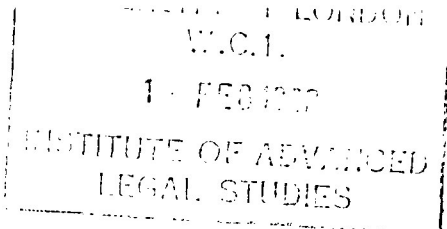


G.H.L.G. 367/1961



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IN THE PRIVY COUNCIL

No. 47 of 1959

ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL

(GOLD COAST SESSION)

I N T H E M A T T E R of the PROPOSED
K A B O R I V E R F O R E S T R E S E R V E

B E T W E E N NANA KATABOA II Ohene of
Apesokubi (Claimant) Appellant

- and -

10

NANA OSEI BONSU Ohene of Asato
(Claimant) Respondent

- AND -

IN THE PRIVY COUNCIL

No. 24 of 1960

ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL

(GOLD COAST SESSION)

B E T W E E N SUB-CHIEF KATABOA of Apesokubi
(substituted for Nana Kwasi Adu
deceased) (Defendant) Appellant

- and -

20

SUB-CHIEF OSEI BONSU III
(Plaintiff) Respondent

C A S E FOR THE RESPONDENT

RECORD

1. This is an appeal from a Judgment of the West African Court of Appeal, Gold Coast Session, dated 20th February, 1956, dismissing with costs an appeal by the Appellant from a Judgment of the Court of the Reserve Settlement Commissioner of the Gold Coast dated the 3rd May, 1954, at Jasikan (hereinafter called the first Appeal) and further, from a Judgment of the West African Court of Appeal, Gold Coast Session, dated 27th April, 1954, dismissing with costs an appeal by the Appellant from a Judgment of the Supreme Court of the Gold Coast, Eastern Judicial Division, Land
- 30 I.p.24.
I.pp.18-21.
II.pp.56-62.
II.pp.39-48.

RECORD

Court, Accra, dated 22nd April, 1954 (hereinafter called the second Appeal).

2. On 16th February, 1961, the said Appeals being between the same parties and raising the same issues were ordered by the Judicial Committee of the Privy Council to be consolidated and heard together on one Case on each side.

- I.p.1. 3. The proceedings resulting in the first Appeal commenced with an Enquiry held by G. O. Parker Esq., the Reserve Settlement Commissioner of the Gold Coast at Worawora in the Ho District of the British Sphere of Togoland and entitled "In the Matter of the Proposed Kabo River Forest Reserve (Oprana Section)". The Enquiry commenced on 16th December, 1930. It was adjourned sine die on the 23rd December, 1930, when the Commissioner made an order referring the subject matter of the Enquiry namely a boundary dispute between the Appellant and Respondent to the Buem Tribunal which had on 7th March, 1927, adjudicated upon the ownership of the disputed area. 10
- I.p.7. 4. The Enquiry was resumed before the Commissioner (then E. N. Jones Esq.) on 5th June, 1931, in respect of a claim made by the Head-chief as to ownership of land, such claim being adverse to the Appellant and the Respondent being both Sub-chiefs. On the same day the Enquiry was again adjourned sine die. 20
- I.p.8. 5. The Enquiry was resumed before the Commissioner (then A. P. Pullen Esq.) on 10th February, 1934, in relation to that section of the Reserve (Oprana) in which the Appellant and Respondent were in dispute. The Commissioner recorded and summarised the litigation that had taken place since the boundary dispute was referred to the Native Court by the Commissioners in December, 1930. The Enquiry continued on various dates and the Commissioner gave judgment on 3rd May, 1954. 30
- I.p.14. 6. In the course of his judgment the Commissioner accepted the decision of the Borada (Buem) Native Tribunal dated the 21st February, 1931, in favour of the Respondent and the Commissioner recorded the boundary in accordance with that decision. 40
- I.p.19.

RECORD

7. The Appellant appealed to the West African Court of Appeal against the decision of the Commissioner by notice dated 20th May, 1954. By consent the Appeal was adjourned to abide the decision of the same Court in the second Appeal. This decision was given on the 13th February, 1956, in favour of the Respondent whereupon on the 20th February, 1956, the Court being bound by the previous decision, dismissed the second Appeal. I.pp.21-22.
- 10
8. The proceedings resulting in the second Appeal were commenced by a civil summons dated 15th April, 1953, issued by the Respondent against the Appellant in the Native Akan Court "B" of Kadjebi, Southern Section of Togoland under British Mandate. The Respondent alleged that the Appellant and his subjects had committed acts of trespass upon his land and claimed recovery of possession. In support of his title to the land described in the summons, the Respondent referred to the decision of the Borada (Buem) Native Tribunal dated 3rd March, 1931, which appears to be the same as that referred to in the first Appeal as being upon the 21st February, 1931. II.pp.1-2.
- 20
9. On 19th June, 1953, the Appellant filed a Notice of Application for an Order to dismiss the Action. The Notice was supported by an Affidavit sworn by the Appellant to which was exhibited (inter alia) an Agreement made between the Appellant and the Respondent and dated 12th July, 1939, in the following terms:- I.pp.26-27.
- 40
- (1) The Ohene of Apesokubi and the Ohene of Asato agreed to discontinue the land dispute, and each party should bear his own costs incurred during the 30 years controversy. II.pp.3-4.
II.pp.5-6.
- 40
- (2) The Ohene of Apesokubi and the Ohene of Asato acting each and on behalf of his respect Elder's and Councillors agree to abide by the decision of the Councillors Worawora, Tapa, Apesokubi and Asato that the boundary should remain as traditionally known. II.pp.71-73.
- (3) The Committee as appointed by the both parties will carry out the preliminary

RECORD

investigation as to the extension of the traditional boundary right cross the forest if any.

- II.pp.66-67. 10. As a result of the Agreement set out above the Appellant contended in paragraphs 8 and 9 of his Affidavit that the Judgment of the Borada (Buem) Native Tribunal which had been affirmed by the West African Court of Appeal in a Judgment dated 20th April, 1937, was of no effect and that the only course open to the Respondent was by way of Arbitration. 10
- II.p.9. 11. On 24th July, 1953, the Respondent filed an Affidavit in opposition.
- II.p.8. 12. On 4th August, 1953, the Native Court commenced the hearing and the Appellant and the holder of a Power of Attorney on behalf of the Respondent supplemented the Affidavits with oral statements. Both were examined by the Court. Thereafter both parties were invited to make sworn statements. The Respondent's representative did so, The Appellant declined to cross-examine the Respondent's representative and also to give a statement on oath. 20
- II.pp.9-17.
- II.pp.17-18.
- II.pp.19-22. 13. On 2nd September, 1953, the Native Akan Court "B" gave Judgment in favour of the Respondent with costs, holding (inter alia) that the Judgment of the Borada (Buem) Tribunal in 1931 had not been nullified by any Court.
- II.p.22. Accordingly the Native Court made an order that the Respondent take possession of the land. 30
- II.pp.26-31. 14. The Appellant appealed to the Native Appeal Court Borada (Buem) which Appeal was heard and determined on 10th November, 1953. The Appeal was allowed on the ground that the proceedings in the Court below were irregular and that the Court should have dealt separately with the Appellant's motion and the Respondent's claim.
- II.p.30.
- II.pp.33-38. 15. From the decision of the Native Appeal Court the Respondent appealed to the Supreme Court of the Gold Coast, Eastern Judicial Division, Land Court - Accra. The Appeal was heard on 15th April, 1954, and was allowed with costs, by a Judgment delivered on 22nd April, 1954. The Court held (inter alia) that the Native Court had 40
- II.pp.39-48.

- not adopted an irregular procedure and that the parties in the proceedings had each been given a full opportunity to present and argue both the Application and the Claim. The Court further held that attempts to arbitrate had proved abortive and that the Respondent could not be held indefinitely to the Agreement dated 12th July 1939. Also that in concluding the said Agreement the Respondent had not abandoned the rights he had won in the 1931 judgment. II. pp.42-43.
II. p.46.
II. p.47.
- 10 16. On 27th April, 1954, the Appellant gave Notice and Grounds of Appeal to the West African Court of Appeal and sought to restore the judgment of the Native Appeal Court. The Appeal was heard on 18th and 19th January, 1956 and the Judgment of the Court was delivered by Coussey P. (with whom Korsah J.A., Jibowu. Ag., J.A. concurred) on 13th February 1956. II. pp.48-50.
II. pp.51-56.
- 20 17. After referring to the proceedings in the Courts below the learned Judge considered the Agreement of 12th July, 1939, and the subsequent failures to solve the dispute between the parties by means of Arbitration. He continued as follows:-
- 30 "..... But the contention of Mr. Akufo Addo, Counsel for the Defendant-Appellant is that on failure of one set of arbitration demarcators, referees or whatever they may be called the parties were bound to continue to appoint new persons until a body was found finally able to carry out the work. II. p.60 l.29.
- 40 "I am as unable to accept this proposition, as was the learned Judge of Appeal. The very object in my view of appointing a Committee of persons to demarcate the boundary was to quieten in the least time possible a dispute that had continued to the advantage of the Apesokubi's who had persisted in their occupation of the land without title. The Respondent's rights under the judgment of 31st March, which is not specifically referred to were not in my opinion in any wise impaired by the 1939 Agreement and, having regard to the events above set forth, to the lapse of time and the breakdown of the machinery for demarcation,

RECORD

the Plaintiff-Respondent was, in my view, entitled to have recourse to the Court for an order for possession of the land of which he had been declared the owner by the 1931 judgment."

II.p.61.

18. The West African Court of Appeal also examined and considered the procedure adopted by the Native Court. The Appeal Court found (inter alia) that the procedure had not contained any irregularities, that both parties had been fully heard and that the Appellant had in no way been prejudiced. 10

19. Accordingly the West African Court of Appeal dismissed the Appeal with costs.

20. Against the Judgments of the West African Court of Appeal, Gold Coast Session, dated 13th February, 1956, and 20th February, 1956, these Appeals to Her Majesty in Council are now preferred, Final Leave to Appeal having been granted by Orders of the said Court both dated 8th October, 1956. 20

The Respondent humbly submits that these Appeals should be dismissed with costs throughout, for the following among other

R E A S O N S

1. Because the Court of the Reserve Settlement Commissioner of the Gold Coast in the first Appeal and the Supreme Court of the Gold Coast, Eastern Judicial Division, Land Court - Accra in the second Appeal, being affirmed by the West African Court of Appeal in both Appeals, were right in holding that the judgment of the Borada (Buem) Tribunal in 1931 having been affirmed by the West African Court of Appeal dated 20th April 1937 had not been nullified by the Agreement between the parties dated 12th July 1939 and therefore the Respondent was entitled to rely upon the said judgment to obtain recovery of possession of the land the subject-matter of the 1931 Judgment. 30

2. Because the Supreme Court of the Gold Coast, Eastern Judicial Division, Land Court - Accra and the West African Court of Appeal in the second 40

Appeal were right in holding that the procedure adopted in the Native Court Akan "B" did not contain any irregularity and did not operate to the prejudice of the Appellant.

3. Because, for the reasons stated therein, the Judgments of all the Courts below with the exception of the Native Appeal Court in the second Appeal are right.

DINGLE FOOT

ALAN GARFITT

No. 47 of 1959

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

IN THE MATTER of the PROPOSED KABO
RIVER FOREST RESERVE

B E T W E E N:

NANA KATABOA II Ohene of Apesokubi
(Claimant) - and - Appellant

NANA OSEI BONSU Ohene of Asato
(Claimant) Respondent
- AND - No.24 of 1960

B E T W E E N:

SUB-CHIEF KATABOA of Apesokubi
(substituted for Nana Kwasi Adu
deceased) (Defendant) Appellant
- and -

SUB-CHIEF OSEI BONSU III of Asato
(Plaintiff) Respondent

C A S E FOR THE RESPONDENT

SYDNEY REDFERN & CO.,
1, Gray's Inn Square,
London, W.C.1.

Respondent's Solicitors.