

~~Case No. 43 of 1953~~

23, 1957

No. 43 of 1953. ✓

In the Privy Council.

ON APPEAL

*FROM THE WEST AFRICAN COURT OF APPEAL
(Gold Coast Session).*

BETWEEN

**NANA OFORI ATTA II Omanhene of Akyem Abuakwa,
and Bafuor Owusu Amo Odikro of Muronam (Plaintiffs) *Appellants.***

AND

**1. NANA ABU BONSRA II as Adansehene and as
representing the Stool of Adanse (substituted for Nana
Bonsra Agyei) (Defendant)**

AND

**2. BANKA STOOL as represented by Brako Ababio II
(Co-defendant) *Respondents.***

RECORD OF PROCEEDINGS

**A. A. BRYDEN & WILLIAMS,
53 VICTORIA STREET,
LONDON, S.W.1,
*Appellant's Solicitors.***

**T. L. WILSON & CO.,
6 WESTMINSTER PALACE GARDENS,
LONDON, S.W.1,
*Solicitors for the first Respondent.***

In the Privy Council

ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL
(Gold Coast Session).

BETWEEN

NANA OFORI ATTA II, Omanhene of Akyem Abuakwa, and
BAFUOR OWUSU AMO, Odikro of Muronam (Plaintiffs) . *Appellants*

AND

- (1) NANA ABU BONSRRA II, as Adansehene and as representing
the STOOL OF ADANSE (substituted for NANA BONSRRA AGYEI)
(Defendant) and
- (2) BANKA STOOL as represented by BRAKO ABABIO II
(Co-Defendant) *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

NANA OFORI ATTA II, Omanhene of Akyem
Abuakwa, and BAFUOR OWUSU AMO, Odikro
of Muronam (Plaintiffs) *Appellants*

10

AND

(1) NANA ABU BONSRRA II, as Adansehene and
as representing the STOOL OF ADANSE (substituted
for NANA BONSRRA AGYEI) (Defendant) and
(2) BANKA STOOL as represented by BRAKO
ABABIO II (Co-Defendant) *Respondents.*

RECORD OF PROCEEDINGS

No. 1.

WRIT OF SUMMONS.

Suit No. 43/1946.

20 IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI.
Divisional Court holden at Kumasi.

Between NANA OFORI ATTA II, Omanhene of Akyem
Abuakwa, Kibi, Gold Coast Colony, and
BAFUOR OWUSU AMO, Odikro of Muronam Plaintiffs
and

NANA BONSRRA AGYEI, Adansehene, Fomena-
Ashanti Defendant

*BANKA STOOL as represented by BRAKO
ABABIO II Co-Defendant.

30 To Nana Bonsra Agyei, Adansehene Fomena-Ashanti.

*In the
Supreme
Court of
the Gold
Coast.*

No. 1.
Writ of
Summons,
29th
August
1946.

*Joined
by Order
of Court
dated
22.7.47.

You are hereby commanded in His Majesty's name to attend before
this Court at Kumasi on Monday the 30th day of September, 1946, at
8.30 o'clock in the forenoon, then and there to answer a Suit by Nana
Ofori Atta II, Omanhene of Akyem Abuakwa, Kibi, Gold Coast Colony
and Bafuor Owusu Amo, Odikro of Muronam against you.

The claim of the Plaintiff Nana Ofori Atta II as Paramount
Chief of Akim Abuakwa to whom Muronam Stool and Stool land

*In the
Supreme
Court of
the Gold
Coast.*

No. 1.
Writ of
Summons,
29th
August
1946,
continued.

are subject, and of the Plaintiff Bafuor Owusu Amo as Odikro of Muronam to whose Stool the Muronam Stool lands belong is for a declaration of their title to all that piece or parcel of land known as Nsuakote or Anungya situate on the right bank of the Anun River and bounded on the North by River Sepong and land belonging to the Stool of Jumakyi, on the South by River Prah and land belonging to Amentia and Brenase Stools, on the East by Muronam Stool land and the Anun River Forest Reserve and on the West by River Apaa and the Mem Bepo and land belonging to Bogyeseanwo Stool.

10

Also for an injunction restraining the Defendant his people and agents from entering upon the said land and interfering with the rights of the Plaintiffs and their people in any manner whatsoever. Issued at Kumasi the 29th day of August, 1946.

Sum claimed	..	..	..	..	Judicial Relief and Injunction.
Court fees	..	..	..	..	£4 10 0
Bailiff's fees	..	..	..	..	0 7 0
					<hr/>
					£4 17 0
					<hr/>

(Sgd.) W. B. VAN LARE,

20

District Magistrate for Judge.

No. 2.
Statement
of Claim,
13th
November
1946.

No. 2.

STATEMENT OF CLAIM.

IN THE SUPREME COURT OF THE GOLD COAST.
Divisional Court, Kumasi-Ashanti.

Between NANA OFORI ATTA II, Omanhene of Akyem
Abuakwa, Kibi, Gold Coast Colony, and
BAFUOR OWUSU AMO, Odikro of Muronam Plaintiffs

and

NANA BONSTRA AGYEI, Adansehene, Fomena-
Ashanti Defendant.

30

PLAINTIFFS' STATEMENT OF CLAIM.

1. The Plaintiff Nana Ofori Atta II is Paramount Chief of Akim Abuakwa to whom Muronam Stool and Stool lands are subject and the Plaintiff Bafuor Owusu Amo is Odikro of Muronam to whose Stool are attached the Muronam Stool lands, including Nsuakwate or Anungya lands, subject matter of this suit, and fully described in the Writ of Summons herein.

2. The said Nsuakwate or Anungye lands have from time immemorial formed part of the Akim Abuakwa Stool lands, subject to the Stool of the Omanhene of Akim Abuakwa, and the said land have not at any time been attached to the Stool of the Adansehene.

*In the
Supreme
Court of
the Gold
Coast.*

3. Prior to the year 1900 the River Prah having been made the boundary between the Colony and Ashanti, Muronam and other Akim towns in the area became part of the Ashanti Protectorate but were not included in the Ashanti Confederacy and the Muronam Stool and lands attached thereto remained subject to the Paramount Stool of the Omanhene of Akim Abuakwa.

No. 2.
Statement
of Claim,
13th
November
1946,
continued.

4. In or about the year 1929 the Adansehene for the first time laid claim to the Muronam Stool lands as being subject to his Stool and instituted an action for trespass against the Chief of Muronam which eventually terminated in favour of the Muronam Stool on appeal to the Court of the Chief Commissioner of Ashanti.

5. From about the year 1942 to date the Adanse Stool, by many acts of trespass and intimidation, has through its agents and servants, sought to exercise rights of ownership over the Nsuakwate lands.

6. An action for £1,000 damages was commenced against the Adansehene in January, 1945, in the Chief Commissioner's Court of the Northern Territories, Tamale, the same being at the time a Court of competent jurisdiction over the Nsuakwate lands, but before that action could come on for trial Section 67 of Cap. 4 was amended, jurisdiction over such cases being then conferred on the Supreme Court.

7. The Plaintiffs claim declaration of title to the Nsuakwate lands as described in the Writ of Summons herein and a perpetual injunction against the Defendant herein as representing the Stool of Adanse, restraining the occupant and subjects of the Adanse Stool from entering upon the said Nsuakwate lands and interfering with the quiet enjoyment of the same by the Plaintiffs and their people, or from dealing with it in any manner whatsoever.

Dated at Yiadom Chambers, Accra, this 13th day of November, 1946.

(Sgd.) J. B. DANQUAH,
Solicitor for the Plaintiffs.

To the Registrar,
Divisional Court,
Kumasi, Ashanti,
and

To Nana Bonsra Agyei,
Adansehene, Defendant herein
His Agent or Solicitor,
Kumasi, Ashanti.

No. 3.
DEFENCE.

(Title as No. 2.)

STATEMENT OF DEFENCE.

1. The Defendant claims that the land the subject matter of the action herein is held by him in his capacity as Omanhene of the Stool of Adansi and not in his personal capacity and assumes from paragraph 7 of the Plaintiffs' Statement of Claim dated the 13th November, 1946, that the action herein is intended to lie against the said Stool of Adansi.

2. The Defendant claims that the land the subject matter of the action herein is under the immediate custody of the Banka Stool represented by Brako Ababio as caretaker of the said lands for the said Adansi Stool and the said Banka Stool should be a party to this action as Co-Defendant. 10

3. The Defendant claims that the Plaintiffs are estopped from claiming against the Defendant the relief sought herein in as much as—

(A) in an action instituted in the Chief Commissioner's Court of Ashanti on or about the 9th day of May, 1940, intituled Chief Kwame Andoh and Kofie Fofie of Muronam for and on behalf of the Stool of Muronam Plaintiffs against Nana Kwakye Penkoro 20 Bankahene and ex-chief Kofi Akeampong of Kade Defendants the Plaintiffs therein being the second Plaintiff herein claimed against the Defendants therein :—

“ 1. A declaration of their title to all that piece or parcel
“ of land known as Nsuakwate or Anungya situate on the right
“ bank of the Anum River and bounded on the north by River
“ Sepong and land belonging to the Stool of Jumakyi, on the
“ south by River Prah and land belonging to Amentia and
“ Brenase Stools, on the east by Muronam Stool land and the
“ Anum River Forest Reserve and on the West by River Apaa 30
“ and the Mem Bepo and land belonging to Bogyeseanwo Stool.

“ 2. Damages for trespass on the said land, and

“ 3. An injunction restraining the defendant his people
“ and agents from entering upon the said land and interfering
“ with the rights of the Plaintiffs and their people in any manner
“ whatsoever.”

(B) On the 19th day of November, 1940, judgment was entered in the said action for the Defendant with costs for the Defendant.

(C) On the 29th day of May, 1941, the West African Court of Appeal dismissed the Appeal of the Plaintiffs against the said 40 judgment with costs for the Defendant.

(D) The First Plaintiff herein claims through and jointly with the Second Plaintiff herein a declaration of title to the same lands as were the subject matter of the action mentioned in paragraph 3

hereof and further claims relief similar to that claimed in the said action in respect of the said lands to wit a declaration as to title and an injunction to restrain the Defendants from entering upon the said land.

(E) The Defendant claims to hold the land the subject matter of the action herein through the said Stool of Banka as caretaker.

(F) The Defendant therefore claims that the Plaintiffs are estopped in their claim herein.

4. The Defendant denies that the lands the subject matter of the
10 action herein are attached or belong to the Muronam Stool and further states that the town of Muronam is not situate in Ashanti but in the Gold Coast Colony.

5. The Defendant denies that the said lands the subject matter of the action herein have from time immemorial formed part of the Muronam Stool lands and/or part of the Akim Abuakwa Stool lands but say that from time immemorial the said lands have formed part of the Defendant's Stool lands.

6. The Defendant denies that the action mentioned in paragraph 4
20 of the Plaintiffs' Statement of Claim proved the title of the Second Defendant herein the Stool of Muronam to any particular lands or alternatively that such action disproved the title of the Defendant to any particular lands but states that that action in which the Defendant herein was the Plaintiff therein and the Second Defendant herein the Muronam Stool was the Defendant therein was ultimately terminated on appeal to the Chief Commissioner's Court of Ashanti by a finding that the Court of first instance had no jurisdiction.

7. The Defendant claims the right to exercise rights of ownership over the land the subject matter of the action herein the said lands forming part of the Defendant's Stool lands.

30 Dated at Kumasi this Fourth day of January 1947.

(Sgd.) J. J. PEELE & CO.,

Defendant's Solicitors.

To The Registrar,
Divisional Court, Kumasi.

And to

The above-named Plaintiffs,

1. Nana Ofori Atta II, Omanhene of Akyem Abuakwa, Kibi, and
 2. Bafuor Owusu Amo, Odikro of Muronam or their Agent or Solicitor, Dr. J. B. Danquah of Accra.
-

*In the
Supreme
Court of
the Gold
Coast.*

—
No. 3.
Defence,
4th
January
1947,
continued.

*In the
Supreme
Court of
the Gold
Coast.*

No. 4.

REPLY.

No. 4.
Reply,
28th
January
1947.

(*Title as No. 2.*)

REPLY TO STATEMENT OF DEFENCE.

1. The Plaintiffs join issue with the Defendant in his Statement of Defence.

2. In further reply to paragraph 1 of the Statement of Defence the Plaintiffs say that as disclosed in their Statement of Claim this action is brought against the Defendant Nana Bonsra Agyei in his capacity as Adansehene and as representing the Stool of Adanse. 10

3. In further reply to paragraph 2 of the Statement of Defence the Plaintiffs deny that the Banka Stool is subject to the Adanse Stool or that the land in dispute is under the immediate custody of the Banka Stool as caretaker for the Adanse Stool or that the Adanse Stool has any interest in that land.

4. The Banka Stool is subject to the Paramount Stool of Akim Abuakwa, 1st Plaintiff herein, and has no separate interest in the subject-matter of this suit nor will that Stool be directly affected by the result of the suit to entitle it to be made a party as Co-Defendant.

5. In further reply to paragraph 3 of the Statement of Defence the Plaintiffs deny that they are estopped by the Judgments referred to therein from claiming against the Defendant the relief sought herein. The Defendant herein was not a party to that suit, and the said judgments did not award the land in dispute to Banka Stool. The West African Court of Appeal in its judgment dated 29th May, 1941, referred to in paragraph (3) (c) of the Statement of Defence, stated *inter alia* :— 20

“ . . . we see no reason to differ from the finding of the Acting Assistant Chief Commissioner of Ashanti in the Court below “ ‘ there is no evidence on the Plaintiff’s side to justify the grant of “ ‘ the declaration of title which he seeks.’ But we think it necessary 30 “ to add that we do not subscribe to his other finding that the “ question of the ownership of this land has already been decided “ by validated Executive Decision Exhibit ‘ M ’.”

The three Defendants in that suit including the Bankahene did not counter-claim for title to the said land.

6. In further answer to paragraph 4 the Plaintiffs say that Muronam is situate in Ashanti being within the district of the District Commissioner of Obuasi, Ashanti, but is subject to the paramount Stool of Akim Abuakwa.

*In the
Supreme
Court of
the Gold
Coast.*

Dated at Yiadom Chambers, Accra, this 28th day of January, 1947.

(Sgd.) J. B. DANQUAH,

Solicitor for the Plaintiffs.

To :

The Registrar,

Divisional Court, Kumasi, Ashanti.

10

And to

Nana Bonsra Agyei,

Adansehene, Defendant herein, his Agent or Solicitor,
Kumasi, Ashanti.

No. 4.
Reply,
28th
January
1947,
continued.

No. 5.

AFFIDAVIT of Brako Ababio in Support of Motion.

(Title as No. 2.)

I, BRAKO ABABIO II, Bankahene of Banka-Ashanti make oath and say as follows :—

No. 5.
Affidavit
of Brako
Ababio in
support of
Motion,
3rd April
1947.

1. I am the Ohene of Banka and duly authorised by the Banka Stool to make this Affidavit.

2. I have read the Writ of Summons issued herein at the instance of the Plaintiffs and dated the 29th day of August, 1946.

3. I have read the Statement of Defence filed herein on the 6th day of January, 1947, on behalf of the Defendant.

4. I agree that the land the subject matter of the action herein is under the immediate custody of the Banka Stool as caretaker for the Adanse Stool.

5. The Banka Stool claims an interest in the land the subject matter of the Suit and will be affected by the result thereof as the Banka Stool does not serve the First Plaintiff herein but is an independent Stool.

6. I swear to this Affidavit in support of the Defendant's application herein for an Order that the Banka Stool be joined as Defendant to this action.

Sworn at Kumasi this 3rd day of April,
1947.

(Sgd.) NANA BRAKO
ABABIO II.

Before Me,

(Sgd.) C. E. BREW,

Commissioner for Oaths.

MOTION for joinder of Banka Stool as Co-Defendant.

(Title as No. 2.)

No. 6.
Motion for
joinder of
Banka
Stool as
Co-
Defendant,
10th April
1947.

TAKE NOTICE that this Honourable Court will be moved on Tuesday the 15th day of April, 1947, at 8.30 of the clock in the forenoon or so soon thereafter as Counsel can be heard by Counsel for the Applicant for an Order that the Banka Stool as represented by Brako Ababio II be joined as Co-Defendant herein.

Such other Order as to this Honourable Court may seem fit.

Dated at Kumasi this tenth day of April, 1947.

10

(Sgd.) J. J. PEELE & CO.,
Applicant's Solicitors.

To :
The Registrar,
Divisional Court, Kumasi.

And to

The above-named Plaintiffs :

1. Nana Ofori Atta II, Omanhene of Akyem Abuakwa, Kibi and
2. Bafuor Owusu Amo, Odikro of Muronam of their Agent or Solicitor, Dr. J. B. Danquah of Accra.

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No. 7.

AFFIDAVIT of Nana Bonsra Agyei in support of Motion for joinder.

(Title as No. 2.)

I, NANA BONSRRA AGYEI Adansehene of Fomena make oath and say as follows :—

1. I am the Adansehene the Defendant herein and duly authorised by the Adansi Stool to make this Affidavit.

2. It is of my own knowledge that the Banka Stool is closely concerned with the land the subject matter of the action herein and that
10 Adansi and Banka have each interests therein to a greater or lesser extent and hitherto undefined.

3. I verily believe that the Banka Stool will be affected by the result of the action herein.

4. I swear to this affidavit in support of the application herein dated the 10th April, 1947, for an Order that the Banka Stool be joined as Co-Defendant to this action.

Sworn at Fomena this 15th day of May, } (Sgd.) NANA BONSRRA
1947, } AGYEI.

Before Me,

20 (Sgd.) ALAN BULLWINKLE,
Asst. District Commissioner.

No. 8.

AFFIDAVIT of Nana Ofori Atta II opposing application for joinder.

(Title as No. 2.)

I, OFORI ATTA II, Okyenhene, make oath and say as follows :—

1. That I am the 1st Plaintiff herein.

2. That the Affidavit of Nana Bonsra Agyei, Defendant herein, sworn to on 15th May, 1947, has been read by me. I have read also the Affidavit of Brako Ababio II, of Banka, sworn to on the 3rd April, 1947, as also the
30 reply of Bafuor Owusu Amo, Odikro of Muronam, second Plaintiff herein, in reply to the Affidavit of 3rd April aforesaid.

3. That the allegation in paragraph 2 of the Defendant's Affidavit is denied. The extent of the interest of both the Adanse Stool and the Banka Stool alleged to be " hitherto undefined " does not exist except in so far as some years ago both Stools attempted to assert title to the land in dispute, but both their claims being largely inconsistent, they failed.

*In the
Supreme
Court of
the Gold
Coast.*

No. 7.
Affidavit
of Nana
Bonsra
Agyei in
support of
Motion for
joinder,
15th May
1947.

No. 8.
Affidavit
of Nana
Ofori
Atta II
opposing
application
for joinder,
31st May
1947.

*In the
Supreme
Court of
the Gold
Coast.*

No. 8.
Affidavit
of Nana
Ofori
Atta II
opposing
application
for joinder,
31st May
1947,
continued.

4. That the allegation in paragraph 3 of the Defendant's affidavit is denied. The Banka Stool has no title to the land other than what it may derive from its customary law right as subject of the Paramount Stool of Akim Abuakwa, or may have been conferred on it by the Paramount Stool.

5. That Nsuakwate land, subject matter of the action herein, is attached directly to the Muronam Stool. The attempt by the Banka Stool to prove that such land belonged to the Banka Stool or was under the Stool as caretaker for the Adansi Stool, failed in the action referred to in paragraph 3 of the Statement of Defence. 10

6. That in that action in which Chief Kwame Andoh and Kofi Fofie of Muronam for and on behalf of the Stool of Muronam were Plaintiffs and Nana Kwakye Penkoro Bankahene and ex-Chief Kofi Akyeampong of Kade were Defendants, the claim was for declaration of title to Nsuakwate land, the very land in dispute herein.

7. That I am advised by Counsel and verily believe that if even the claim of the Banka Stool as caretaker for the Adansi Stool were to be substantiated the Banka Stool would only be proved an agent to the Adansi Stool, Defendant herein, and as such agent the interest of the Banka Stool cannot be other than or separate from the interest or share 20 of its principal so as to entitle Banka Stool to be joined as a party.

8. That the allegation in paragraph 5 of the Bankahene's Affidavit of 3rd April, that the Banka Stool "does not serve the first Plaintiff herein but is an independent Stool" is denied. The Banka Stool is subject to the Paramount Stool of Akim Abuakwa through the Odauhene of Akim Abuakwa whose seat is at Otwereso and Osenase. The Bankahene serves under the said Odauhene as Apajahene and was not truly entitled to be called *Ohene* (Divisional Chief), until 1945 when the Banka Stool was raised by me to the status and rank of *Opakani*, that is to say, Divisional Chief with the title of *Ohene*. The person applying for joinder on behalf of the Banka Stool and named Brako Ababio II has not yet taken the oath of allegiance to my Paramount Stool, and his personal status is questionable. 30

9. That in the aforesaid case referred to in paragraph 3 of Defendant's Statement of Defence the Bankahene admitted and did not question his own status as subject to the Paramount Stool of Akim Abuakwa. The allegation by Brako Ababio II that the Banka Stool is an independent Stool is wholly insupportable.

10. That I am advised by Counsel and verily believe that no sufficient reason has been assigned by the Adansihene or the Bankahene why the latter's Stool should be joined as Co-Defendant herein. 40

Sworn at Kibi this 31st day of May, } (Sgd.) OFORI ATTA II.
1947,

Before Me,

(Sgd.) J. A. R. FORSTER,
Asst. District Commissioner.

No. 9.

AFFIDAVIT of Owusu Amo opposing application for joinder.*(Title as No. 2.)**In the
Supreme
Court of
the Gold
Coast.*No. 9.
Affidavit
of Owusu
Amo
opposing
application
for joinder,
31st May
1947.

I, OWUSU AMO, Odikro of Muronam, make oath and say as follows :—

1. I am one of the Plaintiffs in the above-named case and I am authorised to swear to this affidavit on behalf of myself and the first Plaintiff.

2. That the affidavit of Brako Ababio II Bankahene dated the 11th April, 1947, has been read over and interpreted to me.

10 3. That the allegation in paragraph 4 of the said affidavit is hereby denied. Nsuakwate land, subject matter of the action herein, is attached directly to the Muronam Stool. The attempt by the Banka Stool to prove that such land belonged to the Banka Stool or was under the Stool as caretaker for the Adansi Stool, failed in the action referred to in paragraph 3 of the Defendant's Statement of Defence.

4. That in that action in which Chief Kwame Andoh and Kofie Fofie of Muronam for and on behalf of the Stool of Muronam were Plaintiffs and Nana Kwakye Penkoro Bankahene and ex-Chief Kofi Akyeampong of Kade were Defendants, the claim was for declaration of title to Nsuakwate
20 land, the very land in dispute herein.

5. I am advised by Counsel and verily believe that if even the claim of the Banka Stool as caretaker for the Adansi Stool were to be substantiated the Banka Stool would only be proved an agent to the Adansi Stool, Defendant herein, and as such agent the interest of the Banka Stool cannot be other than or separate from the interest or share of his principal so as to entitle Banka Stool to be joined as a party.

30 6. That the allegation in paragraph 5 of the Bankahene's affidavit that the Banka Stool " does not serve the first Plaintiff herein but is an independent Stool " is denied. The Banka Stool is subject to the Paramount Stool of Akim Abuakwa through the Odauhene of Akim Abuakwa whose seat is at Otwereso and Osenase. The Bankahene serves under the said Odauhene as Apajahene and was not truly entitled to be called *Ohene*, (Divisional Chief), until 1945, when the Banka Stool was raised by the Omanhene of Akim Abuakwa first Plaintiff herein, to the status and rank of *Opakani*, that is to say, Divisional Chief with the title of *Ohene*.

40 7. That in the aforesaid case referred to in the paragraph 3 of the Defendant's Statement of Defence the Bankahene admitted and did not question his own status as subject to the Paramount Stool of Akim Abuakwa. The allegation by Brako Ababio II that the Banka Stool is an independent Stool is wholly insupportable.

6. I crave leave to refer to the said affidavit the original of which is herewith attached and marked "A."

Sworn to at Kibi this 17th day of June, } (Sgd.) OFORI ATTA II.
 1947, by the deponent,

Before Me,
 (Sgd.) W. BRIAN SMITH,
 Snr. District Commissioner.

"A"

10 This is the instrument marked "A" referred to in the Affidavit of Nana Ofori Atta II sworn before me this day of June, 1947.

(sgd.) A. R. BENGHAM,
 District Commissioner.

TO ALL WHOM IT MAY CONCERN.

I, KWADJO YEBOAH of Banka, farmer and Head of the Amoakwa Family in Banka, in Akyem Abuakwa State for myself and on behalf of all the said family members of Kibi, Boadua, Akwatia, Kade, Kyea and Banka make oath and say as follows:—

1. That I am the Head of the Amoakwa Family.
- 20 2. That in time memorial, the Banka Stool has been and is under the Dawuhene of Okwereso in Akyem Abuakwa, who in turn serves the Ofori Panin Stool with it and therefore claims or considers the Stool Abuakwa Stool.
3. That during the demarcation between the Ashantis and Akyems the Pra River was used as the Boundary Line and is still the Boundary.
4. That after the completion of the Demarcation, the Bankas went to the Asuogya of the said River and occupied there till now.
5. That there, the late Okyenhene gave the Bankas to the Government to look over them for him and not to let them be under any other rule or State other than the Akyems.
- 30 6. That I, for myself and on behalf of all family members mentioned respectively, know perfectly well and in truth that the Banka Stool has been under the Ofori Panin Stool from long ago and is still under it.
7. That in view of the foregoing, I for myself and on behalf of the Amoakwa Family members of above mentioned towns depose to this affidavit, saying that if Nana Brako Ababio and his Elders of Banka in Akyem Abuakwa State in their Affidavit filed recently stated that the

*In the
 Supreme
 Court of
 the Gold
 Coast.*

—
 No. 10.
 Affidavit
 of Nana
 Ofori
 Atta II
 with
 annexure
 refuting
 certain
 allegations
 of Banka
 Stool,
 17th June
 1947,
continued.

*In the
Supreme
Court of
the Gold
Coast.*

Banka Stool is for itself and does not serve any other Stool, do not agree and consent with their said Statement and say that I, for myself and on behalf of other members aforesaid mentioned are directly under the Abuakwa State and therefore serves the Ofori Panin Stool always.

Dated at Kyebi this 10th day of June, 1947.

No. 10.
Affidavit
of Nana
Ofori
Atta II
with
annexure
refuting
certain
allegations
of Banka
Stool,
17th June
1947,
continued.

Sworn at Kyebi this 10th day of June, 1947, after the foregoing has been read, interpreted and explained into Twi language by G. K. Obeng of Kyebi when the deponent herein seemed perfectly well to understand same after making his mark hereto :

KWADJO YEBOAH his
Deponent. X
mark 10

W/W to mark,

(Sgd.) G. K. OBENG
L.No. 23553/47
Gratis.

Before Me,

(Sgd.) A. R. BENGHAM,
Commissioner for Oaths.
District Commissioner.

No. 11.
Court
Notes
granting
application
for joinder,
22nd July
1947.

No. 11.

20

COURT NOTES granting Application for Joinder.

IN THE SUPREME COURT OF THE GOLD COAST, Ashanti, at a Divisional Court held at Kumasi on Tuesday the 22nd day of July, 1947, before His Honour Mr. Justice LINGLEY (Acting Judge).

43/1946.

NANA OFORI ATTA Omanhene of Akyem
Abuakwa etc.

v.

NANA BONSTRA AGYEI, Adansihene, Banka-Ashanti.

Asafu-Adjaye moves. Order 3 Rule 5. An application by Brako Ababio II 30 to be joined as Co-Defendant.

Is in possession of land and a claim of title in Plaintiff's case. So entitled to be joined.

Plaintiffs are in no way prejudiced.

Caretaker's position varies : may have share in land. *Yawah v. Maslieno*, 1 W.A.C.A. 87 Deane C.J. at page 90. Caretaker may be paid for services and has no interest : or unpaid when he may have a share in land or proceeds.

In the Supreme Court of the Gold Coast.

Apart from land an allegation that Banka is under Abuakwa Stool.

Recognised by Native Authority Ordinance Cap. 79 Vol. III, 381.

No. 11.
Court
Notes
granting
application
for joinder,
22nd July
1947,
continued.

Danquah—

Claim for declaration of title to land. Banka is raising a new issue : constitutional issues outside jurisdiction of Court.

10 Caretaker cannot have greater interest or interest independent of landlord.

Halsbury Vol. 24 page 326—Suing landlord makes it unnecessary to join tenant as Defendant.

1 K.B. 1905 page 158.

Court—

Cannot see it supports proposition that tenant or landlord could not be allowed to join in action if they wished.

Danquah—

20 Will result in inconvenience and embarrassment so as to render fair trial of suit impossible.

3 W.A.C.A. 220.

Banka's title already determined in Court of Appeal.

Not necessarily in possession.

Halsbury Vol. 23 106. Affidavit of possession must be filed.

Would mean all servants can be joined.

I see no reason why applicant should not be joined. I am confident that at hearing all irrelevant matters will be excluded and Plaintiff will not be prejudiced.

30 Order that mover be joined as a Defendant in the action : Defendant to file defence by 1st September.

Costs in the cause.

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

*In the
Supreme
Court of
the Gold
Coast.*

No. 12.

DEFENCE by Banka Stool—Co-Defendant.

**IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI.
Divisional Court, Kumasi.**

No. 12.
Defence
by Banka
Stool—Co-
Defendant,
30th
August
1947.

**NANA OFORI ATTA II, Omanhene of Akyem
Abuakwa, Kibi, Gold Coast Colony, and
BAFUOR OWUSU AMO, Odikro of Muronam . Plaintiffs**

v.

**NANA BONSRAGYEI, Adansehene, Fomena-
Ashanti Defendant 10**

NANA BRAAKO ABABIO II for BANKA STOOL . Co-Defendant.

STATEMENT OF DEFENCE

**of NANA BRAAKO ABABIO II, for and on behalf of the BANKA STOOL,
Co-Defendant.**

1. The Co-Defendant the Banka Stool states that the land the subject matter of this suit is under the immediate custody of the Banka Stool as caretaker according to Native Custom of the said land for the Adansi Stool the 1st Defendant herein.

2. The Co-Defendant adopts the Statement of Defence filed by the 1st Defendant the Adansi Stool and puts the Plaintiff to strict proof of any 20 rights.

3. The Co-Defendant as caretaker according to Native Custom of the said lands has an interest in the said land entitling the Banka Stool to a share or interest in any profits accruing from the said land and to the possession thereof.

4. That the Banka Stool does not serve the 1st Plaintiff herein but is an independent Stool.

5. That the Plaintiffs are not entitled to the declaration and/or relief sought.

Dated at Kumasi this 30th day of August, 1947. 30

(Sgd.) E. O. ASAFU-ADJAYE,
Solicitor for Co-Defendant,
BANKA STOOL.

The Registrar,
Divisional Court, Kumasi,
and to the above-named Plaintiffs' Solicitor
Dr. J. B. Danquah of Accra.

No. 13.

COURT NOTES ordering survey of land in dispute.

IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI,
at a Divisional Court held at Kumasi on Tuesday the 6th day of
April, 1948, before HIS HONOUR MR. JUSTICE KORSAH.

*In the
Supreme
Court of
the Gold
Coast.*

No. 13.

Court
Notes
ordering
survey of
land in
dispute,
6th April
1948.

43/46 NANA OFORI ATTA II etc.

v.

NANA BONNSRA AGYEI etc.

Mr. Quist with him Dr. Danquah for Plaintiffs.

10 Mr. Asafu-Adjaye with him Mr. Mead for Defendants.

Counsel for parties inform the Court that although the question of survey has been discussed, no formal order for survey has been made; they now apply for an order.

By Court :

Let the land subject-matter of dispute be surveyed; each party should point out the area claimed. The Provincial Surveyor, Ashanti, is hereby requested to instruct a licensed surveyor to survey the land in dispute and to submit the plans together with the field books to the said Provincial Surveyor. If he is satisfied that the survey has been carried
20 out according to his instructions the plans should then be filed in this Court.

Each party to deposit £150 within 2 weeks from date hereof and each party to file instructions to the surveyor including particulars of villages and natural features.

The survey to be by compass traverse.

Adjourned to 16th July.

(Sgd.) K. A. KORSAH,
Judge.

ARGUMENTS of Counsel and Court Notes.

No. 14.
Arguments
of Counsel
and Court
Notes,
8th
November
1949.

IN THE SUPREME COURT OF THE GOLD COAST, Ashanti, at the Divisional Court held at Kumasi on Tuesday the 8th day of November, 1949, before JACKSON, J.

1. OFORI ATTA II
2. BAFUOR OWUSU AMO

v.

1. NANA BONSBRA AGYEI, ADANSEHENE
2. BRAKO ABABIO II, representing the BANKA STOOL. 10

1st Plaintiff absent (not represented by Counsel).

2nd Plaintiff present.

Asafu-Adjaye, Mead and Attoh for the 2 Defendants.

Pleadings and plan filed.

Asafu-Adjaye—

(Arguing estoppel set up in paragraph 3 of Statement of Defence dated 4/1/47.) Refers to paragraph 3. 1st Defendant does not claim land in his personal capacity but on behalf of Adansi Stool. Writ of Summons is defective in this respect as Plaintiff in reply dated 28.1.47 in paragraph 2—he admits he sues 1st Defendant as representing the Stool of Adansi. 20

Capacity in which party is sued must be set out in the Writ. Refers Schedule 3 Order 3 Rule 1. The word “ Shall ” is mandatory.

Danquah—

Submits that “ Nana Bonsra Agyei ” is the Stool title and not a personal one.

Court—

By the Rules the representative capacity must not only be inferred but must be expressed.

Danquah—

Asks leave to amend to read after the name Adansehene the words “ as Adansehene and as representing the Stool of Adanse.” 30

Court—

Let the writ be amended accordingly.

Asafu-Adjaye—

Submits this matter cannot be amended now—as there has been no service on Defendant in his representative capacity.

Court—

I think it may provided you waive service.

Danquah—

Defendant has pleaded specifically that he defends in his representative capacity. Amendment may be made under Order 26 Rule 1. The defect was purely a verbal one which recognised instantly and pleaded upon. Writ amended as prayed for.

Asafu-Adjaye—

Paragraph 3 of Statement of Defence sets up an estoppel. It is submitted that Muronam Stool with whom Akim Abuakwa Stool is privy in estate instituted an action for declaration of title to the same piece of land in the Chief Commissioner's Court, Ashanti, on the 9.5.40. The Defendants in the former action defended on behalf of the Banka Stool and which is the 2nd Defendant in this action. I put in the record of appeal in the former action. Admitted and marked "A."

Danquah—

20 Whole record cannot be put in. Only writ and judgment. On submission of Respondents all that is required to be proved is that this claim is the same as in the first suit, that parties are the same and that judgment was conclusive. In this case we have been told that Omanhene of Akim Abuakwa is privy to the Odikro of Muronam—that is matter to be proved by evidence. In paragraph 3 (c) of Statement of Defence it is pleaded that land is held "through" the Banka. Evidence in first case must be same as in second.

Court—

30 In my judgment the writ, pleadings, or addresses, evidence and judgment are all material to enable this Court to determine whether an estoppel of the description can or cannot succeed. Record admitted and marked as "A."

Asafu-Adjaye—

40 Writ claims a declaration of title at p. 43 damages and injunction. Same land as in this suit. Judgment is at p. 58. Submitted by us that from Plaintiff's Statement of Claim in this action and specifically I refer to paragraph 1 (dated 13.11.46). In the former suit before the Chief Commissioner the declaration asked for was that the land belonged to the Muronam Stool and in the judgment references were then made by the Plaintiff to the privity of estate as between the present two Plaintiffs.

Paragraph 2 of our Statement of Defence dated 4.1.47 makes it clear that these lands are managed by the 2nd Defendant as caretaker for the 1st Defendant (Adansi Stool)—"caretaker" being used in the wider sense.

*In the
Supreme
Court of
the Gold
Coast.*

No. 14.
Arguments
of Counsel
and Court
Notes,
8th
November
1949,
continued.

Exhibit
"A."

*In the
Supreme
Court of
the Gold
Coast.*

No. 14.
Arguments
of Counsel
and Court
Notes,
8th
November
1949,
continued.

It is our first submission that in law the Plaintiffs are bound by the former judgment and in support of that I refer to the case *In re May* (1885), Ch. D. at p. 516. At p. 518 Brett, M.R., said "The Counsel for Petitioner has argued . . . because there was no record . . . that there must be an end of litigation . . ." *Yode Kwao v. Coker* (1 W.A.C.A.) (162)—acquiescence by standing by. By appeal record at p. 47 the Secretary of the Akim Abuakwa State Treasury gave evidence. Evidence of Kwabena Twum. It cannot be said that the 1st Plaintiff could have had no knowledge of that action. In the judgment itself at p. 61, the position of the 1st Plaintiff was discussed. Perusal of whole judgment 10 refers to several exhibits which point to fact that Abuakwa Stool was privy in estate to Muronam.

To show further that Banka Stool was privy to Adansi judgment refers to this fact at p. 62. We rely on exhibits put in during that case including an executive decision.

We claim estoppel on grounds that to the knowledge of the Plaintiffs we have granted concessions on this land.

In 1900 there was an agreement of sale in respect of this land. In 1934 there was an option for a Concession granted by the Adansis. Refers to *Everest and Strode*, 3rd Edition on Estoppel at p. 60 "where a question 20 of right or title etc. etc. . . ."

We were sued for declaration, damages for trespass and injunction. Declaration refused—order as to damages or injunction made. Page 57 of *Everest and Strode*. They cannot come now and say there are now additional facts which were not known then. *Phosphate Sewage Co. v. Molleson* (1878), 4 Appeal Cases p. 814. "Now My Lords these being the facts of the case . . ."

[sic] From

Fair perusal of the pleadings in this action there can be no doubt that this is an attempt by the Akim Abuakwas to have another bite at this land. 30

Danquah replies—

Refers first to two judgments that have been put in. But before do so I refer to *Everest and Strode* at p. 60 "where a question etc. . . . judgment is conclusive as to such right or title etc. . . ." Main question Your Honour has to decide is "has question of right or title to the land been decided." Can it be said from the judgment of the Chief Commissioner of Ashanti's Court and West African Court of Appeal decided the right or title to the land in dispute. We submit that it did not and that as nothing has been decided as to the title or interest—there can be no "res judicata." That is why we are entitled to look at the claim and 40 judgment. I sympathise with my learned friend that West African Court of Appeal did add a rider a part of the judgment which has the effect of saying that the question of the right or title has not been determined.

Refers now to Chief Commissioner's judgment at p. 58. If that judgment had stood it would have been conclusive against all parties to this action—but the effect of the West African Court of Appeal decision nullifies that judgment.

I consent to this copy of the West African Court of Appeal decision going in evidence (admitted and marked "B"). The judgment for Defendant remained in so far as Plaintiff failed to establish his title.

Submits that in effect the judgment was one of non-suit in that the Plaintiff had failed to establish his title. It held that Exhibit "M" did not decide the question as to title.

Submits that question of *res judicata* does not arise here as question of right and title has not been decided.

10 Refers to paragraph 5 of Statement of Defence—the previous judgment did not award the land to Banka Stool and the Defendants in the previous action did not counter-claim. There was therefore no decision as to the right and title to the land.

20 Upon the other point raised by my learned friend, I refer now to the parties in this suit. In the first suit it was a simple case between two adjoining stools those of Muronam and Banka. Muronam is situated in Ashanti territory and as against Bankahene (also in Ashanti) and against ex-Chief Fosupem of Kadi (in the Colony, Akim Abuakwa) and ex-Chief Kofi Akyeampong—the judgment affects these three persons. It has not been alleged that the 2nd and 3rd Defendants then were privy to the Adansehene.

In regard to paragraph 3 (c) of Statement of Defence—I submit that if these words have any meaning at all they mean that Bankahene is the Paramount owner and that the Adansehene is a sub-owner through the Bankahene.

If it is thought that Banka is caretaker for Adanse and has no original title himself then Your Honour is entitled to look at the judgment in the Chief Commissioner of Ashanti's Court and see whether Banka proved her title as being that of a grant derived from Adansi.

30 Refers to p. 62 l. 20. The real case of Banka before the Commissioner at p. . It was not until Adansehene came as a witness that Banka suddenly changed his case to being an agent of Adansehene.

Refers to the Affidavit of 1st Defendant sworn on 15th May, 1947, and paragraph 2 thereof in which he says his relationship is undefined. Second Defendant was brought into the action by the 1st Defendant. Second Defendant swore an affidavit on 3rd April, 1947, and in paragraph 5 claimed an interest—averring that Banka Stool was independent and not subordinate to Akim Abuakwa. Banka is a subject of Akim Abuakwa.

Refers to affidavit of 1st Plaintiff dated 17.6.47 and also one on 31.5.47. This has not been denied by Defendants.

40 Now Banka is claiming as a caretaker for Adanse Stool whereas in the Chief Commissioner of Ashanti's Court he claimed by right of original settlement. Submits that the affidavit of Banka in which he says he is an "independent stool" is a question of importance in relation to pleading that Banka is now said to be the caretaker for Adanse Stool.

As position regarding Banka and Adanse remained and in so far as the two other Defendants in the case have not been shown to be privies of the Adansehene the parties in this case are the same.

*In the
Supreme
Court of
the Gold
Coast.*

No. 14.
Arguments
of Counsel
and Court
Notes,
8th
November
1949,
continued.

*In the
Supreme
Court of
the Gold
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No. 14.

Arguments
of Counsel
and Court
Notes,
8th
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1949,
continued.

In the former case Banka did not claim under the Adanse Stool—he claimed as an owner in his own right.

In the present case the pleading is by the words of paragraph 4 that the Adansehene is the caretaker for the Bankahene. The Defendants have pleaded in such a way as to confuse the Court.

Court—

To avoid any misunderstanding I read paragraph 3 (c) of the Statement of Defence to mean that the Stool of Banka occupies the land as the “ caretaker ” for the Adanse Stool.

Asafu-Adjaye—

10

That is what we did mean.

Court—

Then there can be no misunderstanding.

Danquah—

This pleading is dated in January, 1947. In May, 1947, the Defendants' Solicitor applied to join Banka and there it was sworn that the relationship between 1st Defendant and the Applicant were undefined.

There must be privity between the parties in the 2 suits. There is no clear privity established. The parties are in law different and the issues here go beyond those formerly decided.

20

There is no specific reference to the Adanse Stool. Banka has never claimed under Adanse. There must be established a clear privity of estate as between Adanse and Banka in the first action before the parties can be held to be the same.

It has been suggested that Paramount Chief cannot bring action on grounds that a subordinate Chief of his has failed. The title in the two *schools* [sic] are different. One is Paramount, the other is a sub-stool. 1st Plaintiff claims interest in the land as well as in the Stool, but Odikro of Muronam owns the land.

[sic]

Court—

30

What is the legal interest of the 1st Plaintiff in the land ?

Danquah—

Land cannot be alienated without consent of Paramount Stool and he also has an interest in the usufruct of the land. I await evidence to know what is meant by “ caretaker.” Defendants cannot rely upon the “ executive decision ” in view of the judgment of the West African Court of Appeal.

Refers lastly to point made by my learned friend that Defendants have granted “ Concessions ” on this land to the knowledge of Plaintiffs.

No such knowledge can be imputed to the Plaintiffs from that judgment. That evidence was of no higher value than that given by Plaintiffs in this respect.

Judgment given in case of *Queenmother of Muronam v. Adansehene* in respect of same land. Queenmother obtained damages for trespass upheld in Provincial Commissioner's Court but in Chief Commissioner of Ashanti's Court it was set aside for want of jurisdiction.

Court—

That was a nullity.

10 *Danquah—*

In this action there has been no decision as to title of ownership and therefore no *res judicata*.

Mead replies—

On question as to right or title the Court in the previous case was not called on to decide in whom, at large, title was vested but was called upon in particular to say whether it was vested in the Plaintiff and that was the question before the Court and Court decided he could not substantiate his claim.

20 Having failed in his first action he cannot now come to this Court by a further action and try and substantiate it again.

In the first case, Banka gave evidence as Defendant of his interest in the land coupled with the Adanse Stool. At p. 46 Mr. Asafu-Adjaye in his opening speech referred to a boundary between Banka and Adanse. In the evidence at p. 54 the then Bankahene evidenced that his people came on the land by leave of the Adansehene. Adansehene then was represented by Bodwesango and in the judgment at p. 62 it is clear that whether the evidence supported it or not he did defend the action as the caretaker of the Adansehene. Adansehene gave evidence by his linguist named Kwame Adai at p. 55 onwards.

30 Court in previous action could not decide whether Defendants had title to this land all it could decide whether the Plaintiff had or had not.

Argument that judgment took effect or a non-suit. Schedule 3 Order 39 Rule 3—it was a judgment on the merits for Defendants—Court did not otherwise direct.

Court—

Word " Court " here does not include West African Court of Appeal.

Mead—

40 Counsel for Plaintiffs has suggested and I take exception to the objection that Defendants have attempted to mislead Court by vague pleadings. The vagueness of which my learned friend take exception as to who is " caretaker " is clearly shown in paragraph 2 of the 1st Defendant's Statement of Defence.

*In the
Supreme
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No. 14.
Arguments
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No. 14.
Arguments
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1949,
continued.

Caretaker was defined in case of *Yawah v. Maslieno* (1 W.A.C.A. at p. 87). At p. 50 there is the judicial definition.

No inconsistency on part of 2nd Defendant within this or in the previous case. His Statement of Defence dated 30.8.47 pleads in paragraph 3 his position. Fact that Banka Stool is independent is no bar to it being the caretaker of Stool land for another.

Plaintiff in paragraph 1 of his Statement of Claim states that Muronam lands are attached to his Stool and which include Nsuakwate and Anungya lands.

The previous decision was that this land was not that of Muronam 10 Stool—so 1st Plaintiff cannot as against the Defendants claim it belongs or forms a part of the Akim Abuakwa lands. West African Court of Appeal referred to that part of the judgment of the Chief Commissioner of Ashanti referring to Exhibit "M" therein and a reference to Exhibit "M" which appears at p. 63 of the Record ("A"). It would appear that this validated decision although adjacent to the land now in dispute and in dispute in the previous suit, is not the same piece of land, but it might afford evidence of ownership as to adjacent lands without necessarily being conclusive as to the ownership of the land adjoining it.

Court :

20

There is nothing on the record to show that this land is adjacent ?

Mead :

Only from its description which describes land on the opposite bank of the Pra River. Chief Commissioner of Ashanti held that this in fact established them as being owners of the opposite bank—a finding with which the West African Court of Appeal could not associate itself and judgment of Court of Appeal I submit does not question the validity of that decision itself.

The joinder of 2nd Defendant was made at instance of 2nd Defendant—not at instance of 1st Defendant although naturally he had to express 30 his views as to whether he agreed and on the arguments adduced I submit that the Court should uphold the Defendants' plea of estoppel.

Court :

I take it that the plan filed in Court by Plaintiff will go in by consent.

Exhibit
"1."

(Plan admitted and marked No. 1.)

Danquah :

I would point out that the plan was not in during the argument and that there was no opening.

Court :

40

There was no opening because you did not attend the Court.

Danquah (with leave) replies reference Exhibit " M."

I submit with regard to Exhibit " M " that it was put in as relating to the land in dispute. If it is now contended that Exhibit " M " has nothing to do with the land now in dispute, then it has nothing to do with the present land in dispute.

Court :

I will reserve judgment upon this preliminary issue to the 12th November, 1949.

(Sgd.) J. JACKSON,
Judge.

10

*In the
Supreme
Court of
the Gold
Coast.*
No. 14.
Arguments
of Counsel
and Court
Notes,
8th
November
1949,
continued.

No. 15.

JUDGMENT.

IN THE DIVISIONAL COURT held at Kumasi on Saturday the 12th day of November, 1949, before JACKSON, J.

43/1946.

NANA OFORI ATTA II, Omanhene of Akyem
Abuakwa, Kibi, Gold Coast Colony, and
BAFUOR OWUSU AMO, Odikro of
Muronam

20

v.

1. NANA BONSTRA AGYEI, Adansihene
Fomena-Ashanti
2. BANKA STOOL as represented by BRAKO
ABABIO II

JUDGMENT.

By a writ of summons issued out of this Court on the 29th August, 1946, Nana Ofori Atta II, Omanhene of Akyem Abuakwa, Kibi, in the Gold Coast Colony, and Bafuor Owusu Amo, Odikro of Muronam claimed as against Nana Bonsra Agyei, Adansihene Fomena in Ashanti a declaration in the following terms :—

30

“ The claim of the Plaintiff Nana Ofori Atta II as Paramount
“ Chief of Akim Abuakwa to whom Muronam Stool and Stool land
“ are subject, and of the Plaintiff, Bafuor Owusu Amo, as Odikro
“ of Muronam to whose stool the Muronam Stool lands belongs is
“ for a declaration of their title to all that piece or parcel of land
“ known as Nsuakwate or Anungya situate on the right bank of the
“ Anum River and bounded on the North by River Sepong and land
“ belonging to the Stool of Jumakyi, on the South by River Prah
“ and land belonging to Amentia and Brenase Stools, on the East

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“ by Muronam Stool land and Anum River Forest Reserve and on
“ the West by the River Apaa and Mem Bepo and land belonging
“ to Bogyeseanwo Stool.”

An injunction was also asked for on the 28th October, 1946, pleadings were ordered and on the 19th December, 1946, a Statement of Defence was filed in which a plea by way of estoppel was set up in paragraph 3, on the grounds that the issues between the parties had been determined by a decision given by the Court of the Chief Commissioner of Ashanti, on the 19th November, 1940, and which decision had been upheld by one of the West African Court of Appeal dated the 29th May, 1941. 10

On the 22nd July, 1947, Brako Ababio II, the Benkumhene was joined as a Defendant and on the 1st September, 1947, filed his Statement of Defence in which he pleaded that he adopted the defence filed by the 1st Defendant and pleaded that he defended as “ caretaker according to Native Custom of the said lands.”

On the 6th April, 1948, an order for a survey was made and an order made that each party should point out the area claimed to the Surveyor.

The survey was duly made and the plans were filed in this Court copies of which were supplied to Counsel for the Defendants and Plaintiffs respectively on the 15th March, 1949, and 11th June, 1949. 20

The plan indicates quite clearly by the area marked and delineated in red the boundaries of the land now in dispute, and which is situate within the limits of larger areas claimed by the Plaintiffs and 1st Defendant and which are indicated on the plan by the lines coloured in green and blue. The plan is the one exhibited and marked No. 1. The parties are *ad idem* as the area in dispute.

The trial opened before me on the 8th instant when I heard Mr. Asafu-Adjaye's arguments in support of the plea of estoppel, Dr. Danquah's reply on behalf of the Plaintiffs and Mr. Mead in reply again for the Defendants. 30

The writ in the former action was the one issued out of the Court of the Chief Commissioner Ashanti on the 9th May, 1940, and the particulars of claim are those set out at page 43 of the Appeal Record (admitted and marked as Exhibit “ A ”).

The geographical description of the land given in those particulars are identical in wording with the particulars set out in the writ now before me i.e. the one dated the 29th August, 1946. Both parties showed those boundaries to the Surveyor and the parties are *ad idem*. The subject matter in the former action was precisely the same as it is now.

Secondly, the cause of action is precisely the same, they are both for 40 declaration of title of ownership to this piece of land and for an injunction.

Now as to the parties. In the former action Kwame Andoh and Kofi Fofie of Muronam sued for and on behalf of the Muronam Stool. In this present action the Plaintiff Bafuor Owusu Amo pleads in paragraph 1 of his Statement of Claim that he is

“ Odikro of Muronam to whose stool are attached the Muronam Stool lands.”

In the former action the Omanhene of Akyem Abuakwa was not a party. In that action there were no pleadings ordered. In his opening address Dr. Danquah who, as now, appeared for the Plaintiffs said

“Originally all 3 parties lived on Anum and Prah lands subject of (?) the Ofori Stool i.e. the Paramount Stool of Akim Abuakwa.”

The claim made by the Muronam Stool at that time was quite clearly within the knowledge of the Omanhene of Akim Abuakwa State as a perusal of that record of appeal makes self evident.

10 To-day the Plaintiff Ofori Atta II pleads that these Muronam lands are attached to his Stool. This is also a part of the pleadings on behalf of Muronam.

There was then upon these facts, if they were true, a clear duty to intervene, and having been cognisant of those proceedings and having a right to intervene, he is now estopped by his conduct from questioning a judgment obtained by a Stool claiming under him. It was not only the rights of possession of Muronam which were then attacked, it was the title of absolute ownership which was challenged.

20 Quite clearly a party having an interest of the nature in land cannot stand by watching one, who claims under him an interest subordinate to his own, prosecuting an action to secure a declaration of title of ownership to those lands, and then when he finds his privy in estate is unsuccessful, prosecute another action at a later stage to obtain what his privy in estate has failed to do and what by his own conduct he has permitted. The principle is clear and well-established and to hold otherwise would only tend to encourage perjury and to seek to bolster up a case by later adducing evidence which, had it been in existence, would or should have been adduced at the first trial.

30 In the former action in 1940, the then defendant and then styled the Omanhene of Banka defended the action upon the same grounds as he does in the present one and at page 48 of the record of appeal, his evidence from the start showed quite clearly the interest in estate in the lands which he claimed when he testified almost as soon as he went into the box and said

“ . . . the land within the boundaries described on the writ of summons belongs to Kade people, it is now in the hands of Adansihene and I look after it . . . ”

40 He claimed as “ caretaker ” an interest in the land under the Adansihene, and who is now the 1st Defendant in the present action. It may also be observed that Kwame Adai the linguist of the then Adansihene gave evidence on behalf of the former defendant (page 56 of Exhibit “ A ”) and when he testified

“ After the Soden boundary had been laid Adansihene said that Bankahene is his brother and should look after the land.”

In actions for declaration of title to land a Plaintiff can only recover judgment upon the strength of his own title and not upon that of the weakness of his adversaries.

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The judgment of the learned Commissioner was very definite in its terms when he said

“ I find there is no evidence on the Plaintiff’s side to justify the grant of the declaration of title which he seeks . . . There will therefore be judgment for the defendants with costs to be taxed.”

I have purposely omitted from that judgment these words

“ but on the other hand that the question of the ownership of this land has clearly been decided by validated executive decision Exhibit ‘ X,’ ”

10

since by the judgment dated the 29th May, 1941 (Exhibit “ B ”) the West African Court of Appeal whilst seeing no reason for differing from the finding of the Acting Assistant Chief Commissioner did not subscribe to that portion of the judgment, and in saying so, dismissed the appeal with costs. The judgment given by the Chief Commissioner’s Court and which stands unreversed on appeal has been evidenced and established estoppel by verdict upon the same matters in issue in the present action and affords evidence for and against all parties and those claiming under them. The judgment estops the Stool of Muronam from litigating this same issue as to the title of ownership of the lands described in the present writ and is conclusive and final as *res judicata*.

20

Estoppel in respect of the 1st Plaintiff Nana Ofori Atta II operates upon other principles. 1st Plaintiff sues on behalf of the Stool of Akim Abuakwa and claims in paragraph 2 of his Statement of Claim that these same lands i.e. the Muronam lands “ have from time immemorial formed part of the Akim Abuakwa Stool lands.” He is estopped by having stood by and permitted the Muronam Stool to prosecute the former action to the knowledge of the Akim Abuakwa Stool, an action to establish a title of ownership which on the pleadings it is claimed is vested in the Akim Abuakwa Stool, an interest claimed then by Muronam identical with the one now claimed by Akim Abuakwa and who, in the former action, claimed under the Stool of Akim Abuakwa. A declaration for Muronam in the former action would have been in effect, a declaration of which the 1st Plaintiff would have enjoyed the fruits. They stood by and did not intervene. In my judgment they are now estopped from litigating the matter again, and for these reasons I do uphold the plea of estoppel and do dismiss the claim by both Plaintiffs. The plan (Exhibit No. “ 1 ”) is to be retained in this Court as part of the record.

30

The Defendants are entitled to their costs which are to be taxed. I will assess Counsel’s costs in Chambers at 8 a.m. on the 14th.

40

(Sgd.) J. JACKSON,
Judge.

GROUNDS OF APPEAL.

IN THE WEST AFRICAN COURT OF APPEAL.

Between NANA OFORI ATTA II, Omanhene of Akyem
Abuakwa, Kibi, Gold Coast Colony, and
BAFUOR OWUSU AMO, Odikro of Muronam, Appellants

and

NANA BONSRAGYEI, Adansehene,
BANKAHENE BRAKO ABABIO, Co-Defen-
dant Respondents.

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No. 16.
Grounds of
Appeal,
29th June
1950.

10

The Appellants being dissatisfied with the judgment of the Divisional Court, Kumasi, delivered on the 14th day of November, 1949, and having obtained final leave to appeal therefrom dated the 24th day of June, 1950, hereby appeal to the West African Court of Appeal upon the grounds hereinafter set forth.

GROUNDS OF APPEAL.

1. The Learned Judge of the Court below was wrong in finding for the Respondent and Co-Respondent on their plea that "the issues between the parties had been determined by a decision given by the Court of the Chief Commissioner of Ashanti on the 19th December, 1940, and which decision had been upheld by the West African Court of Appeal on the 29th May, 1941," in that, taken together, the two previous decisions did not in fact and in law, determine the issue of ownership of the land in dispute, the parties in the previous action were not the same, the issues to be determined were not the same, and the evidence required in support was also not the same. Neither the first Plaintiff nor the principal Defendant in the present action was privy to any party in the previous action of 1940.

2. The Learned Judge of the Court below was wrong in holding that the claim made by the Muronam Stool in 1940, was quite clearly within the knowledge of the Omanhene of the Akim Abuakwa State, or that there was a clear duty on the part of the Omanhene to intervene, and that not having so intervened he is now estopped by his conduct from questioning a judgment obtained against a Stool claiming under him. The Odikro of Muronam did not claim under the Omanhene of Akim Abuakwa in that suit.

3. The Judgment of the Chief Commissioner's Court, as varied by the West African Court of Appeal, cannot estop the 1st Plaintiff herein from claiming against the Defendant. The Defendant-Respondent herein was not a party in that action nor did the Defendants in that action succeed in their several defences. There was no final judgment declaring that they were entitled to the land, and they did not counter-claim to entitle them to a judgment declaring the title to be in them.

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4. On a plea of *res judicata*, the onus is on the Defendant making the plea to prove that the parties and the issues were the same, that the evidence was the same, and that the Judgment was final as to title. The Respondents in this case did not discharge that burden because the two judgments cited by them in support of their plea was not a final judgment as to title. The parties were not identical in interest nor in person. The evidence required was, in certain essential respects, different from the evidence in the former action.

5. The two Paramount Stools in the present action, namely, the 1st Appellant, Omanhene of Akyem Abuakwa, and the principal Respondent, the Adansehene, were not parties to the action of 1940, and the Court below was wrong in holding, as regards the 1st Appellant, that he was privy to the Odikro of Muronam, and as regards the principal Respondent that, assuming that the Bankahene was his caretaker, such caretakership made the Adansehene party of the action of 1940. 10

6. The joinder of the Banka Stool in the present action was wrong, because as alleged caretaker or agent of the Adansehene the Bankahene had not an interest separate from that of the Adansehene, and the joinder should therefore be set aside.

7. By paragraph 3 (2) of the Defendant's Statement of Defence filed on the 6th January, 1947, the Adansehene claimed "to hold the land the subject matter of the action herein *through* the said Stool of Banka as caretaker" which is tantamount to an admission of no interest in the land by the Adansehene. This plea precludes a judgment being given in favour of the Adanse Stool. 20

8. The Bankahene was sued in the action of 1940 not as caretaker of Adanse, nor did he represent Adanse in any way. As alleged caretaker, the Bankahene's title was merely that of an agent, and as such alleged agent, the interest of the Banka Stool cannot be other than nor separate from the interest or share of his principal so as to entitle the Banka Stool to be joined as a party. The joinder of the Bankahene as Co-Defendant should therefore be set aside as wrong in law. 30

9. By a petition by the Bankahene to His Honour Mr. Justice Jackson, dated the 14th June, 1950, a copy of which has been supplied to the Appellants by the petitioner, the Bankahene, Co-Respondent herein, had in fact discontinued his part in the case as Co-Defendant, and the Judgment of the 14th November, 1949, by Jackson, J., should be set aside on the ground that at the time the issue of *res judicata* was argued before the Court and at the time the Judgment of the Court below was delivered on that issue the Co-Defendant, the Bankahene or Banka Stool, was not in fact a party to the suit, and the Adansehene or Stool could not avail itself of a previous judgment gained by the Bankahene. 40

10. The Court below was wrong in holding that the interest claimed by Muronam (2nd Plaintiff) is identical with the one now claimed by the Omanhene of Akim Abuakwa, and that Muronam in the former action claimed under the Stool of Akim Abuakwa. Both the Bankahene, the

Ex-Chief Fosupem of Kade and Ex-Chief Kofi Akyeampong of Kade, Defendants in the action of 1940, and the Odikro of Muronam, Plaintiff in that action are subject to the Paramount Stool of Akim Abuakwa. An internal dispute between subordinate Stools as to their inter-Stool land boundaries does not affect the paramount interest of their identical overlord. A judgment against either Banka and Kade on the one side or Muronam on the other cannot affect the Paramount Stool as the overlord of both such parties.

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11. It was not a duty on the Omanhene of Akim Abuakwa to
10 intervene on the part of one of the parties in an action for recovery of land and for trespass between two of his subordinate Stools, the interest of both such Stools being independent of the paramount interest of the overlord, the Omanhene of Akim Abuakwa.

12. There was no privity between either the Bankahene and the two ex-chiefs of Kade and the Omanhene of Akim Abuakwa on one side nor the Odikro of Muronam and the Omanhene of Akim Abuakwa on the other in the action of 1940, and a judgment against either of the two parties cannot bind the Omanhene of Akim Abuakwa.

13. The Learned Judge of the Court below having found as a fact
20 that the 1st Plaintiff-Appellant was not a party in the former action of 1940, and the principal Defendant-Respondent not being in fact a party in the former action of 1940, there were clearly fresh parties and fresh issues, requiring evidence other than was given in the previous action of 1940, and the Learned Judge of the Court below was wrong in upholding the Respondents' plea of *res judicata*.

14. The Judgment was against the weight of evidence.

Dated at Accra this 29th day of June, 1950.

(Sgd.) J. B. DANQUAH,

Solicitor for the Appellants.

30 The Registrar,

West African Court of Appeal,
Gold Coast Session,
Accra.

And to

The Adansehene Bonsra Agyei,
The Bankahene Brako Ababio II,
their Agents or Solicitors,
Kumasi.

COURT NOTES of Arguments.

*In the
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No. 17.
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In the WEST AFRICAN COURT OF APPEAL, Gold Coast Session :
CORAM FOSTER SUTTON, P., COUSSEY and MANYO PLANGE, JJ.

No. 46/50.

NANA OFORI ATTA II & ANOR.

v.

NANA BONSRÀ AGYEI & ANOR.

Dr. Danquah with him Mr. Quist Therson for Plaintiff-Appellant. 10

Mr. Ollennu and Mr. Mead for Adanse—1st Defendant-Respondent.

Mr. Siriboe for 2nd Defendant-Respondent.

Dr. Danquah—

Claim was for a declaration of title.

Appeal is against the Judgment of Jackson, J. at page 25.

Estoppel was raised—by Defendant.

Claim was dismissed on estoppel.

Pleadings were ordered.

Statement of Claim pages 2 and 3.

Statement of Defence pages 4 and 5. 20

Trial Judge acted on wrong principle not applicable to this case—
Paramount Stool is not a privy to its Sub-Stool.

Refers to page 27.—The Adansihene was a party to the previous
action and the fact that the Bankahene said he was a caretaker for the
Adansihene a privy to Bankahene. The fact that linguist gave evidence
does not make Adansihene a party to action.

Findings of Court cannot be supported. Line 21 page 28.

Submits that a declaration in one action only binds another if the
position was such that the other party could have appealed from the
Judgment. 30

Refers to page 58 line 34 to page 59 line 6. Exhibit "A".

We submit that we did not know of the action—but even if we did
know we were not bound—that knowledge i.e. our witness—sub-chief—
who gave evidence would not bind us.

Now says that he is not prepared to say that we had no knowledge
of first case. Paramount Chief's secretary did give evidence in first case
and put in documents.

Cites *Ababio v. Kanga*—Vol. 1, W.A.C.A., p. 253. *N.B.*—But see *Kwao v. Coker* Vol. 1, W.A.C.A., p. 162—at page 167.

If two sub-stools of the same Paramount Stool are litigating about their boundaries the Paramount Stool cannot ask to be joined because it would—in effect—be litigating against itself. It has its title—i.e. paramount one—anyway. Reads from page 255 of Volume 1, W.A.C.A. Reports.

If Banka had not been joined this point could not have been raised against us—I tried to resist his being joined.

10 *Note.*—Claim is that they are Muronam Stool settled on land.

See also page 45 —first action.

Seems clear that it was then being alleged that it was Muronam Stool land—i.e. settled by them.

Refers to page 46 —Opening of Defendants' Counsel. There is no suggestion in his opening that they were caretakers for the Adansihene.

Court adjourned 12.45 p.m.

Resumes 2.15 p.m.

20 *Mr. Siriboe.*—I have to inform Court that my instructions now are that—Banka—is not now represented. Now says that he still represents Banka.

Dr. Danquah—

Refers to opening statement of Counsel—page 46.—Their case was that Banka were the owners it was only later that they said Bankahene was caretaker of Adansi.

We did not bring Banka in—we did not amend—they brought him in.

No issue has ever been tried over the land in dispute as between Adansi and ourselves.

Remarks of Commissioner at “A” on page 62 lines 19 to 24, are *obiter*, so is latter portion of West African Court of Appeal at page 65.

30 Cites—*Ababio v. Kanga*, Volume 1 W.A.C.A. Reports at page 254.

Banka—affidavit, page 7.

Page 13. Affidavit of Head of the Amoakwa Family in Banka.

Nowhere in the record is there anything to say that Banka is under Adansi.

White Book O.16 R.11.

Adding of Defendant :

A defendant against whom no relief is sought by the plaintiff will not be added against the wish of the latter. Privy Council Reports, 1874–1928 : Page 43. *Angu v. Attah*. See page 46.

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Mr. Ollennu :

I submit that if *A* sues *B* for a declaration of title to Black acre, and judgment is entered against him, that he has no title to Black acre he is estopped from ever asserting a title to Black acre. It is a judgment in rem—binding against all the world.

Refers to Statement of Claim, page 43, i.e., in 1940 case.

As far back as 1940 Muronam was held not to have any title to the land in dispute—it was the same land pages 1 and 43.

Page 46, line 2: Plaintiffs have had to defend their land against claims made by Ohene of Adansi. 10

Refers to paragraph 1 of Statement of Claim, page 2, and to paragraph 3.

Volume 1 W.A.C.A. page 256.

I submit that Banka are in possession—no one has denied it.

We are privy to Banka in the sense that they hold through us—at our will.

N.B.—Page 55. Evidence of linguist—given on behalf of the Adansihene.

Page “ B.”

Note: Page , line . 20

Page 7—Bankahene.

Affidavit at page 7, paragraph 4.

Adansi was so identified with Banka in 1940 case that they are clearly privies.

Plaintiff here claims as Paramount Stool. He must have known in 1940 that Muronam was claiming as a sub-stool and that Adansi were setting up an adverse claim to Plaintiffs.

W.A.C.A. Volume 1, page 167.

Dr. Danquah :

Quist-Therson :

30

If it is right that Banka Stool derives its rights through Adansi—Adansi could not be privy to Banka.

A privy—Volume 1 W.A.C.A. page 254.

Page 256 Volume 1 W.A.C.A.

N.B.—Privy—matter of evidence, page 20.

Privy Council cases 1874–1928.

Fact that Muronam chose to bring an action—how can that wipe out our title.

If Muronam cleared out of land—Plaintiffs could go into the land and farm it themselves.

Paramount Stools rights exist independently of sub-stools.

Note.—Page 2, paragraph 1.

If Muronam Stool's title goes so does the Paramount Stools.

Refers to page 9 of record.

Paragraph 2 of Affidavit.

Banka Stool wished to discontinue—page of record.

It is wrong to suggest this case is *res judicata*. Had no real notice that Adansi were going to intervene as owner.

In the West African Court of Appeal.

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C. A. V.
(Intd.) S. F. S.
P.

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No. 18.

JUDGMENT.

WEST AFRICAN COURT OF APPEAL, Special sitting held at Accra, 9th July, 1952. CORAM FOSTER SUTTON, P., COUSSEY, J. A. & MANYO-PLANGE, J.

No. 18.
Judgment,
9th July
1952.

Civil Appeal.
No. 46/50.

20

NANA OFORI ATTA II, Omanhene of Akyem Abuakwa, Kibi, Gold Coast Colony and BAFUOR OWUSU AMO, Odikro of Muronam Plaintiffs-Appellants

v.

NANA BONSRAGYEI, as Adansehene and as representing the STOOL OF ADANSE Defendant-Respondent

30

BANKA STOOL as represented by BRAKO ABABIO II Co-Defendant-Respondent.

JUDGMENT delivered by MANYO-PLANGE, J.

In this appeal the Plaintiffs-Appellants claimed by their writ the first as Paramount Chief of Akim Abuakwa to whom Muronam Stool and Stool land are subject and, the second, as the Odikro of Muronam to whose Stool the Muronam Stool lands belong for a declaration of their title to the land the subject matter of the action and for an injunction.

The Writ was issued against only the first Defendant-Respondent. The title to the land, the subject matter of the action has in a former action (Chief Kwame Andoh and another of Muronam on behalf of the Stool of Muronam v. Nana Kwakye Penkoro, Bankahene and two others)

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been litigated by the second Plaintiff-Appellant's Stool and the Banka Stool as represented by the then Bankahene. In that action judgment was given against second Plaintiff-Appellant's Stool.

In that action, the Bankahene's defence was that the land was for the Adansehene for whom he was caretaker. The first Defendant-Respondent therefore, applied for the joinder of the Banka Stool as represented by Brako Ababio II as co-Defendant and he was accordingly so joined.

Pleadings were ordered and statements of claim and defence were filed. The Defendants-Respondents by their defence denied that the Plaintiffs-Appellants were entitled to the declaration sought and, pleaded 10 further, that the Plaintiffs-Appellants were estopped from litigating the title to the land in dispute and, in support of the plea of estoppel, pleaded the judgment in the former action referred to above.

The plea of estoppel was upheld by the learned trial Judge on different grounds against the Plaintiffs-Appellants.

The learned trial Judge held that the second Plaintiff-Appellant was a party to the former action in which, the cause of action and the subject matter of the action were the same as in this action and, was therefore bound by the judgment in that action and, thereby estopped from again litigating the title to the land in dispute. 20

As against the first Plaintiff-Appellant, he held that the claim made by the Muronam Stool in the former action was quite clearly within the knowledge of the Omanhene of Akim Abuakwa and, that as the first Plaintiff-Appellant pleads that the Muronam lands are attached to his Stool, there was then, if true, a clear duty on Akim Abuakwa to intervene, and having been cognisant of those proceedings and, having a right to intervene, and not having done so, Akim Abuakwa Stool, that is first Plaintiff-Appellant, is now estopped by his conduct from questioning a judgment obtained against a Stool claiming under him; since it was not only the right of possession of Muronam which was then attacked, 30 but it was the title to absolute ownership that was challenged.

Having thus held, the trial Judge gave judgment against the Plaintiffs-Appellants, dismissing their claim with costs. It is against this judgment that the Plaintiffs-Appellants have appealed on 14 grounds. In my view, the determination of this appeal turns, only on the first two grounds which read as follows :—

“ 1. The learned Judge of the Court below was wrong in finding for the Respondent and Co-Respondent on their plea that—

‘ the issues between the parties had been determined by a decision
‘ given by the Court of the Chief Commissioner of Ashanti on the 40
‘ 19th December, 1940, and which decision had been upheld by
‘ the West African Court of Appeal on the 29th May, 1941,’

in that, taken together, the two previous decisions did not in fact and in law determine the ownership of the land in dispute; the parties in the previous action were not the same, the issues were not the same and the evidence required in support was also not the same. Neither the first Plaintiff-Appellant nor the first Defendant-Respondent was privy to any party in the previous action of 1940.

2. The learned Judge of the Court below was wrong in holding that the claim made by the Muronam Stool in 1940 was quite clearly within the knowledge of the Omanhene of Akim Abuakwa State or that there was a clear duty on the part of the Omanhene to intervene, and that not having so intervened he is now estopped by his conduct from questioning a judgment obtained against a stool claiming under him. The Odikro of Muronam did not claim under the Omanhene of Akim Abuakwa in that suit."

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The first ground attacks the finding of estoppel by record which was
10 against the second Plaintiff-Appellant, and the second ground attacks the finding of estoppel by conduct against the first Plaintiff-Appellant.

I shall deal firstly with the first ground. As stated by the learned trial Judge, a perusal of the copy of the proceedings with the judgments which was exhibited and is Exhibit "A" in this action, shows that the second Plaintiff-Appellant and second Defendant-Respondent in this action were the principal parties in the former action: second Plaintiff-Appellant in that action being the first Plaintiff and the second Defendant-Respondent the first Defendant. The issue was the same as in the present action i.e. ownership to land, and the land in dispute the same as the land
20 in dispute in the present action. The claim of the second Plaintiff-Appellant then, as now, was for a declaration of title to the same land as in this action. The judgment which was given against the second Plaintiff which was confirmed on appeal by this Court, was one of a dismissal of his claim and not a non-suit; it reads as follows:—

"I find there is no evidence on the Plaintiff's side to justify the grant of the declaration of title which he seeks . . . There will therefore be judgment for the Defendants with costs to be taxed."

It was therefore a final judgment as to his claim to the title to the land in dispute. That being a final judgment *in rem* against the second
30 Plaintiff-Appellant, he is, in my view, as held by the learned trial Judge, estopped from relitigating the title to the ownership of the same land. Ground 1 therefore fails.

Before leaving this ground, I would like to add that, although the learned trial Judge did not base his finding against the first Plaintiff-Appellant on his being privy to any party to the former action, I am of the opinion that the first Plaintiff-Appellant is also bound by the judgment in the former action on the ground of his being privy to the second Plaintiff-Appellant who claimed title as owner to the land. In the former action there were no pleadings but Counsel for the Plaintiff in that action stated
40 in his opening as follows: "originally all three parties (that is Muronam, Banka and Kade) lived on Anum and Prah lands subject to the Ofori Stool i.e. the Paramount Stool of Akim Abuakwa to which they all owed allegiance through the Odauhene of Otwereso and Osenase . . . The Plaintiffs were the first to settle on the land in that area. They claim to have been on the land from time immemorial."

It is to be observed that, there was no suggestion of the Plaintiffs having derived their title to the land from Akim Abuakwa nor is it so suggested in this present action. This claim of Muronam is not challenged by Akim Abuakwa; on the contrary Akim Abuakwa joins Muronam to

*In the
West
African
Court of
Appeal.*

No. 18.
Judgment,
9th July
1952,
continued.

reassert the claim that the lands are Muronam lands, for by their writ, they claim that the land belong to Muronam. The writ and the statement of claim in the present action read together with the opening statement of Plaintiff's Counsel in the former action already quoted, make it clear in my view that the land is claimed to belong to Muronam and that its attachment to the Stool of Akim Abuakwa is only by virtue of Muronam's admitted allegiance to Akim Abuakwa, and, it is that allegiance that gives Akim Abuakwa an interest in the Muronam lands. Therefore, any interest that Akim Abuakwa may have in the land in dispute is derived from and, entirely dependent on Muronam's title to the land; Akim Abuakwa 10
claims her interest through Muronam and not that Muronam claims under Akim Abuakwa as the learned trial Judge would seem to have held. Akim Abuakwa therefore, can only establish an interest in the land by establishing the title as owner of the Muronam Stool. This view is strengthened by the joinder of the Muronam Stool as co-Plaintiff. Akim Abuakwa Stool therefore, is privy to the Muronam Stool through which it claims an interest in the land in dispute and, is thereby estopped by the judgment in the former action from again litigating the title.

I now come to ground 2. Exhibit "A," the proceedings in the former action, in my view makes it abundantly clear that the Omanhene of 20
Akim Abuakwa was, at the time of these proceedings, aware of them and of the claim made by the Muronam Stool in the action and, the claim set up by the Banka Stool. The Muronam Stool serves Akim Abuakwa Stool through a sub-chief of Akim Abuakwa, that is the Odauhene. This sub-chief was fully aware of the action and proceedings. He was subpoenaed at the instance of the Plaintiffs and he deputed and authorised his linguist to attend and give evidence on his behalf—see page of the record and the linguist's evidence at page of the record. In addition to this, the Secretary to the Omanhene of Akim Abuakwa and Registrar to the Akim Abuakwa State Council went from Kibi to Kumasi to give evidence for 30
the Plaintiffs—see page 47 of the record, and before this he had been serving notice on the Defendants to produce documents.

In these circumstances, I find it inconceivable that the Omanhene of Akim Abuakwa could have been unaware of the proceedings. The matters I have referred to, in my view, abundantly support the learned trial Judge's finding that the proceedings were clearly within the knowledge of the then Omanhene of Akim Abuakwa.

Now, there could have been no doubt that the claim put up then by the Bankahene would if established, have been adverse to the interests, if any, of Akim Abuakwa in the land in dispute. That being so, what should 40
the Omanhene of Akim Abuakwa have done in the circumstances? In my view he should have applied to be joined as Co-Plaintiff. He took no such course. Being cognisant of the proceedings, he was "content to stand by and see his battle fought by somebody else in the same interest": the interest is the same, because the matter to be determined in the present action was the same as was determined in the former action namely, Muronam's title to the land in dispute, without which, Akim Abuakwa cannot establish an interest in the land. Having stood by and seen the battle fought to a finish to the disadvantage of Muronam, he goes to sleep

for nearly five years, then suddenly wakes up and tries to re-open the question of Muronam's title to the land in dispute which had been determined in the former action.

*In the
West
African
Court of
Appeal.*

Clearly the first Plaintiff-Appellant is by his conduct estopped from so doing and, I think the case of *In re Lart. Wilkinson v. Blades* [1896] L.R. 2 Ch. 788 supports the view that the first Plaintiff-Appellant is estopped by his conduct. I see practically no distinction between that case and the present except that, in *Wilkinson v. Blades*, Wilkinson actually took a benefit under the judgment; but that in my view only
10 amounted to further evidence of acquiescence.

No. 18.
Judgment,
9th July
1952,
continued.

Counsel for the Plaintiffs-Appellants argued that, as the dispute was between two sub-chiefs of the Paramount Stool, the Paramount Stool could not intervene; because, whatever the result, its title to the land could not be affected. That argument would have had some force if the former action had been one in which the titles of the opposing parties were both derived from the Paramount Stool of Akim Abuakwa.

Here, not only are the titles to the land in dispute not derived from the Akim Abuakwa Stool, but the defence claimed that the land belonged to some other Paramount Stool, that is, the Stool of Adansi.

20 The Stool of Adansi had previously laid claim to the land in dispute, in the case of Omanhene of Adansi against the Queen mother of Muronam in which judgment was given in favour of Adansi in the District Commissioner's Court and was upheld on appeal to the Provincial Commissioner's Court; but on further appeal to the Chief Commissioner's Court the appeal was allowed not on the merits, but only on the ground that the Court of first instance had no jurisdiction. When therefore Adansi's title to the land was again asserted, it was clearly the duty of Akim Abuakwa to intervene if she had an interest to the land. Ground 2 must therefore also fail.

30 As I have already stated the determination of this appeal turns in my view only on the two grounds I have dealt with. The conclusions at which I have arrived make irrelevant, any consideration of the other grounds of appeal. I would therefore dismiss this appeal with costs.

(Sgd.) J. S. MANYO PLANGE,

Judge.

I concur.

(Sgd.) S. FOSTER SUTTON,
P.

I concur.

40

(Sgd.) J. HENLEY COUSSEY,
J.A.

No. 19.

*In the
West
African
Court of
Appeal.*

MOTION for Final Leave to Appeal to Privy Council and for substitution.

IN THE WEST AFRICAN COURT OF APPEAL.

Gold Coast Session.

Accra.

Before a single Judge of Appeal.

Civil Appeal No. 46/50.

No. 19.
Motion for
Final Leave
to Appeal
to Privy
Council
and for
Substitu-
tion,
30th March
1953.

Between NANA OFORI ATTA II,
Omanhene of Akyem Abuakwa,
Kibi, Gold Coast Colony, and
BAFUOR OWUSU AMOH,
Odikro of Muronam

10

and

NANA BONSRRA AGYEI II,
Adansehene, and as repre-
senting the STOOL of ADANSE Defendant-Respondent.

BANKA STOOL, as represented
by BRAKO ABABIO II . . . Co-Defendant-Respondent.

TAKE NOTICE that this Honourable Court will be moved by Joseph Boakye Danquah of Counsel for and on behalf of the Appellants 20 herein for an Order by the Court granting final leave to appeal from the Judgment of the Court delivered on the 9th July 1952 to the Privy Council, and for an Order substituting the name of Nana Abu Bonsra II as Adansehene, Defendant-Respondent, in place of Nana Bonsra Agyei, and for such other order or orders as the Court may seem fit.

To be moved on Monday 20th day of April 1953 at 8.30 a.m. in the forenoon or so soon thereafter as Counsel can be heard.

Dated at Yiadom Chambers, Accra, this 30th day of March, 1953.

(Sgd.) J. B. DANQUAH,

Solicitor for the Appellants. 30

The Registrar,
West African Court of Appeal,
Accra.

And to

Nana Bonsra Agyei
(Nana Abu Bonsra),
Adansehene,
His Agent or Solicitor, Fomena, Adanse,

Bankahene Brako Ababio II,
His Agent or Solicitor, Banka.

40

No. 20.

AFFIDAVIT of Nana Ofori Atta II in support.

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

Before a single Judge of Appeal.

(Title as No. 19.)

*In the
West
African
Court of
Appeal.*

No. 20.
Affidavit
of Nana
Ofori
Atta II
in support,
30th March
1953.

10 I, OFORI ATTA II, Omanhene of Akyem Abuakwa on behalf of myself
and the other Appellant in the above-named appeal make oath and
say as follows :—

1. That on the 30th day of August 1952 conditional leave to Appeal
to the Privy Council from the Judgment of this Honourable Court delivered
herein on the 9th July 1952 was granted to the Appellant.

2. That the conditions imposed by the Court namely

(1) To deposit a sum of £100 to cover costs of this Privy Council
record.

(2) To give notice of this appeal through the Court to the
Respondent and Co-Respondent and

20 (3) To execute a bond in the sum of £500 with two sureties
for the payment of such costs as may be awarded by the Privy
Council to the Respondent and the Co-Respondent have all been
fulfilled.

3. That since filing the appeal I have been informed and verily
believe that Nana Bonsra Agyei II, Adansehene, has abdicated and Nana
Abu Bonsra II, is now the Adansehene.

4. That I swear to this affidavit therefore for an Order granting final
leave to appeal to the Privy Council and for the name of Nana Abu
Bonsra II, to be substituted as Adansehene, Defendant-Respondent.

30 SWORN at Kibi this 30th day
of March, 1953.

(Sgd.) OFORI ATTA II

Deponent.

Before Me,

(Sgd.) K. A. KISSI,

Commissioner for Oaths.

*In the
West
African
Court of
Appeal.*

COURT NOTES granting Final Leave to Appeal to Privy Council and Substitution.

20th April, 1953.

No. 21.

Court
Notes
granting
Final Leave
to Appeal
to Privy
Council
and
Substitu-
tion,
20th April
1953.

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

Coram KORSAH, J. sitting as a Single Judge of Appeal.

Motion :

NANA OFORI ATTA II & ANOR. . Plaintiffs-Appellants

v.

NANA BONSRRA AGYEI & ANOR. . Defendants-Respondents.

Motion on notice for final leave to appeal to the Privy Council and 10 for substitution.

Danquah for Applicant.

Ollennu for Respondent.

Danquah : This is application for final leave to appeal to Privy Council, and for an Order substituting the name of Nana Abu Bonsra II as Adansihene Defendant Respondent in place of Nana Bonsra Agyei.

Ollennu does not oppose.

Court : Leave granted as prayed in respect of final leave : and the name of Nana Abu Bonsra II as Adansihene substituted for that of Nana Bonsra Agyei as prayed.

20

Costs in the cause.

(Sgd.) K. A. KORSAH.
J.



EXHIBITS.

Part Ex. "A"—Andoh & Another v. Penkro & Others.

(a) Particulars of Claim.

IN THE CHIEF COMMISSIONER'S COURT,
Kumasi,
Ashanti.

Between Chief KWAME ANDOH and OPANYIN KOFI
FOFIE of Muronam for and on behalf of the
STOOL of MURONAM Plaintiffs

Exhibits.

Part
Plaintiffs'
Exhibit
"A."

*Andoh and
Another v.
Penkro and
Others.*

(a) Par-
ticulars of
Claim,
6th May
1940.

10

and

NANA KWAKYE PENKRO, Bankahene, now
at Kumasi, Ex-Chief FOSUPEM of KADE,
now residing at Banka and Ex-Chief
AKYEAPONG OF KADE now residing at
Banka.

20

THE PLAINTIFFS claim declaration of title to all that piece or
parcel of land situate at Muronam, and bounded on the North by the
River Sepong and land belonging to the Stool of Jumakyi, on the South
by the River Prah and lands belonging to Amentia and Brenase Stools,
on the East by Muronam Stool and the Anum Forest Reserve and on the
West by the River Apaa and the Mem Bepo and land belonging to
Bogyesanwo Stool;

(2) £100 damages from the Defendants for trespass committed on the
said land, from the confluence of Sepong and Anum Rivers to land near
Abama stream and comprising land on the Bedabia stream, including the
Nsuakote village;

(3) An injunction to restrain the Defendants their agents or servants
from entering the said lands.

Dated at Yiadom Chambers, Accra, this 6th day of May, 1940.

30

(Sgd.) J. B. DANQUAH,
Solicitor for the Plaintiffs.

The Registrar,
Chief Commissioner's Court,
Kumasi.

Exhibits.

Part Ex. "A"—Andoh & Another v. Penkro & Others.

Part
Plaintiffs'
Exhibit
"A."
*Andoh and
Another v.
Penkro and
Others.*
(b) Writ
of
Summons,
9th May
1940.

1/40

(b) Writ of Summons.

IN THE SUPREME COURT OF THE GOLD COAST.
Chief Commissioner's Court, Kumasi.
Court holden at Kumasi.

**CHIEF KWAME ANDOH and OPANYIN KOFI
FOFIE of Muronam for and on behalf of the
STOOL OF MURONAM Plaintiffs**

and

10

**NANA KWAKYE PENKRO, Bankahene, now at
Kumasi Ex-Chief FOSUPEM of Kade now
residing at Banka and Ex-Chief KOFI
AKYEAMPONG of Kade now residing at Banka**

**To Nana Kwakye Penkro Bankahene now at Kumasi Ex-Chief Fosupem
of Kade now residing at Banka and Ex-Chief Kofi Akyeampong of
Kade, now residing at Banka.**

You are hereby commanded in His Majesty's name to attend this
Court at Kumasi on Wednesday the 5th day of June, 1940, at 9 o'clock
in the forenoon, then and there to answer a suit by Chief Kwame Andoh
and Opanyin Kofi Fofie of Muronam against you. The Plaintiffs' claim
—see page 43. 20

Issued at Kumasi the 9th day of May, 1940.

Claim Judicial Relief

Sum claimed	..	..	..	..	..	£100	0	0
Court Fees	..	..	..	..	..	6	10	0
Bailiff's fees	..	..	..	..	..	0	3	0
							<hr/>	
							£106 13 0	
							<hr/>	

(Sgd.) G. P. H. BEWES,

Ag. Asst. Chief Commissioner. 30



Part Ex. "A"—Andoh & Another v. Penkro & Others.

(c) Court Notes of Pleadings.

IN THE CHIEF COMMISSIONER'S COURT OF ASHANTI, held at Kumasi on the 25th day of June, 1940, before His Worship G. P. H. BEWES, Esquire, Ag. Asst. Chief Commissioner appointed to preside over the Chief Commissioner's Court.

(Title as to parties as in (b).)

Dr. J. B. Danquah for Plaintiff.

Mr. Asafu-Adjaye for Defendants.

10 *Dr. Danquah* : Claim declaration of title to land boundaries of which as given in writ of summons.

(1) A claim covers land of Muronam stool.

(2) On claim refers to the portion of that stool land on which Defendants' land extend.

All land claimed is outside Forest Reserve. Plaintiffs are Odikro and Principal Elder of Muronam respectively. 1st Defendant is Head Chief of Banka and 2nd and 3rd Defendants are both ex-Chiefs of a town in Akim Abuakwa called Kade in the Gold Coast Colony and are now residing at Banka. There is no Clan relationship between the parties. Plaintiffs' stool belongs to the Aduana Clan. Banka Stool belongs to Amokwa Clan. The Kade people belong to the Twidan family. Originally all three parties lived on Anum and Prah lands subject of the Ofori Stool i.e. the Paramount Stool of Akim Abuakwa to which they all owed allegiance through the Adaahene of Otwereso and Osenase. The second and third Defendants left this Prah Anum territory at the time of Osei Tutu war about 200 years ago and did not come back till about eight years ago. After the political boundary between Ashanti and Gold Coast was laid down at River Prah Plaintiff and 1st Defendant came under Ashanti Protectorate and Banka was made Head Chief for the various sub-chiefs in that Division and was practically independent of both Osei Tutu's and Ofori's Stool for political purposes. Plaintiffs were first to settle on land in that area. They claim to have been on the land from time immemorial. 2nd and 3rd Defendants' people i.e. Kade people came to the Plaintiffs' ancestors and were given land at Nsuakwote to live on. Some time after the Banka people came to Plaintiffs' ancestors and were also given land to live on near the Densu River. Not long after there was war between Osei Tutu of Ashanti with Akim. Nsuakwote was *raised* [*sic*] to the ground and 2nd and 3rd Defendants left the land, never returning. Plaintiffs' stool took possession of their lands, re-entered their lands and had been in possession ever since. The claim against 2nd and 3rd Defendants is based on well-known principle of M.C.L. that the stumps of the plantation trees belong to the owner of the land i.e. where a land given to a party is vacated the original owner can re-enter. The claim against the 1st Defendant is

Exhibits.

Part
Plaintiffs'
Exhibit
"A."
*Andoh and
Another v.
Penkro and
Others.*

(c) Court
Notes of
Pleadings,
25th June
1940.

Exhibits.

—
Part
Plaintiffs'
Exhibit
"A."

*Andoh and
Another v.
Penkro and
Others.*

(c) Court
Notes of
Pleadings,
25th June
1940,
continued.

that he had gone beyond the boundary of the land which was given to him. In recent times the Plaintiffs have had to defend the claims made in respect of this land by the Ohene of Adansi and none of the Defendants took part in the dispute as claimants to the land for their own stool. When 1st the second and third Defendants were seen on the land actions were brought against them in the Omanhene's Tribunal at Kebi but they never appeared for the hearing. We are claiming that we are entitled to the land. The Plaintiffs are subject to the jurisdiction of Defendant.

Mr. Asafu-Adjaye : The Defendants deny that Plaintiffs are entitled to declaration sought. The Defendants state that 2nd Plaintiff has no right to appear on behalf of the Muronam stool and that he should be non-sued on that ground. 1st Defendant is the N.A. of Banka Division in Ashanti and has been in possession of the land in dispute for 200 to 300 years. We say that being in actual possession of such a long period without opposition from Plaintiffs or any other persons we are entitled to remain in possession of the land. There are several villages on land occupied by subjects of 1st Defendant's stool, we have our cemeteries, sacred groves and disused red clay pit. We have exercised rights or ownership over this land and have paid tribute to no other person. The Plaintiffs are subject to our jurisdiction and have been granted permission to live on a portion of the land. 10

According to traditional history these lands were formerly the property of the Kadehene who is related to the first Defendant. On his migration to the Gold Coast Colony the land was given to us to occupy some and enjoy proceeds thereof without interruption from anybody. The Plaintiffs' people have on several occasions obtained permission from us to till portions of this land and they have paid tribute of game to us in acknowledgement of our ownership. About 5 years ago the Muronam people became disloyal to the Stool of Banka and so they set up the claim. We have other farms on this land. Strangers who are cultivating the land with our permission and also have paid customary tribute to us. Our tradition is that Plaintiffs' people had no land in this area. Their elders by name of Moro and Dowu migrated from Denkyira Hemang and met the Bankahene Braku and Kadehene Djan living on the disputed lands. Tradition has it that the Muronam people being of the same tribe Aduana as Banka and Kade they were granted permission to settle on portions of this land. The old farms existed on this land were the following —Bonsru-Adjare, Agogo, Anomabu, Bonsompomasu, Nyarkamasi. These were all farms belonging to us. Apart from this traditional history we have the present demarcation between Ashanti and the Colony and in the decision by Government of the boundary between Banka and Adansi portion of the land in dispute went into Adansi Division. Adansihene realising that we were the owners has not taken advantage of this demarcation and has allowed us right of ownership. We deny that we have *tree-passed* [*sic*] on Plaintiffs' land and that Plaintiffs' claim should be dismissed. In regard to the alleged cases in the Omanhene's Tribunal we say the decision without effect the ownership of the land. 30 40

Part Ex. "A"—Andoh & Another v. Penkro & Others.

(d) Evidence of Kwabena Twum.

2nd Plaintiff: KWABENA TWUM AMPOFO DANQUAH Sworn:

I am Registrar to State Council and Secretary to Omanhene of Akim Abuakwa. I live at Kyebi. I know Andoh the Chief of Muronam and also Fosupem and Acheampong, the 2nd and 3rd Defendants. I remember in 1935 an action was brought by Muronam Odikro against Akyeampong the 3rd Defendant. I have here a certified true copy of the summons in this case. I have also the certified true copy of the proceedings in the
 10 case. Date of summons is 25th March, 1935. The case has not been completely heard owing to the Defendant having applied for an adjournment. The case is still pending before the Kyebi Tribunal. It is a land dispute concerning land at Muronam. Writ of Summons and proceedings of part heard case tendered in evidence.

Exhibits.
 ———
 Part
 Plaintiffs'
 Exhibit
 "A."
*Andoh and
 Another v.
 Penkro and
 Others.*
 (d) Evi-
 dence of
 Kwabena
 Twum,
 25th July
 1940.

Counsel for Defendants:

Counsel for Defendants object on the following grounds:—

(1) It's for Plaintiff to assert whether he had laid claim to this land and if he has laid claim to it his evidence is quite sufficient for the purpose. The land is in Ashanti and not within the jurisdiction of the Paramount
 20 Chief of Akim Abuakwa whose Tribunal record it is sought to produce it cannot create any estoppel against 2nd and 3rd Defendants. As no judgment has been given thereon and even if judgment was given it would be null and void for want of jurisdiction. With regard to 1st Defendant, he is not alleged to be a party to this suit before the Kyebi Tribunal and cannot in any way said to be bound by the proceedings therein. Lastly the writ of summons if tendered in evidence does not operate against us unless there was a judgment against us.

Dr. Danquah in reply. My learned friend's objection gives all the more reason why the documents should be accepted. Question of estoppel
 30 does not arise at all. We only want to show that we have taken steps to establish our claim. We say that the documents can be accepted as evidence.

Objection overruled—Writ of Summons admitted in evidence and marked Ex. "C." Proceedings rejected. I know Brodie. I saw him last at Kyebi on 6th April, 1935. He came as representative of General Mines Investment Limited. I remember that the Omanhene received a letter from Muronam complaining about a trespass by Banka. This is the letter. It is dated 20th January, 1935. I consequence of this letter
 40 the Omanhene wrote a letter dated 4th March, 1935, to G.M.I. This is a copy of the letter. As a result the Company replied through their Solicitor. This letter is dated 11th April, 1935. It is signed by Mr. E. O. Asafu-Adjaye, Solicitor. On 13th June, 1935, the Omanhene replied to that letter. The Company did not take up an option. Letters tendered in evidence.

Exhibits

Part
Plaintiffs'
Exhibit
"A."
*Andoh and
Another v.
Penkoro and
Others.*
(d) Evi-
dence of
Kwabena
Twum,
25th July
1940,
continued.

Mr. Asafu-Adjaye :

Mr. Asafu-Adjaye objects—letters written to a 3rd party by one party to a suit will not bind the Defendants in this case. We are not in any way connected. The Company was not acting as our agent. Unless there is evidence to show that we authorised the Company to write these letters before they can be admitted against us.

Objection overruled. Letters admitted in evidence and marked "D." that dated 26th January, 1935, marked Ex. D, 4th March, 1935, marked "E." Ex. E, 11th April, 1935, marked Ex. F, 13th June, 1935 marked Ex. G. "F." I also have a letter dated 22nd June, 1935, written by General Manager 10 "G." General Mines Investment Limited to Odikro of Muronam. Admitted in evidence and marked Ex. H.

Counsel for Defendants states he does not wish to examine witness as all the documents put in evidence are inadmissible.

Part Ex. "A"—Andoh & Another v. Penkoro & Others.

(e) Evi-
dence of
Kwakyie
Penkoro
Banka-
hene,
10th
September
1940.

(e) Evidence of Kwakyie Penkoro, Bankahene.*Kwakyie Penkoro :*

I am Ohene of Banka. I am the 1st Defendant. My boundaries are different to those described in Writ of Summons, but the land within the boundaries described on the writ of summons belongs to Kade people, 20 it is now in the hands of Adansihene and I look after it. These lands as well as the Banka Stool lands did not originally belong to the Plaintiffs. Muronam people have no stool. I gave them my land to live on. The land belongs to my ancestors. My ancestor who first came to the land was Otin. His sister was Akyereampoma. These two with their children came from Esumeja and settled on the lands. They met no one on the lands *where [sic]* they got there. Whilst they were on the land Muro who had a stool came from Denkyira Hemang and met my ancestor who was the Bankahene and said to him you are my brother "I am passing to Kyebi Abuakwa and I beg you to give me some land to stay on. I will not stay 30 here long. I am waiting for my children who are following me and when they arrive I will go together with them." The Bankahene had a stool servant who had a village at a place called Apotosu. The stool servant's name was Onyame Tinin. Muro went and stayed at Apotosu. Bankahene allowed him to stay there. Muro had a female slave. Her name was Okyere. Onyame Tintin married Okyere. They begat a child by name Jamia. Muronam people are descendants of Jamia. When Muro left his descendants said they were going to stay there as in the place of their master so the place was known as Muronam. It was originally known as Apotosu. Muro came to Bankahene and said to him "I told you I was not going to 40 stay long. I am now going away and I leave you your land." Bankahene took the descendants of Muro's slave or his children. We were staying together as brothers. It was not the Muronam people who gave land to the Banka people. After Muro had gone there was no dispute between us and the Muronam people. Bankahene gets snail tribute from Muronam

people. Later on one man came to Banka Stool called Komfo Hia. He married a woman from Muronam family by name Amma Fanti. Amma Fanti said to her husband after the marriage: "I ask that you should not collect tribute from my children again and that you should allow me to receive them in order to look after the children with the proceeds." On this account Komfo Hia did not collect tribute from the Muronam people again. We had no dispute among ourselves till Captain Soden came and asked us to define our boundaries so that he could demarcate them. At the time I stopped collecting from Muronam people there were no strangers on the land. Since strangers came snails have not been collected on the land. The snails have died out. The Muronam people were under me long before and I used to serve Ochweri with them as subjects under me. Captain Soden asked us to relate our history. Captain Soden invited Amentiahene by name Owuro, also Bodwesangohene. Tokwaihene by name Atram was also invited. Captain Soden asked those he had invited to define their boundaries with the Bankahene. These people were the various people having land in that neighbourhood. Bankahene said he had a boundary with Amentiahene at Ankomisua river. Captain Soden asked Amentiahene if this was true and he said yes. He asked Bankahene to define his boundaries with Tokwaihene and he said Koranhwire. Tokwaihene agreed to this. When Bodwesango people migrated to Banka, the Bankahene gave him a piece of land by name Abamase to live on. Bankahene told Bodwesangohene to occupy this land up to a river called Dei. When this enquiry was going on the Muronam people were present with the Bankahene and heard all that was going on.

Dr. Danquah objects to evidence being given of this enquiry because the record of the enquiry is the best evidence. Objection overruled.

When we told Bodwesangohene he could occupy up to Dei river, he left the place and gave us back our land. At present I have no boundary with Bodwesango people. It was when the Kade people left their land to me that is where I have boundary with Bodwesango, but it is in respect of the Bodwesango people's land. When Bodwesango people left Abamase they went and stayed beyond Nsuakote. Nsuakote was land belonging to Kade people which was left in my charge so I have boundary with Bodwesango people there. Muronam people did not tell Captain Soden that they had any land there. At that time the Muronam people had no chief because they had no stool. They had family head and were under me. When a whiteman came to take concession he paid a knocking fee to the Bankahene. The Bankahene gave Muronam people £1 out of it because they were his children. The knocking fee was £150. I know Ofoasi people. I have a boundary with them at Tarbretuo river, then on the right side getting towards the bush the boundary is the river Akolabresu. Debi is the same as Dei river. Bankahene also gave £1 to Amentiahene. £1 also to Juaben people. Bankahene said "you are all my children and if I get money and do not give you some you will not be satisfied. When I give out concessions it is not necessary to make Muronam people a party to the deed. Concessions have come on the land twice. Each time the Muronam people know of it. These concessions I speak of were in Banka lands. The first whiteman that came for concession was at the outbreak of the Great war in 1914, and during the war he left. A second whiteman came on the land later. He paid a knocking fee of £300. Again

Exhibits.

Part
Plaintiffs'
Exhibit
"A."

*Andoh and
Another v.
Penkro and
Others.*

(e) Evi-
dence of
Kwakye
Penkoro
Banka-
hene,
10th
September
1940,
continued.

Exhibits.
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 Part
 Plaintiffs'
 Exhibit
 "A."
*Andoh and
 Another v.
 Penkro and
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 (e) Evi-
 dence of
 Kwakye
 Penkro
 Banka-
 hene,
 10th
 September
 1940,
continued.

£1 was given to Muronam people and £1 to Juaben people. Notice of concession was filed and 6 months were allowed before certificate of validity was to be issued. At the expiration of 6 months no one had appeared to oppose the concession. As Muronam is mine I have five villages surrounding Muronam. I have a pond at Muronam from which every year I receive fishes from it because Muronam land is mine. The following are my villages on the land. Bowihoo, Amakom, Kokooka, the Muronam people have farmed nearly up to Kokooko but as Government has taken the land I cannot go there. Asuafufu is another village also Kwaku Tenteng. There was no dispute between us. I gave them the money 10 because they are my children. Odikro of Amentia has no land there and I gave him also some of the money. When the Muronam people started to make a dispute with me not long ago and they sent to tell me they had made a stool and they sent a bottle of gin to be presented to me. I said I will not drink the gin. I said you are my children and you live on my land. You have no stool and if you wanted one I should be the person to create one for you. From ancient times you had no stool and if you say so I have to write to the District Commissioner. It was during the time of Captain Ross. I wrote to him and he asked me not to say anything till he comes. Because the Muronam people wanted to litigate with me 20 and at one time my son Osei reported to me he had heard people telling in the bush at Nsuakote and when he asked them what they were doing they said Fofie had sent them to stay there. I deny the name Manka which it is said has been corrupted into Banka. Bodwesango, Ofuasi and other people who were staying there with us left for Akyim and because we remained there whoever came and met us said "you have not gone" (Ebanieaka) (lit: fence left). This has been converted into Banka. What I know about Nsuakote lands is this—It was Kade people's land from time immemorial. When they were going away they left it to me. Since 30 they left it to me I have been exercising rights of ownership over it up to today. In the old days I got rubber tribute, gave tribute. One time one whiteman came to take concession on Nsuakote land. I made him to understand that I am only the caretaker of the land and he could get the proper owners to come first. I sent for the Odikro of Kade who was also called Muro. When Muro came whiteman gave him £40. The documents were prepared in Accra. I did not accompany the parties. This was not long before the Ya Asantewa rising. Owing to the rising the whiteman went away. This is the Nsuakote land near Banka. Up to date I am still looking after the land. Captain Soden laid a boundary from Ankomesu to Anum and along Anum River to Sapon Anum junction. Nsuakote 40 land then went into Adansi and this is the land subject of this claim. Since it went into the Adansi Division, the Adansi still recognises me as the one to whom the land was left. The Adansihene permits me to collect tribute and I send a portion to him. The Kadehene and Bankahene are brothers. So they can come from Kade to the chief of Banka and vice versa. It was during the time of Nana Osei Yaw that Kade people left the land to me. From that time up to now we Bankas have been in possession of Nsuakote land up to today. Recently the Kade people came back and saw the Adansihene about the land. The Muronam people have never challenged our right to be on this land until this case came on. The 50 Muronam people have never claimed any portion of tribute from this land. I have never seen that Dwumakyi has boundary with Muronam people.

The Sapong river then forms boundary between Kokofu and Adansi. Nsuakote land is at present within the Adansihene's boundary, so what Queenmother of Dwumakyi says cannot be correct. At present I have people I have put on this land to farm. Some of them are Kojo Breku. He has been on the land a long time and has planted cocoa trees which are now bearing fruit. Asare is another. Also there a long time, and there are many others. Kwabena Du (identified) has been on the land a long time at Anum waterfalls. At first they were fishing and now they are farming. I got tribute from them. It is not true that Fofie said that

10 Banka land formed part of Nsuakote land before and that they gave me the Banka portion to settle on. A Muronam man named Kweku Mensah brought a leg of game recently killed at Bediabia a land in dispute. The Muronam chief did not object to it. Their traditional history that they gave me the land to live on is not correct. My stool has never paid any Aseda to Muronam people.

Adjourned till tomorrow morning.

(Sgd.) G. P. H. BEWES,

Ag. A.C.C.A.

10.9.40.

Exhibits.

Part
Plaintiffs'
Exhibit
"A."

*Andoh and
Another v.
Penkro and
Others.*

(e) Evi-
dence of
Kwakye
Penkoro
Banka-
hene,
10th
September
1940,
continued.

20 *Kwakye Penkoro's Examination-in-Chief continues :*

I have villages on Nsuakote land. Abena Binso Danyame where I have allowed Berekuo people to stay for a long time. Nsan also. I have several villages there and my people have been on the land a long time. Kade people are our brothers. We all came to the land together, Kade people stayed on one side of Anum river and we stayed on the other. The side on which Kade stayed is Nsuakote. We came together in a body from Essumegya. There was no one occupying Nsuakote land when we came. Since then I and the Kade people have been in possession of this land up to today.

11th
September
1940.

30 *Cross-examined :*

I am Omanhene of Banka. I was made Omanhene by power of Government. Before that I was an Odikro. Amentia had an Odikro also, but Muronam had no stool only a head of family. I was serving Ocheresu and Muronam served Ocheresu through me. Kwakye Penkoro who sat on Banka Stool was my grand uncle. During his time Muronam people had no stool. What Yaw Antwi of Ocheresu said here was not true. Kwadwo Kwakyi who also occupied Banka died at Daman in Akim and his body was brought back to Banka. We are all Akims and we went to Bodua to visit a brother of his and died on the way. Kojo

40 Beng married Akua Nipa and he took his children to Bodua during Ashanti wars. All Akim people went back to Akim during the Ashanti wars and Banka people went to Bodua. *These was* started a long time ago. About Osei Yaw's time. After we migrated south we used to come back again after the wars were over. During Osei Yaw's invasion we went as far as Nyayao and then came back where we went we used to

Exhibits.
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 Part
 Plaintiffs'
 Exhibit
 "A."
*Andoh and
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 Others.*

[sic]

(e) Evi-
 dence of
 Kwakye
 Penkro
 Banka-
 hene,
 10th
 September
 1940,
continued.

take our stool. Kade people had already gone and they went; they left the land to me. They had already gone when we left Nyayao. It was in Osei Yaw's war we went to Nyayao. Kade people did not go during any war. They left the land of their own free will. From the time the Kade people came to Nsuakote they never fought with Ashantis. They emigrated to the Colony in Osei Yaw's time. When we were at Essumegya we had a chief on the stool. My family was Amoakade clan. Essumeja was Aduana clan. We were all one family comprising five clans. Some of these clans can inter-marry. I had land at Essumeja but I have left it and have no land there today. As I did not return 10 there the land is — longer mine. I agree with the proposition that "the roots of the plantain belongs to the Odikro" i.e. the land always reverts to the original owner. (Aborodese was Odikro.) The land at Nsuakote should have belonged to me but in the proposition above quoted it now belongs to Kobina Foli. Muronam people have no stool and they cannot own any land. As Muro begged for the land if he had got the land from us and stayed on it then it would be his, but it would not be for the Muronam people because they have no stool. Muronam people are descendants of Muro's subjects. The land I refer to as having been given to Muro is the land in this dispute. From time to time the 20 District Commissioner has asked me to supply him with a list of chiefs in my Division. In 1934 I was chief of Banka and I gave the District Commissioner a list of people in my District. I gave the name of Afua Frimpoma but she was not Odikro only head of family. Muro came and begged land from Banka. He was of Aduana clan. If you have children and they stayed with you a long time they join your clan. They cannot sit on Muro's stool. I did not know if Jamia was of Aduana clan. I don't know if Otwere was of Aduana clan. Nyame Tintin stays at Apotosu which is now Muronam. He was my stool servant and went and stayed there. He was staying there with his wife. As he has been 30 with us a long time he now belongs to my family. I can inherit his property but he cannot inherit mine. His wife's name was Ekuia a member of my stool family. They had children at Apotososo but they are all dead. Nyametintin also married Atwere. Atwere's descendants are the Plaintiffs. It was not Plaintiffs who begged for the land it was Muro. Atwere went with Muro when he left, but later she returned. She had an issue by name Jamia and the present Muronam people are the descendants of Jamia. Jamia therefore became a member of Aduana family but cannot inherit Aduana property. Muro begat the ancestor of Muronam people to the land. When Atwere went away she left her issue 40 Jamia and later on she came back to visit Jamia who had remained with the father. I have not asked them to live the place. When Muro came on his way to Akim he stayed for a long time before going on. Muro is not buried at Muronam. Muronam people have a cemetery. I don't know if they worship there every year. When Nyametintin died and the people decided to remain in the place they called it Muronam. Nyametintin died before Atwere. They only had one daughter Jamia. Atwere came back alone, and met her daughter and said she was going to stay in Muro's place—land Muronam. He did not object as we had given Muro the land to live on. He gave the land to Muro. Atwere 50 was only a servant. It was by right of gift to Muro that we allowed Atwere's people to stay there and also my predecessor married a daughter

of Jamia. The land I am referring to is the land on the east side of Anum in which Muronam village is situated. The land on the west side of Anum is not theirs. When I originally came there was no one of Muronam on Amentia land. I was on the land before Amentia. He was brought by Swedru chief. I did not give them this land. I had fixed my boundary at Nkumiasua and they settled beyond this boundary. When we went there was no one on the other side of Nkumiasua. Government knows about the boundary. Muroname and Amentia have concocted to remove me from Banka so they should not be believed. If Awuro the former chief of Amentia was alive he would be able to give evidence as to the boundary but this present chief is at one with the Plaintiffs, because they have sued me in the High Court for false arrest and I have had litigation with them for the last two years. This particular case in the High Court is not about land. I am not calling anybody to give evidence as to Amentia boundary but I am putting documents in evidence. I am claiming all the Banka lands as belonging to my stool. Captain Soden invited us and on information given to him he laid down the boundaries of our land. At that time in 1907 there was no dispute between myself and Muronam. There was a dispute with Tokwai and as a result Captain Soden laid down a boundary. After laying the boundary between myself and Tokwai, Captain Soden and the District Commissioner, Obuasi went round and laid boundaries between myself and neighbouring chiefs. Bodwesango and Amentia were invited by the Commissioner to come. I had no dispute with these two. The Kadé people live on the west side of Anum river and I live on the east. Banka stool has no land on the west side of Anum river. The land left to me by Kadehene is mine. According to the boundary of Adansi viz. from the Prah up to Anum and then to Saponng that land is for Adansi. Adansi asked me to continue to look after the land. From time immemorial that land belonged to Kade.

There are some people there now living there Adansi. Adansihene told me he had a dispute with Muronam people and that he got judgment and I should go on looking after the land. I know there is a stool called Dwumakyi stool on the land. Evidence of Dwumakyi is not true. Dwumakyi is between Anum river and Adansi. I know that Dwumakyi won a case with Adansi over Dwumakyi land. I have subpoenaed a witness from Bodwesango but not one from Dwumakyi. I have not subpoenaed a representative of Bodwesango stool to give evidence. All my neighbours hated me as Government have made me an Omanhene. My town is called Banka on account of a fence around the town. When the Ashantis went away everybody left except myself. Muronam went away. Adansi also went away. Everyone fled except myself. Banka means "the place where someone stood with determination." Whenever I go away I come back. I have never heard of Oduro of Muronam. I know Yaw of Simpe. I went to Muronam and asked him to look after the children as there was no elderly man there then. I was then a linguist. I do not appoint the headman of Muronam family and if a headman dies they appoint a successor themselves. Since there is no chief they do not report to me when a head of family dies. I did not know Kofi Denkyira was head of family at Muronam at one time. Kwaku Ameyaw was one of the big men of the family. He got money and brought [sic] many slaves and lived with them at Muronam. He was not head of the family. I have not heard of Yaw Kume, or Apianim, or Owusu Amoh. I have

Exhibits.

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Part
Plaintiffs'
Exhibit
"A."

*Andoh and
Another v.
Penkro and
Others.*

(e) Evi-
dence of
Kwakye
Penkro
Banka-
hene,
10th
September
1940,
continued.

Exhibits.
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 Part
 Plaintiffs'
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 Another v.
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 (e) Evi-
 dence of
 Kwakye
 Penkoro
 Banka-
 hene,
 10th
 September
 1940,
continued.

never heard of Owusu Amoh, or Fenten, or Tabi or Oduro, or Nkama. One Kwame Nkansa comes from Amentia. I know Abddi. He was not chief of Muronam. He was on the Pram stool and was deposed. I placed Simpe as Head of Muronam as the town was without a head. This was after the Ya Asantiwa rising. For 200 years Muronam never had a chief. I claim to be related to the Kade people and I can inherit the stool at Kade and Kade people can inherit the stool at Banka. When Kwakye died Danyansa was at Banka and was asked to look after the town. Danyanma was a slave. He remained in that position from a long time and some time later when Government asked them about the chief of Banka we had wanted to remove Dayanma but were advised by Government that as Dayanma had been looking after the town for a long time he should be allowed to occupy the stool. There was someone there who could occupy the stool; it is not true that when Kwakye died that there were *proper* no candidates to occupy the stool. After Dayanma Owusu occupied the stool of Banka. We found Dayanma as one of our proper chiefs, but I keep his stool apart from the stools of the royals. He was first Omanhene of Banka. I was born at Kyea. My mother was born at Banka. I know a man called Kwadwo Bereku. I put him on Nsuakote land in Frimpong's time. He was there with Abe and Ofei. I don't know if Frimpoma sent Kofi Tano and Kwame Anoh to drive them from the land. They did not come to me to ask me to drive them from the land. I have a son called Kojo Siaw. He was not driven from the land. It was on one occasion when I had gone to one of my villages and I saw some people there and on asking who placed them there they said Fofie the 2nd Plaintiff. I asked them to call Fofie for me but he refused to come. That was at Anweasi. When Fofie refused to come I sent for the people themselves to come and see me. When my bearer got there he was told that the elder men amongst them have gone to Muronam. Fofie had put people on the land to cultivate it. I did not go on the land myself because when I went to their village the people accused me before the District Commissioner, Obuasi, that I had burned their villages. The people had farm huts there. I took no action against Fofie. Because I asked Fofie to remove the people he had put on the land he took action against me in the Asantehene's Court. When the dispute between Muronam and Adansi was going on I knew about it. This land is for Adansi. The Adansihene gave me permission to put the people on the land. The Adansihene and I never had a dispute over the land west of Anum. Before Captain Soden Bodwesango was representing the Adansihene. I never had a dispute with Bodwesango when Captain Soden came to settle my dispute with Tokwai Amentia and Muronam also came. I know Bobinso is also called Bonsra Agyei. It is on the land in dispute. The land belonged to Kade till Government decision when it went to Adansi. I have not given a gun to Kwaku Mensah to hunt for me. He does not live at Banka, Kwabena Ntiamoa is my brother. I did not know if he bought a gun for Kwaku Mensah. Yao Kobi lives at Muronam. 1st Plaintiff is his nephew. The Muronam people have farms to east of Anum and west of Anum. I do not collect any toll from them from farms east of Anum. I do not take money from any strangers on the Muronam land east of Anum. I remember some time ago Amentia and Muronam had a dispute. I went and settled this dispute. We did not lay down a boundary as Government had already laid down

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- a boundary from Tokwai to Atobo. I charged £3 to each side for inspecting the land because both parties were disputing about farms and on inspection of land we found Nkumisua stream to be between the farms in dispute so we decided that this stream was the boundary between the two parties. I gave land to Muronam up to Nkumisua. I have never heard that anybody came down to Bankahene from heaven on a chain. I don't know if Muronam people gave Banka land. I gave Muronam people land. It is not true that Muronam people gave Kade people land. I don't know how far towards the east my ancestors told Muro to go.
- 10 On the west he was not given a boundary. Frimpoma was head of family at Muronam. Frimpoma went to Bah and on her return she said she had been elected Odikro of Prasu. There was objection to her title and matter went before District Commissioner and she had to admit she was only head of the family and she was asked to pay aseda of £2. Muronam people are the servants of Pram. Frimpoma said she had been told by Prah to look after Muronam people—Banka objected and matter went before District Commissioner. Muro's stool was at Pram. When Frimpoma was head of family there was no one close to look after the town.

Exhibits.
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 Part
 Plaintiffs'
 Exhibit
 "A."
*Andoh and
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 (e) Evi-
 dence of
 Kwakye
 Penkoro
 Banka-
 hene,
 10th
 September
 1940,
continued.

20 *Re-examined :*

Frimpoma denied before District Commissioner that she was a chief. She said she was only head of family. Aseda from an Odikro like Amentia would be with expenses £6. If Frimpoma had been an Odikro she would have paid about £6. At the time Captain Soden laid boundary Muronam, was in Banka Division and boundaries he laid affected all Banka Division. It was after the demarcation that land west of Anum, came into Adansi. I have no right to cross this boundary unless the other man gives me permission. In spite of the demarcation any occupation of the Nsuakote land remained indicated. I was allowed to continue occupation of Adansis.

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Part Ex. "A"—*Andoh & Another v. Penkoro & Others.*

(f) Evidence of Kwami Adai.

Kwami Adai s.a.r.b.

- I am linguist representing the Adansihene. I have been asked to give evidence on behalf of Adansihene. The boundaries of Adansi lands at present are, with Kokofuhene—the river Sapong; from Sapong along Anum river to Prah river. It is not true what the Jimachi people say that Sapong is boundary between Jimachi and Muronam. Our boundary at river Sapong with Kokofuhene was laid down as a result of a dispute between Jimachi stool under Kokofu and Adansi. That case was decided
- 40 in the Chief Commissioner Court here and as a result Sapong was made a boundary between Kokofu and Adansi. Captain Soden laid the Anum as boundary between Adansi and Banka. He was at Banka when he laid the boundary. That was about 33 years ago. One side of Anum was Banka and on the other side Adansi. Muronam was at that time serving the Bankahene and they were present. Adansi boundary *have* been laid [sic]

(f) Evi-
 dence of
 Kwame
 Adai,
 13th
 September
 1940.

Exhibits. down as I said on the West side of Anum we have Nsuakote land. That
 — land has the Sapong as boundary on top of Anum and Prah on one side.
 Part Plaintiffs' It is not correct that this land belonged to Muronam stool. Nsuakote land
 Exhibit originally belonged to people who have now left and are now staying at
 "A." Kade. After the Soden boundary had been laid Adansihene said that
Andoh and Bankahene is his brother and should look after the land. It would not be
Another v. correct to say that this land belongs to Muronam people. At one time
Penkro and there was a dispute between Adansi and Muronam. That case was heard
Others. by the Commissioner at Obuasi. Adansihene won the case at Obuasi.
 (f) Evi- Appeal was taken to the Provincial Commissioner's Court and further to 10
 dence of the Chief Commissioner's Court where the case was not heard. Since that
 Kwame the dispute the land is in possession of Adansihene who has appointed
 Adai, Bankahene as caretaker. I know a white man called Gabriel. The Adansi
 13th stool granted him an option on Anum Sapong concession. This concession
 September embraces part of Nsuakote land. (Ex. "K.") The Muronam people did
 1940, not protest against the grant of this option. If any one trespass
continued. on the land the Bankahene is to report to Adansihene where if he chooses
 will take action. The Plaintiffs have no right to sue for trespass in respect
 of this land. I have never heard the tradition that Muronam first settled
 on the land nor that they gave a portion to the Bankahene. The 20
 Adansihene is a big ruler in that area and the Prah has been his boundary
 from time immemorial so he would know the history of the owners of
 adjoining lands, so if what Muronam was saying was correct Adansihene
 would know. Banka people migrated from Essumeja and settled on the
 Banka land. The Kade people also migrated from Essumeja at the same
 time. They are brothers to Banka. Banka settled on one side of Sapong
 and Anum and Kade on the other.

Cross-examined :

When Banka and Kade people migrated from Essumeja I do not know
 who they met on the land. The tradition has been told me. I have not 30
 been told whom Banka and Kade met on the land. I was not told the
 extent of the land they occupied. I cannot say who came first on the land.
 I know the Odaahene of Ocheresu. I know his linguist gave evidence.
 I know there is a case before the Divisional Court between Ocheresu and
 Adansi over the Prah boundary. The case between Jimachi and Adansi
 was finished at the High Court of Accra and Jimachi won. When Captain
 Soden went to Banka no one from Adansi went to Banka. On Captain
 Soden's return he informed the Adansihene Kobina Foli of the boundary.
 I myself was at Adansi then. I know the reason why Soden went to
 Banka was on account of a disuute between Banka and Atokwai. Atokwai 40
 was then serving Bodwesango. I have not had Captain Soden's decision
 read to *him*, [sic] but I have heard what is in it. The Bankahene I heard
 invited all those serving him to be present. Muronam and Amentia were
 then serving the Bankahene. There is a boundary between Bodwesango
 and Adansi stool lands at Adjinkwa near Jimi River. We have to pass
 through Bodwesango before we get to Nsuakote, so whoever owned
 Nsuakote land would have boundary with Bodwesango. The Bodwesango-
 Nsuakote boundary is near Min. The dispute between Adansi and
 Muronam took place about 11 years ago. The Adansihene took action
 because he saw the Muronam people on the land (Ex. "A"). Muronam 50
 people refused to go away from the land and we sued them. No result

- was arrived at and the Adansihene was told he could take a new action if he wished. Later on there was a political dispute we did not take any further action in the matter. During the time of Tabi Adji he sent someone to drive the Muronam people away. This was about 8 years ago. A report was made to District Commissioner, Obuasi. They were driven away and they left the place. The bearer who was sent by Adansihene Tabri broke down their houses. As soon as the present Adansihene has settled down and inspected this land he will take action. If Kyeame Kodjo is still on the land he runs away if the Adansihene sends any one down. If anyone
- 10 has made a farm there he has made it secretly. On our way from Brenase we told Bankahene to look after Nsuakote land. This was about 30 years ago. After Captain Soden's boundary had been laid. He was made a caretaker to look after the land as the people there are his children. We gave him Nsuakote land with boundaries from Sapon to Anum and from Anum through the bush to Min (boundary with Bodwesango). We did not give him the land attached to Banka stool land. We have not given him authority to say that the land is attached to Banka stool land. If that land belonged to the Banka stool then his name would be on the option lease. We gave the land to Bankahene about 30 years ago. I only
- 20 know 4 tenants whose names he reported to Adansihene. The cocoa there is not properly grown. I have been to see it myself. So we have not yet got any tribute. Some of these tenants have been there for more than 13 years. Sometimes trees die back. Except for the drink of £15 which was brought to Adansihene and Bankahene got a share. It was sent by the Bankahene. This was about 15 years ago. We have only given an option on the land. We have not been to the concession Court. The Adansihene has not received any letter telling him that Akim Abuakwahene was protesting against the option. Bankahene informed Adansihene that Muronam people had taken action against him in the Asantehene's Court.
- 30 We were also told that an action was taken in this Court. If the Plaintiffs wished to sue anybody they ought to sue the Adansihene.

Exhibits.
 —
 Part
 Plaintiffs'
 Exhibit
 "A."
*Andoh and
 Another v.
 Penkro and
 Others.*
 (f) Evi-
 dence of
 Kwame
 Adai,
 13th
 September
 1940,
continued.

Re-examined :

Bankahene has never told Adansihene that he is claiming the land as against the Adansis.

Exhibits.

Part Ex. "A"—Andoh & Another v. Penkoro & Others.

Part
Plaintiffs'
Exhibit
"A."
*Andoh and
Another v.
Penkoro and
Others.*
(g) Judg-
ment of
Chief Com-
missioner's
Court,
19th
November
1940.

(g) Judgment of Chief Commissioner's Court.

IN THE CHIEF COMMISSIONERS COURT OF ASHANTI held at Kumasi on the 19th day of November, 1940, before His Worship G. P. H. BEWES, Esquire, Acting Assistant Chief Commissioner appointed to preside over the Chief Commissioner's Court.

CHIEF KWAME ANDOH and KOFI FOFIE of Muronam, for and on behalf of the STOOL OF MURONAM Plaintiffs

v.

10

NANA KWAKYE PENKORO, Bankahene now at Kumasi, Ex-Chief FORSUPEM OF KADE now residing at Banka and Ex-Chief KOFI AKYEAMPONG OF KADE now residing at Banka Defendants.

JUDGMENT.

Action in this land dispute was originally instituted in the Asantehene's "A" Court when Chief Kwame Andoh of Muronam and Kofi Fofie of Muronam on 18th December, 1937, took a summons against Kwakye Penkoro of Banka of £100 damages for trespass at various places on the land viz. :—

- " Panyin Opeai and Abeh cottage
- " (2) Anoasi cottage
- " (3) Kwasi Jatto cottage
- " (4) Kojo Sanu cottage
- " (5) Kwaku Senin, Donkor and Kodjoe Sei cottage and for "immediate ejection from the above places."

As the land was situated outside the confederacy that Court had no jurisdiction to entertain the claim and on 31st January, 1938, His Honour the Chief Commissioner of Ashanti made an executive Order under Section 22 (c) of Cap. 80 in Gold Coast Colony transferring the case to this Court.

The case was not then disposed of and the Plaintiffs gave notice of discontinuance on 6th May, 1940, and on 9th May, 1940, Chief Kwame Andoh and Opanyin Kofi Fofie on behalf of the stool of Muronam took an action against Nana Kwakye Penkoro, Bankahene, Ex-Chief Fosupem of Kade and Ex-Chief Akyeampong of Kade claiming (1) a declaration of title to all that piece or parcel of land situate at Muronam and bounded on the North by the river Sarpong and land belonging to the stool of Jumakyi, on the South by the River Prah and lands belonging to Amentia and Brenase stools, and on the East by Muronam stool land and the Anum Forest Reserve, and on the West by the river Apaa and the Mem Bepo and land belonging to Bogyesanwo (Bodwesanwo) stool.

(2) £100 damages from the Defendants for trespass committed on the said land from the confluence of Sarpong and Anum rivers to land near Abana stream and comprising land on the stream including the Nsua Kote village.

(3) An injunction to restrain the Defendants, their agents or servants from entering the said lands.

10 I have heard the parties and their witnesses, and I have had made by a Licensed Surveyor a tracing of Fumso Topo sheet and on it has been marked the extent of the land about which the parties are litigating, together with boundaries of other lands also Concessions, and such features as the parties wish marked.

This map is Exhibit " Q " and it will be observed from it that the land in respect of which the Plaintiffs are asking for a declaration of title and damages is that portion lying west of the river Anum and surrounded by a green line. On the map there is a footnote explaining what is the land in dispute. It will be observed that in this footnote the words " being claimed by the Plaintiffs from Defendants " have been deleted. This has been done at the request of Dr. Danquah (for Plaintiffs) who considered that the footnote as it originally stood was misleading.

20 It will I think be convenient if I first tabulate the various documentary Exhibits which have been put in by the parties :—

30 *Exhibit " A "* 29th January, 1929. Put in by consent—proceedings in a case taken on 29th January, 1929, by the Omanhene of Adansi against the Queenmother of Muronam for £50 damages for trespass on the land west of Anum which is now in dispute. Judgment was given in favour of the Plaintiff in Court of District Commissioner, Obuasi, and was upheld on appeal to the Provincial Commissioner but on further appeal to this Court it was decided that the Court of first instance had no jurisdiction and the appeal was allowed on that ground. This latter decision was given in 1932.

Exhibit " B " 29th January, 1940. Put in by Plaintiff—A letter dated 29th January, 1940, from the Omanhene of Banka addressed to the Headman of Krobos at Muronam notifying them that the land west of Anum is his stool land that they should not deal with Muronam about it.

40 *Exhibit " C "* 8th March, 1935. Put in by Plaintiff—a writ of summons taken by the Plaintiff in the Tribunal of the Paramount Chief of the Akyem Abuakwa State against the 3rd Defendant : claiming £50 for [*sic*] Defendant to show cause why Defendant has written a letter to the Omanhene of Akyem Abuakwa dated 8th March, 1935, to the effect that Plaintiff has no land at Muronam at a place called Anungya (i.e. across the Anum).

Exhibit " D " 26th January, 1935 : Put in by Plaintiff—letter written by Muronam to Paramount Chief of Akyem Abuakwa reporting the presence of white men on land.

Exhibit " E " 4th March, 1935. Put in by Plaintiff : Copy of a letter from the Paramount Chief of Akyem Abuakwa to the Manager,

Exhibits.

Part
Plaintiffs'
Exhibit
" A. "

*Andoh and
Another v.
Penkoro and
Others.*

(g) Judgment of
Chief Commissioner's
Court,
19th
November
1940,
continued.

Exhibits.

—
Part
Plaintiffs'
Exhibit
"A."

*Andoh and
Another v.
Penkoro and
Others.*

(g) Judgment of
Chief Commissioner's
Court,
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November
1940,
continued.

General Mines Investment Co. to the effect that he is Paramount Chief of Muronam Stool and all questions affecting Muronam land have got to be settled by him and that the Chief of Banka has no right to deal with Muronam stool land and cannot exercise paramountcy over the Muronam Stool in regard to this land.

Exhibit "F" 11th April, 1935. Put in by Plaintiff—A letter from the Solicitor to the General Mines Investment Co. addressed to Omanhene of Akyem Abuakwa notifying him that General Mines Investment Co. Ltd. hold a valid option from the Omanhene of Adansi over the Anum-Sarpong Extension Option and that a small bush camp has been made near Bawbinso within the area covered by this option. 10

Exhibit "G" 13th June, 1935. Put in by Plaintiff—A copy of a reply to Exhibit "F" setting out what is Muronam stool land and saying that Omanhene of Adansi has no right over this land.

Exhibit "H" 2nd January, 1935. Put in by Plaintiff—Letter from General Mines Investment Co. Ltd. to Odikro of Muronam stating that the writer had spoken to the Chief of Banka on receipt of a letter dated 16th January from Muronam (this letter is not in evidence) and that the Chief of Banka knew nothing whatsoever about it and that he should have been consulted first. (This refers presumably to the complaint made by Muronam to Ofori Atta about Banka's action in putting people on land.) 20

Exhibit "I" 15th July, 1936, and subsequent dates. Put in by Plaintiff—six receipts given by the Omanhene of Akyem Abuakwa and others in respect of money received from sale of right to farm on land in dispute.

Exhibit "J" 5th June, 1934. Put in by Defendant—Concession lease granted by 1st Defendant and his Elders to Gold Coast Mines Ltd., in respect of Banka Concession. (It should be noted that this Concession is East of the Anum river and therefore outside the area in dispute.) 30

Exhibit "K" 27th June, 1934. Put in by Defendant—Memorandum of Agreement in respect of Anum Sarpong Concession granted to the Kumasi Mines Ltd. by Kobina Foli Omanhene of Adansi.

[sic] Plaintiffs

Exhibit "L" 27th February, 1900. Put in by *Defendants*—An Agreement by Kobina Muro, King of Kade to sell to Christian Josiah Reindorf, a portion of Insokota (Nsuakote) land.

Exhibit "M" February, 1907. Put in by *Defendants*—A validated executive decision laying down the boundaries of Banka Lands. 40

Exhibit "N" 9th July, 1934. Put in by Plaintiffs. A letter from the District Commissioner, Obuassi, to the Acting Omanhene Akyem Abuakwa regarding the position of the Bankahene *vis-a-vis* the Omanhene of Akyem Abuakwa together with a copy of a reply dated 23rd October, 1934.

Exhibit "O" 27th February, 1900. Put in by Defendants—
Supplementary Agreement to Exhibit "L."

Exhibit "P" 16th March, 1937. Put in by Defendants—A receipt given to Codjoe Kyeame of Somanya for £61 6s. in respect of purchase of land from Muronam.

Exhibit "Q": the plan referred to above.

I will now set out briefly the traditional history as given by both parties. The Plaintiffs' story is that their ancestors came down from Heaven on a brass pan suspended on a chain and settled on this land, or in other
 10 words that they have been on the land from time immemorial and were the first settlers. That Moro was the first arrival on the land (hence the name Muronam). That during the time of Owusu Amo, a successor of Muro, Obeng Dako and Abeyaa Atta came from Hemang Denkera and asked for a place to settle and Owusu Amo settled them at Nsuakote (on land in dispute) and that these two were the ancestors of the Kade people. That the predecessors of Banka came from Essumeja and Manka a brother of Owusu Amo settled them at his town Manka (now corrupted to Banka). A little later Osei Tutu then King of Ashanti (circa 1740 A.D.) waged war and the Bankas and the Kades fled south across the Prah and left the land and
 20 did not come back again and Nsuakote was reoccupied by Muronam people.

Defendants' story is that he and the Kade people were the first settlers on the land, that he settled at Banka and the Kade people settled on the west side of Anum. That when Muro came Banka settled him at Apotusu, which is now called Muronam, and that later he Muronam left leaving his people behind him there. That at the time of the flight of the people from the Ashanti army his (Banka's) predecessor stayed behind and the Kade people gave him Nsuakote land to look after. His story of the name Banka is that it is a corruption of "Ebanie Aka" i.e. he who remained behind.

30 This briefly is the traditional history of the two parties.

This case has a slight political aroma hanging about it. It has been stated that at one time the predecessors of 1st Plaintiff and 1st Defendant served Akyem Abuakwa and from some of the documentary Exhibits it will be seen that protests about the Bankahene's dealing with this land were referred by the Plaintiffs to the Paramount Chief of the Akyem Abuakwa State. Be that as it may, somewhere round about 1900, the Ohene of Banka was granted Paramount rank by the Government and the Chief of Muronam became sub-chief under him, which position he holds to-day and which is a position which must be accepted by this Court. I
 40 will now turn to the evidence offered by the parties as to dealings in this land. On the Plaintiffs' side first. In his evidence the Plaintiff stated that just before 1900 Taylor paid £100 to Muronam for a concession. No document appears to have been made on this and the money is stated to have been paid to Omanhene of Akyem Abuakwa. Taylor's gold pit was shown to the Surveyor and is marked on the map. It has been stated also by Plaintiff that later on a man from Accra paid £25 for a concession and later again another man paid £8 for a dredging licence. No documents were made on any of these transactions but it has been stated that Banka

Exhibits.
—
Part
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Exhibits. raised no objection. Next in 1936 and subsequent dates sales of land were made by Muronam to strangers of which records are on Exhibit—" I " and " P." Also the evidence of various witnesses who say they farm on land with permission of Muronam is on record.

Part
Plaintiffs'
Exhibit
" A "

*Andoh and
Another v
Penkoro and
Others*
(g) Judg-
ment of
Chief Com-
missioner's
Court,
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November
1940,
continued.

On Defendants' side there is in 1900 an agreement of sale between Kobina Moro of Kade and Reindorf in respect of Nsuakote land (Exhibits " L " and " O "). In 1934 Anum Sarpong Option Concession was granted to Kumasi Mines Ltd. by the Omanhene of Adansi and the evidence of the various witnesses as to farming on the land by permission of Banka and the evidence of Kobina Doh who fished in the River Anum for Bankahene is on record. It is peculiar that on the Plaintiff's side except for the statement that some time subsequent to 1900 when a man is supposed to have paid £25 for concession and another £8 for dredging, there is no evidence of any dealing on this land till 1934 i.e. after the Chief Commissioner's Judgment of 20th June, 1932, in the case between Adansi and Queenmother of Muronam which Muronam says here he won, though he did not so as the appeal was allowed on the ground that the Court of first instance had no jurisdiction. 10

Since 1934 it is clear that both parties have been busy putting people on the land. When the Bankahene gave his evidence he stated *inter alia* that he was caretaker of the land for the Adansi and indeed in view of the validated executive decision Exhibit " M " on which he relies, he could hardly do otherwise. In my opinion the answer to the question as to who this land belongs to is found in that decision. 20

Dr. Danquah for the Plaintiffs has submitted that if regard is to be had to this decision then it must be made clear that it was a judgment rising out of a dispute and that there is no evidence that there was a dispute other than between Atokwai and Banka, that it was never intended by legislation that Government should take land from one stool and give it to another, and that the decision ought never to have been validated, and that the decision merely laid down the boundaries of the newly established Banka Division. 30

As regards this point as to whether the boundaries were those of the Banka Division or the boundaries of Banka lands as stated in the Exhibit, it is to be noted that Amentia was present at the meeting of this boundary and that Amentia lands were not included inside the Banka lands although Amentia was a part of the Government made Banka Division. It has been stated that formerly Amentia served Akim Oda while Banka and Muronam served Ocheresu under Akyem Abuakwa, so it is clear to me that Soden's boundary laid down the boundaries of the Banka stool lands which had formerly been under Ocheresu. 40

In fact they could not have been Banka Divisional boundaries or Amentia land must have been included. This same view that the boundaries were land boundaries appears to have been held by the Courts of the District Commissioner, Obuasi, and the Provincial Commissioner in Exhibit " A " which found that the Adansi claim to land west of Anum was bound by the executive decision.

As regards Dr. Danquah's submission that this executive decision should never have been validated the answer is to be found in Section 4 of Cap. 120 "a true copy of such entry in the boundary book shall be sufficient and conclusive evidence in all Courts and Native Tribunals that the executive decision was in fact given confirmed or approved by the Chief Commissioner."

Exhibits.

Part
Plaintiffs'
Exhibit
"A."

*Andoh and
Another v.
Penkoro and
Others.*

(g) Judg-
ment of
Chief Com-
missioner's
Court,
19th
November
1940,
continued.

10 It has been stated also that Muronam was not aware of this boundary having been laid down, but I find this impossible to believe. Palavers were held at Banka and Amentia according to Exhibit "M," Amentia is about $1\frac{1}{2}$ miles from Muronam and it is inconceivable that the Muronam people should not have known. The fact that reference to Muronam is excluded from Exhibit "M" points the fact that it was recognised at that time that Muronam was living on Banka land.

In Exhibit "M" no mention is made of Adansi, but Bogyisango which is mentioned is a sub-division of Adansi. I find there is no evidence on the Plaintiffs' side to justify the grant of the declaration of title which he seeks, but on the other hand that the question of the ownership of this land has already been decided by validated executive decision Exhibit "M." There will therefore be judgment for the Defendants with costs to be taxed.

20

(Sgd.) G. P. H. BEWES,
Acting Assistant Chief Commissioner.

Part Ex. "A"—Andoh & Another v. Penkoro & Others.

(h) Exhibit "M"—Executive Decision.

Reference Obuasi Boundary Book p. 29/30.

(h) Ex-
hibit "M."
Executive
Decision,
February
1907.

At Palavers held at Banka and Amantia during the month of February, 1907, at which the Chiefs of Bogyisango, Banka and Amantia were present the boundaries of Banka Lands were laid as follows:—

1. The left bank of the Prah River from a point exactly opposite to the point where the Ankomisua River flows into the Prah River to a point on the left bank of the Prah River exactly opposite to where the Anum River flows into the Prah River.
2. From thence a straight line to the confluence of the Anum and Prah Rivers.
3. From thence the thalweg of Anum River to the point where the Dei River flows into the Anum River.

Exhibits.

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Part
Plaintiffs'
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"A."

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Others.*

(h) Ex-
hibit "M."
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1907,
continued.

4. From thence the thalweg of Dei River to the point where the Atubo River flows into the Dei River.

5. From thence a straight line more or less defined by a range of hills to the source of the Akwantaferi River.

6. From thence the thalweg of the Akwantaferi River to the point where the Akwantaferi River flows into the Pumpumasi River.

7. From thence a straight line to the source of Ankomisua River.

8. From thence the thalweg of the Ankomisua River to the point where the Ankomisua River flows into the Prah River.

9. From thence a straight line to a point on the left bank of the Prah River exactly opposite to the confluence of the Prah and Ankomisua Rivers. 10

(Sgd.) G. W. CLOTHWORTHY SODEN,

Commissioner S. D. A.

I hereby certify that the above is a true copy of the execution decision given by C. W. Clothworthy Soden Commissioner Southern District Ashanti on the day of February, 1907, and approved by me on the th day of September, 1928.

Dated at Kumasi this 8th day of February, 1930.

(Sgd.) JOHN MAXWELL,

Chief Commissioner Ashanti, 20

I hereby certify that the foregoing is a true copy of an executive decision given confirmed or approved by the Chief Commissioner and officially recorded in the Boundary Book.

(Sgd.) A. PREMPEH,

Registrar, Chief Commissioner's Court.

Exhibit " B "—Judgment of West African Court of Appeal in Andoh & Another v. Penkoro & Others.

Exhibits.
Plaintiff's Exhibit " B."

29th May, 1941.

IN THE WEST AFRICAN COURT OF APPEAL, Gold Coast Session, held at Victoriaborg, Accra, on Thursday the 29th day of May, 1941, before Their Honours Sir DONALD KINGDON, C.J., Nigeria (President), Sir PHILIP BERTIE PETRIDES, C.J., Gold Coast and GEORGE GRAHAM PAUL, C.J., Sierra Leone.

Judgment of West African Court of Appeal in Andoh and Another v. Penkoro and Others, 29th May 1941.

Civil Appeal.

10 Chief KWAME ANDOH and KOFI FOFIE of Muronam for and on behalf of the STOOL OF MURONAM Plaintiffs-Appellants.

v.

NANA KWAKYE PENKORO, Bankahene, Ex-Chief FOSUPEM and Ex-Chief KOFI AKYEAMPONG, Defendants-Respondents.

Appeal from judgment of Ag. Asst. C. C. A. dated the 19th November, 1940.

J. H. Coussey (with him J. B. Danquah) for Plaintiffs-Appellants.

20 E. O. Asafu-Adjaye for Defendants-Respondents.

* * * * *

JUDGMENT.

It is sufficient for the purpose of deciding this appeal to say that, after hearing exhaustive argument by Appellants' Counsel, we see no reason to differ from the finding of the Acting Assistant Chief Commissioner of Ashanti in the Court below " there is no evidence on the Plaintiff's side to justify the grant of the declaration of title which he seeks." But we think it necessary to add that we do not subscribe to his other finding that " the question of the ownership of this land has already been decided by validated ' Executive Decision Exhibit " M ".'

30 The appeal is dismissed with costs assessed at £48 12s. 10d.

(Sgd.) DONALD KINGDON,
President.

(Sgd.) PHILIP B. PETRIDES.
Chief Justice, Gold Coast.

(Sgd.) G. GRAHAM PAUL,
Chief Justice, Sierra Leone.

29th May. 1941.

In the Privy Council.

ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL (Gold Coast Session).

BETWEEN

**NANA OFORI ATTA II Omanhene of Akyem Abuakwa,
and Bafuor Owusu Amo Odikro of Muronam (Plaintiffs)** *Appellants.*

AND

**1. NANA ABU BONSRRA II as Adansehene and as
representing the Stool of Adanse (substituted for Nana
Bonsra Agyei) (Defendant)**

AND

**2. BANKA STOOL as represented by Brako Ababio II
(Co-defendant)** *Respondents.*

RECORD OF PROCEEDINGS

A. A. BRYDEN & WILLIAMS,
53 VICTORIA STREET,
LONDON, S.W.1,
Appellant's Solicitors.

T. L. WILSON & CO.,
6 WESTMINSTER PALACE GARDENS,
LONDON, S.W.1,
Solicitors for the first Respondent.