

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

INSTITUTION
63653

B E T W E E N :

NANA ADJEE III, Ohene of Okadjakrom for and
on behalf of the Stool and people of Okadjakrom
Plaintiff/Appellant

- and -

NANA ADJEDU II, Ohene of Atonkor for and on
behalf of the Stool and people of Atonkor
Defendant/Respondent

1. YAW DANKWA (deceased)
 2. ADO KWASI,
 3. KWAKU YIRENKYI,
 4. MANSAN NKANSAH,
 5. YAW MPEW DARKO,
 6. G.K. ADDO and
 7. KOFI ASARE
- Co-Defendants/Respondents

AND B E T W E E N :

NANA ADJEE III, Ohene of Okadjakrom
Defendant/Appellant

- and -

ASOFOATSE KWADJO NKANSAH of Atonkor
Plaintiff/Respondent

(Consolidated Appeals)

RECORD OF PROCEEDINGS

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Solicitors for Appellant.

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53, Victoria Street,
London, S.W.1.
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ON APPEAL
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(GOLD COAST SESSION)

B E T W E E N :

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RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL

No. 24 of 1958

ON APPEAL

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

B E T W E E N :

NANA ADJEI III, Ohene of Okadjakrom for and on
behalf of the Stool and people of Okadjakrom
Plaintiff/Appellant

- and -

10 NANA ADJEDU II, Ohene of Atonkor for and on
behalf of the Stool and people of Atonkor
Defendant/Respondent

1. YAW DANKWA (deceased),
2. ADO KWASI,
3. KWAKU YIRENKYI,
4. MANSAH NKANSAH,
5. YAW MPEW DARKO,
6. G. K. ADDO and
7. KOFI ASARE. Co-Defendants/Respondents

AND B E T W E E N :

20 NANA ADJEI III, Ohene of Okadjakrom
Defendant/Appellant

- and -

ASOFOATSE KWADJO NKANSAH of Atonkor
Plaintiff/Respondent

(Consolidated Appeals)

RECORD OF PROCEEDINGS

PART I

In the
Native Court of
Omanhene of Buem

No. 1

CIVIL SUMMONS

No. 73/51.

No. 1

IN THE NATIVE COURT OF OMANHENE OF BUEM.

Civil Summons.

5th December,
1951
(1st Action)

B E T W E E N

NANA ADJEI III, Ohene of Okadjakrom
for and on behalf of the Stool and
people of Okadjakrom, Plaintiff

- and -

NANA ADJEDU II, Ohene of Atonkor for
and on behalf of the Stool and
people of Atonkor, Defendant 10

Joined by Order of Court
d/d 8/4/53. (1. YAW DANKWA,
2. ADO KWASI,
3. KWAKU YIRENKYI,
4. MANSAH NKANSAH,
5. YAW MPEW DARKO
6. G.K. ADDO &
7. KOFI ASARE, Co-Defendants

To NANA ADJEDU II, Ohene of Atonkor. 20

You are hereby commanded to attend this Native Court at Borada at 9 a.m. o'clock on the 16th January, 1952, to answer a suit by Nana Adjei III, Ohene of Okadjakrom against you.

The Plaintiff claims:-

In a previous Suit No.6/40 entitled Nana Adjedu II, Ohene of Atonkor (Pltff) versus Nana Adjei III, Ohene of Okadjakrom (Deft) in respect of All that piece or parcel of land situate near Okadjakrome and known as "Kafuetonku" and bounded on one side by Okadjakrome Stool Land, on the 2nd side by Atonkor Stool Land at a point where "Otuku-kata" tree stands, on the 3rd side by River Konsu separating the said Land from Guaman Stool Land and on the 4th side by Jasikan Stool Land - the tribunal of the Buem State Council (functioning under the Native Administration (Southern Sphere of Togoland) Ordinance Cap 90 on 2nd July, 1940, 30

gave judgment against the Plaintiff in that Suit and Defendant in this Suit as follows:-

In the
Native Court of
Omanhene of Buem

"Judgment is for the Defendant with costs to be taxed - Defendant to retain his farms".

No. 1

The said judgment of the tribunal of the Buem State Council dated 2nd July, 1940, was subsequently confirmed on Appeal by the Provincial Commissioner's Court and later by the West African Court of Appeal.

Civil Summons.
5th December,
1951
(1st Action)
- continued.

10 In subsequent Interlocutory proceedings commenced in the Native Court 'B' of the Omanhene of Buem in respect of the same parcel of Land which came on Appeal before the Magistrate (Constituted by the District Commissioner) Kpandu, the said Magistrate, on the 22nd March, 1951, ruled as follows:-

20 "Counsel for the Defendant argues that the original decision by the State Council gave to the Defendant the whole area in dispute. This is correct. Counsel for Plaintiff argues that the boundaries of the area in dispute are not known and that the Buem Borada Native Court has sensibly settled the matter by dividing equally between the parties the area in dispute. This may be a sensible solution, but it is in the face of the original judgment giving the area in dispute to the Defendant

30 "The Appeal therefore allowed and the Order made by the Buem Borada Native Court ordering that the Land in dispute shall be divided equally between the two parties is set aside".

The parties in both the original Suit and the subsequent Interlocutory proceedings are the same and the subject matter is also the same - And the Defendant in this Suit is Estopped "Per Rem Judicatum" by the said recited Decision or Judgment from alleging that he or any of his subjects of Atonkor own the Land the subject-matter of the Suit.

40 The Defendant and his subjects in spite of the judgments against them, have been persistently entering upon the Land in dispute and disturbing the Plaintiff and his subjects in their occupation

the Magistrate's Court Kpandu, under the provisions of Section 54(1)(c) of the Native Courts (Southern Section of Togoland under British Mandate) Ordinance, 1949, has reported to the Land Judge the pendency of the above-named case before the Native Court of the Omanhene, Buem:

In the
Supremo Court

No. 2

Order of
Transfer.

15th March, 1952
(1st Action)
- continued.

10

IT IS HEREBY ORDERED that the said cause be transferred from the Native Court of the Omanhene, Buem, to the Land Division of the Supreme Court of the Gold Coast at Accra, to be heard and determined:

20

AND IT IS HEREBY ORDERED (1) that the original Writ of Summons and process and proceedings in the said cause and attested copies of all entries in the books of the Native Court of the Omanhene, Buem relative thereto be transmitted to the Land Division of the Supreme Court of the Gold Coast at Accra and (2) that the said cause be placed on the General List for Thursday the 17th day of April, 1952, at 8.30 a.m.

Given under my hand and the seal of the said Court at Victoriaborg, Accra, this 15th day of March, 1952.

(Sgd) Dugbartey Narnor,
REGISTRAR, LAND COURT.

No. 3

ORDER FOR PLEADINGS

(Title as No. 2)

No. 3

Order for
Pleadings.

17th April, 1952.
(1st Action)

30

Lassey (holding Bossman's brief) for Plaintiff. Akyeampong for Defendant.

Akyeampong is asking for plan and pleadings.

Court:-

Let Statement of Claim and plan be filed within 3 months, and Statement of Defence within 21 days of the date of the service of the Statement of Claim and a copy of the plan upon defendant.

(Sgd) J. Jackson,
J.

In the
Supreme Court

No. 4

STATEMENT OF CLAIM

No. 4

Statement of
Claim.

20th August,
1952
(1st Action)

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN JUDICIAL DIVISION
LAND COURT - ACCRA.

Transferred Suit No. 1/1952.

NANA ADJEI III, Ohene of Okadjakrome
for and on behalf of the Stool and
people of Okadjakrome in Togoland
under United Kingdom Trusteeship

Plaintiff

10

versus

NANA ADJEDU II Ohene of Atonkor for
and on behalf of the Stool and
people of Atonkor in Togoland under
United Kingdom Trusteeship

Defendant

STATEMENT OF CLAIM FILED ON BEHALF
OF THE PLAINTIFF HEREIN

1. The Plaintiff is the Chief and occupant
(Ohene) of the Stool of Okadjakrome, and sues in
these proceedings for himself and his said Stool
and people of Okadjakrome.

20

2. In a previous Suit No.6/40 entitled Nana
Adjedu II, Ohene of Atonkor (Pltff) vs: Nana Adjei
III, Ohene of Okadjakrome (Deft) in respect of
All that piece or parcel of Land near Okadjakrome
and known as "Kafuetonku" and bounded on one side
by Okadjakrome Stool land, on the second side by
Atonkor Stool Land at a point where "Otukutaka"
tree stands, on the third side by River Konsu
separating the said Land from Atonkor and Guaman
Stool Land, and on the fourth side by Jasikan Stool
Land - the Tribunal of the Buem State Council
(functioning under the Native Administration South-
ern Sphere of Togoland Ordinance Cap. 90) on the
2nd July, 1940, gave Judgment against the Plaintiff
in that Suit and Defendant in this Suit as follows:-

30

"Judgment is for the Defendant with costs to
be taxed - Defendant to retain his farm".

In the
Supreme Court

No. 4

Statement of
Claim.

20th August,
1952

(1st Action)

- continued.

3. The area of Land the subject matter of the said Suit is shown on Plan dated 18th August, 1952, signed by F.K. Ziddah, Esq., Licensed Surveyor - by the yellow line to the East, and Green line to the West and embraces the area marked Red which is the subject matter of this Suit - the Defendant having now abandoned his claim to the Land between the purple line and the yellow line shown on the said Plan.

10 4. The said Judgment of the Tribunal of the Buem State Council dated 2nd July, 1940, was subsequently confirmed on Appeal by the Provincial Commissioner's Court, and later by the West African Court of Appeal.

20 5. In subsequent Interlocutory proceedings commenced in the Native Court 'B' of the Omanhene of Buem in respect of the same parcel of Land which came on Appeal before the Magistrate (constituted by the District Commissioner) Kpandu, the said Magistrate, on the 2nd March, 1951, ruled as follows:-

30 "Counsel for the Defendant argues that the
"original decision by the State Council gave to
"the Defendant the whole area in dispute. This
"is correct, Counsel for Plaintiff argues that
"the boundaries of the area in dispute are not
"known and that the Buem/Borada Native Court
"has sensibly settled the matter by dividing
"equally between the parties the area in dispute.
"This may be sensible solution, but it is in
"face of the original Judgment giving the area
"in dispute to the Defendant..... The Appeal
"therefore allowed and the Order made by the
"Buem/Borada Native Court ordering that the Land
"in dispute shall be divided equally between the
"two parties is set aside".

40 6. The Line of Demarcation made by the Borada Native Court 'B' and which was set aside by the Appellate Court of the Magistrate (constituted by the District Commissioner) Kpandu as set forth in paragraph 5 supra, is that shown running through the middle of the area edged Red by the Red Line running from the Southern Boundary from a point marked "Nguan Tree" in a Northernly direction to three Onyma Trees by the old track from Atonkor Jasikan called "ABIBRIWASE".

In the
Supreme Court

No. 4

Statement of
Claim.

20th August,
1952

(1st Action)

- continued.

7. The parties in both the original Suit and the subsequent Interlocutory proceedings are the same as in this present Suit, and the subject matter is also the same - and the Defendant in this Suit is Estopped "Per Rem Judicatam" by the said recited decisions or Judgments from alleging that he or any of his subjects or Atonkor own the Land the subject matter of the Suit edged Red in the Plan.

8. The Defendant and his subjects, in spite of the Judgments against them, have been persistently entering upon the Land in dispute and disturbing the Plaintiff and his subjects in their occupation of farms on the said Land and wrongfully taking and carrying away crops from the said farms.

10

9. THE PLAINTIFF THEREFORE CLAIMS:-

(1) Declaration of the title of his Stool to the said Land

(2) £1,000 Damages against the said Defendant and his subjects for their trespass on the said Land

20

and

(3) Perpetual Injunction to restrain the said Defendant, his agents, servants and people from further commission of any form of trespass on the said Land.

DATED at Azinyo Chambers, Accra, this 20th day of August, 1952.

(Sgd) K. Adumua-Bossman
SOLICITOR FOR PLAINTIFF.

No. 5

No. 5

30

Statement of
Defence.

STATEMENT OF DEFENCE

(Title as No. 4)

11th September,
1952

(1st Action)

STATEMENT OF DEFENCE FILED ON BEHALF OF THE
DEFENDANT HEREIN BY OPOKU-AKYEAMPONG, ESQUIRE
BARRISTER-AT-LAW, ACCRA.

1. The Defendant is not in a position to dispute the allegations contained in paragraph 1 of the Plaintiff's statement of claim.

2. In reply to paragraph 2 of the Plaintiff's Statement of Claim, the Defendant avers that he is the Owner of All that piece or parcel of land edged Red in the Plan filed herein by reason of being the occupant of the Stool of Atonkor, and that the Suit referred to by the Plaintiff in paragraph 2 of his Statement of Claim was in respect of that portion of the land along the Southern Boundary of the land in dispute.

In the
Supreme Court

No. 5

Statement of
Defence.

11th September,
1952

(1st Action)
- continued.

10 (Amended by Order of Court d/d 23/11/53)
(Intd) B.A.

3. The Defendant further avers that his claim in the former Case was for Damages for trespass committed by (1) Kwame Ofei, (2) Chief Farmer Yaw Adjei, (3) Kwaku Nyina, (4) Mami Asolayaa, (5) Buadi (6) Kwansah Dzabon, (7) Frempong, (8) Kwabena Ntow and (9) Kumi, who made cocoa farms on the Southern boundary of the Defendant's land.

20 4. And that the Judgment which never conferred title in respect of the whole land upon the Plaintiff rather reads as follows: "Judgment is for Defendant with costs to be taxed. No Order as to fixing of boundary is made until one or both of the parties move this Court for it".

30 5. The Defendant therefore will contend that the said Judgment was not complete and that the Rights of the Parties in that case were not conclusively defined and that is borne out by the fact that the Plaintiff had to move the Borada Native Court 'B' in 1950 for the demarcation of the boundary between the Plaintiff and the Defendant's land.

6. The Defendant admits the allegations contained in paragraphs 3, 4, 5 and 6 of the Plaintiff's Statement of Claim but will contend that the said Interlocutory Proceedings did not decide the issue between the parties

40 7. The Defendant avers that since the said Judgment of 2nd July, 1940 was incomplete and was in respect of mere Trespass to a portion of the land in dispute it cannot constitute an Estoppel "per rem judicatem" for the claim now before the Court is substantially a claim for Declaration of Title which was never decided by the said Judgment in favour of the Plaintiff.

In the
Supreme Court

No. 5

Statement of
Defence.

11th September,
1952
(1st Action)
- continued.

8. The Defendant in reply to paragraph 8 of the Plaintiff's Statement of Claim avers that his subjects have farms on the land and are still making farms on the land in dispute and they do so in exercise of their rights of Ownership.

9. In further reply to paragraph 8 of the Plaintiff's Statement of Claim the Defendant avers that his subjects have not been disturbing the Plaintiff's subjects for the use of the farms which they were allowed to retain under the 1940 Judgment. 10

10. The Defendant denies that he or his subjects have trespassed on to the Plaintiff's land or farms belonging to Plaintiff's subjects.

11. The Defendant denies that the Plaintiff is entitled to the Reliefs or any of the Reliefs he claims.

12. Save as hereinbefore expressly admitted the Defendant denies each and every allegation of facts contained in the Plaintiff's Statement of claim as if same were herein set out in detail and traversed seriatim. 20

13. The Defendant claims by way of Counter-claim:-

(1) A Declaration of title to all that piece or parcel of land edged Red in the Plan filed herein

and

(2) Perpetual Injunction restraining the Plaintiff and his subjects, servants, agents from interfering with lawful use of the Defendant's said land. 30

DATED at Asiri-Owoahene Chambers, Accra, this 11th day of September, 1952.

(Sgd) Opoku-Akyeampong,
SOLICITOR FOR DEFENDANT.

No. 6

R E P L Y

(Title as No. 4)

In the
Supreme Court

No. 6

REPLY FILED ON BEHALF OF THE PLAINTIFF TO THE
STATEMENT OF DEFENCE FILED ON BEHALF OF THE
DEFENDANT HEREIN.

Reply.

15th September,
1952
(1st Action).

10 1. The Plaintiff joins issue with the Defendant on the allegations contained in paragraphs 2,3,4,5, 7,8,9,10 and 11 of the said Defendant's Statement of Defence.

20 2. In further reply to the allegations in paragraph 2 of the Statement of Defence, the Plaintiff avers that the Defendant as Plaintiff in the former Suit claimed to own or have title to not only All that piece or parcel edged Red on the Plan prepared for this Suit, but also the Land further East to the line shown or marked Yellow on the said Plan - And the whole area then claimed by the Defendant in the said former Suit which includes the area now in dispute in this present Suit, was held or adjudged not to belong to the said Defendant - Wherefore the said Defendant is now Estopped from making any averment or claim contrary to the said former adjudication against him.

30 3. In further reply to the allegation in paragraph 2 of the Statement of Defence to the effect that the former Suit related to and was in respect of only "the portion of the Land along the Southern Boundary of the Land in dispute" the Plaintiff avers that not only the description of the area involved in the first Suit, but also the fact that the present Plaintiff then Defendant in the former Suit claimed right up to the Western line shown in Green on the Plan, completely refutes the Defendant's allegation.

40 4. In further reply to the allegations in paragraph 3 of the Statement of Defence, the Plaintiff avers that although in the former Suit Defendant then Plaintiff claimed Damages for trespass, the Suit clearly raised the issue of ownership of or title to the area of Land then the subject-matter

In the
Supreme Court

No. 6

Reply.

15th September,
1952
(1st Action)
- continued.

of that Suit, whilst the Plaintiff in this present Suit then Defendant in the said former Suit although making no specific Counter-claim, defended on the ground that he was owner of or entitled to the area of Land the subject-matter of that Suit.

5. In further reply to the allegations in paragraph 4 of the Statement of Defence the Plaintiff avers that it was unnecessary for the Judgment in that former Suit to confer or declare title in the then Defendant in that Suit, because the Plaintiff was then as Defendant defending his title and possession which was challenged by the Writ or Claim - and the said Plaintiff in this Suit as Defendant in the former Suit found it unnecessary to and did not Counter-claim for title. It is however sufficient for the determination of the question whether the Defendant is Estopped by the former Suit - that it was adjudged in the former Suit that the said Defendant in this Suit as Plaintiff in the former Suit, was not the owner of the area of Land claimed in the former Suit which is the same as that in respect of which he is now sued in this present suit. 10 20

6. In further reply to the allegation in paragraph 4 of the Statement of Defence to the effect that in the former Suit it was ordered as follows: "No Order as to fixing of boundary is made until one or both of the Parties move this Court for it" - the Plaintiff avers that the matter of the fixing of a boundary or boundary marks has nothing to do with the adjudication that the area clearly defined and ascertained which was in dispute between the parties, did not belong to one, but did belong to the other of the contesting parties. 30

7. In further reply to the allegations in paragraph 4 of the Statement of Defence, the Plaintiff avers that the former Judgment or adjudication was clear, definite and decisive enough as to the rights of the contending parties to the area of Land in the said former Suit - the said former Judgment having clearly and unambiguously rejected the present Defendant's, then Plaintiff's, claim to the ownership of the area of Land in dispute - and that the subsequent application to the Borada Native Court 'B' to have the boundary cut or demarcated between that Land adjudged not to belong to the present Defendant and the adjoining Land 40

submittedly belonging to the present Defendant to the West of the former area in dispute, cannot and did not in any way affect or impair the finality or validity of the former adjudication that the area did not belong to the present Defendant.

In the
Supreme Court

No. 6

Reply.

15th September,
1952
(1st Action)
- continued.

10 8. In further reply to the allegations in paragraph 7 of the Statement of Defence the Plaintiff avers that the said allegations are founded partly on a deliberate attempt to misunderstand the true import and substance of the previous Suit and the decision given in it, and partly on a misconception as to the full scope, meaning and operation of the doctrine of "Estoppel per Rem Judicatam".

20 9. In further reply to the allegations in paragraph 8 of the Statement of Defence, the Plaintiff avers that it is the continuation of the farming activities of the Defendant's subjects on the Land in dispute since the former Judgment which is the cause of this action and of the claims for Declaration of title, Damages and perpetual Injunction made in the Writ and the Statement of Claim.

10. The Plaintiff joins issue generally on the allegations contained in paragraphs 9,10 and 11 of the Statement of Defence.

30 11. The Plaintiff DENIES that the Defendant is entitled to any of the Reliefs claimed in his Counter-claim, and avers that the said Defendant is Estopped by the Judgment in the former suit from claiming the said Relief or Reliefs in respect of the said area of Land the subject matter of the present Suit which was also the subject matter of the former Suit.

DATED at Azinyo Chambers, Accra, this 15th day of September, 1952.

(Sgd) K. Adumua-Bossman,
SOLICITOR FOR PLAINTIFF.

In the
Supreme Court

No. 7

No. 7

APPLICATION FOR JOINDER

(Title as No.4)

Application for
joinder.

11th September,
1952
(1st Action).

TAKE NOTICE that this Court will be moved by Opoku-Akyeampong of Counsel for and on behalf of (1) Yaw Dankwa, (2) Ado Kwasi, (3) Kwaku Yirenkyi, (4) Mensah Nkansah, (5) Yaw Ampew Darko, (6) G.K. Addo and (7) Kofi Asare all of Atonkor for an Order for Joinder as Co-Defendants and for such further Order or Orders as to the Court may seem meet.

10

COURT to be moved on Tuesday the 7th day of April, 1953, at 9 of the clock in the forenoon or so soon thereafter as Counsel can be heard.

DATED at Asiri-Owoahene Chambers, Accra, this 11th day of September, 1952.

(Sgd.) Opoku Akyeampong
SOLICITOR FOR APPLICANTS.

No. 8

No. 8

Affidavit of
G.K. Addo in
support of
application
for joinder.

AFFIDAVIT of GILBERT KWASI ADDO IN SUPPORT OF
APPLICATION FOR JOINDER.

20

(Title as No.4)

12th September,
1952
(1st Action).

I, GILBERT KWASI ADDO of Atonkor make Oath and say as follows:-

1. That I am one of the Applicants herein and have the power and authority of the other applicants to swear to this Affidavit on our joint behalf.

2. That we all have cocoa farms and/or lands on the land the subject matter of the Suit.

3. That as any Judgment that may be given may affect our interest in the land, we feel that the proper course is for us to be joined as Co-Defendants to enable us to protect our said interest.

30

4. That in the circumstances I make this Affidavit on behalf of myself and the other Applicants in support of Application for Joinder herein.

Sworn at Accra, this 12th) G.K. Addo,
day of September, 1952) (Sgd)

Before me

(Sgd) E. Ohene Glover,
COMMISSIONER FOR OATHS.

In the
Supreme Court

No. 8
Affidavit of
G.K. Addo in
support of
application
for joinder.
12th September,
1952
(1st Action)
- continued.

No. 9

10

SUPPLEMENTARY AFFIDAVIT OF YAW DANKWA
IN SUPPORT OF APPLICATION FOR JOINDER

(Title as No.4)

I, YAW DANKWA of Atonkor make Oath and say as follows:-

1. That I am one of the Applicants herein and have the power and authority of the other applicants to swear to this Affidavit on our joint behalf.

20

2. That we are Members or subjects of the Atonkor Stool, i.e. the Defendant's Stool.

3. That as such Members or Subjects we are entitled to make farms on the Defendant's land and it was in that capacity that we made farms on the land in dispute.

30

SWORN at Accra, this 3rd day)
of October, 1952, by the De-)
ponent after the foregoing)
has been read over, interpre-)
ted and explained to him in) YAW DANKWA his
the Twi language by Yaw Ansah) X
Yeboah of Accra and he seemed) mark.
perfectly to understand the) W/W to mark.
same before making his mark) (Sgd.) Y.A. Yeboah.
hereto.)

Before me

(Sgd.) E. Ohene Glover,
COMMISSIONER FOR OATHS.

No. 9

Supplementary
Affidavit of
Y.Dankwa in
support of
application
for joinder.
3rd October,
1952
(1st Action)

In the
Supreme Court

No. 10

Court Notes of
Joinder.

7th April, 1953.
(1st Action).

No. 10

COURT NOTES OF JOINDER

(Title as No. 4)

Bossman for Plaintiff
Opoku Akyeampong for Defendant applicant.

Motion in terms of papers filed for joinder.
Bossman does not oppose.

Court:-

Application granted as prayed. Copies of papers in the suit to be served on all the Co-defendants; The said Defendants to file defence within 14 days after service of statement of Claim; Plaintiff to file reply if any within 7 days from service of Defence.

10

Adjourned to 13th May.

(Sgd) K.A. Korsah,
J.

No. 11

Defence of the
Co-Defendants.

27th May, 1953
(1st Action)

No. 11

DEFENCE OF THE CO-DEFENDANTS

(Title as No. 4 but Amended by addition of

20

1. YAW DANKWA,
2. ADDO KWASI,
3. KWAKU YIRENKYI,
4. MENSAH NKANSAH,
5. YAW AMPEW DARKO,
6. G.K. ADDO and
7. KOFI ASARE all of Atonkor, Co-Defendants

STATEMENT OF DEFENCE FILED HEREIN ON BEHALF
OF THE CO-DEFENDANTS BY OPOKU-AKYEAMPOG,
ESQUIRE, BARRISTER-AT-LAW, ACCRA.

1. The Co-Defendants do not dispute the Plaintiff's allegation that he is the Chief and occupant of the Stool of Okadjakrome but they are not in a position however to admit or deny the allegation that he sues for himself and his said Stool and

30

people of Okadjakrome as contained in paragraph 1 of his Statement of Claim.

In the
Supreme Court

No. 11

2. The Co-Defendants admit that the title in the said previous suit was Nana Adjedu II etc. vs: Nana Adjedi III but deny that the Claim in that Suit was as described by the Plaintiff in paragraph 2 of his Statement of Claim.

Defence of the
Co-Defendants.

27th May, 1953
(1st Action)

- continued

10

3. In further denial of the allegations contained in paragraph 2 of the Plaintiff's Statement of Claim the Co-Defendants aver that the Judgment quoted in the said paragraph was in respect of the following claim which was the text of Nana Adjedu's Claim viz:

(1) Plaintiff claims £25 (Twenty five pounds) Damages from Defendant or his subjects which he represents for having trespassed on that part of the land belonging to the Plaintiffs.

20

(2) That a heap of stones called "Adjasutabo" or "Apeambo", forming the starting point of the recognized land boundary between the land of Plaintiffs, and the Defendant, at a place called "Obribriwase" and continued to meet the lorry road, where the last heap of boundary stones were placed, and so demarcated by the Order of the D.C., through the Omanhene of Buem, forms the territorial boundary between the land of Plaintiffs and the land of Defendant.

30

4. The Co-Defendants deny the allegations contained in paragraph 3 of the Plaintiff's Statement of Claim.

5. The Co-Defendants admit the allegations contained in paragraphs 4, 5 and 6 of the Plaintiff's Statement of Claim.

40

6. The Co-Defendants admit that the Plaintiff and the Defendant in both the original suit and the subsequent Interlocutory Proceedings are the same but deny that the subject matter is the same as alleged by the Plaintiff in paragraph 7 of his Statement of Claim.

7. As to the Plea of Res Judicata pleaded by the Plaintiff in paragraph 7 of the Plaintiff's Statement of Claim, the Co-Defendants aver that the said Plea is not maintainable on the grounds that

In the
Supreme Court

No. 11

Defence of the
Co-Defendants.

27th May, 1953
(1st Action)
- continued.

- (1) They were not parties to that Suit,
- (2) Their Claims relate to other portions of the land now in dispute than the portion of land the subject matter of the previous Suit i.e. Suit No.60/1940, and
- (3) They are not privies to the Defendant.

8. The Co-Defendants will contend that the land in dispute is not the property of the Plaintiff and that he has no legitimate claim whatsoever to it.

10

9. The Co-Defendants aver that the whole of the land in dispute is a portion of Atonkor lands which are communal lands which lands have been and could be cultivated by any citizen of Atonkor.

10. That whatever portion of the said land which is cultivated by a particular person from Atonkor becomes the family property of the said particular person who originally cultivated it.

11. The Co-Defendant YAW DANKWA will contend that the area marked on the plan within the land in dispute and claimed by him was originally cultivated by his late father to which he is the owner now by succession and that he and his family have been in undisturbed possession and occupation since about 50 years ago.

20

12. The Co-Defendants ADDO KWASI and KWAKU YIRENKYI aver that the portions of the land in dispute claimed by them and marked on the Plan form part of their predecessor, by name Kwasi Darko's land of which they have been in quiet and undisturbed possession and occupation for a very long time until last year when the Plaintiff purported to be the owner of all Atonkor lands.

30

13. The Co-Defendants MENSAH NKANSAH alias ASAFOATSE KWADJO NKANSAH, G.K. ADDO and KOFI ASARE aver that they are members of the same family of which the Co-Defendant Nkansah's late father Kwadjo Kosome was the head.

14. That the said family of the Co-Defendants, Nkansah, G.K. Addo and Kofi Asare own the lands now occupied by the said Co-Defendants and they have owned and occupied the said land for over 50 years without any disturbance.

40

15. The Co-Defendant AMPEM DARKO will contend that he is the Head of the Bentiomia Family of Atonkor which first cultivated that portion of the land now occupied by the said Co-Defendant and that the said Co-Defendant has occupied his portion of the land in dispute since 25 years ago without any interference or disturbance.

In the
Supreme Court

No. 11

Defence of the
Co-Defendants.

27th May, 1953

(1st Action)

- continued.

DATED at Asiri-Owoahene Chambers, Accra,
this 27th day of May, 1953.

10

(Sgd.) Opoku Akyeampong,
SOLICITOR FOR CO-DEFENDANTS.

No. 12

NOTICE OF AMENDMENT OF STATEMENT OF DEFENCE

(Title as No. 4)

No. 12

Notice of
Amendment of
Statement of
Defence.

27th May, 1953

(1st Action)

TAKE NOTICE that at the hearing of the above-named Case the Defendant will ask leave of the Court to amend his Statement of Defence by deleting paragraph 2 of his Statement of Defence and substituting therefor the following:-

20

"2.(a) The Defendant admits that the Title of the previous Suit No.60/1940 was as described by the Plaintiff in paragraph 2 of his Statement of Claim but denies that the text of his Claim was as set out by the Plaintiff in paragraph 2 therein.

(b) That the Defendant's claim in that Suit No.60/1940 reads as follows:

30

(1) Plaintiff claims £25 (Twenty five pounds) from Defendant or his subjects which he represents for having trespassed on that part of the land belonging to the Plaintiffs.

(2) That a heap of stones called "Adjasutabo" or "Apembo" forming the starting point

In the
Supreme Court

No. 12

Notice of
Amendment of
Statement of
Defence.

27th May, 1953
(1st Action)
- continued.

of the recognised land boundary between the land of Plaintiffs, and the Defendant, at a place called "Obribriwase" and continued to meet the lorry road, where the last heap of boundary stones, were placed, and so demarcated by the Order of the D.C., through the Omanhene of Buem, forms the territorial boundary between the land of Plaintiffs and the land of Defendant".

10

DATED at Asiri-Owoahene Chambers, Accra, this
27th day of May, 1953.

(Sgd) Opoku-Akyeampong.
Solicitor for Defendant.

In the Native
Court 'B' of
Omanhene of Buem

No. 13

Civil Summons:

12th September,
1951
(2nd Action)

No. 13

CIVIL SUMMONS

IN THE NATIVE COURT 'B' OF OMANHENE OF BUEM.

B E T W E E N

ASAFOATSE KWADJO NKANSAH of Atonkor
Plaintiff

20

- and -

NANA ADJEI III Ohene of Okadjakrom
Defendant

To NANA ADJEI III, Ohene of Okadjakrom.

You are hereby commanded to attend this Native Court at Borada at 8.30 a.m. o'clock on the 8th day of November, 1951, to answer a suit by Asafoatse Kwadjo Nkansah of Atonkor against you.

Claim:-

The Plaintiff's claim against the Defendant
is for:- 30

- (a) Declaration of title to ownership and possession of all that piece or parcel of land with

cocoa farms thereon situate, lying and being at a place commonly known and called "Kafier-tonku" near Atonkor bounded on one side by the property of G.M. Adu, on one side by properties of Asula Yaa and Djeiwa of Okadjakrom, on one side by the property of Plaintiff and on the other side by the property of Opanyin Ampim Yaw Darko of Akaa.

10 The value of the land about £300.0.0 (Three hundred pounds)

- (b) £25.0.0. damages for trespass committed on the Plaintiff's said land.
- (c) Mesne profits for past two years.
- (d) An Order for perpetual injunction restraining the Defendant his agents or servants from interfering with Plaintiff's lawful farms and enjoyment of his dealing with Plaintiff's said land.

20 DATED at Borada the 12th day of September, 1951.

Claim	-	£25. 0. 0
Fees	-	2. 0. 0
Service &		
Mileage	-	<u>4. 0</u>
		<u>£27. 4. 0</u>

(Sgd) ? ?
For President, Native Court.

In the Native
Court 'B' of
Omanhene of Buom

—————
No. 13

Civil Summons.
12th September,
1951
(2nd Action)
- continued.

In the
Supreme Court

No. 14

No. 14

ORDER OF TRANSFER

Order of
Transfer.
7th January,
1953.
(2nd Action)

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN JUDICIAL DIVISION
LAND DIVISION
ACCRA

Transferred Suit No. L1/1953.

ASAFOATSE KWADJO NKANSAH
of Atonkor

Plaintiff

v.

10

NANA ADJEI III Ohene of
Okadjakrom

Defendant

(Sgd) W.B. Van Lare,
ACTING JUDGE.

ORDER OF TRANSFER

WHEREAS by Order dated 29th November, 1952, the Magistrate's Court, Kpandu, under the provisions of Section 54 (1)(c) of the Native Courts (Southern Section of Togoland under British Mandate) Ordinance, 1949, has reported to the Land Judge the pendency of the above-named case before the Native Court 'B' of the Omanhene of Buem;

20

IT IS HEREBY ORDERED that the said cause be transferred from the Native Court 'B' of the Omanhene of Buem to the Land Division of the Supreme Court of the Gold Coast at Accra, to be heard and determined:

AND IT IS HEREBY ORDERED (1) that the original writ of summons and process and proceedings in the said cause and attested copies of all entries in the books of the Native Court 'B' of the Omanhene of Buem relative thereto be transmitted to the Land Division of the Supreme Court of the Gold Coast at Accra and (2) that the said cause be placed on the General List for Wednesday the 28th day of January, 1953 at 8.30 a.m. for mention.

30

Given under my hand and the seal of the said Court at Victoriaborg, Accra, this 7th day of January, 1953.

(Sgd) Dugbartey Narnor,
REGISTRAR, LAND COURT.

No. 15

COURT NOTES ORDERING PLEADINGS

(Title as No.14)

Akyeampong for Plaintiff
Miss Baeta for Bossman for Defendant

Pleadings ordered; Statement of
Claim - 21 days
Defence - 14 days
Reply - 7 days

In the
Supreme Court

No. 15

Court Notes
ordering
Pleadings

18th February,
1953
(2nd Action)

10

For mention 7/4/53.

(Sgd) W.B. Van Lare,
Ag. J.

No. 16

STATEMENT OF CLAIM

(Title as No.14)

STATEMENT OF CLAIM FILED ON BEHALF OF THE
PLAINTIFF HEREIN BY OPOKU-AKYEAMPONG, ESQUIRE,
BARRISTER-AT-LAW, ACCRA this 7th day of MARCH,
1953.

No. 16

Statement of
Claim.

6th March, 1953
(2nd Action)

20

1. The Plaintiff's predecessor by name Kwadjo Kosome of Atonkor was the Head of the Plaintiff's family who owned a large portion of the lands known as the Kafietonko lands situate lying and being at a few yards from Atonkor.

30

2. That portion of the Plaintiff's said lands which is the subject matter of this suit is bounded on one side by the property of G.K. Adu, on one side by the properties of Asula Yaa and Djeiwa of Okadjakrom; on one side by the property of the Plaintiff and on the 4th side by the property of Opanyin Ampim Yaw Darko of Akaa.

3. On this land described in paragraph 2 supra are cocoa farms and foodstuff farms which have been cultivated by the Plaintiff or his predecessor since 30 years ago or more and the said farms have been enjoyed by the Plaintiff and his family without any disturbance or interference whatsoever by any other person or persons.

In the
Supreme Court

No. 16

Statement of
Claim.

6th March, 1953
(2nd Action)
- continued.

4. About 3 years ago, without any reason and or justification, the Defendant caused the Plaintiff's cocoa on his farm so described above to be plucked and carried away and have since then prevented the Plaintiff and his family from the lawful use and enjoyment of his farms or property.

5. Wherefore the Plaintiff claims from the Defendant

- (1) Declaration of title to and the recovery of possession of all that piece or parcel of land with cocoa farms thereon and described in paragraph 2 supra. 10
- (2) Twenty five pounds (£25) Damages for the trespass committed by the Defendant on the Plaintiff's said land.
- (3) Mesne profits from the time the Defendant started committing the said trespass until the period when a receiver and manager was appointed to take charge of the property in dispute. 20
- (4) For an Order of perpetual Injunction restraining the Defendant his Servants or Agents from further interfering with the Plaintiff's lawful use and enjoyment of his property.

DATED at Asiri-Owoahene Chambers, Accra, this 6th day of March, 1953.

(Sgd.) Opoku-Akyeampong.
Solicitor for Plaintiff.

No. 17

Statement of
Defence.

8th April, 1953
(2nd Action)

No. 17

STATEMENT OF DEFENCE

30

(Title as No.14)

STATEMENT OF DEFENCE
FILED ON BEHALF OF THE DEFENDANT HEREIN.

1. The Defendant emphatically denies the allegation in paragraph 1 of the Statement of Claim that the Plaintiff's Family or any member thereof owned a large portion of the Land known as Kafietonku

the subject matter of this Suit which are shown edged Pink or Red in Plan prepared for this Suit, signed by F. Ziddah, Licensed Surveyor.

In the
Supreme Court

No. 17

Statement of
Defence.

8th April, 1953
(2nd Action)

- continued.

2. The Defendant further denies the allegation in paragraph 2 of the Statement of Claim that the Plaintiff or his Family are the owners of the Land described in the said paragraph 2 of the Statement of Claim.

10 3. In further denial of the allegations in paragraphs 1 and 2 of the Statement of Claim - the Defendant alleges that the Land now claimed by the Plaintiff formed, and was a portion of a larger area which was the subject matter of a Suit between the Chief of Atonkor litigating on behalf of the Plaintiff and other subjects of Atonkor and with the knowledge and active assistance of the said Plaintiff and other Atonkor subjects on the one hand - and the Defendant herein litigating on behalf of himself and his subjects of Okadjakrome,
20 and the said Defendant pleads that the judgment in the said suit in favour of himself and his subjects of Okadjakrome as against the Chief of Atonkor and his subjects in Suit No.6/40 in the Tribunal of the State Council of Buem given on the 2nd July, 1940 in Nana Adjedu II, Ohene of Atonkor vs; Nana Adjei III, Ohene of Okadjakrome, Estops the Plaintiff from now claiming ownership or possession of the Land the subject matter of the Suit.

30 4. The Defendant denies the allegations in paragraph 3 that on the Land the subject matter of the Suit are cocoa and foodstuff farms cultivated by the Plaintiff and his predecessors since 30 years ago - and the Defendant says during the course of the trial of the Suit No.6/40 Nana Adjedu II, etc. vs. Nana Adjei III, etc., the Native Tribunal were satisfied that such farms as were then on the Land in dispute belonged to the Defendant herein and his subjects, wherefore the Tribunal specifically ordered that "Defendant to retain his farms" - and
40 the Defendant pleads that the Plaintiff is Estopped by the said Judgment from now claiming ownership or right to possession of the farms on the Land the subject matter of this Suit.

5. The Defendant does not admit that the Plaintiff owns any cocoa farms which have been unlawfully plucked as alleged in paragraph 4 of the Statement of Claim - and the Defendant says such

In the
Supreme Court

No. 17

Statement of
Defence.

8th April, 1953
(2nd Action)
- continued.

cocoa farms as he has caused to be plucked within the past 3 years, was after he had obtained Judgment for the Land with the farms thereon as belonging to him and his subjects.

6. The Defendant denies that Plaintiff is entitled to any of the Reliefs claimed in paragraph 5 of his Statement of Claim.

DATED at Azinyo Chambers, Accra, this 8th day of April, 1953.

(Sgd) K. Adumua-Bossman,
SOLICITOR FOR DEFENDANT.

10

No. 18

Court Notes
ordering survey,
13th April, 1953.
(2nd Action)

No. 18

COURT NOTES ORDERING SURVEY

(Title as No.14)

Akyeampong for Plaintiff
Ollennu holds Bossman's brief for Defendant.

Akyeampong: Pleadings closed, but there is another case pending in this Court between Nana Adjei III and Nana Adjedu II, Counsel for both parties have applied for the two cases to be consolidated.

20

A plan of the area in dispute is necessary and I therefore ask for an order for land to be surveyed.

Ollennu agrees.

Court: - Survey ordered.

Counsel for parties nominate A.E. Kpekata, Licensed Surveyor.

Let A.E. Kpekata, Licensed Surveyor, survey the area in dispute. Plaintiff and Defendant to file description of boundaries with all features both on the boundaries and within the area including farms, villages, etc. within 2 weeks. Each party to deposit the sum of £50 in Court within two weeks. Copy of this order to be served on Mr. A.E. Kpekata, Licensed Surveyor.

30

Adjourned to 11th May for mention. As to whether parties have filed description of boundaries and paid deposit as hereby ordered.

(Sgd) K.A. Korsah,
J.

40

No. 19

STATEMENT FILED ON BEHALF OF THE PLAINTIFF
SHOWING BOUNDARIES AND FEATURES OF THE LAND.

(Title as No.14)

STATEMENT FILED ON BEHALF OF THE PLAINTIFF
HEREIN SHOWING THE BOUNDARIES AND ALSO SOME OF
OTHER FEATURES BOTH NATURAL AND ARTIFICIAL TO
BE FOUND ON THE PLAINTIFF'S SAID LAND

In the
Supreme Court

No. 19

Statement filed
on behalf of
the Plaintiff
showing bound-
aries and
features of the
land.

23rd April, 1953.
(2nd Action).

10

1. The following persons form boundaries with
the Plaintiff:

- (a) G.K. Adu of Atonkor
- (b) Asula Yaa and Djeiwa
- (c) Kwasi Kuma
- (d) Kwaku Yirenkwy and
- (e) Ampim Yaw Darko.

2. NATURAL FEATURES:

20

- (a) Kola Trees
- (b) Palm Trees
- (c) Konsu River or Stream
- (d) Bamboo Trees.

3. ARTIFICIAL FEATURES:

30

- (a) Orange Trees
- (b) Avocado Pears (Trees)
- (c) Nkranyedua used as boundary between
Plaintiff's own cultivated farm and the
farms of the Plaintiff's late brother by
name Kwasi Ayim and Kwabena Safo respec-
tively.
- (d) Cocoa farms.
- (e) Farmsteads
- (f) Deserted villages
- (g) Cemetery
- (h) Fetish Grove.

DATED at Asiri-Owoahene Chambers, Accra, this
23rd day of April, 1953.

(Sgd) Opoku-Akyeampong.
SOLICITOR FOR PLAINTIFF.



In the
Supreme Court

No. 20

Court Notes of
Adjournment.

11th May, 1953
(2nd Action).

No. 20

COURT NOTES OF ADJOURNMENT

(Title as No.14)

Akyeampong for Plaintiff
Bossman for Defendant.

Bossman: In view of the fact that this case is very closely connected with Suit No.1/52 fixed for Wednesday 13th May, this case should be put the same date with a view to Court considering application for Consolidation. There is a plan in existence made in the other case and it covers the area in dispute.

10

Akyeampong: As far as the other case is concerned I agree that a plan has been made and filed in Court.

Court:-

Adjourned to Wednesday 13th May.

(Sgd.) K.A. Korsah,
J.

No. 21

Court Notes of
Consolidation.

13th May, 1953.

No. 21

COURT NOTES OF CONSOLIDATION

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN JUDICIAL DIVISION (LAND DIVISION) held at Victoriaborg, Accra, on Wednesday the 13th day of May, 1953, before KORSAH, J.

20

NANA ADJEI III v. NANA ADJEDU II & ORS.
ASAFOATSE KWADJO NKANSAH v. NANA ADJEI III.

At the request of Counsel the above cases are hereby consolidated as prayed.

Counsel for Defendant: Co-Defendants to point out their respective claims on the plan.

30

Counsel for Plaintiff: They are all indicated.

Court: Adjourned to 22nd June for hearing.

(Sgd) K.A. Korsah,
J.

No. 22

ARGUMENT OF COUNSEL AND
COURT NOTES OF ADJOURNMENT

(Title as No.21)

Counsel for Plaintiff:

I am asking the Court, to consider the plea of res judicata raised in the pleadings.

Counsel for Defence:

10 This is a Notice of Amendment of Statement of Defence which I wish the Court to consider before evidence.

Counsel for Plaintiff: I do not oppose it.

Court:- Amended accordingly.

Counsel for Plaintiff:

20 Plaintiff's case is that the result of the 1940 litigation between the parties was to reject the Defendant's claim to the area now in dispute; and to admit the Plaintiff's title to it; but as there was no formal counter-claim no formal declaration in that suit. Plaintiff therefore now seeks to obtain the necessary declaration, Mesne Profits and Injunction. I refer to the writ and pleadings.

Adjourned to 24th November at 11 a.m.

(Sgd) K.A. Korsah,
J.

In the
Supreme Court

No. 22

Argument of
Counsel and
Court Notes of
Adjournment.

23rd November,
1953.

In the
Supreme Court

No. 23

ARGUMENT OF COUNSEL

No. 23

(Title as No.21)

Argument of
Counsel.

24th November,
1953.

Counsel for Plaintiff, Adjei III:

It is my case that land which was subject of 1940 suit is that shown up to the Yellow boundary in South East and as I have already stated to the Court:

Court:- I hereby order that the question as to "Res Judicata" be tried first. I shall therefore proceed to take evidence of this issue. Plaintiff Nana Adjei III to begin. 10

Counsel for Nana Adjei III:

I tender writ of summons in suit No.6/40 Nana Adjedu II Ohene of Atonkor versus Nana Adjei III Ohene of Okadjakrome, in the Court of Buem State Council. No objection marked 'A'.

Inspection Report of Viewers, marked 'B'.

Judgment in the said suit delivered by the said State Council on 2nd July, 1940. No objection marked 'C'. 20

Judgment of Provincial Commissioner - 22nd May, 1941, no objection marked 'D'

Judgment of West African Court of Appeal - 27th November, 1941, marked 'E'

Interlocutory proceedings and Ruling before Native Appeal Court of Buem State, no objection marked 'F'.

Mandamus order by Coussey, J., upon Magistrate, Kpandu - 9th September, 1950; no objection marked 'G'. 30

Magistrate's decision - 22nd March, 1951, marked 'H'.

Plan made by F. Ziddah, Licensed Surveyor, marked 'J'.

Counsel:- It is now necessary to take the evidence of the Surveyor, who is unfortunately not in Court. Asking for adjournment to call him tomorrow.

Adjourned to 25th November. Costs of Defendant Nana Adjedu II assessed at £5.5/- for to-day. 40

(Sgd.) K.A. Korsah,
J.

No. 24FREDERICK KWAMI ANANI ZIDDAH

Counsel as before.

FREDERICK KWAMI ANANI ZIDDAH, s.o.b.

10 I am licensed surveyor living at Kadjebi; I prepared the plan in Suit No.1/1952; both parties were present; and I have shown on the plan what the parties pointed to me. Defendant was present throughout. He pointed to me the boundary which Captain Lilly is alleged to have fixed for the parties. I have indicated same in the plan as purple line beginning from the Lorry Road on the west to the North Easterly direction to a point known as Abibriwasi, then on to river "Konsu" north east.

Both parties spoke to me about some previous litigation between them. Defendant told me in that suit, the boundary he claimed was the one indicated by Yellow line in this plan.

20 Plaintiff showed me line which he also claimed in that suit which I have indicated by a green line or edged green, starting from the point on the Motor Road marked Otukutaka, on the West, and continues Northward to River Konsu and thence along the river towards north east to a point where the Guaman footpath crosses River Konsu.

I have indicated at the point marked Otukutaka, this "C.E.P's and State Council judgments".

30 I was also told there had been a recent demarcation of boundary by the Borada tribunal. Plaintiff pointed this out to me in presence of Defendant. I have shown same on the plan by a Red line, but not surveyed because no definite marks were given to me and the track was not visible.

40 I have indicated the several farms pointed out in the area; of these only 12 farms are claimed by both parties; all the others are claimed by one side or the other. The 12 disputed farms are numbered red in the plan and also described in my notes on the plan.

I have also shown the relative positions of the towns of the two parties; Atonkor on the North West and Akadjakrome on the South East. This is the Plan marked 'J'.

Adjourned to 26th November, 1953.

(Sgd) K.A. Korsah.

J.

In the
Supreme Court

Plaintiff's
Evidence.

No. 24

F.K.A. Ziddah.

25th November,
1953.

Examination.

In the
Supreme Court

Plaintiff's
Evidence

No. 24

F.K.A. Ziddah.

26th November,
1953.

Cross-
examination.

Cross-examined.

Yes, Plaintiff told me that Otukutaka was road clearing boundary, which means the spot where the two parties meet when clearing road; by Plaintiff I mean Nana Adjei III. Plaintiff further told me that from Otukutaka their boundary went northward to a tall palm tree at the bank of river Konso on the north; when we got to the spot we found out the palm tree was not there; Plaintiff told me it has been washed away by the river and so I marked the site as indicated in the plan; there was nothing there to indicate the site of a palm tree. The site is at the edge of Mensah Nkansah's farm - marked No.2 with red ink on plan. 10

Defendant told me that original claim in a former suit was the line edged Yellow; but pointed the line edged Purple as the boundary subsequently fixed by Captain Lilly.

The Defendant himself took me along the track of the purple line from Apeboa which is junction of motor road with purple line, to Abribriwasi where I met Okyeame Koranteng and Ninfahene Akuamoah of Kadje; they told me "the line along which you have walked was the one fixed by Captain Lilly". 20

The information had been given to me by the defendant, when all parties were present and before we started surveying the line from Apeboa junction Defendant told me one Adabra, Brown and Koranteng were present when the line was cut by order of Captain Lilly. There were many people at the time but Koranteng was only introduced to me at Abribriwasi. Koranteng confirmed what Defendant had told me. The defendant and his people told me that in Captain Lilly's time their boundary stopped at Abribriwasi but in this claim they continued it right up to river Konsu at "Guame Oban" as the place where Plaintiff and Defendant meet. Farm No.6 Captain Ntim was pointed out by both Plaintiff and Defendant. They agreed that the farm is for Plaintiff. 30 40

On the Plan I have made reference Notes with respect to the farms whose numbers are shown on the plan as Nos. 1 - 12 in red ink. Where I have written letters P and D in front of any name, it shows both parties claim the farm; but where I have written either P or D alone it shows both parties

agreed the person whose name is written after the number owns the farm.

I was told during the survey that Captain Ntim had died. No one introduced himself as the successor of Ntim. At Abribriwasi I saw a few scattered stones; I was however told by Defendant that there had been a heap of stones at the spot.

Re-examination:

10 Apart from Otukutaka Plaintiff did not point out any other boundary on the west as boundary between him and defendant.

No. 25

COURT NOTES

Counsel for Plaintiff:

20 I tender in evidence the former evidence of the representative of Nana Adjei III herein who was defendant in the 1940 case and the evidence of Nana Adjedu II defendant herein who was plaintiff in the 1940 case, to enable the Court to determine the issue of subject matter in that previous litigation, but not to prove the facts stated by either of them.

Counsel for Defendant:

I object, because the parties referred to are living, and their evidence is not admissible to prove what they said. Contend only the judgment should be admitted. If judgment not clear that parties evidence should be heard in Court now - not their past statements.

30 Counsel for Plaintiff:

The objection is founded on complete misconception; the evidence of parties now will only affect facts of the case as canvassed now. The plea requires Court to consider what put in issue at the time and what the parties said in Court.

In the
Supremo Court

Plaintiff's
Evidence

No. 24

F.K.A. Ziddah.
26th November,
1953.

Cross-
examination
- continued.

Re-examination.

No. 25

Court Notes.

26th November,
1953.

In the
Supreme Court

Robinson v. Duleep Singh - 11 Ch. Div. p.798.
Houstoun v. Marquis of Sligo - 29 Ch.Div.
p.448

Plaintiff's
Evidence

No. 25
Court Notes.
26th November,
1953
- continued.

Counsel for Defendant:

I withdraw my objection and suggest that the whole former proceedings be admitted to enable the Court to ascertain the subject matter of the suit and the issues raised and determined.

Court:-

By consent proceedings in Suit 6/40
Nana Adjedu II Ohene of Atonkor, Plaintiff v. Nana
Adjei III, Ohene of Okadjakrome marked 'K'.

10

Counsel for Plaintiff:

I do not wish to call further evidence on this issue.

Case for Plaintiff.

Defendant's
Evidence

No. 26
Adjedu II.
26th November,
1953.
Examination

No. 26

ADJEDU II

DEFENCE:

ADJEDU II, s.a.r.b.

20

I am Ohene of Atonkor: I gave evidence in the suit No.6/40 between myself and Nana Adjei: My evidence is in Exhibit 'K' pages to inclusive.

The Yellow line I pointed out to the Surveyor Mr. Ziddah and indicated in plan Exhibit 'J' is where I first pointed to Captain Lilly as my boundary; this was between 1922 and 1923. The boundary Captain Lilly fixed however was from Abribriwasi to Apeboa (Lorry Road). This was the same boundary I pointed out during the 1940 case. In this present claim I have extended my boundary north of Abribriwasi to Guame Oban on river Konsu.

30

Cross-examined:-

I remember a man from Guaman, gave evidence in the 1940 case for Plaintiff now, but I don't remember if he said that he had boundary with Plaintiff on river Konsu. Now after reading page of Exhibit 'K' I see that the witness William Atta Ofoli said that "Guaman people meet with the Okadjakromes on river Konsu"; but I do not know what part of Konsu. In the 1940 case I contended that Captain Lilly having fixed the boundary on the purple line, therefore all the land on the West of the Purple line between Apeboa and Abribri-wase right up north westerly direction to Akontor town including Akonsu was my land.

In the
Supreme Court

Defendant's
Evidence

No. 26

Adjedu II.

26th November,
1953.

Cross-
examination.

10

Q. Did you claim it as land attached to your Stool?

A. No; not as land attached to my Stool, but as family land.

Q. Did you sue in 1940 as Ohene of Atonkor?

20

A. Yes! but I explained that the land is for a family.

Court:-

Q. Do you still defend the suit on the basis that the land is for the same family. A. Yes!

Witness: I sued Nana Adjei III in 1940 because his subjects were farming on land between purple line and river Konsu.

Q. Do you remember Nana Adjei in 1940 said his boundary with you commenced at Otukutaka on the lorry road to join the Konsu?

30

A. I don't remember, I do however remember he mentioned Otukutaka.

Q. Looking at page of Exhibit 'K' what do you say now?

A. I see he said his boundary went up to river Konsu.

Both parties call the area in dispute "Kafetouku Land", the name however extends beyond the area in dispute.

In the
Supreme Court

Defendant's
Evidence

No. 26

Adjedu II.

26th November,
1953.

Cross-
examination
- continued.

After the evidence in the Native Court both parties accompanied the members of the tribunal to inspect our respective claims. I at that time pointed out the Purple line to the Native Court. Nana Adjei also took the tribunal and ourselves to the point Otukutaka by the motor road up to the Konsu and said that if he were to cut boundary line that would be his land.

When he took the tribunal to the line, it had already been cut by him as his boundary.

10

I agreed that Otukutaka was the place where both of us cleared road from each side up to that is I and my subjects cleared from Atonku along the motor road to Otukutaka, and Nana Adjei and subjects from Okadjakrome to Otukutaka.

I agreed that the area in dispute now is the same as the area in dispute in 1940 case except from Atribriwasi to Konsu.

In 1951 Nana Adjei III applied to the Native Court at Borada to demarcate the boundary between us. In connection with his application the tribunal inspected the land in the presence of both parties, both of us pointed out our respective claims as shown in the plan. After the inspection the Native Court decided to divide the land equally into two. After this Nana Adjei did not attend Court or the demarcation.

20

The Native Court however demarcated and on appeal the Magistrate set the Native Court trial aside. The Guaman witness said the Guamans met with Okadjakrome people on Guaman-Jasikan road where it crosses river Konsu. It is not often the case that where people clear the road up to the end of their boundary.

30

No Re-examination.

By Assessor: Both Plaintiff and Defendant are under one Omanhene.

Adjourned to 27th November,

(Sgd.) K.A. Korsah,
J.

40

No. 27ADDRESSES OF COUNSELIn the
Supreme CourtNo. 27Addresses of
Counsel.27th November,
1953.Counsel for Defendant:

Addresses Court (having led evidence)

Agreed land in dispute known as Kafe Tonku land. Plea of Res Judicata; relies (1) Land in dispute was same land in suit No.6/40. (2) Between same parties. (3) Same issues involved. Seeks to estop defendant Nana Adjedu II from denying Plaintiff's title.

10 Submit plea must fail, on following grounds:

1. Land in present suit not same in suit 6/40. In former suit Nana Adjedu II then Plaintiff said his southern boundary was from Abribriwase to Apeboa and that five of Nana Adjei III's subjects had made farms - vide writ p.1 Exhibit 'K'. There was no counter-claim. Refers to Exhibit 'B'.

20 Submit that land claim in the former case is part of the land now claimed, because defendant in the present suit, who was Plaintiff in the former suit, now claims land above Abribriwase up to river Konsu.

Agbo Kofi v. Addo Kofi 1 W.A.C.A. p.284 at 285.

30 2. Further submit that parties in suit No.6/40 not the same as in this suit. In the present suit Adjei III v. Adjedu II there are seven other defendants who claim different portions of the same land which is enclosed between purple and green colours; these claim in their own rights, they were not parties in the former suit nor are they privies: they do not claim title through the defendants: admit six of them subjects of Nana Adjedu II defendant herein; but one of them Ampim Darko is a stranger from a place called Akaa, a few miles from Atonkor: Akaa is not with the Atonkor division.

Nana Adjedu II did not claim in suit No.6/40 that land then in dispute was Atonkor Stool Land.

Cites 14 Hailsham p. 426, 428.

Co-defendants do not derive their title from Nana Adjedu II.

In the
Supreme Court

No. 27

Addresses of
Counsel.

27th November,
1953

- continued.

3. Submit title to land in dispute not decided in the former case.

Nana Adjedu II in former suit claimed damages for trespass, he failed in that suit, because he was unable to prove possession of the area; that judgment in effect was a non suit and could not be said to have conferred title on Plaintiff herein who was defendant in that suit.

Cite 14 Hailsham p.434 section 488.

Submit that although title to the area was canvassed in the former proceedings that was not determined, Refer paragraphs 4 and 5 of Defence dated 11.9.52. 10

Apart from trespass the question of boundary was put in issue in the former case and if the Native Court had decided what was the boundary, perhaps it could be said that title was decided.

Refer to Exhibit 'F' p. also to judgment contained in Exhibit 'K' at p. of Exhibit 'K' also p. this evidence refers to Captain Lilly's boundary. Submit judgment not complete: 14 Hailsham 441. 20

Counsel for Plaintiff:

The first thing to bear in mind is the well known dictum, it is not the form of writ, but the issues raised by the parties in the Native Court. Defendant herein has admitted in the witness box that the whole dispute was practically the same area; he says he did not point out boundary North of Abribriwasi; but admitted witness of Guama gave evidence. 30

Refer pleadings - statement of claim paragraph 3 shown, embracing area marked Red which is the area enclosed by Purple and Green. In his defence paragraph 6 says Defendant admits paragraph of statement of claim. Evidence of Defendant Nana Adjedu II in this suit. Claim in former suit was between Adjedu II as Chief of Atonkor against Adjei III as Chief of Okadjakrom - capacities in which contested never in doubt. Beyond doubt, that same parties, in same rights and same identical issue of ownership. 40

Subsequent application was for Demarcation. Refer to Coussey Ruling Exhibit 'G' seeking to work out Arithmetical calculation. Also Exhibit 'H'.

Judgment of Magistrate. Submit title was indeed decided adversely against Nana Adjedu II. Cite Fiaga Abutia Kwadjo vs. Fiaga Adai Kwasi Awudome, W.A.C.A. 17.2.47. Chief Djakoto vs. Saba suit No. 11/49 Coussey, J. with respect to co-defendants; They are subjects farming on the land; and he admits that it was on account of farming by subjects that former claim was instituted. Defence filed disclose grounds for defence. Asafoatse Kwadjo Nkansah is subject of Nana Adjedu II.

C. A. V.

(Sgd) K.A. Korsah,
J.

No. 28

COURT NOTES OF JUDGMENT

Judgment read. Judgment for Plaintiff with costs to be taxed Counsel's fee fixed at 100 guineas. Evidence as to damages to be taken later.

The second suit is dismissed with costs to be taxed Counsel's fee fixed at £10.10. Od.

(Sgd) K.A. Korsah,
J.

In the
Supreme Court

No. 27

Addresses of
Counsel.
27th November,
1953
- continued.

No. 28

Court Notes of
Judgment.

16th July, 1954.

In the
Supreme Court

No. 29

J U D G M E N T

No. 29

Judgment.

16th July, 1954.

Transferred Suit No.1/1952.

NANA ADJEI III, Ohene of Okadjakrome
for and on behalf of the Stool and
people of Okadjakrome Plaintiff

v.

NANA ADJEDU II, Ohene of Atonkor for
and on behalf of the Stool and people
of Atonkor, Defendant

10

- and -

Transferred Suit No.1/1953

ASAFOATSE KWADJO NKANSAH, Plaintiff

v.

NANA ADJEI III, Ohene of Okadjakrom
Defendant

CONSOLIDATED SUITS

Plaintiff's claim is for (1) Declaration of
title to a piece of land which was the subject
matter of Suit No.6/40 between the said parties
(2) £1000 damages against defendant and his sub-
jects for trespass and (3) Perpetual Injunction.

20

By his statement of claim plaintiff states
that by virtue of the judgment of the Buem State
Council (functioning under the Native Administra-
tion Southern Sphere of Togoland Ordinance Cap.90)
delivered on 2nd day of July, 1940 the defendant
herein is estopped "Per Rem Judicatem" from contend-
in that the said land belongs to him and his sub-
jects of Atonkor.

30

By his defence, the defendant, contends, that
his claim in suit No.6/40 was for damages for tres-
pass committed by 9 persons who made cocoa farms
on the Southern boundary of his land; that the
judgment did not confer title in respect of the
whole land, upon the plaintiff; that the said judg-
ment was not "complete"; and that the rights of
the parties were not conclusively defined.

By his Counter-claim the defendant claims:-

- 1) Declaration of title to the said land, and
- 2) Perpetual Injunction.

The parties having agreed that the issue raised by the plea of Estoppel per Rem Judicatem should first be determined, they adduced evidence in respect thereof.

In the
Supreme Court
No. 29

Judgment.

16th July, 1954
- continued.

10 By Suit No.6/40 between Nana Adjedu II versus Nana Adjei III, the plaintiff therein now defendant claimed from defendant therein now plaintiff (1) £25 damages for trespass and (2) Declaration of title to the land described therein as follows :-

20 "That a heap of stones called "Adjasutable" or "Ampebo" joining the starting point of the recognised land boundary between the land of plaintiff and the defendant at a place called "Obribriwase and continued to meet the lorry road, where the last heap of boundary stones were placed, and so demarcated by the order of the District Commissioner through the Omanhene of Buem forms the territorial boundary between the land of Plaintiffs and the land of defendant."

By the judgment of the said Buem State Council, it was finally decreed thus:-

"Judgment is for Defendant with costs to be taxed. Defendant to retain his farms. No order as to fixing of boundary is made until one or both of the parties move this Court for it".

30 An appeal by Nana Adjei III plaintiff herein from the said judgment to West African Court of Appeal was dismissed.

40 It is agreed by the parties that the land in dispute is the piece or parcel of land edged "Pink" in the plan marked Exhibit 'J'. The plaintiff whose principal town Okadjakrom is situate in the South east has pointed to the surveyor the boundary which he claimed in Suit No.6/40 and it is shown edged "Green" in the plan marked 'J'; the defendant also pointed the boundary which he claimed in the said suit No.6/40 and it is shewn edged "Yellow" in the said plan. From the relative positions of the principal towns of the parties viz: Plaintiff's "Okadjakrom" on the South east; and Defendant's

In the
Supreme Court

No. 29

Judgment.

16th July, 1954
- continued.

"Atonkor" on the north west, and from the evidence which proves that plaintiff had claimed the site shown on the Plan as "Otukutaka" as the limit of his northwest boundary and the river Konsu as his northern boundary, with the Defendant; while the defendant in the same suit claimed the land which is bounded on the South and East by the Yellow line which overlaps the plaintiff's claim. From this it is clear that the land subject matter of Suit No.6/40 is the land situated between the two boundaries edged Green and Yellow respectively. 10
This in fact is admitted by the defendant who however qualifies this admission on two grounds that (a) "The judgment was not complete, and (b) that the rights of the parties, were not conclusively defined".

In my view these grounds are untenable, having regard to the evidence which was adduced before the Buem State Council in 1940. It is true that the actual dimensions of the land were not stated; but the judgment fully discussed the merits of the claims and declared Plaintiff who was then defendant owner of the land between the two boundaries edged Green and Yellow respectively. 20

I am satisfied the parties now, as in the former Suit No.6/40 are the same; the land subject matter of the suit is the same, in so far as the claim of the plaintiff herein is concerned; he having claimed river Konsu as his Northern boundary. The fact that defendant herein limited his claim up to Abribriwasi as his Northern Boundary, thus shewing that he did not claim a narrow strip of land south of the river Konsu, does not, in my view detract from the judgment the benefits conferred on the plaintiff in respect of that portion of the land he had in fact claimed. 30

I therefore hold that Defendant is estopped from denying plaintiff's title to the said land. I grant perpetual injunction as prayed. Evidence in respect of the claim for damages to be taken later. 40
Costs to Plaintiff to be taxed; Counsel's fee fixed at 100 guineas.

As regards Tr. Suit No.1/1953 Between Asafoatse Kwadjo Nkansah of Atonkor and Nana Adjei III of Okadjakrom, I hold that as Suit No.6/40 was Between the two Chiefs in their representative capacities

as Chiefs of Atonkor and Okadjakrom respectively for and on behalf of their subjects, the said Kwadjo Nkansah is bound by the said previous judgment. I therefore dismiss his claim against Nana Adjei III with costs to be taxed, Counsel's fee assessed at £10. 10. 0d.

(Sgd) K.A. Korsah,
AG. CHIEF JUSTICE.

In the
Supreme Court

No. 29

Judgment.

16th July, 1954

- continued.

Counsel:-

10 Mr. K.A. Bossman for Plaintiff in 1st case
and Defendant in 2nd case.

Mr. Opoku Akyeampong for Defendant in 1st case
and Plaintiff in 2nd case.

No. 30

NOTICE OF APPEAL

IN THE WEST AFRICAN COURT OF APPEAL

GOLD COAST SESSION - ACCRA

A.D. 1954.

In the
West African
Court of Appeal

No. 30

Notice of Appeal

28th July, 1954.

Tr. Suit No.1/1952

20 B E T W E E N :

NANA ADJEI III, Ohene of Okadjakrome
for and on behalf of the Stool and
people of Okadjakrome Plaintiff

Versus

NANA ADJEDU II, Ohene of Atonkor for
and on behalf of the Stool and people
of Atonkor Defendant

30 YAW DANKWA, ADDO KWASI, KWAKU YIRENKYI,
MENSAH NKANSAH, YAW AMPEW DARKO G.K.ADDO
and KOFI ASARE all of Atonkor Co-Defendants

- and -

Tr. Suit No.1/1953.

ASAFOATSE NKANSAH KWADJO of Atonkor
Plaintiff

versus:

NANA ADJEI III, Ohene of Okadjakrome
Defendant

- Consolidated -

NOTICE OF APPEAL

40 TAKE NOTICE that the DEFENDANT and the CO-
DEFENDANTS in Transferred Suit No.1/1952 and the

In the
West African
Court of Appeal

No. 30

Notice of Appeal.
28th July, 1954
- continued.

PLAINTIFF in Transferred Suit No.1/1953, being dissatisfied with the decision of the Land Court, Accra, contained in the Judgment of His Lordship Mr. Justice K.A. Korsah, Acting Chief Justice, dated the 16th day of July, 1954, do hereby appeal to the West African Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the Appeal seek the Relief or Reliefs set out in paragraph 4.

AND the Appellants further state that the names and addresses of the persons directly affected by the Appeal are those set out in paragraph 5. 10

2. Part of Decision of Lower Court complained of ; -
WHOLE DECISION.

3. GROUNDS OF APPEAL:

(1) That the Learned Trial Judge was wrong in holding that the Defendants in Transferred Suit No.1/1952 and the Plaintiff in the Transferred Suit No.1/1953 were Estopped from denying the Title of the Plaintiff Nana Adjei III because: 20

(a) The issue which was the subject matter of Suit No.6/40 was not the same as the issues which are subject matter of the present Suits on Appeal.

(b) With the exception of Nana Adjedu II, the Defendant herein and Nana Adjei III, the Plaintiff herein, the parties are not the same

(c) The subject matter i.e. the land in dispute is not precisely the same. 30

(d) The Judgment in Suit No.6/1940 was not complete and the rights of the parties therein were not conclusively defined.

(2) That the Learned Trial Judge misdirected himself when he said "It is true that the actual dimensions of the land were not stated etc. but the judgment fully discussed the merits of the Claims and declared the Plaintiff who was then Defendant Owner of the land between the two boundaries edged Green and Yellow". 40

In the
West African
Court of Appeal

No. 30

Notice of Appeal.
28th July, 1954
- continued.

- (3) That the Learned Trial Judge failed to consider the Claims by the Co-Defendant in the Transferred Suit No.1/1952.
- (4) That the Learned Trial Judge failed to consider the effect of the Motion filed by Nana Adjei III in the Buem State Council and dated the 18th July, 1949 which said Motion estops the Plaintiff Nana Adjei III from pleading of "Estoppel per judicatem".
- 10 (5) That the Learned Judge failed to deal with the Defendant's counter-claim.
- (6) That the Learned Judge was wrong in granting the Plaintiff Nana Adjei III, Perpetual Injunction when by his Claim he admitted the Defendants and the Plaintiff in Suit No.1/1953 claim of possession and when also he did not claim possession or an Order of ejection.
- 20 (7) That the Trial of the Actions was highly unsatisfactory.
- (8) That the judgment is against the weight of evidence.

4. Relief or Reliefs sought by the Appellants from the West African Court of Appeal are:-
That the judgment in favour of the Plaintiff Nana Adjei III, be set aside and the Case be remitted back to the Land Court to be tried on its merits by another Judge.

5. Person directly affected by this Appeal is:-

30

<u>Name:</u>	<u>Address:</u>
Nana Adjei III	Ohene of Okadjakrome, Okadjakrome.

DATED at Asiri-Owoahene Chambers, Accra, this
28th day of July, 1954.

(Sgd) Opoku Akyeampong.
SOLICITOR FOR APPELLANTS.

In the
West African
Court of Appeal

No. 31

(Title as No.30)

No. 31

COURT NOTES OF ARGUMENT

Court Notes of
Argument.
7th February,
1956.

Cor: Coussey, P., Ames, and Jackson, JJ.A.

Akyeampong for Appellants in both appeals.
Bossman for Respondent.

Akyeampong:

Plaintiff based claim on a Judgment in a former suit which he averred was in his favour. See that Judgment at page 80 - Exhibit 'C'. The claim in that suit was for trespass see page 61 line 13. This litigation started as a private dispute between Akosomo of Atonkor and Oku-Sakyi of Okadjakrom in respect of an area which I cannot precisely locate. 10

Captain Lilly, a District Commissioner demarcated a boundary in that suit between the parties, when the Stools of Atonkor and Okadjakrom came into the dispute.

Refers to statement at page 61. The Appellants say that Captain Lilly fixed the purple line on plan 'J' as the boundary between Atonkor and Okadjakrom. 20

Refers to page 31 to show that Appellant in earlier case showed boundary along purple line up to Abribriwasi.

Respondent claimed green line from Otukutaka to the Konsu River.

Page 32. Evidence of Surveyor as to boundary shown in earlier case. 30

Page 79. Inspection of Buem Council.

Page 80. Judgment of Buem Council which is pleaded by plaintiff Respondent.

Refers to Plan 'J' shows farms of people who

were ordered by Judgment to retain their farms -
 Implies that the Native Court did not accept the
 purple line as a boundary properly demarcated.
 That was position in 1940.

Adjourned 8th February.

(Intd) J.H.C.

8th February, 1956.

Counsel as before.

Akyeampong:

10 Ground 1:

In Suit No. C/40 there were two sets of parties, the original plaintiff and defendant and their respective overlords who were joined.

The Native Court attempted to determine what was the boundary between the two towns rather than the claim of the respective plaintiff and defendant.

20 In the earlier case when the present Respondent was asked he said he could not show an established boundary. Therefore the fact that the appellant failed to establish the purple line does not preclude him from showing that he owns land north west of the purple line.

30 Refers page 70 Both sides cultivating lands. There was no boundary between them. What was put in issue was the farms on the purple line. The Plaintiff claimed a boundary on the yellow line. He failed to establish that and his action was dismissed. The Court ordered the defendant to retain his farms until a boundary was established. That Judgment did not adjudge that the defendant now plaintiff-respondent had a boundary on the green line and defendant-appellant is not precluded from establishing a boundary elsewhere and re-litigating as to title to whole land. The plaintiff-respondent set up the purple land - It was not declared upon, but there is evidence to support it - If there had not been a ruling of res judicata we would have led evidence to establish the purple line. In any event in the present proceedings the plaintiff must prove his title affirmatively.

40

In the
 West African
 Court of Appeal

No. 31

Court Notes of
 Argument.

7th February,
 1956

- continued.

8th February,
 1956.

In the
West African
Court of Appeal

No. 31

Court Notes of
Argument.

8th February,
1956

- continued.

Ground 2: Read - The plaintiff-respondent were not adjudged owners of the land between lines green and yellow by the Native Court.

Ground 3: Co-Defendants claims were not considered. See Defence filed by them at page 16. Injunction should not be against them.

Ground 4: Partly dealt with. Refers page 85 Native Court had no jurisdiction after Judgment to entertain a Motion to demarcate a boundary. But it illustrates that the Judgment of 2nd July, 1940 did not determine a boundary. Another suit was necessary. 10

Ground 5: The counterclaim would put in issue what was the true boundary. Defendant-appellant was prevented from proving his claim

Ground 6: Refers to page 31 - Surveyor showed that appellants were in possession of several farms. Injunction without evidence unwarranted. 20

13 - Hailsham page 434 see 488.

All that Judgment established is that Defendant-appellant had failed to establish the purple line boundary.

Bossman contra:

Although defendant-appellant put forward the yellow boundary and failed, he claimed that he can re-litigate another boundary on the same land. Examination of proceedings Exhibit 'K' leaves no doubt that in the 1940 case the defendant put in issue title to the whole area of land whether it belonged to Stool of Atonkor or Okadjakrom. Claim to a boundary involves claim of land up to the boundary. 30

His claim page 61 on that part of the land belonging to Plaintiff - the boundary of which is the stone at Apembo to Obribriwasi. 40

Refers page 69. Evidence of Okadjakrom in 1940 case.

Plaintiff-respondent had old boundary on green line. Captain Lilly had endeavoured to place a boundary elsewhere - Plaintiff-Respondent protested.

In the
West African
Court of Appeal

Pages 34-36. Shows that Respondent put whole area of land red from green line to purple line in issue.

No. 31

Court Notes of
Argument.

Fiaga Adai Kwesi & Anor.
versus
Fiaga Abutia Kwadjo

8th February,
1956
- continued.

10

Cyclostyled 1944 W.A.C.A. 22nd February, 1944.

Lond v. Gavlett,
1923, 2 Ch. 177.

The appellant put in issue same area of land and lost. Cannot re-litigate same issue.

As to Ground 2:

Not necessary from res judicata that there should be a declaration in defendants favour.

Ground 3:

20

Case of Co-defendants was identified with that of defendant-appellant. Their case was in no way different.

Ground 4:

Magistrate ruled at pages 103/4. Exhibit 'H' that whole land was awarded the Plaintiff-Respondent.

Ground 6:

30

Injunction was proper against defendants who were joined as they derived title and were privy and bound by 1940 Judgment.

Akyeampong in reply:

Farms of Co-defendants were made before the 1940 Judgment. No evidence that they were made after. They averred that they had been in possession over 50 years.

The title to the whole land was not put in issue in 1940. Only as to a boundary - In the

In the
West African
Court of Appeal

No. 31

Court Notes of
Argument.

8th February
1956

- continued.

Motion after the 1940 Judgment the Court had held they could not say where the boundary was. This would necessitate a new action to be tried in the normal course as to which res judicata would not apply.

Judgment did not decide that the green line was the limit of appellants' land.

Assampong versus Kwaku Amuaku
1 W.A.C.A. 192 at p. 197.

Prays that Judgment be set aside and case be remitted for trial. 10

C.A.V.

(Intd) J.H.C.

No. 32

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No. 32

J U D G M E N T

Coram:

COUSSEY, P.
AMES, Ag. J.A.
JACKSON, Ag. J.A.

Civil Appeal No.32/55. 20

25th February, 1956.

NANA ADJEI III, Ohene of Okadjakrom
for and on behalf of the Stool and
people of Okadjakrom, Plaintiff-Respondent.

versus

NANA ADJEDU II, Ohene of Atonkor
for and on behalf of the Stool
and people of Atonkor Defendant-Appellant

1. YAW DANKWA, 2. ADO KWASI,
3. KWAKU YIRENKYI, 4. MENSAH NKANSAH,
5. YAW ASORPEW DARKO, 6. G.K. ADDO and
7. KOFI ASARE, Co-Defendants-Appellants

30

- and -

ASAFOATSE KWADJO NKANSAH of
Atonkor Plaintiff-Appellant

versus

NANA ADJEI III, Ohene of Okadjakrom
Defendant-Respondent

- CONSOLIDATED -

AMES, Ag. J.A.:

40

Everyone, whose work is in the Courts of West

Africa, is well accustomed to land cases in which the plaintiff claims a declaration of title to land. We are also well accustomed to a defendant pleading that the issue is res judicata. But I cannot remember any case in all my years in which the Plaintiff did both these things at the same time. That is what has happened here. The plaintiff-respondent claimed a declaration of title to land and at the outset pleaded res judicata. This was tantamount to his saying: "I am claiming a declaration of title to this land but I need not prove my claim and you (the defendant-appellant) cannot make any defence, because the issue is res judicata, by reason of a 1940 case, in which you unsuccessfully sued me for a declaration that the boundary between us ran along my side of the disputed lands which you claimed to be your land". If this is the correct state of affairs, it seems to me that the plaintiff ought to be non-suited and mulcted in costs for having vexed the defendant with a claim which was adjudicated upon by a Court long ago.

The dispute, which has existed for a very long time, is between the Stool and people of Okadjakrom and the Stool and people of Atonkor. This case was started in December, 1951, by the Ohene of Okadjakrom (whom I will call the respondent) against the Ohene of Atonkor (whom I will call the appellant) in the Court of the Omanhene of Buem. The claim is (1) a declaration of title to land, (2) damages for trespass and (3) a perpetual injunction.

The suit was transferred to the Land Division of the Supreme Court in February, 1952. In the Land Court some other persons, farmers of Atonkor, were joined as defendants in the suit and another suit by another Atonkor farmer against the respondent, which also had been started in the same Native Court and transferred likewise, was consolidated with it. I shall not refer to these other defendants or the other suit because all the farmers are privies to Ohene of Atonkor, in his representative capacity.

In the Land Court, pleadings and a plan were ordered and filed, and the appellant counterclaimed for a declaration of title to the same land and perpetual injunction. Eventually the suit came on for hearing in November, 1953, when it was agreed that the respondent's plea of res judicata should be first heard and decided. It was founded on a

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- continued.

judgment of the Court of the Buem State Council, given in July, 1940, in its case 6/1940. The respondent's plea was upheld and the Land Court ruled that the appellant was estopped from denying the respondent's title to the land in dispute and granted a perpetual injunction and ordered that evidence in respect of the claim for damages (which had started as £50 in the Buem Court, but had grown into £1,000) should be taken later. Against that decision this appeal has been made, on various grounds, most of which concern the ruling on the plea of res judicata, but one complains that the case of co-defendants was not considered and another that there was no decision on the appellant's counterclaim.

10

The land in dispute is called Kafetonku and is between Okadjakrom and Atonkor on the Okadjakrom side of the river Ayensu.

One side of it lies along the motor road from Okadjakrom to Atonkor, which runs from SE to NW. From the NW end of this side, that is to say its end nearer Atonkor a second side goes NE to the river and then follows the river, E for a while and then N. This side is coloured green on the surveyor's plan. The third side starts from the other end of the side along the road, that is to say its end nearer Okadjakrom, and goes NE for a while and then curves round to the N and past it and joins the river making a narrow apex with the second side. This third side is coloured purple on the plan.

20

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In the 1940 case, the Atonkor Stool has sued the Okadjakrom Stool for damages for trespass and a declaration that their boundary with Okadjakrom was in effect the purple line, and that the land in dispute was their land.

Apparently in 1922 they had asserted that the boundary left the motor road at a point even nearer to Okadjakrom than is the purple line. That 1922 line is coloured yellow on the plan, and it joins the purple line at a spot called Obribriwase where the purple line begins to get close to the river.

40

The reason that in the 1940 case they withdrew their claim from the yellow line back to the purple line was this. In 1922 or so, the then District Commissioner, Lilley by name, had attempted to settle a dispute by deciding that the boundary should run from Obribriwase to the motor road

10 along the purple line and not the yellow line, and had put up heaps of stones at Obribriwase and at the road end of the purple line and had said that the length of it should be marked with the usual boundary marks. But it appears from the evidence that Okadjakrom never agreed that that was the correct boundary, and in fact (as found by the Court in the 1940 case) the line was never so marked and the customary ceremonies by which a disputed boundary is irrevocably and mutually established were not performed.

It was this last fact which made the Buem Court reject the appellant's claim in the 1940 case and give judgment for the respondent. The operative part of the judgment was :-

20 "Judgment is for the defendant" (respondent in this case) "with costs to be taxed. Defendant to retain his farms. No order as to fixing of boundary is made until one or both of the parties move this Court for it."

30 The respondent had adduced evidence intended to show that the boundary was not the purple line but the green line and that he and his people of Okadjakrom had never accepted the Lilley decision. There is nothing to show under what authority Lilley made his decision and so it is not to be assumed that his decision was made under some statutory power. There was no counterclaim by the respondent for a declaration that the green line was the boundary or that he possessed a good title to the area of land in dispute.

Now, does that judgment constitute a declaration of title for the respondent to the whole area of land in between the green and purple lines so as to enable him to prosecute, without further evidence of title, any claim founded on such title against any Atonkor farmer who is in occupation of any part of it without his permission?

40 The answer depends on what was in issue between the parties. There were no pleadings. But fortunately the Court's judgment and their inspection notes show clearly what the Court thought to be in issue and what, consequently, they intended to decide.

The Court recorded in their inspection notes

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(after saying how the defendant - now respondent - led them along the green line from where it leaves the road towards the river):-

"The party then reached the River Konsu where defendant ended and said the line thus traced forms the limit of the portion upon which his subjects have hitherto cultivated to meet the Atonkor people because there was no boundary between them. Plaintiff questioned defendant whether he could show any demarcation to prove that the locus was a boundary point. Defendant answered that he could not do so because it was not an established boundary but a rough line to show the limit of the area hitherto cultivated by his subjects, and argued that there is never a fixed boundary between them. The party's investigations ended there." 10

In their judgment the Court said:-

"..... The question at issue is whether there exists an established boundary between the landed properties of both (Atonkor) and (Okadjakrom) From the evidence of both sides this Court is satisfied that about 18 years ago (Lilley) did order that a boundary be fixed The land viewers from this Court also report that, apart from the two heaps of stones at each end of the proposed path that was to be cut, there are no signs of a boundary The judgment of Lilley orders the cutting of the (boundary). It does not say it was done the evidence in Court says it was not completely carried out in one case and not at all done in the other. The two witnesses for (Atonkor) also affirm this argument that the cutting and demarcation of the boundary were not complete." This was followed by the operative part which I have already set out. 30

With all respect, I do not see how that judgment can be said to establish the green line as the boundary or how one can read into it a declaration of title in favour of the respondent of the land between the green and the purple lines. I think too that the subsequent action of the respondent shows that he also did not so interpret it at that time, although he has now changed his interpretation.

The subsequent history of the dispute was this.

This decision of the Buem Court was affirmed in May, 1941, by the Court of the Provincial Commissioner to which Atonkor had appealed. The Commissioner said in his decision.

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10 "It has been proved.....that in.....1922.....
"Lilley..... did determine the boundary..... but
"unfortunately the finding of Captain Lilley cannot
"be interpreted owing to mutilation..... If it
"were possible to interpret Lilley's judgment I
"would have ordered the boundary to be surveyed
"and cut but unfortunately this is impossible. I
"see no reason to upset the judgment of the Buem
"State Council who found on matter of fact in fav-
"our of the defendant..."

So the Provincial Commissioner's Court did not interpret the Buem Court's decision as making the green line the boundary. Otherwise what need to regret not being able to find out where Lilley intended his line to run.

20 There was a further appeal by the appellant (Atonkor) to this Court, which was dismissed in November, 1941.

30 In December, 1941, the respondent (Okadjakrom) applied to the Buem Court for an "order to cut and demarcate the boundary which should be through our old road clearing boundary" (which was where the green line left the road). It appears that the Court was going to demarcate the boundary (there is nothing to show where they were going to start) but it all came to nothing because the respondent objected that the Court was differently constituted from how it had been in 1940 and the motion was dismissed on the ground of "obstruction" by the respondent.

Nothing more happened till 1949. By this time the Courts in that part of the country had been re-organised. The Buem Court had ceased to be the Court with jurisdiction over the matter. Its successor was the Borada Native Court of Appeal, and the respondent applied to it "for an order for tribunal to carry into effect forthwith the said judgment of the tribunal dated the 2nd day of July, 1940. And for the said tribunal to inspect the boundary in dispute and determine the course thereof and to effect and complete the demarcation thereof - And for such other order as to the tribunal may seem meet".

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1956

- continued.

The Borada Court, which heard the application, was of course in the circumstances constituted by different persons. But there was no objection this time. The respondent was more successful and eventually in July, 1950, the Court determined a boundary, that shown on the surveyor's plan by a red dotted line about half way between the green and purple lines. This was intended (so the record shows) to be a fair division of the disputed land between the two parties.

10

There was an application (it is not clear to me which party applied) to the Magistrate's Court for special leave to appeal, which he refused to hear; and an order of mandamus was obtained from the Supreme Court. He then heard the application and in March, 1951, he allowed the appeal and set aside the red dotted line. He thought (so he recorded) that, although that division of the land might be a sensible solution, it could not be upheld because "of the original (1940) judgment giving the area to the defendant" (now respondent).

20

There was no further appeal and so the situation is what it was in 1940.

The learned Magistrate's interpretation was in keeping with the Appellant's present argument, and the opinion of the learned Judge of the Land Court.

I see the position like this. The 1940 decision was a finding that there was no "established" boundary. The order for the defendant, now respondent, to retain his farms was not a declaration of title for him, as is shown by the case of Outram v. Morewood (1803 3 East 345). It was only a finding that the plaintiff, now appellant, had failed to show that the defendant was not entitled to the possession of them. The respondent now sues for a declaration of title. I see nothing in the 1940 decision to estop the appellant from defending such an action. I do not know how the respondent intends to discharge the onus which is on him; perhaps he can bring evidence of acts of ownership on part or parts of the land. If so, I see nothing in the 1940 decision to estop the appellant from bringing evidence in rebuttal or of acts of ownership by him or his people on part or parts. Indeed if the Native Court in 1940 had considered and adjudicated upon something more than the single

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issue of "Is there an established boundary?" they might have succeeded in defining the rights of the parties and so have put an end to this very old dispute.

In the
West African
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- continued.

10 Since the argument in Court my attention has been drawn to a case which was before this Court in 1947, Abutia Kwadjo II and another v. Addai Kwasi. The judgment of this Court, dated 17th February, 1947, approved and applied an observation of this Court made in an earlier case about the same land between the same parties but the other way round, in which the earlier plaintiff has sued the earlier defendant for a declaration of title to the land in dispute without there being any counterclaim by the earlier defendant for a declaration of title. The observation was this: "In such cases" (meaning those in which a plaintiff claims a declaration of title but fails) "the proper course is merely to dismiss the plaintiff's claim. 20 "This, of course, does not mean that the matter is "any the less res judicata in favour of the defendant".

In applying that observation in the 1947 case this Court said:-

30 ".....It is clear that the learned Judges in that case were endeavouring to make it clear that although a declaration of ownership and possession could not be given in the particular case before the Court because of the omission on the part of Counsel for the defendant to enter a counterclaim to this effect nevertheless the judgment would be a bar to any further proceedings between the parties."

That case, which at first sight seems similar to this one, is nevertheless distinguishable. I have not the pleadings in the case, but from the judgment one must presume that it was the ownership of the land which had been in issue in the earlier case and which had been adjudicated upon.

40 In this 1940 case of Atonkor v. Okadjakrom the Buem Court did not adjudicate upon the ownership of the land although the appellant had claimed a declaration to the land behind his alleged boundary line. The Court adjudicated only upon the issue "Is there an established boundary?" and omitted to consider where the boundary ought to be and how much, if any of the land in dispute was owned

In the
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Court of Appeal

No. 32

Judgment.

25th February,
1956

- continued.

by the appellant. There has been no adjudication upon these latter questions.

I would allow the appeal and set aside the ruling and order of the Court below and order that the hearing of the two consolidated cases be continued.

(Sgd.) A.G. Ames.

COUSSEY, P.: I concur. (Sgd.) J. Henley Coussey, P.

JACKSON, Ag. J.A.: I concur (Sgd) J. Jackson.

Opoku Akyeampong for the appellants.
Bossman for the respondent.

10

No. 33

Court Notes of
Order allowing
Appeal.

25th February,
1956.

No. 33

COURT NOTES of ORDER allowing APPEAL

(Title as No.32)

Judgment delivered by Ames, Ag. J.A. allowing appeal.

The ruling and order of the Court below are set aside and IT IS ORDERED that the hearing of the two consolidated suits do proceed in the Land Court on the merits.

20

Costs for the appellants on the appeal allowed at £81. 4/-.

Defendant-appellants costs in Court below on issue of res judicata to be taxed by defendant-appellant. (Counsel's costs at £10.10/-). Any costs paid to plaintiff-respondent to be by him refunded.

(Sgd.) J. Henley Coussey,
P.

No. 34

COURT NOTES granting final leave to APPEAL
to the PRIVY COUNCIL

(Title as No.30)

Motion on notice for final leave to appeal.

Mr. Lassey for Applicant (Nana Adjei III).

10 We have fulfilled all the essential conditions of appeal imposed by the Court. The Court imposed as a further condition that notice be given to all parties affected by appeal. All parties affected were duly served within 21 days of Judgment, with notice of intention to appeal. No further notice is required under article 6 of Order in Council regulating appeals to Judicial Committee. Ask for order for final leave to appeal.

BY COURT:-

Order as prayed for final leave to appeal.

Costs of this application £17. 4. 6 in the cause.

20 Note. Mr. Lassey informs me that an application is pending for an order for Injunction and Receiver pending appeal.

(Sgd.) J. Henley Coussey,
P.

In the
West African
Court of Appeal

No. 34

Court Notes
granting final
leave to appeal
to the Privy
Council.

29th October,
1956.

Plaintiff's
Exhibit

PART II

E X H I B I T S

"A"

"A" - Plaintiff's Exhibit. CIVIL SUMMONS
in Suit No.6/40

Civil Summons
in Suit No.6/40

16th April, 1940.

IN THE TRIBUNAL OF BUEM STATE COUNCIL
(Togoland under British Mandate (Southern
Section))

B E T W E E N

sic. NANA AGYEDU II Plaintiff
- and -
NANA ADJEI III, Defendant

10

To NANA ADJEI III, Defendant.

sic. You are hereby commanded to attend this Tri-
bunal at Borada on the 29th day of April, 1940 at
9 o'clock a.m. to answer a suit by Nana Agyedu II
of Atonkor against you.

The Plaintiff claims (a) £25 Damages from
Defendant or his subjects which he represents for
having trespassed on that part of the land belong- 20
ing to the Plaintiff (2) That a heap of stones
called "Adjasutabe" or "Apembo" forming the start-
ing point of the recognized land boundary between
the land of Plaintiff and the defendant, at a place
called "Obribriwase" and continued to meet the
lorry road, where the last heap of boundary stones
were placed, and so demarcated by the Order of the
District Commissioner and with the consent of both
parties through the Omanhene of Buem, forms the
territorial boundary between the land of Plaintiff 30
and the land of the Defendant, and that from the
heap of stones on the road side, right from Okadja-
krom is the land claimed by me.

20

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Issued at Borada the 16th day of April, 1940.

Claim £25. 0. 0
Summons 1. 0. 0
Service 1. 0
Mileage. 1. 6
£26. 2. 6

Nana Akuamoia IV his
X
mark.
Ag. President Member.

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"K" - Plaintiff's Exhibit. PROCEEDINGS
in Suit No.6/40

Plaintiff's
Exhibit

IN THE COURT OF THE BUEM STATE COUNCIL,

"K"

HELD AT BORADA ON MONDAY THE 3rd JUNE, 1940.

Proceedings in
Suit No. 6/40.

BEFORE: NANA AKPANDJA II, OMANHENE, PR. MEMBER.
NANA C.O. ADIBO, AKPAPAHENE, MEMBER.
NANA SALO KOFI II, BOWIREHENE, MEMBER.

3rd and 4th
June, 1940.

NANA ADJEDU II, Ohene of Atonkor, Plaintiff.

versus

10 NANA ADJEI III, Ohene of Okadjakrom Defendant

Claim: Plaintiff claims £25 (Twenty-five pounds)
Damages from Defendant or his subjects
which he represents, for having trespassed
on that part of the land belonging to the
Plaintiffs.

20 2. That a heap of stones called "Adjasutabe"
or "Apembo", forming the starting point of
the recognized land boundary between the
land of Plaintiffs, and the Defendants, at
a place called "Obribriwase", and contin-
ued to meet the Lorry Road, where the last
heap of boundary stones were placed, and
so demarcated by the Order of the D.C.,
through the Omanhene of Buem, forms the
territorial boundary between the land of
Plaintiffs and the land of Defendant.

Both Parties present.

Plea: Not Liable.

30 By written application, Nana Adjei III applied
for permission to be represented by Mr. Christian
Adjei of Okadjakrom owing to ill-health.

Council granted this application.

Plaintiff, sworn on the Great Oath of Fida, stated
as follows:-

I am Nana Adjedu II, Atonkorhene, my co-
Plaintiff is Kwabena Akosome of Atonkor, a farmer
by occupation. I know Nana Adjei III of Okadjakrom.

Plaintiff's
Exhibit

"K"

Proceedings in
Suit No. 6/40.

3rd and 4th
June, 1940
- continued.

Some years ago there arose a dispute between Akosomo of Atonkor and Oku-Sakyi of Okadjakrom about a piece of land called Kahuetonku, which case went up to the District Commissioner, The D.C. Captain C.C. Lilly saw Nana Omanhene about this and requested him to give him some members to be deputed to view and cut down a boundary between the said parties. Subsequently Omanhene deputed Opanyin Adabra who also through the permission of the Adontenhene of Buem went with some members from Jasikan into the land. These representatives of the Omanhene together with the D.C. in person went with both parties into the land. The inspection started from a point called Obribriwase which is the meeting point of our lands. Both parties agreed that that point was our boundary. During those days Okadjakrom was under Jasikan and was called Jasikan-Akuraa. The cutting of the boundary was started from this point, on the old road leading from Atonkor to Jasikan. Just at the point called Obribriwase, is a Kola-tree, the property of my uncle Akosome up to the present time. At that very place stands an Okane tree. The boundary was cut through into the motor road from Atonkor to Okadjakrom, and Opanyin Adabra ordered 1 live sheep to be slaughtered upon the heap of stones collected and placed at each end of the boundary, and a fee of £2.10/- and 2 bottles gin was charged. This was the act performed as custom necessary for the occasion. This has been the boundary between myself and the Defendant up to this day. After this boundary had been cut down, everybody who cuts a tree viz: Odum tree, obtains our consent before he does so on our portion of the land. Duedu of Okadjakrom was one of the people who trespassed and was duely brought before the Omanhene. The Omanhene asked or ordered the return of the beams and planks to us. Three young men from Okadjakrom also obtained our permission to make farms on our land. Kwasi Frempong, one of them brought 1 bottle beer to see us about the land. After going a few yards from Obribriwase onwards to the motor road, Captain C.C. Lilly left us and entrusted the rest of the work to Opanyin Adabra. There is an Opapaw tree also at the point Obribriwase. At this point Plaintiff produced two written agreements between (1) Kwasi Ohene and Kwadjoe Kosomoe; (2) Kwasi Ntsim of Djasikan Ekura and Cudjoe Kosomoe, tendered in evidence. Defendant raised objection stating that: He is called Nana Adjei of Okadjakrom. He does not know anything about an agreement between

sic.

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some two persons or more as mentioned above, neither is he interested in them. 2. If any two chiefs dispute over a piece of land, no private individuals from either side should make any bargains to gain their own private ends.

Plaintiff's
Exhibit

"K"

Proceedings in
Suit No. 6/40.

3rd and 4th
June, 1940.

- continued.

10

Council asked for the nativity of the participants of the agreements. Plaintiff explained that Kwadjoe Kosomoe is a native of Atonkor; Kwasi Ohene is a native of Okadjakrom. Kwasi Ntsim - of Okadjakrom and Kosomoe of Atonkor. Council ruled that the documents be accepted and identified to be decided later whether they should be taken as part of evidence or not. Plaintiff continued his statement that the land popularly called Kahuetonku is a family land of which Kwadjoe Kosomoe is the head, but the boundary laid down by the deputation was between my lands as chief of Atonkor and the lands of Nana Adjei as chief of Okadjakrom.

20

(Sgd) Nana Adjedu II his
X
Mkd. Kwabena Akosomoe mark.

w/m.

(Sgd) S.D. Opoku.

xxd. by Defendant;

Q. Have Akosome and Oku-Sakyi ever gone to the Magistrate's Court about this land?

A. Yes, I remember.

Q. Who obtained judgment in that case?

A. No judgment was delivered, he caused the land to be divided between them.

30

Q. Do you remember that the chief of Okadjakrom, I, the speaker, has a boundary with you as chief of Atonkor on the main road from Okadjakrom to Atonkor from the olden times?

A. I have no ancient land boundary with you but we have a road clearing boundary.

Q. Can you show me any marks or objects which mark that road-clearing-boundary?

A. I do not remember any marks there.

40

Q. Did you take it as if I was clearing my portion of the road through your land?

A. Yes.

Plaintiff's
Exhibit

"K"

Proceedings in
Suit No. 6/40.
3rd and 4th
June, 1940
- continued.

Q. If any person makes a road across your land do you not question him?

A. That practice necessitated our fixing a land boundary which was undertaken by C.C. Lilly.

Q. You assert that Obribriwase is the land boundary between you and the people of Jasikan; where lies the boundary between you and me, Nana Adjei III?

A. My boundary with you lies from Obribriwase right up to the motor road. 10

Q. Where lies Obribriwase? On the right bank of Konsu or on the left?

A. On the left bank of it - that is nearer to Okadjakrom.

Q. Can you show any signs or marks on the path from Obribriwase to the road as a demarcation of boundary?

A. Yes, there is a heap of stones on the right side of the road from Okadjakrom and another at Obribriwase. 20

Q. Do you tell me that there are stones lying all along the road from Obribriwase to the road?

A. No; the stones are to be found at both ends of the path cut.

Q. You have said that you were charged £2. 10/- a live sheep and two bottles gin; was I charged the same fees?

A. Yes.

Q. Do you remember that I was among the party which cut that boundary? 30

A. Yes.

Q. What custom did I perform to show that I agreed upon that boundary?

A. You paid £2.10/-; gave a sheep, and two bottles gin.

xd. by Council:

Q. Was Nana Adjei present when the boundary was cut? A. Yes.

Q. Were all the elders assembled before this custom was performed? A. Yes.

- Q. How many marks or demarcations were made to mark the boundary?
 A. Two heaps of stones, at each end of the boundary.
- Q. How long after the boundary was fixed before the Defendant trespassed on the land?
 A. About 16 or 17 years.
- Q. On the occasion of the fixing of the boundary who was the particular elder who was in charge of the performance of the custom?
 10 A. Osafohene Adabra.
- Q. Was a clear unbroken path made from Obribriwase to the motor road before the stones were placed there? A. Yes.
- Q. Taking that path as the boundary, where are the trespassers farming now?
 A. The side towards Atonkor.
- Q. Were the documents you wanted to tender into evidence made before or after the fixing of the boundary? A. After it.
- 20 Q. After concluding the transaction did the deputation return to report to the Omanhene?
 A. Yes, his representative did it.
- Q. Did the boundary locate somebody's farm in the other party's property? A. Yes.
- Q. How many of your farms went into Nana Adjei's land, and how many of his into yours?
 A. Yes, Oku-Sakyi's, Osafohene Ntim's cocoa farms and very many farm-steads. None of mine went to the other party.
- 30 Q. You said a path was made. It must be overgrown with weeds now. How do you ascertain the line now, and justify the trespassing?
 A. The farms made are quite away towards Atonkor side from the demarcations.
- Q. Have you ever asked Adjei to let you clear the path and plant some boundary trees to mark it?
 A. No; none of us has ever reminded the other.
- Q. With the bushy road existing, how do you determine your boundary?
 40 A. The Apembo still shows the points.

Plaintiff's
 Exhibit

"K"

Proceedings in
 Suit No. 6/40.

3rd and 4th
 June, 1940
 - continued.

Plaintiff's
Exhibit

"K"

Proceedings in
Suit No. 6/40.
3rd and 4th
June, 1940
- continued.

OSAFOHENE ADABRA, 1st Witness for Plaintiff.

Swore by the Great Oath of Fida and Benada.

xd. by Plaintiff states:-

I remember Captain Lilly coming to ask Omanhene for a deputy to fix the boundary. I remember being deputed to go with Captain Lilly into the land. It is about 14 or 17 years ago. We started from the road clearing boundary where there was a tree called Obribriwase. Both parties were present. Captain Lilly left off after some yards and entrusted the work to me for after fixing some few poles, he said I could do the work intelligently. I finished the work on the main road from Okadjakrom to Atonkor. I heaped up stones at the end of the path on the road side. The same thing was done at Obribriwase. I slaughtered two sheep upon them according to the white man's order. One sheep was taken from each party and two bottles gin also from each party. I ordered that no one should enter the other party's property and also that those who had their farms located on the land of the other party should retain their farms. £2.10/- was taken from each side.

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xd. by Nana Adjei.

Q. Who sent you to cut that boundary between Nana Adjedu and myself?

A. Captain Lilly asked Nana Omanhene and I was deputed.

Q. Were you the only deputy to cut that boundary?

A. No; Okyeame Brown of Borada, Okyeame Koranteng of Borada, Mankrado Suro, Borada, and Opanyin were of Jasikan now deceased were also there.

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Q. Was Agya Ware the only man from Jasikan? Did you not see Adontenhene Brantuo?

A. I saw him there but he did not take part in the cutting of the boundary; that is why I did not mention his name.

Q. What at all did Adontenhene come to do there?

A. He came to identify the old path between Jasikan and Atonkor which was then not very clear and visible.

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Q. Was this his only duty?

A. Yes, I have said that already.

- Q. Did you call the Adontenhene to identify the path?
 A. I do not know who called him.
- Q. You said that the road was not visible. You were deputed for the work. If you did not call the Adontenhene, why was he there?
 A. I do not know.
- Q. Who showed you the road then?
 A. We found it ourselves.
- 10 Q. What did you put on the path you cut?
 A. We put nothing on the path - we ordered that they should both plant Ntome on it and to see that the road is also through.
- Q. Have you ever received report that the Ntome trees had been planted?
 A. Nobody has reported that.
- Q. What report did you give the Omanhene as you did not finish the work?
 A. I finish the task.
- 20 Q. Was it not your duty to see that it was done?
 A. Both parties agreed to have it done.
- Q. Can you trace the path now?
 A. If the stones have not been removed, I can trace it.
- Q. Does your path end at the old boundary between myself and Atonkor people?
 A. I do not know.
- Q. Was your path through grassland, wood or farm steads?
 30 A. It starts from forest and emerges into grass.
- Q. Did you touch any farms on the path?
 A. No, I do not remember.
- Q. How many of my farms went to Atonkor side?
 A. I cannot tell.
- Q. Was it not your duty to know how many farms there were?

Plaintiff's
 Exhibit

"K"

Proceedings in
 Suit No. 6/40.

3rd and 4th
 June, 1940

- continued.

Council rules that questions should refer to claim; farms are not in dispute.

Plaintiff's
Exhibit

"K"

Proceedings in
Suit No. 6/40.

3rd and 4th
June, 1940

- continued.

Q. What did I do to show that I consented to the boundary?

A. You agreed and therefore gave 1 live sheep to be slaughtered on the stones.

Q. Do you remember that I did not give anything of the kind?

A. I remember you gave.

Q. After completing your path into the main road, did it occur to you that you had finished laying boundary between us?

A. Yes, I finished what was entrusted to me by Captain Lilly. 10

Q. Do you remember that we have been asking Omanhene to cut our left side boundary for us?

A. No work on that side has ever been entrusted to me. I do not know.

Q. Can you produce any document on the work you accomplished?

A. Yes, the document is the live sheep and the gin you offered. 20

Q. Is that the document signed by Nana Adjedu and myself?

A. The custom performed is more important than any document.

xd. by Council:

Q. Was Nana Brantus there when the sheep was slaughtered?

A. No; he was not there.

Q. Were both parties present?

A. They were all present. 30

Q. Did you report on the work to the Omanhene?

A. Yes, he in turn submitted his report to Captain Lilly.

Q. Was Opanyin Were present at the performance?

A. No, he left because of ill-health.

Case adjourned till tomorrow 7 a.m.

Defendant, Sworn on the Bible stated as follows:-

Plaintiff's
Exhibit

"K"

Proceedings in
Suit No. 6/40.

I am called Christian George Adjei, my co-defendant is Gideon Kwaku Brekume, all of Okadjakrom representing Nana Adjei III of Okadjakrom, I am a farmer. I know Nana Adjedu II of Atonkor.

3rd and 4th
June, 1940
- continued.

10 About 20 years ago, Captain C.C. Lilly sent a messenger from the road to Guamang to Nana Adjei III, asking him to come over to see him. Since Nana Adjei was suffering from blindness, he deputed 3 men, Kwaku Adjei, Brekume Kwaku and Adjei Mensah to see the Captain. They overtook him at a place called Obribriwase on the Guaman road. These men overtook Boamong Kwabena of Borada, now deceased, the late Nana Agbo, Nana Brantue II of Jasikan, Adontenhene, Sam. Nyame his clerk and some elders from Atonkor, Captain Lilly enquired from the people of Jasikan and Atonkor whether that spot was their old boundary. They answered, yes. An elder of Okadjakrom, Kwaku Adjei essayed to speak but the Captain knocked off his hat into a nearby palm-tree. Commanding him to shut up his mouth. 20 The Captain ordered some of the elders to go from that spot into the main motor road. No stones were heaped up there as a demarcation. All the rest of the people were asked to return to Okadjakrom by the Guamang road. This latter party came as far as to a place - the old boundary between Atonkor and Okadjakrom marked by a tree popularly called Otokotaka. The Captain then asked whether that 30 place was the old boundary, just then they heard the other party coming through the bush from Obribriwase entering the main road from behind. The Captain and his party then returned to meet the second party where they were entering the road. The distance between the spot of the old boundary and where this party entered the road is about one quarter of a mile. Captain Lilly ordered a heap of stones to be raised there, making or creating that place the new boundary. Elder Kwaku Adjei 40 started to speak again but was vehemently checked by the Captain again with a sharp warning. The Captain ordered another path to be made on the other side of the road-path (to the left side - going from Okadjakrom to Atonkor) instructing the representatives of the Omanhene and Nana Brantue to cut that path as far as to the end of the lands of Okadjakrom and Atonkor. He also enacted that if once a chief or anybody objects to the cutting of a boundary, that party should undergo a fine of

Plaintiff's
Exhibit

"K"

Proceedings in
Suit No. 6/40.

3rd and 4th
June, 1940

- continued.

£25. On that day, no fees were paid; neither was any custom performed with a live sheep nor anything. The Captain and his party closed up and went away. Nana Adjei's deputation of three men came home and reported to him what had expired. He said that they could continue with the cutting of the path, but even if they finished he had something to say about it. After a long while, the Omanhene sent the same representatives to come and cut the path. They came to us and demanded £5 from each side. The people of Okadjakrom paid the amount. They started cutting the path as far as to a brook called Ona. The people of Atonkor objected to the procedure. Owing to a brawl which ensued, the party broke off. Nana Adabra was never there with the party. This is why I have called Nana Brentue as my witness. If he comes to say he saw him there once I should lose the case. I opine also that a path was never cut into the main road from Obribriwase and also that no custom as has been said by the Plaintiff was performed. Since then we have been asking the Omanhene very constantly to see that the boundary path be cut. At one time we were asked to pay £4 so that the path be cut. We paid that and he promised to receive same amount from Atonkor. We have actually been tormenting the Omanhene about this important matter. This has never been done. We asked for the refund of the £4 if the path would not be made. It was not refunded. The people of Atonkor have employed "abusa" tenants, cultivating the forest. We wrote to both Omanhene and Nana Adjedu that since the path of the boundary would not be made, we still recognized the old boundary. After this we also started cultivation on the land. I made a motion asking for the transfer of the case to the Paramount Tribunal. The D.C. ordered the case to be heard by the State Council owing to uncertainty about jurisdiction. I have called the Mankrade of Guaman to prove that I have a boundary with him in River Konsu the river being the boundary line. I have a boundary with Jasikan on the east, - where an Anwa tree stands in a vale. I have also asked the Chief of Worawora to prove that the kola-tree referred to by Plaintiff was not at all planted by a man from Atonkor. The Defendant tendered in evidence a Hearing Notice dated 24th February, 1940, No.24/40 to prove that the cutting of the boundary and demarcation was not completed and that the Borada Tribunal intended to continue it.

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Plaintiff raises objection and stated "I have another land case with the defendant in the Borada Tribunal; this notice does not state to which land it refers. I cannot therefore accept it as part of evidence". Council rules that the Tribunal Registrar, Mr. E.R. Addow should prove to which of the cases in his court this notice refers.

Plaintiff's
Exhibit

"K"

Proceedings in
Suit No. 6/40.

3rd and 4th
June, 1940

- continued.

10 Mr. E.R. Addow stated on the Bible that there is no record of any land case between these parties in the Court. It was an order from the Omanhene sitting in arbitration among his subjects. It was unfortunate therefore that the hearing notice had to be sent. It was a mistake to use the Tribunal Form. Council rules therefore that the Notice cannot be accepted.

20 The Defendant continued in his statement that his witness the Chief of Worawora will also testify that long ago, during the Ashanti War in this District, his grandfather Krame was cultivating in the West of Obribriwase, towards Atonkor, proving that the land there had been my property very long time ago. This same grandfather buried his riches at a place there and marked the place with 4 Ntome trees in a row.

(Sgd) Christian G. Adjei.
for Gyasehene Adjei III.

xxd. by Plaintiff:

- 30 Q. You have said you saw some elders from Borada, Jasikan and Atonkor. What were they for?
A. On arriving to attend to Captain Lilly's call, I learned that they were there to cut and demarcate the boundary.
- Q. What boundary?
A. The deputation from Mana Adjei were made to know that they were ordered to cut a new boundary between Atonkor and Okadjakrom.
- Q. What sort of boundary? - land boundary or what?
A. The land boundary between you and me.
- 40 Q. Do you agree that the people from Borada also went there to cut that boundary?
A. I learned this when I got there.
- Q. What is the name of that land?
A. It is called Kahuetonku.

Plaintiff's
Exhibit

"K"

Proceedings in
Suit No. 6/40.

3rd and 4th
June, 1940
- continued.

Q. Have you ever lived in the same town with Nana Brantuo of Jasikan as your liege lord?

A. I have lived with him as brother.

Q. During those days you lived together who was the elder or senior?

A. We are not here to judge between the seniority between Brantuo and me.

Q. Do you say that Captain Lilly ordered a path to be made from Abribriwase to the main road?

A. I said so; but the elders who went there on behalf of Nana Adjei I, refused. 10

Q. Judging from the direction of the course followed by the party from Obribriwase to the road, which side are your present farms which I object to?

A. They are on the right side, facing the main road from Obribriwase.

Q. Do you remember what object the Captain placed at Obribriwase as he placed stones on the main road?

A. Nothing was placed there. 20

Q. Have you ever seen me once crossing that line upon which the party walked from Obribriwase to the road in my cultivation?

A. I do not know if you have once done so.

Q. Was the party there upon the order of Captain Lilly as you refer to? A. Yes.

Q. After that act, where do both of us meet in our road clearing?

A. Because the case is pending I do not meet with you in road clearing. 30

Q. Have you thrown away the stones heaped up at the main roadside in our presence?

A. I have never touched a stone there.

Q. Can you recognize Obribriwase to-day?

A. Yes, if the tree is still standing.

xxd. by Council:

Q. From the ancient time have you any boundary with Nana Adjedu of Atonkor?

A. Yes. 40

Plaintiff's
Exhibit

"K"

Proceedings in
Suit No. 6/40.

3rd and 4th
June, 1940
- continued.

Q. What are the demarcations on the boundary?

A. A tree called Otokotaka on one side and a heap of earth raised on the other side.

Q. Did you go with the Captain and the Omanhene's Deputation?

A. I did not go personally but my representatives went.

Q. What was the report they brought to you?

10 A. They reported that the Captain has made a new boundary from Obribriwase to the main road, where he put a heap of stones.

Q. After this what was performed as custom on the road?

A. No path was cut; no custom performed besides the stones.

Q. In your statement, you referred to a river Ona; where is that river? On the left or right of the main road?

A. On the left from Okadjakrom to Atonkor.

20 Q. Who was the leader of the party which cut the path?

A. The leader was Nana Agbo now deceased.

Q. Was the path on the left cut on the same day as that on the right?

A. No. On another day.

Q. How many years is it now since the path was cut?

A. About 20 years now.

30 Q. Has any one of your subjects cultivated there since then?

A. Yes, we do farm on the land.

Q. Is the path on the left a continuation of the path on the right?

A. A continuation of the same.

WILLIAM ATA OFORI, 1st Witness for Defendant.

Swore on the Bible and stated as follows:-

I am William Ata Ofori, I live at Guamang, I am a farmer, I am a linguist. I know both parties. I am representing Nana Mankrade Joseph Anang of Guamang.

xd. by Defendant.

- Q. Which side of the old road is the kola tree planted?
 A. It stands on the right side of the road from Obribriwase.

Plaintiff's
Exhibit
 "K"

Proceedings in
 Suit No. 6/40.

xxd. by Plaintiff.

- Q. What is the name of the land you refer to?
 A. I do not know the name for it.

3rd and 4th
 June, 1940
 - continued.

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- Q. Which side of the road is the kola tree situated?
 A. It is on the right.

- Q. Do you know the owner of the land?
 A. I do not know it; I only know my people were allowed to live on the farms.

NANA BRANTUO II, Witness for both parties.

Swore by the Great Oath of Fida. I am Nana Yaw Apreko Brantuo II of Jasikan, Adontenhene of Buem. I know both parties.

20

I remember there was a time, the exact date I have not been able to have at hand here, that Captain Lilly came to my town Jasikan, called me and interviewed me that there was a land dispute between one Akosomo of Atonkor and Oku-Sakyi of Okadjakrom which land was situated on the old road from Jasikan to Atonkor. At that period Okadjakrom was called Jasikan Akuraa. He asked me if I could show him the road junction between Jasikan and Atonkor. I said, Yes. Went together to Okadjakrom where he took 4 men and 4 men also from Atonkor to go with us. There I found some elders from Borada, Nana Adbo now deceased and Head Linguist Boampong Kwabena also deceased. I also took my Registrar Sam. Nyame and Head Linguist Kwasi Donkor with me. We took the road from Okadjakrom to Guamang, and Captain asked me if I could tell the road from Jasikan to Atonkor if we got there. When we got to the cross roads, Jasikan to Atonkor and Okadjakrom to Guamang, there were two trees, Okanee and Obribriwa, between which the road passes. He asked whether that place was the road boundary. I said, No. We proceeded on the Atonkor road a little and got to the required place. We reached the road

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Plaintiff's
Exhibit

"K"

Proceedings in
Suit No. 6/40.

3rd and 4th
June, 1940
- continued.

junction popularly called Obribriwase and halted. There was a palm tree near the Obribriwa tree on the right. Behind the palm tree is an Okanee. On the left is the Obribriwa tree, which marks the road boundary between Atonkor and Jasikan. Behind this tree, towards Atonkor stands an Opapaw tree. When I stated that the place was the meeting place referred to on the old road, there was a man from Okadjakrom called Kwaku Adjei wearing a hat. The Captain knocked it off with his staff and all present laughed, taking off their hats. The hat flew into the palm-tree near by. The Captain enquired from me whether there was any other road clearing boundary between Atonkor and Okadjakrom on that road. I said, no; they had one on the main motor road but not there. Both parties also were asked and they agreed upon my assertion. He asked whether it was far from that point to the main road. We said it was not very far. He asked me if I know the road boundary between Okadjakrom and Atonkor on the main road. I said yes. He ordered that some of the men should go through the bush to the main road; the rest including the Captain and myself should go back by the road to Okadjakrom, by which we came. Nana Adjei wanted to take me home but the Captain refused, saying I should go with him to the Atonkor road, main motor road. The two parties which left Obribriwase consisted each of men from Okadjakrom and Atonkor. I had names written down - only it is unfortunate I cannot get it now, to prove what each one did. He ordered that if the people going through the bush should get there before us, they should stand waiting for us. When we met the other party, we found that the old road boundary was still ahead, - towards Atonkor.

There, Captain ordered that 3 small stones be placed where the bush party entered the main road, three on each side of the road. He told Nana Agbo that he had entrusted the rest of the work to Omanhene, to see that a path be made to the west from the place where the stones had been placed - that is towards the left side of the road. The Party broke off. When we got home the Captain gave me £2 that day as present. About 2 months later, Nana Omanhene ordered that Nana Agbo and myself should go and cut the path. I went with my retinue including then the present Nana Akuamoah IV as a young man in my Division. We took the main motor road from Okadjakrom to Atonkor. It was a

rainy morning; when we got to the side where the stones were placed; the people of Atonkor had not come. We waited and sent for them. They came. Then we started cutting the path from the stones westward on the left side and worked a whole day. That day, one Kotu inadvertently cut the hand of my Registrar Mr. Sam. Nyame. We closed up and intended to continue next morning. Next day we met there to continue. We worked on westwards. We were near River Ona when Linguist Boamong Kwabena said that we should according to the direction of the line, curve it a little to the Atonkor side. When we made this curve, elder Akosomo and his followers got annoyed and a serious debate followed. Akosomo said that in his opinion we were not qualified for the work entrusted to us and that he would ask Nana to appoint other members for it. He would not listen to us any more, and we had to stop. We reported this to Nana Omanhene who said that if the Adontenhene and Nana Agbo were not qualified for the work he would see to appoint a deputation headed by Yayo, his son (derision) to carry on the work. Since then I have never heard anything about the land up to lately when I received witness summons. This is what I know.

(Sgd) Nana Y.A. Brantuo II,
Adontenhene.

xd. by Plaintiff:

- 30 Q. Have the people of Okadjakrom stayed with you before? A. Yes.
- Q. What did the Captain and his party intend the line from the main road to Obribriwase to be?
A. I understand it to mean on the Captain's part that the intention was to find the direction of Obribriwase from the road, but he said nothing specific of that.
- Q. Do you remember that Obribriwase was our road boundary when the Okadjakrom people were with you? A. Yes.
- 40 Q. Who is the owner of the land from Obribriwase towards Atonkor, you know?
A. I do not know.

xd. by Defendant.

- Q. Do you remember that any performance of custom took place on the road?
A. No custom was performed.

Plaintiff's
Exhibit

"K"

Proceedings in
Suit No. 6/40.

3rd and 4th
June, 1940

- continued.

Plaintiff's
Exhibit

"K"

Proceedings in
Suit No. 6/40.

3rd and 4th
June, 1940
- continued.

xd. by Council.

- Q. What did the Captain order the cutting of the path from Obribriwase to the road for?
A. He ordered we should make a boundary between them. This could not be done owing to opposition and we stopped.

Q. Who made a complaint about the land to Captain Lilly?

A. In fact, I do not know who made the complaint.

Q. You mentioned Oku-Sakyi and Akesome, did you not?

A. Yes, but I do not know which of them made the complaint.

10

COURT ORDER:

The Council will view the land in dispute on the 1st July, 1940.

Nana should see that a path is made along his boundary with the Defendant in the first week of June from 7th to 10th. Nana Adjei should do the same from 12th to 16th. This is to prepare the way for the viewers. The path should be made in the Kahuetonku lands only, - that is from the motor road to Obribriwase.

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The Plaintiff to deposit £12 towards transport and maintenance of the deputation. Judgment will be delivered after the inspection of the land.

Case adjourned to 1st of July, 1940.

(Mkd) Nana Akpanja II, his
w/m & Recorder Presiding Member X
(Sgd) S.D. Opoku. mark.

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"B" - Plaintiff's Exhibit. INSPECTION REPORT
of VIEWERS in Suit No. 6/40.

Plaintiff's
Exhibit

"B"

IN THE COURT OF THE BUM STATE COUNCIL,
HELD AT BORADA ON 2ND DAY OF JULY, 1940.

Inspection
Report of
Viewers in
Suit No. 6/40.

Before:

NANA AKFANDJA II, Pr. Member
NANA C.O. Adibo, Member
NANA SALO KOFI II, Member.

2nd July, 1940.

Case No. 6/40.

10 NANA ADJIDU II, Ohene of Atonkor Plaintiff

versus

NANA ADJEE III, Ohene of Okadjakrom
Defendant

20 Both parties having agreed to the Court order
that the disputed land should be viewed by the
Council before Judgment, the deputation consisting
of the President and the members who sat over the
case. together with Plaintiff and co-plaintiff and
defendant and co-defendant accompanied by two other
men on each side and the Registrar entered the land
in the morning of the 1st of July, 1940. The Plain-
tiff leading the viewing party showed Obribriwase,
the old road clearing boundary between Jasikan and
Atonkor marked by three stones and a defunct tree,
and some other trees, viz. Opapaw, Okanee, Oil-
palm. He also showed the old Kola tree referred
to in his statement. He showed marked on trees
which he said were made there on the day the land
was viewed and the path made. We were led on this
30 path into many farms which belonged to men from
Okadjakrom. These farms range from 1 to 5 years
of age. There was one farm made only this year
and has corn and other food crops planted in it.
This farm was claimed by both Plaintiff and Defend-
ant. The Council questioned to find the real own-
er of the farm but no definite conclusion was
reached. Along this path, Plaintiff showed a site
on which lay pieces of an Odum tree, which he said
were saw by one Duedu of Okadjakrom and the
40 planks were ordered to be returned to Plaintiff by

Plaintiff's
Exhibit

"B"

Inspection
Report of
Viewers in
Suit No.6/40.

2nd July, 1940
- continued.

the Borada Tribunal, because the tree grew in Plaintiff's land. Plaintiff led the party into the motor road, where he ended by showing a heap of stones which he said were placed there by the order of Captain Lilly.

The Defendant then led the party farther down the road and showed a place marked by a tree now defunct but with new shoots coming up, and said that it was the old road clearing boundary between Plaintiff and himself. This was confirmed by Plaintiff. Defendant led the party on his path down a place where a considerable number of palms were lying, being tapped for wine. Plaintiff claimed that the palms were being tapped by his subjects with nobody's permission because they have right to the land as owners. This was the case with some cocoa farms along the path, which also belonged to Atonkor subjects. The party then reached the River Konsu where defendant ended and said the line thus traced forms the limit of the portion upon which his subjects have hitherto cultivated to meet the Atonkor people, because there was no boundary between them. Plaintiff questioned Defendant whether he could show any demarcation to prove that the locus was a boundary point. Defendant answered that he could not do so because it was not an established boundary but a rough line to show the limit of the area hitherto cultivated by his subjects, and argued that there is never a fixed boundary between them. The party's investigations ended there.

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"C"

Judgment in
Suit No.6/40.
2nd July, 1940.

"C" - Plaintiff's Exhibit. JUDGMENT in
Suit No. 6/40

IN THE COURT OF THE BUEM STATE COUNCIL,
HELD AT BORADA ON THE 2ND DAY OF JULY, 1940.

(Title as Exhibit "B")

JUDGMENT:-

This is a case which was transferred from the Kudje (nifa) Tribunal to the State Council's Court by the District Commissioner owing to uncertainty whether the Nifa or the Omanhene has jurisdiction over the land in dispute.

40

In this suit the Plaintiff claims from Defendant \$25 compensatory damages for trespassing on his (Plaintiff's) land. The question at issue therefore is whether there exists an established boundary between the landed properties of both Plaintiff and Defendant, and secondly whether it is true Defendant has trespassed over that established boundary.

Plaintiff's
Exhibit

"C"

Judgment in
Suit No.6/40.

2nd July, 1940
- continued.

10 From the evidences on both sides, this Court is satisfied that about 18 years ago, the Political Officer then at Kpandu did order that a boundary be fixed between the lands of the plaintiff and Defendant. Linguist Adabra and Koranteng were the Deputies of the Omanhene to whom the cutting of the boundary was entrusted. Nana Adabra in his evidence states that although they cut the path they did not put nor plant anything there to demarcate it. (Cf. xxd. by Defendant). After 18 years, that path could not be traceable or visible in the forest without the necessary demarcations. Nana Brantuo, the second witness for Plaintiff and also for defendant and therefore the Principal witness, states that apart from the heap of stones raised at both ends of the long path to be cut, no cutting of path took place at all and that no custom was performed at all. This shakes the evidence of the first witness and also the statement of the Plaintiff.

30 The land viewers from this Court also report that apart from the two heaps of stones at each end of proposed path that was to be cut, there are no signs of a boundary between Plaintiff and Defendant. The Plaintiff tenders two written agreements into evidence. Those documents or agreements were entered into by private citizens who cannot be said to have done this to involve or to avoid implications in the Nana Adjedu versus Nana Adjei case.

40 Another document tendered is the fragment of a certified true copy of the judgment of the learned Political Officer, C.C. Lilly. This judgment orders the cutting of the said path. It does not say that it was done. The evidence in Court says that it was not completely carried out in one case and not at all done in the other. Therefore this Court cannot accept the judgment as a proof that the boundary was cut. The two witnesses of the Plaintiff himself also affirm this argument that

Plaintiff's
Exhibit

"C"

Judgment in
Suit No.6/40.

2nd July, 1940
- continued.

the cutting and demarcation of the boundary were not complete in (1) action as well as (2) custom. Judgment is for Defendant with costs to be taxed. Defendant to retain his farms. No order as to the fixing of boundary is made until one or both of the parties move this Court for it.

We concur: (Mkd) Nana Akpandji II, his X mark
Pr. Member.

(Sgd) Nana C.O. Adibo, Member.

(Mkd) Nana Salo Kofi II, his X mark 10
Member.

Recorder & W/Ms.
(Sgd) S.D. Opoku,
Registrar,
2.7.40.

"D"

Judgment of
Provincial
Commissioner
in Appeal from
Judgment in
Suit No. 6/40.

22nd May, 1941.

"D" - Plaintiff's Exhibit. JUDGMENT of
PROVINCIAL COMMISSIONER IN APPEAL
from JUDGMENT in Suit No.6/40.

IN THE PROVINCIAL COMMISSIONER'S COURT, EASTERN
PROVINCE, HELD AT KOFORIDUA ON THURSDAY THE 22ND
DAY OF MAY, 1941, BEFORE HIS WORSHIP ERIC ANDERSON
BURNER, Esquire, Acting Deputy Provincial Commis-
sioner. 20

NANA ADJEDU II of Atonkor Plaintiff-Appellant

versus

NANA ADJEI III of Okadjakrom Defendant-Respondent

JUDGMENT:-

This is a case which comes to this Court on appeal from a judgment given by the Buem State Council on the 2nd July, 1940. The Plaintiff's claim is for £25 trespass of his land by the Defendant Adjei III, who is the Ohene of Okadjakrom. He also claims "that a heap of stones called "Adjasutabe" or "Ampembo", forming the starting point of the recognized land boundary between the land of Plaintiffs and the Defendant at a place called "Obribriwase", and continued to meet the Lorry Road where the last heap of boundary stones were placed and so demarcated by the Order of the 30

District Commissioner through the Omanhene of Buem, forms the territorial boundary between the land of Plaintiffs and the land of Defendant". This second claim would appear to be one for a declaration of boundary.

Plaintiff's
Exhibit

"D"

10 It has been proved beyond doubt that on the 23rd January, 1922, Captain C.C. Lilly, the then Political Officer stationed in the Ho District, did determine the boundary between the Plaintiff and Defendant in this case but unfortunately the finding of Captain C.C. Lilly cannot be interpreted owing to mutilation. This is therefore value-loss and must be ignored.

Judgment of
Provincial
Commissioner
in Appeal from
Judgment in
Suit No. 6/40.

22nd May, 1941
- continued.

I have studied the record with care and I do not consider the judgment is against the weight of evidence. There is no documentary evidence as to the boundary and the persons who viewed the land state there is no sign today of a cut boundary.

20 If it were possible to interpret Lilly's Judgment I would have ordered the boundary be surveyed and cut, but unfortunately this is impossible.

I see no reason to upset the judgment of the Buem State Council who found on matters of fact in favour of the Defendant.

I dismiss this appeal with costs to be taxed. Court below to carry out.

(Sgd) E.A. Burner,
AG. DEPUTY C.E.P.

Plaintiff's
Exhibit

"E"

Judgment of
The West African
Court of Appeal
in Appeal from
Judgment of
Provincial
Commissioner.

27th November,
1941.

"E" - Plaintiff's Exhibit. JUDGMENT of THE
WEST AFRICAN COURT OF APPEAL in APPEAL
FROM JUDGMENT of PROVINCIAL COMMISSIONER

27th November, 1941

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST
SESSION HELD AT VICTORIABORG, ACCRA, on THURSDAY,
the 27th day of NOVEMBER, 1941, BEFORE THEIR
HONOURS SIR DONALD KINGDON, C.J., Nigeria (Presi-
dent) SIR PHILIP BERTIE PETRIDES, C.J. Gold Coast
and ROBERT STROTHER-STEWART, J., Gold Coast.

10

CIVIL APPEAL

NANA ADJEDU II of Atonkor, Plaintiff-Appellant-
Appellant

vs.

NANA ADJEI III of Okadjakrom, Defendant-Respondent-
Respondent

APPEAL from Judgment of Ag. Deputy Provincial
Commissioner, Eastern Province dated 22nd May, 1941.

Frans Dove for Appellant -
K.A. Bossman for Respondent -

20

X X X X X

JUDGMENT -

There is no substance in this appeal. It is
dismissed with costs assessed at £12. 12. 6.

27th Nov., 1941.

(Sgd) Donald Kingdon,
President.
(Sgd) P.B. Petrides.
(Sgd) R. Strother-Stewart, J.

"F" - Plaintiff's Exhibit. PROCEEDINGS
CONSEQUENT UPON DECISION in Suit No.6/40.

Plaintiff's
Exhibit

"F"

IN THE NATIVE TRIBUNAL OF BUEM STATE COUNCIL
TOGOLAND UNDER BRITISH MANDATE
(SOUTHERN SECTION)

Proceedings
consequent
upon decision
in Suit No.6/40.

IN THE MATTER of CASE NO. 6/40 ENTITLED
NANA ADJEDU II, Ohene of Atonkor (Plaintiff)

19th July, 1949
to 1st August,
1950.

versus

NANA ADJEI III, Ohene of Okadjakrom (Defendant)

10

AND

IN THE MATTER of APPLICATION for the carrying into
effect of ORDER made in the said Suit for
demarcation of Boundary.

AFFIDAVIT IN SUPPORT OF MOTION

I, NANA ADJEI III Ohene of Okadjakrom make
Oath and say as follows:-

1. That I am the Defendant in the above named
suit.

20

2. That on the 2nd day of July, 1940 the Tribunal
gave judgment in the above named suit in my favour
and declared as follows:-

30

"From the Evidences on both sides, this Court
"is satisfied that about 18 years ago, the
"Political Officer then at Kpandu, did Order
"that a Boundary be fixed between the Lands of
"the Plaintiff and Defendant.
"The Land Viewers from this Court also report
"that apart from the two heaps of stones at
"each side of the proposed path that was to be
"cut there are no signs of a boundary between
"Plaintiff and Defendant.
"Judgment is for Defendant with Costs to be
"taxed. Defendant to retain his farms. No
"Order as to the fixing of boundary is made
"until one or both of the parties move this
"Court for it".

"Mkd. Nana Akpandja II
"Presiding Member".

3. The Judgment referred to in paragraph 2 hereof

Plaintiff's
Exhibit

"F"

Proceedings
consequent
upon decision
in Suit No.6/40.
19th July, 1949
to 1st August,
1950.
- continued.

was subsequently confirmed on the 22nd day of May 1941 by the Provincial Commissioner's Court, and on the 27th day of November, 1941 by the West African Court of Appeal as per copies of the Judgments of the said Appellate Courts on hand to which I crave leave to refer.

4. That subsequently I moved the Tribunal for the demarcation of the boundary as per copy of Motion paper hereto annexed marked 'A' but through a misunderstanding I did not attend the Tribunal, and in my absence as well as the absence of the Plaintiff Nana Adjedu II Ohene of Atonkor, the Tribunal dismissed my Application as per Exhibit 'B' annexed.

10

5. That my letter to the Tribunal reproduced in their decision was written under a misapprehension, and was not intended as an opposition against members of the Tribunal entering upon the Land in dispute to inspect determine the course of and demarcate the boundary as the Tribunal considered the said Letter to be, and I am quite ready to give my consent (if necessary) that members of the Tribunal should enter upon the Land.

20

6. That the delay in the fixing and demarcation of the boundary has been causing much hardship to myself and my subjects as well as severe financial loss from the date of the judgment dated 2nd July, 1940 up to date.

7. That I make this Affidavit in support of Application for Demarcation of the Boundary in terms of Motion paper herein.

30

Sworn at Kpando this 19th)
day of July, 1949 the)
foregoing having been)
first read over interpre-)
ted and explained to)
Deponent by E.F. Tsogbe) (Mkd) Nana Adjei III his
in the Twi language when) X
he seemed perfectly to) mark
understand the same before)
making his mark hereto)

Before me,
(Sgd) E.F. Tsogbe.
COMMISSIONER FOR OATHS.

This is the Exhibit marked 'A' referred to in the Oath of the within-named NANA ADJEI III sworn before me this day of July, 1949.

(Sgd.) E.F. Tsogbe.
COMMISSIONER FOR OATHS.

IN THE NATIVE TRIBUNAL OF THE BUEM STATE COUNCIL
HELD AT BORADA ON THURSDAY, the 18th day of
DECEMBER, 1941.

Plaintiff's
Exhibit

"F"

BEFORE:-

NANA AKPANJA II P.M.
 NANA SALO KOFI II M.
 NANA A. ADIBO M.

Proceedings
 consequent
 upon decision
 in Suit No.6/40.

19th July, 1949
 to 1st August,
 1950

- continued

Motion No.15/41.

NANA ADJEI III, Ohene of Okadjakrom, Mover

10

versus

NANA ADJEDU II, Ohene of Atonkor, Opposer

MOTION EX-PARTE.

MOTION EX-PARTE by written application dated the 17th of December, 1941, by the Mover herein, praying to this Honourable Court for an Order to cut and demarcate the boundary between the towns of Okadjakrom and Atonkor, which should be cut on the left and right through our old road clearing boundary, to avoid further inconveniences, and for any other order as to the Honourable Court may seem meet. Mover heard.

20

COURT ORDER.

The Buem State Council will in no distant date hear this motion in the presence of both parties and will there and then consider the application of the Mover herein.

Copies of this Order to be served on the Mover and the Opposer.

30

(Mkd)	Nana Akpanja II	Their
"	Nana Salo Kofi II	X
		X
		marks.

(Sgd) Nana C.O. Adibo.

w/w/to marks & sign.

(Sgd) S.D. Opoku
 State Reg.
 18.12.41.

Plaintiff's
Exhibit

"B"

IN THE NATIVE TRIBUNAL OF THE BUEM STATE COUNCIL,
HELD AT JASIKAN on TUESDAY, the 28th of
APRIL, 1942.

"F"

Proceedings
consequent
upon decision
in Suit No.6/40
19th July, 1949
to 1st August,
1950.
- continued

BEFORE:-

NANA AKUAMOAH IV, Ag. P.M.
NANA APPEW IV, Member
NANA ADIBO "
NANA SALO KOFI II "
NANA OWUSU IV "

Motion No. 22/42.

10

NANA ADJEI III of Okadjakrom, Mover
versus

NANA ADJEDU II of Atonkor, Opposer

Present:- Nana Adjedu II, Opposer
Absent:- Nana Adjei III, Mover.

Following the Council's Notice that the Mover and the Opposer should appear before the Council at Jasikan for the determination of the Motion, the Mover sent the following letter.

"Okadjakrom
28.4.42."

20

"Secretary,

"Reference your note of even date, I have to
"reply that, - today I learnt from the members
"of the Buem State Council, who came to Okadja-
"krom this morning that the President is not
"well - and I know perfectly well that, the
"decision of my motion cannot be taken place
"in his absence.

"Furthermore, I have sent a report of what
"happened this morning in respect of the Motion
"to the President and I wish to hear from him
"before come"

30

"Yours etc.

(Mkd) Adjei III"

w/w/mk.
(Sgd) C.S. Adjei
F.O.C.

his
X
mark.

COUNCIL'S DECISION

Plaintiff's
Exhibit

"F"

In view of the fact that the writer of this letter is the Mover in this Motion, and that the Members of the Council now sitting have the authority to sit as full Council for any business of the Buem State Council, we proceed to give our decision in the matter before us.

Proceedings
consequent
upon decision
in Suit No.6/40

19th July, 1949
to 1st August
1950

- continued.

10

The Motion before us is an independent one and was originally heard before the present members and the Omanhene of Buem State as the President. The Omanhene being indisposed to-day has ordered that Nana Akuamoah IV, Nifahene, presides as the Acting Presiding Member to cut and demarcate the boundary.

20

The Mover has opposed the Council's entry into the land on the ground that the present Members were not the Members who sat over the land case. Nana Adjedu II of Atonkor versus Nana Adjei III of Okadjakrom, in the year 1940, and argues that this is the same case. The Council disagrees with this argument, because, this is entirely an independent Motion, not arising from that case which has passed this Tribunal on appeal to the C.E.P's Court and the West African Court of Appeal and has not been referred back.

Since the Mover in his own volition has obstructed this Council from entering the land, we dismiss this Motion with costs against the Mover.

Costs allowed at £9.7.6d. (nine pounds seven shillings and six pence).

Copy of this Judgment to be served on the Mover and Opposer.

		Their
(Mkd)	Nana Akuamoah IV	X
(Sgd)	Nana Appew IV	
	" Nana C.O. Adibo	
(Mkd)	Nana Salo Kofi II	X
(Sgd)	Nana S.T. Owusu IV	marks

Recorder:-

(Sgd) S.D. Opoku

Registrar.

This is the Exhibit marked 'B' referred to in the Oath of the with-named NANA ADJEI III sworn before me this day of July, 1949.

(Sgd) E.F. Tsogbe
COMMISSIONER FOR OATHS.

Plaintiff's
Exhibit

"F"

Proceedings
consequent
upon decision
in Suit No.6/40

19th July, 1949
to 1st August
1950

- continued.

IN THE NATIVE TRIBUNAL OF THE BUEM STATE
TOGOLAND UNDER THE UNITED KINGDOM TRUSTEESHIP

IN THE MATTER of CASE No. 6/40 entitled

NANA ADJEDU II, Ohene of Atonkor Plaintiff-Opposer

vs.

NANA ADJEI III, Ohene of Okadjakrom

Defendant-Mover

AFFIDAVIT of NANA ADJEDU II, directing the
Line where Boundary is to be demarcated.

I, NANA ADJEDU II, Ohene of Atonkor in the Buem State Kpandu/Ho District Togoland under the United Kingdom Trusteeship make Oath and say as follows:- 10

1. That I am the Plaintiff, Opposer in the above case.

2. That the question or claim at issue now is the demarcation of the boundary of land of Atonkor and Okadjakrom.

3. That Linguist Koranteng of Borada and some others such as Opanin Kwasi Kuma of Kudje, James Dodoo of Atonkor and Osafohene Apim Dako of Aka knew the line where the boundary line was ordered to be cut by Captain C. Lilly, the then D.F.O., Kpandu that the heaps of stones on either side of the path form the boundary of the disputed land and that the planting of customary boundary trees between the two heaps of stones is the problem now to solve. 20

4. That I make this Affidavit as an application to the Honourable State Council for an Order to cut and demarcate the boundary by planting boundary trees on the line between the two heaps of stones on both sides of the path referred to in the Judgment. 30

Sworn at Accra this 23rd day)
of August, 1949.

)(Sgd) Nana Adjedu II,
DEPONENT.

Before me,
(Sgd) R.A. Bannerman
COMMISSIONER FOR OATHS.

IN THE NATIVE APPEAL COURT, HELD AT BORADA on
 MONDAY the 21st day of OCTOBER, 1949, BEFORE
 NANA JOHN K. AMANIE, President, with the follow-
 ing Members:-

NANA AMOYAW of Borada
 GABRIEL BEVELIMBELE of Borada
 RAPHAEL KWABENA of Borada
 BEN ATTA of Borada.

Plaintiff's
 Exhibit

"F"

Proceedings
 consequent
 upon decision
 in Suit No.6/40.

19th July, 1949
 to 1st August
 1950

- continued.

MOTION No. 9/49.

10 NANA ADJEDU II, Ohene of Atonkor
Plaintiff-Opposer
 vs.
 NANA ADJEI III, Ohene of Okadjakrom
Defendant-Mover

MOTION ON NOTICE

20 Motion on Notice by Nana Adjei III, Ohene of
 Okadjakrom the Defendant in the above named suit
 which was determined by this Tribunal on the 2nd
 day of July, 1940, for an Order for Tribunal to
 carry into effect forthwith the said Judgment of
 the Tribunal dated the 2nd day of July, 1940. And
 for the said Tribunal to inspect the Boundary in
 dispute and determine the course thereof and to
 effect and complete the demarcation thereof - And
 for such other Order as to the Tribunal may seem
 meet.

PARTIES:- Both parties present.

Motion and Affidavit of Mover and Affidavit of
 Opposer read.

30 BY COURT TO MOVER:-

- Q. Have you anything to say in addition to your
 Motion?
 A. What the opposer mentioned of Capt. C.C. Lilly,
 that the boundary line should pass through the
 two heaps of stone is passed and not to be taken.

BY COURT TO OPPOSER:-

- 40 Q. Have you anything to say in opposition to this
 Motion?
 A. The old boundary between the Mover and myself
 is a place called Obribriwase which was shown
 to the then District Commissioner, Capt. C.C.
 Lilly by me.

Plaintiff's
Exhibit

"F"

Proceedings
consequent
upon decision
in Suit No.6/40.

19th July, 1949
to 1st August
1950

- continued.

BY COURT TO MOVER:-

Q. Do you want the boundary to be demarcated by this Court?

A. Yes, I do agree.

BY COURT TO OPPOSER:-

Q. Do you agree that the boundary be demarcated by this Court?

A. Yes, I do agree.

BY COURT TO MOVER:-

Q. Do you know the two heaps of stones on the land? 10

A. Yes, I know. It was Capt. Lilly who put the two heaps of stones on the Land.

Recorder:-

(Sgd) G.K. Apreko
REGISTRAR, N.A. C.

COURT ORDER:-

Before a fair decision for the demarcation of the boundary between both parties in this Motion could be arrived at unless the area in dispute has been viewed by the members of this Court. 20

Both parties are requested to deposit with this Court the sum of £12 each as Land Viewing Deposits in Order that the members can view the area in dispute on Friday, the 4th day of November, 1949, for the demarcation of the boundary. Motion adjourned sine die.

(Mkd) Nana John K. Amanie his
PRESIDENT X
NATIVE APPEAL COURT. mark 30

w/to mark:-

(Sgd) G.K. Apreke
REGISTRAR, N.A. C.
31.10.49.

IN THE NATIVE APPEAL COURT, HELD AT BORADA, on
 MONDAY the 27th day of FEBRUARY, 1950 BEFORE
 NANA JOHN K. AMANIE, President with the follow-
 ing Members:-

NANA AMOYAU of Borada
 GABRIEL BEVELIBELE of Borada
 RAPHAEL KWABENA of Borada
 BEN ATTA of Borada

Plaintiff's
 Exhibit

"F"

Proceedings
 consequent
 upon decision
 in Suit No.6/40.

19th July, 1949
 to 1st August,
 1950

- continued.

MOTION No. 9/49.

10 NANA ADJEDU II, Ohene of Atonkor
Plaintiff-Opposer.
 vs.
 NANA ADJEMI III, Ohene of Okadjakrom
Defendant-Mover

PARTIES:- Both parties present.

LAND INSPECTION NOTES

20 On the 4th of November, 1949, the Viewing
 Party of five members of the Court went to the
 area in dispute between the parties herein. The
 Party started its inspection at 10.00 a.m. The
 Party asked the Mover to show his boundary marks
 between the opposer and himself and he showed by
 saying that his boundary marks are on the North
 opposite Atonkor and that they are from the Jasikan
 - Worawora lorry road on the West to River Konsu
 on the East the marks on the West and East are the
 boundary marks between the Opposer and himself
 from ancient time. Between these marks the sub-
 30 jects of the Mover cleared and that the members of
 the Party walked from the Jasikan - Worawora lorry
 road to River Konsu.

40 After the Mover has finished with the showing
 of his boundary marks, the opposer also was asked
 to show his boundary marks between the Mover and
 himself and he showed by saying that his boundary
 marks are on the South opposite Okadjakrom and that
 are from the heap of stones of the Jasikan-Worawora
 lorry road on the West to the heap of stones on the
 East, the marks on the West and East are the bound-
 ary marks between the Mover and himself from
 ancient time. The Opposer asserted that the heaps
 of stones on the West and East were made by the

Plaintiff's
Exhibit

"F"

Proceedings
consequent
upon decision
in Suit No.6/40.

19th July, 1949
to 1st August,
1950

- continued.

then District Commissioner, Kpandu, Capt.C.C.Lilly, who ordered the Omanhene of Buem State to depute some people to fix boundary mark trees between the two heaps of stones but this was not done hence the Mover has now decided to claim the area in dispute to be his own. Linguist Koranteng of Borada who was subpoenaed by the Opposer herein as the eye-witness whom Capt. C.C. Lilly has entrusted the demarcation of the boundary to, has confirmed what the Opposer stated here above to the Viewing Party at the viewing spot.

10

The members of the Party walked from River Konsu on the East towards Okadjakrom and got to the heap of stones on the East being the boundary mark for the Opposer and proceeded to the heap of stones on the Jasikan- Worawora lorry road on the West. When the Members reached the Jasikan - Worawora lorry road they only saw a big stone in the soil of which the Opposer said that owing to the making of the lorry road hence the heap of stones has been meddled with and some of the stones have been removed and only one remaining at the spot near Jasikan - Worawora lorry road opposite Okadjakrom from the big stone near the lorry road of which the opposer claims to be his boundary mark, the members of the Party proceeded to the North and got to the other boundary mark of the Mover opposite Atonkor to determine the largeness of the area in dispute.

20

After the parties have shown their two boundary marks to the members of the Party, the members could not demarcate any boundary between them owing to being too tired of the hard work of inspection of the day. The members therefore decided to demarcate the boundary between the parties after having given Decision in the matter. The value of the land in dispute was estimated to be at the price of £50. The members of the Party left the area in dispute at about 4.55 p.m.

30

At this stage the Members of this Court retired into consultation and returned to give the following Decision.

DECISION:

40

This is a Motion on Notice of a land case for demarcation of boundary (to the Buem State Council) and by virtue of Section 17(1) and (2) of the Native Courts Ordinance, No.8 of 1949, it has been

transmitted to this Native Appeal Court of Borada for hearing and determination.

Plaintiff's
Exhibit

"F"

The Mover herein moved the State Council as follows:-

Proceedings
consequent
upon decision
in Suit No.6/40.

19th July, 1949
to 1st August,
1950

- continued.

10 "Motion on Notice by Nana Adjei III, Ohene of
"Okadjakrom, the Defendant in the above named
"suit which was determined by this Tribunal
"on the 2nd day of July, 1940, for an Order
"for the Tribunal to carry into effect forth-
"with the said Judgment of the Tribunal dated
"the 2nd day of July, 1940. And for the said
"Tribunal to inspect the boundary in dispute
"and determine the course thereof and to
"effect and complete the demarcation thereof -
"And for such other Order as to the Tribunal
"may seem meet."

20 This Motion originated from the Judgment Order
of the Buem State Council dated 2nd July, 1940,
which has been read by this Court in part as
follows:-

"Judgment is for Defendant with costs to be
"taxed. Defendant to retain his farms. No
"Order as to the fixing of boundary is made
"until one or both of the parties move this
"Court for it".

30 On the strength of the above Judgment Order,
the appeal therefrom was confirmed on the 22nd of
May, 1941, by the Provincial Commission's Court
and further, on the 27th of November, 1941, by the
West African Court of Appeal, after which, the
Mover herein moved the State Council, for the de-
marcation of boundary in dispute on the 18th of
December, 1941. The State Council ordered in con-
nection with that motion as follows:-

40 "The Buem State Council will in no distant
"date hear this Motion in the presence of
"both parties and will there and then con-
"sider the application of the Mover herein.
"Copies of this Order to be served on the
"Mover and the Opposer."

On the 28th of April, 1942, the State Council
set on the Motion in accordance with its previous
Order dated 18th December, 1941. The Opposer herein

Plaintiff's
Exhibit

"F"

Proceedings
consequent
upon decision
in Suit No.6/40.

19th July, 1949
to 1st August,
1950

- continued.

was present and the Mover herein was absent. However, through his own misunderstanding in the affairs of the demarcation of the boundary in dispute he, the Mover sent a letter dated 28/4/42 to the State Council, which letter was read by this Court inter alia, as follows:-

"Reference your note of even date, I have to
"reply that - today, I learnt from the members
"of the Buem State Council, who came to Okad-
"jakrom this morning that the President is 10
"not well - and I know perfectly well that,
"the decision of my Motion cannot be taken
"place in his absence.
"Further more, I have sent a report of what
"happened this morning in respect of the
"Motion to the President and I wish to hear
"from him before come".

The State Council, thereby, delivered its
decision as follows:-

"In view of the fact that the writer of this 20
"letter is the Mover in this Motion, and that
"the members of the Council now sitting have
"the authority to sit as full Council for any
"business of the Buem State Council, we pro-
"ceed to give our decision in the matter
"before us.
"The Motion before us is an independent one
"and was originally heard before the present
"members and the Omanhene as President. The 30
"Omanhene being indisposed to-day has ordered
"that Nana Akuamoah IV, Nifahene, presides as
"the Acting Presiding Member to cut and demar-
"cate the boundary.
"The Mover has opposed the Council's entry
"into the land on the ground that the present
"members were not the members, who sat over
"the land case, Nana Adjedu II, of Atonkor
"versus Nana Adjei III, of Okadjakrom, in the
"year 1940, and argues that this is the same 40
"case. The Council disagrees with this argu-
"ment, because this is entirely an independent
"Motion, not arising from that case which has
"passed this Tribunal on appeal to the Commis-
"sioner of the Eastern Province's Court and
"the West African Court of Appeal and has not
"been referred back. Since the Mover in his
"own volition has obstructed this Council
"from entering the land, we dismiss this

"Motion with costs against the Mover. Costs
 "allowed at £9. 7. 6d. (Nine pounds Seven
 "shillings and Six pence). Copy of this
 "Judgment to be served on the Mover and
 "Opposer".

Plaintiff's
 Exhibit

 "F"

Proceedings
 consequent
 upon decision
 in Suit No.6/40.

19th July, 1949
 to 1st August,
 1950

- continued.

10

By the effect of the above Decision delivered
 by the State Council, the Mover now filed on the
 8th of August, 1949, a fresh Motion on Notice with
 Affidavit with the State Council for demarcation
 of boundary in dispute between the Opposer and him-
 self.

20

On the 4th of November, 1949, the Members of
 this Court viewed the area in dispute accordingly.
 The Mover showed his boundary marks beginning from
 the Jasikan - Worawora lorry road ranging from the
 West and touching River Konsu on the Eastern part
 of the boundary marks of which are opposite Atonkor
 on the Northern part. The Opposer showed his
 boundary marks beginning from an ancient footpath
 at Obribriwase, a place where a heap of stones has
 been placed ranging from the Eastern part and
 touching the Jasikan - Worawora lorry road on the
 Western part the boundary marks of which are oppo-
 site Okadjakrom on the Southern part.

This Court has observed that the Mover herein
 was unable to appeal against the Decision delivered
 by the State Council on the 28th of April, 1942,
 owing that he was satisfied with the said Decision
 which has been read in part as follows:-

30

"this is entirely an independent Motion, not
 "arising from that case which has passed this
 "Tribunal on appeal to the Commissioner of
 "the Eastern Province's Court and the West
 "African Court of Appeal and has not been re-
 "ferred back".

40

In view of the fact that on the 2nd of July,
 1940, the State Council delivered its judgment in
 favour of the Defendant - Mover and against the
 Plaintiff-Opposer herein and on the 28th of April,
 1942, it has further delivered the above-mentioned
 Decision therefore in accordance with the tenor
 the said Decision, the Judgment delivered by on the
 2nd of July, 1940, should not be applied to this
 Motion in any way, because, this Motion is entirely
 an independent one from the said Judgment.

In the opinion of this Court it was decided

Plaintiff's
Exhibit

"F"

Proceedings
consequent
upon decision
in Suit No.6/40.

19th July, 1949
to 1st August,
1950

- continued.

that the two boundary marks showed by the parties herein cannot be relied upon by this Court, because, on the 4th of November, 1949, during the inspection of the land boundaries in dispute by this Court, the contending parties could not give any tangible proofs with regard to the boundary marks shown by them the land cocoa farms thereon in dispute should be divided equally between both parties herein in accordance with the Buem Customary Laws and usage.

10

By order of this Court, the area in dispute should be measured and cut into two equal parts or shared between both parties herein in accordance with the Buem Customary Laws and usage; that is one half share of same to be the property of the Opposer on the North and one half share of same to be the property of the Mover on the South; and that, after the area in dispute has been shared between them and any of the parties herein might possess cocoa farm or farms of the other party, that party should approach the other party amicably for the necessary remuneration to be made between themselves of such farm or farms, if any, in accordance with the Buem Customary Laws and usage. Each party to deposit the sum of ₦6 for the demarcation of the boundary.

20

The date for the demarcation of the boundary will be fixed immediately after payment of the deposit by both parties respectively.

Each party to bear his own costs in this Motion.

30

Mkd. Nana John K. Amanie
PRESIDENT.
NATIVE APPEAL COURT.

his
X
mark.

w/to mark
(Sgd) G.K. Apreko
REGISTRAR, N.A.C.
27/2/50.

IN THE NATIVE APPEAL COURT, HELD AT OBRIBRIWASE in THE LAND IN DISPUTE BETWEEN ATONKOR AND OKADJAKROM on MONDAY and TUESDAY the 31st and 1st days of JULY and AUGUST, 1950, respectively, BEFORE NANA JOHN K. AMANIE, President, with the following Members:-

NANA AMOYAW
GABRIEL BEVELEBELE
RAPHIAEL KWABENA
BEN ATTA.

Plaintiff's
Exhibit

"F"

Proceedings
consequent
upon decision
in Suit No.6/40.

19th July, 1949
to 1st August,
1950

- continued.

10 MOTION No. 9/49.

NANA ADJEDU II, Ohene of Atonkor,

Plaintiff-Opposer

Vs.

NANA ADJEI III, Ohene of Okadjakrom,

Defendant-Mover

PARTIES:- Opposer - present
Mover - absent.

20 The Mover's letter of reply dated 29th July, 1950, to the Court Registrar's letter No.51/22/B.S/1944 dated 26th July, 1950, in connection with the demarcation of the land in dispute to be made on the 31st of July, 1950, reads in part as follows:-

"I have the honour to acknowledge receipt of
"your letter dated the 26th July, 1950 with
"thanks. I am sorry to inform you that I
"have already sent the case to High Court,
"Accra. Therefore, I cannot agree to your
"request until I shall be advised from Accra
"High Court".

30

LAND DEMARCATION REPORTS

IN accordance with the strength of this Court's decision and Order which was delivered on the 27th of February, 1950, before the above-quoted letter was received from the Mover, refusing to attend with the members for the demarcation of the land in dispute, the members of this Court therefore left to the land in dispute for the demarcation of

Plaintiff's
Exhibit

"F"

Proceedings
consequent
upon decision
in Suit No.6/40.

19th July, 1949
to 1st August,
1950

- continued.

the disputed area on the 31st of July, 1950, and started business at 10.20 a.m.

Both parts of the land in dispute on the East and West were measured by the members of the Court and they found them to be as follows:-

On the Western part of the land in dispute near the lorry road between the two towns of Atonkor and Okadjakrom the length measurement of same was found to be 416 fathoms.

The members then divided the length measurement of the land in dispute of 416 fathoms on the Western part of it into two equal parts of 208 fathoms for the Opposer on the North-Western part and 208 fathoms for the Mover on the South-Western part because neither of the two parties could prove to the satisfactory belief of the members as to the portion he claims. The members planted "Ntome" trees in a group as land boundary mark between both parties herein on the Western part near the lorry road.

10

20

On the Eastern part of the land in dispute near River "Konsu" between the two towns of Atonkor and Okadjakrom the length measurement of same was found to be 318 fathoms. Also, the members divided the length measurement of the land in dispute of 318 fathoms on the Eastern part of it into two equal parts of 159 fathoms for the Opposer on the North-eastern part and 159 fathoms for the Mover on the South-Eastern part because neither of the two parties could prove to the satisfactory belief of the members as to the portion he claims. The members planted "Ntome" trees in a group as land boundary mark between both parties herein on the Eastern part near River "Konsu".

30

The members have also planted 25 "Ntome" trees in a row as land boundary marks between the other "Ntome" trees which the members have previously planted in two groups on the Eastern and Western parts.

After the members have completed the demarcation of the land in dispute between both parties herein, they performed in full the Buem Customary rites in respect of demarcation of land boundary between two parties.

40

The members of this Court hereby ordered that the demarcation of the land boundary made with its land boundary marks fixed by them in accordance with the Buem Customary Laws and usage under their Decision delivered on the 27th of February, 1950, should be the final land boundary for this land in dispute, namely Obribriwase, between both parties herein as from now on.

Plaintiff's
Exhibit

"F"

Proceedings consequent upon decision in Suit No.6/40.

10 The members of the Court left the disputed area of land on the 1st of August, 1950, at about 6.00 p.m. without any disturbance from either of the two parties.

19th July, 1949 to 1st August, 1950

- continued.

(Mkd) Nana John K. Amanie his
PRESIDENT X
Witness to mark NATIVE APPEAL COURT, mark.
(Sgd) G.K. Apreko BORADA.
Registrar, N.A.C.
1.8.50.

"G" - Plaintiff's Exhibit. ORDER OF
MANDAMUS of COUSSEY, J.

"G"

20 9th September, 1950.

Order of
Mandamus of
Coussey, J.

IN THE SUPREME COURT OF THE GOLD COAST,
EASTERN JUDICIAL DIVISION (LAND DIVISION) held at
VICTORIABORG, ACCRA, on SATURDAY the 9th day of
SEPTEMBER, 1950, before COUSSEY, J.

9th September,
1950.

IN THE MATTER of the NATIVE COURTS (SOUTHERN
SECTION OF TOGOLAND UNDER BRITISH MANDATE)
ORDINANCE No.8/49.

and

30 IN THE MATTER of INTERLOCUTORY ORDER dated
27th February, 1950, made in Suit No.6/40
entitled Nana Adjedu II, etc. vs. Nana
Adjei III etc. by the Native Appeal Court
of Buem State - Borada

and

IN THE MATTER of APPLICATION for SPECIAL LEAVE
to APPEAL etc.

and

40 IN THE MATTER of APPLICATION for LEAVE to apply
for an ORDER of MANDAMUS against the said
Magistrate, Kpandu.

Mr. Bossman for Nana Adjei III
Mr. Akyeampong for Mr. Buckmaster for Magistrate,
Kpandu.

It is not always easy to distinguish between

Plaintiff's
Exhibit

"G"

Order of
Mandamus of
Coussey, J.
9th September,
1950
- continued.

what is a final and what is an interlocutory order but is clear to me that the judgment of the Buem State Council dated 2nd July, 1940 in this suit is the judgment that adjudicated on the right claimed and the defence set up, and that it is therefore the final judgment in the suit. It is when further step is necessary to perfect an order or judgment, that it is interlocutory and not final - Collins vs. Paddington 5, Q.B.D. 368 at p.370 per Baggallay L.J.

10

In this case the Buem State Council in the judgment referred to decreed "Judgment is for Defendant with costs to be taxed. Defendant to retain his farm. No order as to the fixing of boundary is made until one or both of the parties move this Court".

In 1948 the Defendant moved the State Council to demarcate the boundary. The application, coming before the Native Appeal Court at Borada, as the Buem State Council had ceased to exist as the Court having jurisdiction in the matter, the Native Appeal Court by its Ruling dated the 27th February, 1950, ordered that the land with cocoa farms in dispute should be divided equally between both parties "as the contending parties could not give any tangible proofs with regard to the boundary marks shown by them" without considering the merits of this Order it is clear to my mind that it is an Order made in the original Suit, for no further action had been instituted and it purported to be an Order working out the arithmetical result of the judgment of the 2nd July, 1940 in the sense of how much land should fall to each party under the judgment. In my opinion it is an Order consequent on that judgment and is therefore an interlocutory Order.

20

30

Mr. Buckmaster has asked me to consider whether the effect of the replacement of sections 118 to 123 of the Native Courts (Southern Section of Togoland under United Kingdom Trusteeship) Procedure Regulations No. 8 of 1949 by an amending section No.2 of No.15 of 1950, the first section of which reads:-

40

"118(1) Any person wishing to appeal from an
"Order or decision of a Native Court shall
"file in the Native Court and lodge in the

"appeal Court a Notice of Intention to appeal
"and such Notices shall be filed and lodged
"within one month of the date of the Order or
"decision appealed against"

Plaintiff's
Exhibit
"G"

10 limits the time within which an appeal can be
brought from an interlocutory Order to one month.
It is conceded that if this is the effect of the
amendment referred to, the application for special
leave in this case is out of time as it was filed
in the Magistrate's Court on the 18th May, 1950,
in respect of an Order dated the 27th February,
1950. These Regulations are procedural.

Order of
Mandamus of
Coussey, J.
9th September,
1950
- continued.

20 In my opinion the right to apply for special
leave to appeal from an interlocutory Order is
given by a special provision namely, Section 52(2)
of Ordinance No.8 of 1949 and it is not affected
by this amendment of the Regulations made under
the ordinance. If this had been intended, Section
133 of the Regulations which places no such limit
of time on an application for special leave to
appeal from an interlocutory Order, would not have
been retained unamended in the Regulations.

In the result this application for Mandamus
is granted and it is ordered that the Magistrate
do hear the application for special leave to
appeal.

(Sgd) J. Henley Coussey,
JUDGE.

"H" - Plaintiff's Exhibit. DECISION OF
MAGISTRATE of KPANDU.

"H"

22.3.51.

Decision of
Magistrate of
Kpandu.
22nd March, 1951.

IN THE MAGISTRATE'S COURT OF THE GOLD COAST,
EASTERN PROVINCE, held at KPANDU on THURSDAY the
22nd day of MARCH, 1951, before HIS WORSHIP, TOM
HINDLE, Esquire, Magistrate.

NANA ADJEDU II.

vs.

NANA ADJEI III.

DECISION

Counsel for defendant argues that the "Native
Appeal Court" had no jurisdiction. He argues that

Plaintiff's
Exhibit

"H"

Decision of
Magistrate of
Kpandu.

22nd March, 1951
- continued.

the Buem Borada Native Court which has the grade 'B' and Native Appeal Court" has two functions which must be kept clearly defined. The fact is that there is only one Buem Borada Native Court and that this Native Court exercises the jurisdiction over the whole Buem State which was formerly exercised by the State Council. The fact that the appeal record is headed "In the Native Appeal Court" makes no difference. This is the name by which the Buem Borada Native Court is commonly known. The Buem Borada Native Court which dealt with the interlocutory application had jurisdiction to do so.

10

Counsel for the defendant argues that the original decision by the State Council gave to the defendant the whole area in dispute. This is correct. Counsel for the Plaintiff argues that the boundaries of the area in dispute are not known and that the Buem Borada Native Court has sensibly settled the matter by dividing equally between the two parties the area in dispute. This may be a sensible solution but it is in the face of the original judgment giving the area in dispute to the defendant. It was the duty of the Buem Borada Native Court to define the boundary between the area in dispute (and the plaintiff's land) and this it has not attempted to do.

The appeal therefore allowed and the order made by the Buem Borada Native Court ordering that the land in dispute shall be divided between the two parties is set aside. Those costs as to which no order has yet been made will be paid by the plaintiff.

(Sgd) T. Hindle,
Magistrate.
