavit having been first read over interpreted to the deponent who cannot read and write in the Fanti language by A. E. Okru of Cape Coast and he seemed perfectly to understand the same before touching pen and making his mark hereto.

his
KWEKU ABAKA X
mark

Before me,

(Sgd.) J. T. ODAMETEY,

Commissioner for Oaths.

Filed 24.9.49.
(Intd.) N.N.A.
for R.D.C.

*In the
Supreme
Court.*

GRANT OF SPECIAL LEAVE TO APPEAL.

No. 34.
Grant of
Special
Leave to
Appeal,
29th
September
1949.

IN THE SUPREME COURT OF THE GOLD COAST, Lands Division,
the 29th day of September, 1949, before Mr. Justice LINGLEY,
Ag. Judge.

8/49.

ODIKRO KOJO ESIAM

v.

SAM BREW & ANOR.

APPLICATION FOR SPECIAL LEAVE TO APPEAL.

10

Court :

I think this is a proper case for special leave to be given. Special leave to appeal to W.A.C.A. is granted subject to :—

(A) Deposit £10 against cost of record.

(B) Bond in £40 with two sureties in like amount against costs.

(C) Notice to Respondent.

Conditions to be fulfilled within one month.

(Intd.) L.G.L.

Ag. J.

20

No. 35.

FOUNDATIONS OF APPEAL.

IN THE WEST AFRICAN COURT OF APPEAL, Accra.

ODIKRO KOJO ESAM . . . Plaintiff-Respondent

v.

JOSEPH SAM BREW and
ABUSUAPENYIN KWEKU
EDUFUL for himself and on behalf
of MANKRADU'S NSONA FAMILY of
Esiam

10 Defendants-Appellants.

*In the
West
African
Court of
Appeal.*

No. 35.
Grounds of
Appeal,
31st
October
1949.

The Appellant, being dissatisfied with the decision given by the Land Court, Cape Coast, on the 17th day of September, 1949, in the application made in the above-named case, having obtained Final Leave to appeal therefrom dated the 29th day of October, 1949, hereby appeals to the West African Court of Appeal upon the grounds hereinafter set forth.

FOUNDATIONS OF APPEAL.

1. The Appeal proceedings having been transferred to the Court by the Magistrate of Cape Coast, the Land Court was bound in law to hear and determine the said appeal.

20 2. Because the Learned Judge of the Land Court was wrong in holding that there was no Appeal before him since the above case was one of the Appeal cases pending before him immediately prior to the abolition of the Native Court of Appeal of the Ayan-Na-Breman Confederacy and that the same was properly transferred to the Land Court of competent jurisdiction.

Dated this 31st day of October, 1949.

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

[sic]

30 To the Registrar of the Court,
Accra

And to the above-named JOSEPH SAM BREW
of Asafa KWEKU EDUFUL of Esiam.

ARGUMENTS ON APPEAL.

*In the
West
African
Court of
Appeal.*

13th December, 1951.

No. 36.
Arguments
on appeal.
13th
December
1951.

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

Coram : FOSTER SUTTON, P., COUSSEY and KORSAH, JJ.

128/49.

ODIKRO KOJO ESIAM . . . Plaintiff-Respondent-
Appellant

v.

JOSEPH SAM BREW & ANOR. . . Defendants-Appellants- 10
Respondents.

Benjamin for applicant-appellant.

J. W. de Graft Johnson appears for Joseph Sam Brew and Kweku Eduful.

Benjamin :

Real issue is set out by Jackson J. at pages 35–37 of Record.

Reads Judgment at page 36.

Plaintiff-Respondent died on 23rd July—Proceedings were, therefore, defective.

Short point.

20

3rd May 1948—Native Appeal Court had given judgment *ex parte* in favour of Defendants—when he died suit was defective because no substitution had been made—although suit was, of course, still pending.

At page 37 District Commissioner stops hearing before Native Court as it is a land case. This order has not been vacated or reviewed—Formal Order drawn up page 38.

Page 40—Benjamin applied for substitution of Plaintiff to Land Court application dated 10th August, 1949.

Present Respondent filed motion to discharge order page 42.

District Commissioner having transferred case to Land Court 30 Lingley, J., could not deal with the matter because substitution had not yet been effected.

Court adjourns 12.30 p.m. Resumes 2 p.m.

Benjamin continues :

District Commissioner was acting within his powers under Section 54—Native Courts Ordinance 54 (1) (c).

Land Court Judge must direct where case must be heard—Section 14 of Cap. 4.

N.B. We look at original Order of transfer—It was made by Lingley Ag. J. on 2nd May, 1949—an order transferring this case from Magistrate's Court, Cape Coast, to the Lands Division of Supreme Court.

We call upon Johnson.

Johnson :

I concede that order of transfer if properly made—then Land Court is bound to hear and determine, but submit that order here was *not* properly made by Lingley Ag. J. because there was nothing pending before Magistrate's to report as pending—Refers to page 32 of Record letter written by District Commissioner saying he was satisfied that the case was finally disposed of on 18th September.

See also page 28. Final Order of President of Native Appeal Court.

Proceedings before Native Appeal Court were *not ex parte*—because he filed document—“ Reply to Appellant's Grounds of Appeal.”

Regulation 127 of Native Courts (Colony) Procedure Regulations—is my second string on this part of my argument.

Benjamin in reply :

20 There was something pending—1 W.A.C.A., page 78.

Lingley J.'s Order transferring the case to the Land Court has not been set aside.

C. A. V.

S. F. S.,
P.

13.12.51.

*In the
West
African
Court of
Appeal.*
No. 36.
Arguments
on appeal,
13th
December
1951,
continued.

JUDGMENT.

*In the
West
African
Court of
Appeal.*

No. 37.
Judgment,
21st
December
1951.

WEST AFRICAN COURT OF APPEAL. General sitting held at Accra
21st December, 1951.

Coram : FOSTER-SUTTON, P., COUSSEY & KORSAH, JJ.

Civil Appeal

No. 128/49.

ODIKRO KOJO ESLAM of Ayinasu . Plaintiff-Respondent-
Appellant-Appellant

v.

10

JOSEPH SAM BREW of Asafa . Defendant-Appellant-
Respondent-Respondent

EBUSUAPANYIN KWEKU EDUFUL
(substituted for MANKRADU KWAMIN
AYEBUAH deceased) . . . Co-Defendant-Appellant-
Respondent-Respondent.

JUDGMENT.

FOSTER-
SUTTON, P.

FOSTER-SUTTON, P.: It was conceded by both Mr. Hayfron-
Benjamin, for the Appellant, and Mr. de Graft Johnson, for the Respondent 20
that the only question for determination on this appeal is whether
Lingley, J., was right in holding that there was nothing "pending" in
the Native Appeal Court of Ayan-na-Breman Confederacy, Cape Coast
District, which could be transferred for determination by the Land Court.

The appeal first came before the Native Appeal Court for hearing
on the 14th of April, 1948. The Appellant was present but the Respondent
appeared by an agent who produced a letter asking for an adjournment.
Pursuant to that request the hearing of the appeal was adjourned until the
27th April, 1948. On that day the Respondent again failed to appear,
and the bailiff of the Court intimated that he had been unable to find the 30
Respondent to serve formal notice of the date of hearing on him. The
Native Appeal Court then decided to proceed with the appeal and after
a long and careful hearing, which terminated on 3rd May, 1948, they
allowed the appeal and set aside the judgment of the Native Court "B."

On the 28th June, 1948, the unsuccessful Respondent made an
application to the Native Appeal Court, by motion, asking it to set aside
its decision and re-hear the appeal on the ground that the hearing took
place ex parte. After hearing argument the Court granted the applicant

Respondent's request and fixed the appeal for re-hearing on the 27th July, 1948, by a fresh panel. After that the appeal came before the Native Appeal Court on two occasions on neither of which did the Respondent put in an appearance. In those circumstances the Court withdrew its consent to the re-hearing of the appeal, at the same time intimating that their judgment delivered on the 3rd May, 1948, remained effective.

*In the
West
African
Court of
Appeal.*

No. 37.
Judgment,
21st
December
1951,
continued.

Finally an order was made on the 2nd May, 1949, transferring the case to the Lands Division of the Supreme Court.

10 It follows from the foregoing that the real question for determination is whether it was competent for the Native Court of Appeal to re-open the case after their judgment of 3rd May, 1948. The Respondent was fully aware of the proceedings before the Court. He filed a detailed "Reply to Appellant's Grounds of Appeal," pages 54 and 55 of the record, and he must, in my view, be deemed to have had notice that his application for an adjournment had been granted and that the hearing of the appeal had been fixed for the 27th April, 1948, because it is clear from the record that the agent he sent to ask for the adjournment was fully informed of the Court's decision by the President of the Native Appeal Court. While it is true that the appeal was heard in his absence it cannot, I think, be
20 said that he was unaware of the position.

Apart, however, from the question as to whether the appeal was heard *ex parte* in the sense the term has been interpreted in this case, the Native Courts of Appeal are expressly authorised, by regulation 127 of the Native Courts (Colony) Procedure Regulations 1945, *inter alia*, to proceed to hear an appeal *ex parte* in the absence of the Appellant or Respondent.

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.

30 For the reasons I have given I am of the opinion that there was nothing "pending" which was capable of being transferred to the Land Court for adjudication. That being so, in my view, this appeal should be dismissed with costs fixed at £22 3s. 6d.

COUSSEY, J. : I concur.

COUSSEY, J.

KORSAH, J. : I concur.

KORSAH, J.

Counsel :

Hayfron-Benjamin for the Appellant.

de Graft Johnson for the Respondent.

*In the
West
African
Court of
Appeal.*

APPLICATION for and grant of final leave to appeal to Her Majesty in Council.
IN THE WEST AFRICAN COURT OF APPEAL, Gold Coast Session
A.D. 1952.

W. A. C. A. Civil Appeal
No. 128/1949.

No. 38.
Application
for and
grant of
Final
Leave to
Appeal to
Her
Majesty in
Council,
30th April
and 26th
June 1952.

ODIKRO KOJO ESIAM of Ayinasu . . . Plaintiff :
Appellant to Privy Council

v.

JOSEPH SAM BREW of Asafa . . . Defendant : 10
Respondent to Privy Council

EBUSUAPANYIN KWEKU EDUFUL (substi-
tuted for MANKRADU KWAMI AYEBUAH of
Esiam, deceased . . . Co-Defendant
Respondent to Privy Council.

30th
April 1952.

PLEASE TAKE NOTICE that this Honourable Court will be moved
on Monday the 23rd day of June, 1952, at 9 a.m. or so soon thereafter as
Counsel for the Plaintiff-Appellant herein can be heard for Final Leave
to appeal from the Judgment delivered herein on or about the 21st day of
December, 1951, to Her Majesty's Judicial Committee of the Privy Council, 20
all conditions imposed by the Court having been complied with.

Dated at Cape Coast this 30th day of April, 1952.

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

To the Registrar,
West African Court of Appeal,
Gold Coast Session, Accra,

And to the above-named Defendant-Respondent and Co-Defendant-
Respondent, their Agents or Solicitor.

26th June
1952.

26th June, 1952 : 30

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

Motion :

(11) **ODIKRO KOJO ESIAM**
v.
JOSEPH SAM BREW & ANOR.

MOTION for final leave to appeal to Privy Council.

Mr. Benjamin for Appellant.

Benjamin moves :

Order in terms of motions.

26.6.52.

S. F. S.
P.

40

ORDER IN COUNCIL for substitution.

AT THE COURT AT BUCKINGHAM PALACE.

The 21st day of June, 1955.

Present

THE QUEEN'S MOST EXCELLENT MAJESTY.

LORD PRESIDENT.

MR. SECRETARY LLOYD-GEORGE.

MR. SANDYS.

10 SIR WALTER MONCKTON.

MR. LOW.

MR. NUTTING.

MR. BROOKE.

MR. TURTON.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 7th day of June, 1955, in the words following, viz. :—

20 “ WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Ebusuapanyin Kweku Abaka in the matter of an Appeal from the West African Court of Appeal (Gold Coast Session) between the Petitioner (applicant for substitution in the place of the deceased Plaintiff Odikro Kojo Esiam) and Joseph Sam Brew and Ebusuapanyin Kweku Eduful (substituted for Mankradu Kwamin Ayebuah, deceased) (Defendants) Respondents setting forth that the above Appeal is pending before Your Majesty in Council and that the Record has become defective by reason of the deaths of the Plaintiff Odikro Kojo Esiam and of the second Respondent Ebusuapanyin Kweku Eduful: that as appears from a Supplemental Record which has arrived at the Privy Council Office the Petitioner Kweku Abaka Ebusuapanyin (or Head of Family) with the unanimous consent of members of the deceased's family (the Yoko Anona family) had been acting for the family in the prosecution during the intervening period of the proceedings in this case: that as also appears from the said Supplemental Record Nana Kwei Gyarku III has now been installed as Odikro (or sub-chief) of Ayinasu in the place of the deceased Odikro Kojo Esiam aforesaid: that under the provision of Section 26 of the West African (Appeal to Privy Council) Order in Council 1949 the West African Court of Appeal certified on the 28th day of February 1955 that in the opinion of that Court Nana Kwei Gyarku III Odikro of Ayinasu is the proper

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*In the
Privy
Council.*

No. 39.
Order in
Council for
substitu-
tion, 21st
June 1955.



*In the
Privy
Council.*

No. 39.
Order in
Council for
substitu-
tion, 21st
June 1955,
continued.

person to be substituted or entered on the record in the place of Odikro Kojo Esiam deceased: that it appears from a further Supplemental Record that under the provisions of the aforesaid Section 26 of the West African (Appeal to Privy Council) Order in Council 1949 the West African Court of Appeal also certified on the 28th day of February 1955 that in the opinion of that Court Nana Obu II Mankradu of Esiam is the proper person to be substituted or entered on the record in the place of Ebusuapanyin Kweku Eduful deceased: And humbly praying that Nana Kwei Gyarku III Odikro of Ayinasu may be substituted as Appellant 10 in the above appeal for the Petitioner and in place of the deceased Plaintiff Odikro Kojo Esiam, and that Nana Obu II Mankradu of Esiam may be substituted as a Respondent in the above appeal for the deceased second Respondent and that the Appeal may be revived accordingly:

“THE LORDS OF THE COMMITTEE in obedience to His late Majesty’s said Order in Council have taken the humble Petition into consideration and the Solicitors for the first Respondent having signified in writing their consent to the prayer thereof Their Lordships do this day agree humbly to report to Your Majesty as their opinion 20 that Nana Kwei Gyarku III Odikro of Ayinasu ought to be substituted in place of Ebusuapanyin Kweku Abaka as Appellant and for the Plaintiff Odikro Kojo Esiam deceased and Nana Obu II Mankradu of Esiam ought to be substituted in place of Ebusuapanyin Kweku Eduful deceased as second Respondent and that this Appeal ought to stand revived accordingly.”

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution. 30

Whereof the Governor or Officer administering the Government of the Gold Coast for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW.

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.*

RECORD OF PROCEEDINGS

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