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IN THE PRIVY COUNCIL

No. 25 of 1960

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

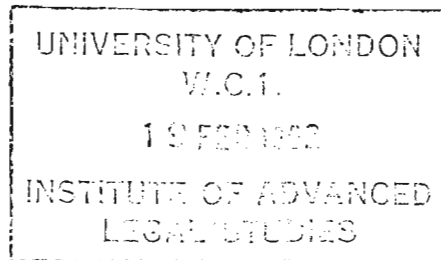
B E T W E E N :

R. E. WUTA-OFEI Defendant-Appellant

- and -

MABEL DANQUAH Plaintiff-Respondent

R E C O R D O F P R O C E E D I N G S



- 63609

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Solicitors & Agents for
the Appellant.

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Solicitors for the Respondent.

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

B E T W E E N :

R. B. WUTA-OFEI Defendant-Appellant

- and -

MABEL DANQUAH Plaintiff-Respondent

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL

No. 25 of 1960

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

B E T W E E N :

R. B. WUTA-OFEI Defendant-Appellant

- and -

MABEL DANQUAH Plaintiff-Respondent

RECORD OF PROCEEDINGS

10

No. 1

In the
Native Court

CIVIL SUMMONS

CIVIL SUMMONS
EASTERN PROVINCE GOLD COAST

No. 1

Civil Summons.
10th April, 1948.

No.Suit 175/48

IN THE NATIVE COURT "B" 3

MABEL DANQUAH ... Plaintiff

- and -

R. B. WUTA-OFEI ... Defendant

20 R.B. WUTA-OFEI of Accra.

20

You are hereby commanded to attend this Native Court at Labadi on Monday the 3rd day of May, 1948 at 8.30 o'clock a.m. to answer a suit by Plaintiff against you.

30

The Plaintiff is the owner of all that piece or parcel of land situate lying and being at Christiansborg Accra aforesaid bounded on the North by J.B. Danquah's property measuring Two hundred and five (205) feet more or less on the South by a Road measuring One hundred and fifty-five (155) feet more or less on the East by Osu Stool land measuring One hundred and fifty (150)

In the
Native Court

No. 1

Civil Summons.
10th April, 1948
- continued.

feet more or less and on the West by Cantonments Road and measuring One hundred and Sixty (160) feet more or less comprising an area of 64 acres or howsoever otherwise the said piece or parcel of land may be described known or distinguished.

The said piece of land was granted to the Plaintiff by the Stool of Osu (Christiansborg) in the year 1939 in accordance with native custom the said gift being later confirmed and evidenced by an Indenture dated the 31st December, 1945 and registered in the Deeds Registry as No. 581/1946.

10

The Defendant has trespassed on the Plaintiff's land and in spite of repeated warnings has continued to build a block wall around the Plaintiff's land. He claims to have obtained a Conveyance of the land from the Head of the Alata Quarter of Osu.

And the Plaintiff claims as against the Defendant:

1. A declaration of his title to the land described above.
2. Fifty pounds (£50) damages for trespass.
3. Interim injunction restraining the Defendant his agents or servants from further trespass on the land.

20

Claim	£50. - . -
Fees	2. - . -
Service	1. -
Mileage	<u>2. -</u>

Complt Fee	<u>£52. 3. -</u>
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30

DATED at IARADI the 10th day of April, 1948.

(Sgd.) ?
President, of Native Court.

Take notice that if you do not attend the Native Court may give judgment in your absence.

No. 2

ORDER OF TRANSFER

IN THE SUPREME COURT OF THE GOLD COAST,

EASTERN JUDICIAL DIVISION

LAND DIVISION

(L.S.)

ACCRA.

(L.S.)

(Sgd.) K.A. Korsah
JUDGE.

Transferred Suit
No. L.42/1952

10

MABEL DANQUAH,

Plaintiff

v.

R.B. WUTA-OFFEI,
NII KWABENA BONNE III,
OSU ALATA MANTSE,

Defendant

Co-Defendant

ORDER OF TRANSFER

20

WHEREAS by Order dated 15th October, 1952, the Magistrate's Court, Accra, under the provisions of Section 54(1)(c) of the Native Courts (Colony) Ordinance, 1944, has reported to the Land Judge, the pendency of the above-named case before the Ga Native Court "B", Accra, prior to Order-in-Council No.28 of 1952:

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

30

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 Ga Native Court "B", Accra, relative thereto be transmitted to the Land Division of the Supreme Court of the Gold Coast, Accra, and (2) that the said cause be placed on the General List for Wednesday the 14th day of January, 1953, at 8.30 a.m. for mention.

GIVEN under my hand and the seal of the said Court at Victoriaborg, Accra, this 31st day of December, 1952.

40

(Sgd.) Dugbartey Narnor.
REGISTRAR, LAND COURT.

In the
Supreme Court

No. 2

Order of
Transfer.

31st December,
1952.

In the
Supreme Court

No. 3

COURT NOTES ORDERING PLEADINGS

No. 3

16th July, 1954.

Court Notes
ordering
Pleadings.
16th July, 1954.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN
JUDICIAL DIVISION (LAND DIVISION) held at
VICTORIABORG, ACCRA, on FRIDAY the 16th day of
JULY, 1954, BEFORE VAN LARE, J.

Tr. L42/52.

MABEL DANQUAH

v.

10

R. B. WUTA-OMEI
NII KWABENA BONNE III.

QUIST-THERSON for plaintiff.
MRS. FORSTER for OLLEMMU for defendant & Co-
defendant.

QUIST-THERSON:

I propose to amend the claim in view of what
has intervened since the institution of the action
in 1948. I shall give due notice to the other
side and propose to serve defendant and co-defend-
ant with particulars of claim. I would also like
to have particulars of the defence.

20

MRS. FORSTER:

If served with particulars of claim we shall
serve a statement of defence.

COURT:

Plaintiff to file statement of claim in 21
days. Defence in 14 days, Reply in 7 days.

For Mention 5/10/54.

(Sgd.) W.B. Van Lare,
J.
16/7/54.

30

No. 4

STATEMENT OF CLAIM

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

Transferred Suit
No. 42/1952.

In the
Supreme Court

No. 4

Statement of
Claim.

5th August,
1954.

B E T W E E N

MABEL DANQUAH

...

Plaintiff

-- and --

1. R. B. WUTA OFEI

2. NII KWABENA BONNE III

Defendants

10

STATEMENT OF CLAIM
FILED ON BEHALF OF THE PLAINTIFF

1. The Plaintiff in the year 1939 was granted by the Stool of Osu (Christiansborg) in accordance with native custom the piece of land hereinafter described and which was attached to and owned by the said Stool.

20 2. The said gift by custom was later confirmed and evidenced in writing by an Indenture dated the 31st December, 1945 and registered in the Accra Deeds Registry as No.381/1946.

3. The first Defendant R.B. Wuta Ofei early in the year 1948 deliberately trespassed upon the Plaintiff's land and proceeded to build thereon in defiance and contemptuous disregard of oral warnings and a letter from the Plaintiff's Solicitor, and has continued the trespass ever since.

30 4. The said first Defendant claims to have obtained a grant of the land from the second Defendant Nii Kwabena Bonne III who has not and never has had any interest in or title to the said land.

5. The said piece of land is described as follows: All that piece or parcel of land situate and lying along the Cantonments Road, Christiansborg, Accra

In the
Supreme Court

No. 4

Statement of
Claim.

5th August,
1954

- continued.

bounded on the North by land belonging to Eva Buckman (sometimes erroneously reputed to belong to J.B. Danquah) measuring Two Hundred and five (205) feet more or less on the South by a Road measuring One hundred and fifty-five (155) feet more or less on the East by Osu Stool land measuring One hundred and fifty (150) feet more or less and on the West by Cantonments Road and measuring One hundred and sixty (160) feet more or less comprising an area of .64 Acre or howsoever otherwise the said piece or parcel of land may be described known or distinguished.

10

6. And the Plaintiff claims as follows:

- (a) As against both Defendants: A declaration of her title of ownership to the land and hereditaments hereinbefore described.
- (b) As against the First Defendant only:
 - (i) Recovery of possession.
 - (ii) Mesne profits from date of writ in the Ga Native Court till possession of the said land is delivered to the Plaintiff
 - (iii) A perpetual injunction restraining him his agents, tenants, servants or licensees from further trespass upon the Plaintiff's land.

20

Dated at Christiansborg, Accra the 5th day of August, 1954.

(Sgd.) J. Quist-Therson
Solicitor for Plaintiff.

TO

- (1) The Registrar,
Land Court, Accra.
- (2) The first Defendant
or His Solicitor W.A.
Ollennu, Esq.,
- (3) The second Defendant
Nii Kwabena Bonne III.
Christiansborg, Accra.

30

No. 5

STATEMENT OF DEFENCE

(TITLE AS NO. 4)

DEFENDANTS' STATEMENT OF DEFENCE

In the
Supreme Court

No. 5

Statement of
Defence.

11th October,
1954

1. The Defendants are not in a position to deny paragraphs 1 and 2 of the Plaintiff's Statement of Claim.

10 2. In further reply to paragraph 1 of the Plaintiff's Statement of Claim the Defendants say that alleged grant by the Osu Stool conferred no title in the land upon the Plaintiff, because five (5) years before the alleged grant to the Plaintiff, the Osu Stool, acting by the Head of the Alata Quarter of Osu, had granted the said land to the 1st Defendant, and the 1st Defendant had in possession of the same as from that date.

20 3. In reply to paragraph 3 of the Statement of Claim the Defendants say that the 1st Defendant had been in possession of the land for about ten (10) years before he commenced to build thereon.

4. In reply to paragraph 4 of the Statement of Claim the 2nd Defendant says that as Mantse of Osu Alata Quarter he is one of the principal elders of the Osu Stool and the proper person according to custom to allot portions of Osu Stool land to members of the said Quarter, of which Quarter the 1st Defendant is one.

30 5. In further reply to paragraph 3 and 4 of the Statement of Claim the Defendants say that the 1st Defendant as subject of the Osu Stool is entitled to occupy and build on portion of the Stool lands of Osu, and that where such land occupied and built upon by him appears to have been granted by the said Stool to another subject, he cannot be ejected from and deprived of the said land in favour of the other subject, and that in such circumstances the Stool would have to replace the other subject with another piece of land.

40 SAVE as hereinbefore expressly admitted the Defendants deny each and every allegation contained in the Plaintiff's Statement of Claim as if the same were herein set out in detail and traversed seriatim.

In the
Supreme Court

No. 5

Statement of
Defence.

11th October,
1954

- continued.

* Added by order of the Court dated 21/6/55.

* 6. By Ordinance No.44 of 1940 entitled Accra Town (Land) Ordinance Now Cap.87 Government acquired an area of land including the land in dispute and shown in plan No. X1621 from Nii Noi Owoo II, Mantse of Osu; James Coleman, Acting Mankralo of Osu and other elders of Ashanti Blohum, Nii Adja Beblesch and Nii Amen Bonne and ors. representing the stool of Alata. Government undertook by indenture of 6th February, 1948 to divest itself of that land at a later date. Even up to the present date Government has not divested its interest of the land. Therefore at the date of the action plaintiff had no title to the land.

10

DATED at IA CHAMBERS, ACCRA, this 11th day of October, 1954.

(Sgd.) N.A. Ollennu,
Solicitor for Defendants.

The Registrar,
Land Court,
Accra.

20

And to the above-named Plaintiff,
or to her Solicitor,
J. Quist-Therson,
Accra.

No. 6

Reply.

14th October,
1954.

No. 6

R E P L Y

(TITLE AS NO. 4)

REPLY FILED ON BEHALF OF THE PLAINTIFF

1. The Plaintiff in reply to the Statement of Defence filed by the Defendants says that the allegations and statements in paragraphs 2, 3, 4 and 5 of the said Defence are inaccurate and untrue.

30

2. The Plaintiff joins issue with the Defendants on their Defence.

DATED at CHRISTIANSBORG, ACCRA the 14th day of October, 1954.

(Sgd.) J. Quist-Therson
Solicitor for Plaintiff.

40

THE REGISTRAR, Land Court, ACCRA.
And to the above-named Defendants,
or to their Solicitor Nii Amaa
Ollennu, Esq. ACCRA.

COURT NOTES

25th February, 1955.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN JUDICIAL DIVISION (LANDS DIVISION) held at VICTORIABORG, ACCRA, on Friday the 25th day of FEBRUARY, 1955, BEFORE VAN LARE, J.

In the
Supreme Court

No. 7

Court Notes.
25th February and
1st March, 1955.

Tr.142/1952.

MABEL DANQUAH

v.

R.B. WUTA-OFEI & ANR.

10

QUIST-THERSON for Plaintiff.

ENCHILLU for Ollennu:

My instructions are to produce a medical certificate to say defendant Wuta-Ofei is ill and unable to attend today.

QUIST-THERSON:

I am willing to accommodate until Monday 28/2/55.

20

COURT:

Case to remain on the list until Monday 28/2/55.

Mr. N.T. Clerk is hereby appointed Assessor.

1st March, 1955.

QUIST-THERSON for plaintiff.

MRS. FORSTER for Ollennu for defendants & co-defendant.

MR. N.T. CLERK Assessor.

QUIST-THERSON opens and calls.

In the
Supreme Court

No. 8

MABEL DANQUAH

Plaintiff's
Evidence

MABEL DANQUAH s.o.b. in English:

No. 8

Mabel Danquah.
1st March, 1955.
Examination.

I am the plaintiff in this case. About the year 1939 I applied through my mother Eva Buckman for a grant of a piece of Osu land. A grant was made in my favour, and a plot was demarcated for me by one Adolph Lokko, the person in charge, who went on the land with the linguist of the Stool in the company of some elders. Sometime later, in 1945 the gift made to me by custom was confirmed and evidenced by an Indenture dated 31st December, 1945 and registered in the Accra Deeds Registry as No.381/1946. The said document had been tendered in these proceedings before the Native Court from which the case has been transferred - This is it - put in, Exhibit "A". I caused pillars to be placed on the four corners of the plot. The site was being looked after by my mother on my behalf. My initials, "M.D." were on each pillar. I caused no structure to be erected on the land but sometime in 1948 I heard something. I visited the site and noticed some blocks placed upon the site which had been granted to me. I made enquiries and learnt the person who caused the cement blocks to be placed on the said land; I therefore formed the opinion the person was preparing to put up a building on my land. I therefore gave certain instructions to my Solicitor Mr. Quist-Therson who addressed a letter to the defendant Wuta Ofei. I produce copy of my Solicitor's said letter dated 15th March, 1948, put in Exhibit "B". This is Mr. Wuta Ofei's reply - dated 23rd March, 1948 - put in Exhibit "C". Later I received a letter from the defendant Wuta-Ofei - it is dated 6th April, 1948 - put in Exhibit "D". I noticed that the defendant Wuta-Ofei caused a fence to be built around the plot granted to me; I therefore instituted an action against the defendant before the Native Court at Labadi in May 1948. I applied for an Interim Injunction to restrain the defendant from carrying on his building operations on my land without success. I beg to refer to the affidavit of the defendant in opposition to my motion - (produced from the custody of the Court) it is dated 11th January, 1949 under the Oath and signature of the defendant - put in Exhibit "E". The defendant continued his building despite my repeated protest; the building has since been completed

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while the case has been pending. I am aware that the house is let out to tenants. The case went on from one panel to the other without determination for over 5 years and was eventually transferred to this Court -- and the Native Court was closed down, and we are now in this Court. I am aware that the defendant Wuta Ofei claims the land against my title alleging that he obtained title to the exact site of my plot from Nii Kwabena Bonne III Osu Alata Mantse. I enquired from the Osu Mantse. I therefore instituted this action claiming my land reliefs set out in the statement of claim filed on my behalf.

10

Cross-examined by Mrs. Forster:

Q. When did the defendant start building on this land?

A. In 1948 -- during the time case was before the Native Court.

20

Q. Did the building itself start before you applied for the Interim Injunction? A. No.

Q. Did you not also receive a summons against you by Wuta-Ofei in respect of this same land before the injunction? A. Yes.

Q. Is the defendant Wuta Ofei an Osu man?

A. I do not know but he is reputed to be, I will say he is.

Q. Are you an Osu subject yourself? A. Yes.

Re-examined: None.

No. 9

A. G. LOKKO

30

ADOLPHUS GIFFORD LOKKO s.o.b. in English:

I am at present clerk of Works Tema Development Corporation. I am a subject of Osu. I had been a senior Building Inspector, Accra Town Council also I used to be Chief Draftsman P.W.D. For many years last I have been entrusted with the work of demarcating plots of land granted by the Manche of Osu and his elders to subjects of the

In the
Supreme Court

Plaintiff's
Evidence

No. 8

Mabel Danquah.
1st March, 1955.

Examination
- continued.

Cross-
examination.

No. 9

A.G. Lokko.
1st March, 1955.
Examination.

In the
Supreme Court

Plaintiff's
Evidence

No. 9

A.G. Lokko.
1st March, 1955.
Examination
- continued.

Stool. I started this work for the Osu Stool since 1924. The plaintiff is a subject of Osu Stool and I am certain that sometime ago she had been granted a plot of land by the Osu Stool and I demarcated the plot for her.

I remember the land acquisition matter No. 6 of 1950, known as the Royal Engineers Acquisition of Osu land in the area of the land in dispute. I made a plan of the area subject matter of the acquisition. I knew the land subject matter in this case. The land in dispute between the parties in this case is shown or demarcated on the plan I made in respect of the Acquisition Matter. On that plan I showed plots granted by the Osu Stool to various subjects of the Osu Stool. The years of the grant are indicated on the said plan. I also indicated the plots which had been built upon in the area. This is the plan exhibited in the R.E. Acquisition. It is dated 5th April 1951 and bears my signature - put in, Exhibit "F". I refer to the plot in dispute in this case it is marked "Mabel Danquah", it is situated north of the area of Acquisition. The date showing grant to the plaintiff is 11.3.1939. The area of the acquisition is edged red. As far as I can remember when I went on the area to demarcate the grant to the plaintiff in 1939 I also demarcated another plot, an adjoining one, to Dr. J.B. Danquah, and another plot to Sir Emmanuel C. Quist, and another plot Eva Buckman. There was no sign of occupation of the plot granted to the plaintiff by any other person at all. There were no pillars, nor any growing cultivation nor any shed. There was in fact no evidence of any occupation whatsoever. I was accompanied by two linguists the late Masupeh and Wilson - since deceased. Apart from me as the overseer there was no caretaker other than the Osu Manche who gave me instructions from time to time. My duties commenced since 1924 when I started demarcating the land. Before 1924 there was only the lay out but plots had not been granted cut by the Stool to its subjects. I was the first person appointed and was responsible to demarcate the plots in the area. If the plot granted to the plaintiff in 1939 had been earlier granted to the defendant Wuta Ofei or to any other person I would have known because I would be the person to demarcate it. The position in 1951, is this, Exhibit "F" is a true copy of the plan of the area as then demarcated. I was specially asked to prepare Exhibit "F" for the purpose of the acquisition. I

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was present in Court and I came to know that the claim was between the grantees of the Osu Manche as against the grantees of Osu Alata Manche. My plan does not show grants made by Osu Alata Manche. I do not know when the Osu Alata Manche started making grant to certain persons. M. Captan was one of the claimants who was a purchaser from the head of the Osu Alata. At this stage, Judgment in the Land Acquisition Suit No.6/50 delivered by Jackson, Ag. C.J. dated 24th July, 1951 - put in Exhibit "G" at p. 62/73 of Record of Proceedings on appeal to W.A.C.A.

10

I produce certified true copy of the Judgment of the West African Court of Appeal, it is dated, 2nd April, 1954 - Exhibit "H".

I know as a fact from the plan Exhibit "F" that the grantees of the Osu Stool have built in the areas marked "B". The area in dispute in this case is no where near the Alata Quarter of Christiansborg.

20

Cross-examined by Ollennu:

Q. Is it correct that there are 4 Quarters in Christiansborg?

A. Yes - they are 1. Kinkawa; 2. Ashanti Blohum; 3. Alata and 4. Anorhor.

Q. Is it correct that from time immemorial heads of these quarters have made grants to members of their quarters for building purposes? A. Yes.

30 Q. Recently there was an acquisition known as the Ring Road and East Dodowah Road Acquisition?

A. I do not know.

Q. The area stretching from the junction of Ring Road and Dodowah Road, to the north of and nearing Switch Back Road and turning East to Christiansborg, and Cantonment Road and coming to South to Christiansborg and Cantonment and Ring Road Junction and turning West to Dodowah Road Junction is North West of the land in dispute. in this case? A. Yes.

40 Q. The lay out you have referred to was made by whom? A. By government.

Q. Was the layout used by you in demarcating the grants as alleged by you, made by government? A. Yes.

In the
Supreme Court

Plaintiff's
Evidence

No. 9

A.G. Lokko.
1st March, 1955.

Examination
- continued.

Cross-
examination.

In the
Supreme Court

Plaintiff's
Evidence

No. 9

A.G. Lokko.
1st March, 1955.
Cross-
examination
- continued.

Q. Is it correct that when the Stool makes the grant according to Native Custom then you go out with the linguist and the grantee and then make a demarcation on the ground within the government lay out? A. Yes.

Q. Did not the government lay out show plots?
A. Not in this Osudoku Area - the Sanitary Sites were acquired by government.

Q. When the lay out was made originally were these provisions made for these Sanitary Sites?

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A. Yes.

Q. Since 1924 you have demarcated hundreds and hundreds of these plots?

Q. Yes - but I remember the area was quite bare and unoccupied when I demarcated for the plaintiff; I cannot say when effective occupation in the area started.

Re-examination.

Re-examined:

Heads of quarters in Osu were allowed to grant outskirts lands attached to the buildings within the particular quarter. In 1939 the Alata quarter was nowhere near the plaintiff's plot. I have lived in Christiansborg all my life. I know defendant Wuta Ofei, he is a member of Alata Quarter. The plaintiff is not a member of the Alata Quarter.

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No. 10

No. 10

J.K. Allotey.
1st March, 1955.
Examination.

J. K. ALLOTEY

JAMES KPAKPOE ALLOTEY s.o.b. in English:

Building Inspector, Accra Municipal Council. I attend on a Subpoena to the Town Council to produce. I produce official records relating to the building of the defendant Mr. Wuta Ofei, house No.F.827/2, Cantonments Road, Christiansborg. According to the official records this building started 24th February, 1948, the fence lines and two rooms in the outhouse were set out and passed and approved by the Building Inspector. On the 26th February, 1948 - fence line checked and approved by the Senior Building Inspector.

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On the 31st March 1948 - excavation for the concrete foundation was approved.

In April 1948 work started on the Main Building which was completed on 7th October, 1949.

The plan for the building was approved on 15th December, 1947 - the estimated cost being £4000/-/-.

Cross-examined by Ollennu: None.

Case for plaintiff.

10 Adjournd until tomorrow 2/3/55.

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

In the
Supreme Court

Plaintiff's
Evidence

No. 10

J.K. Allotey.
1st March, 1955
Examination
- continued.

Defence:

MRS. FORSTER calls:-

No. 11

R.B. WUTA-OFEI

ROBERT BENAJMIN WUTA-OFEI s.o.b. in English:

20 Live in Christiansborg, a Journalist. I am the defendant in this case. Know the land in dispute; I am in possession of the piece of land on which I have since put up a building at a cost about £5000/-/-. This land was granted to me by the Nii Amen Bonne head of the Alata Quarter of Osu. The grant was made to me in 1935 and I have been in possession ever since, and have been making cement blocks on it and started to build on it in 1947. I was interrupted when I started building on the land by the plaintiff. Earlier the government interrupted my building operation. This is how I came to possess the land. I asked the chief for the land, he gave me the plots in the area where my building is now. The chief who promised me the land took ill during that time there was some dispute between himself and the elders of the Stool. Nii Amen Bonne died and he was succeeded by Nii Kwabena Bonne III the co-defendant whom I approached and he made a grant of

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Defendants'
Evidence

No. 11

R.B. Wuta-Ofei.
20th June, 1955.
Examination.

In the
Supreme Court

Defendants'
Evidence

No. 11

R.B. Wuta-Ofei.
20th June, 1955.
Examination
- continued.

two plots to me. This was by a deed of conveyance in 1946. Nii Kwabena Bonne III said my plots were too many and he gave me only two plots one for my wife. I produce the deed of conveyance to me from the co-defendant. It is dated 1st October, 1947, put in, objected to on the ground that it has cancellations on it initialled by the grantee only as to date of execution - objection overruled - this does not affect admissibility but weight only - received and marked Exhibit "1". I can explain the cancellations and interlineations appearing on Exhibit "1". On Exhibit "1", the date appears to be altered from October, 1946 to February, 1947. This alteration was made by me in the presence of Nii Kwabena Bonne III. This was countersigned by him whose initials appear thereon. There are no other alterations appearing thereon. I have also another document made by Nii Bonne III, the co-defendant to my wife, Mrs. Robert Benjamin Wuta-Ofei. This is first dated 1st October, 1946 but like the earlier conveyance was also changed by me and initialled by the grantor to February, 1947 - put in (same objection and same ruling) Exhibit "2". These three plots are adjacent and the house stands on the three plots. The three plots now constitute one unit. I own the whole of the building on the whole land. These three adjacent plots are really owned by me, and that's how I came to build on the three plots together. The conveyance Exhibit "2" in the name of my wife was only to split as I understood the elders of the Stool objected to one person having more than 2 plots. That's why I had the conveyance in my name for 2 plots Exhibit "1", and my wife had the one plot Exhibit "2", but I have since built on the area covering the three plots. Originally I begged for 6 plots which Nii Amen Bonne granted. When I obtained these conveyances and sent them for stamping I learnt something; from Commissioner of Lands. I produce letters 18th February, 1947 which reads - put in Exhibit "3"; also another letter dated 13th January, 1949 - put in Exhibit "4". I also received letters from the co-defendant dated 30th February, 1947 - put in Exhibit "5"; another letter 10th February, 1948 - put in Exhibit "6". These alterations were made because I could not procure registration in time.

I am to say that as a matter of fact the deeds have not been registered. I did not consider registration necessary after all and I therefore

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did not register my documents. I discovered that at the time the Stool made me the grant it was Crown Land. In 1948 the Government released the land to the Stools. In 1935 when Amen Bonne granted me the land some elders went with me on the land. These included Mr. Nunoo, Mr. Bonarparte, Mr. J.S. Addo, and others whom I have forgotten.

Adjourned until tomorrow 21/6/55.

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

In the
Supreme Court

Defendants'
Evidence

No. 11

R.B. Wuta-Ofei.
20th June, 1955.
Examination
- continued.

No. 12

COURT NOTES ON LEAVE TO AMEND DEFENCE

21st June, 1955.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN JUDICIAL DIVISION (LANDS DIVISION) held at VICTORIABORG, ACCRA, on Tuesday the 21st day of JUNE, 1955, BEFORE VAN LARE, J.

No. 12

Court Notes on
leave to Amend
Defence.

21st June, 1955.

Tr.L42/1952.

MABEL DANQUAH

v.

R.B. WUTA-OFEI
NII KWABENA BONNE III Co-defendant

Assessor Mr. Clerk in attendance.

Resumed

MUNCHILL for plaintiff.
OILLENNU for defendant & Co-defendant.

OILLENNU:

I am asking for leave to amend the Statement of Defence at this stage to add paragraph 6, as follows:-

By Ordinance No.44 of 1940 entitled Accra Town (Land) Ordinance now Cap.87 Government acquired an area of land including the land in dispute and shown in plan No.X1621 from Nii Noi Owco II, Mantse of Osu; James Coleman, Acting

In the
Supreme Court

No. 12

Court Notes on
leave to Amend
Defence.

21st June, 1955
- continued.

Mankralo of Osu and other elders of Ashanti
Blohum, Nii Adja Beblenseh and Nii Amen Bonne
and ors. representing the Stool of Alata.

Government undertook by indentures of 6th
February, 1948 to divest itself of that land
at a later date. Even up to the present date
Government has not divested its interest of
the land. Therefore at the date of the ac-
tion, plaintiff had no title to the land.

COURT:

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By Court.

Statement of Defence amended accordingly with
liberty to plaintiff to adduce additional evidence
on the point.

Defendants'
Evidence

No. 13

R.B. WUTA-OFEI - (continued)

No. 13

R.B. Wuta-Ofei.
21st June, 1955.

Examination
- continued.

ROBERT BENJAMIN WUTA-OFEI (same oath)

Witness continues in Chief:-

I produce two indentures dated 24th September,
1939 made between the Stool of Osu and Governor of
the Gold Coast; and the other between the Ag.
Mankralo and ors. and the Governor of the Gold
Coast - both put in Exhibits "7A" and "7B".

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I also produce two other indentures (Deeds of
Release and Covenants dated 6th February 1948) -
between same parties - put in Exhibits "8A" and
"8B".

When I started to build on the land govern-
ment warned me, and certain correspondence passed
between me and Commissioner of Lands. I knew a
woman called Odofoley who has a piece of land some-
where South of mine. She is an Alata woman and a
subject of the Stool. I am also an Osu man. I
know something of Osu custom. When an Osu subject
wants a piece of land he asks the chief or head of
his quarter. I am aware that all lands in Osu are
attached to the Osu Stool, but the heads of the
quarter look after the lands adjacent to their
quarters. If a subject residing in a quarter wants
land he asks the chief of the quarter who makes the

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grant of the land adjacent to the quarter. I know the land between the Cantonment Road on the east and the Dodowah Road on the West. Part of that area I know to be adjacent to Ashanti Blohum and part to Kinkawe. If the head of a quarter grants a piece of land to a subject of a quarter who enters into effective possession and the Manche of Osu has also at any time granted that same piece to any other subject of Osu, I know that the person who develops the land is allowed to maintain and keep the land. If the other subject is given another piece of land in replacement the first man is asked to bear the cost of the expenses. By the first man I mean the person in occupation. Supposing two persons have been granted land one by the head of the quarter, the other by the Manche this is what happens as to who maintains it. It is the person who enters the land and develops it maintains it.

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At the time I first went on the land I did not know that the land had been granted to the plaintiff. There were no pillars on it. It was since 1935 I started putting building materials on the land until 1948 when government challenged my right to be the land.

Yesterday I gave the value of the house I put up on the land I have since checked and discovered that the total cost is £7,700/-/- odd.

30

There have been some attempts at settlement of this case out of Court. Plaintiff has not approached me to have another land because I have built on the land in dispute.

Cross-examined by Enchill:

Q. Such attempts have been unsuccessful?

A. That is so.

Q. When you first wanted to take conveyance on this piece of land you went to Mr. Quist-Therson?

A. No, it was about another land.

40

Q. You went to Mr. Quist-Therson to make conveyance for you on another land? A. Yes.

Q. Mr. Quist-Therson told you that that land had already been granted by the Osu Stool to the plaintiff in this case?

A. No, on that occasion it was some land in another quarter.

In the
Supreme Court

Defendants'
Evidence

No. 13

R.B. Wuta-Ofei.
21st June, 1955.
Examination
- continued.

sic.

Cross-
examination.

In the
Supreme Court

Defendants'
Evidence

No. 13

R.B. Wuta-Ofei.
21st June, 1955.
Cross-
examination
- continued.

Q. You said in 1935 you said Nii Amen Bonne gave you a piece of land comprising of six plots?

A. Yes.

Q. You performed custom when Nii Amen Bonne granted you the six plots?

A. Yes and I regarded that area as mine.

Q. According to you all that Nii Kwabena Bonne did was to give you and Mrs. Wuta Ofei conveyance on 3 plots only?

A. Yes, he told me he could not give me the other plots because the elders objected to the six plots.

10

TO COURT

I therefore considered that I lost the three other plots. Kwabena Bonne III therefore confirmed only the three plots given to me. I had no claim to the remaining three plots.

Q. Was the reason of the objection by the elders that six plots were too much for you?

A. Yes, that was the reason; a good reason I accepted it; so I obtained a grant from Kwabena Bonne III for only 3 plots on which I have since built.

20

Q. Do you know what had happened to the three plots you lost?

A. No, I do not know.

Q. Were they not adjoining to the land in dispute?

A. Yes, there are no buildings on it.

Q. Do you say the Alata elders said you could not have more than 3 plots?

A. That was what I was informed.

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22nd June, 1955.

22nd June, 1955.

Cross-
examination
- continued.

ROBERT BENJAMIN WUTA-OFEI (same oath) continues under cross-examination by Enchill:-

Q. Why did you change the date on your documents?

A. Because I could not register it then - I say I could not stamp it in October, 1946

Q. Why did you make it February, 1947?

A. Because I thought I could stamp it then.

Q. When did you make these alterations on your document?

40

A. After I received Exhibit "4" - (Witness is shown Exhibit "4" dated 13th January 1949).

In the
Supreme Court

Witness now says - I must have changed the date to 1947 before that time.

Defendants'
Evidence

No. 13

Q. Why did you not tell Mr. Quist-Therson in Exhibit "C" that you obtained your land from Nii Amen Bonne? A. Because it did not strike me to do so.

R.B. Wuta-Ofei.
22nd June, 1955.

10 Q. I suggest to you that you did not tell the lawyer who prepared your title deed that you obtained an earlier grant from Amen Bonne. A. No, because the instructions did not go to the lawyer from me, but from Kwabena Bonne III's Office.

Cross-
examination
- continued.

Q. I put it to you that up till 1948 you did nothing on the land. A. That is not correct.

Q. In an application for interim injunction you swore to an affidavit disclosing certain facts - Exhibit "E". A. Yes.

20 Q. Those facts are still correct, and you have increased the value of the land for the true owner? A. Yes, there is a building on the land now.

Q. You see here a conveyance made on the 3rd January 1948 made between Kwabena Bonne III and yourself. A. Yes.

Q. This conveyance relates to another land a short distance from the land in dispute? A. Yes.

COURT:

Conveyance put in, Exhibit "J".

30 Q. The document is registered, not so? A. Yes, as it appears on it.

Q. You obtained other lands in that area which have been registered? A. Yes, I think so.

Q. Did you ever see the plaintiff's conveyance? A. Yes - I saw it when this matter was before the Native Court.

Q. Stamped and registered? A. Yes.

In the
Supreme Court

Defendants'
Evidence

No. 13

R.B. Wuta-Ofei.
22nd June, 1955.

Cross-
examination
- continued.

Q. You mortgaged the land in dispute to A. G. Leventis & Co. Ltd. and they supplied you with materials and you built on it? A. Yes.

Q. When was the building completed?
A. Between 1948 and 1949.

Q. You yourself are living in the outhouse on the land? A. Yes.

Q. And you let out the main house?
A. Yes - not always.

Q. Will you give the particulars?

A. In 1949 I let it out for 2 months at the rental of £54/-/- a month to Mr. Swaniker. In 1950 I let it out to two army Captains for 6 months at £54/-/- a month.

10

Q. What are the names of the army captains?
A. Crook and Lander.

Q. In 1951 you let to whom?
A. A company hired it for 9 months at the rental of £65/-/- a month.

Q. Did not the Company Hahuba - continue until 1952 or more?
A. I cannot tell exactly - it may be more than a year.

20

TO COURT:

With notice I can prepare and produce a Statement of Account showing the rents that have accrued from the house as from when it was completed up till the present time.

Q. There is also a petrol pump on the land in dispute? A. Yes.

30

Q. Will you give an account of all rents accruing from that also? A. Yes.

Q. When did you obtain your building permit?
A. In 1947.

Q. Why did you not build on the land before 1949?
A. Because I was being held up and because I was not ready.

Q. Exhibit "J" your conveyance comprises 12 plots of land to you?
A. Yes - these 12 plots were not really and in fact mine - it is this: Some one not a subject of

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Alata Stool, nor was he of the Osu Stool nevertheless wanted Osu land. He approached me. So I represented to the Stool and got the plots in my name and I conveyed to that man.

Q. You got all these plots for £10/-/-?

A. Yes - the drink I gave the Stool.

Q. For whom did you get this large piece of land?

A. I think for Captan.

Q. Did you sell these plots to Captan?

10 A. Yes - I did so.

Q. How much did you yourself sell to Captan?

A. I believe for £600/-/- or so.

Q. I put it to you that you had no difficulty at all to get land from Nii Kwabena Bonne III for yourself?

A. Even in respect of the 12 plots there was some difficulty.

Q. I put it to you that the supposed grant from Nii Amen Bonne is not true? A. It is true.

20 Q. I put it to you that Nii Kwabena Bonne III took no three plots from you?

A. He did, but he granted me three plots.

Q. I put it to you that your fence line was not approved before February 1948, and you did not start building operations before that date?

A. Yes, that may be so.

TO COURT:

Q. When did you receive Summons in this matter?

A. It was in April 1948.

30 Q. Exhibit "J" relate to area only about 300 yards from area in dispute? A. Yes.

Q. And it is a nice and continuous stretch of land fronting Cantonments Road? A. Yes.

TO COURT:

There was only one application for an Interim Injunction in this matter; that's the one which I swore to an affidavit Exhibit "E".

Q. I put it to you the custom in Osu is that once a proper authority has given you land as a subject

In the
Supreme Court

Defendants'
Evidence

No. 13

R.B. Wuta-Ofei.
22nd June, 1955.

Cross-
examination
- continued.

In the
Supreme Court

Defendants'
Evidence

No. 13

R.B. Wuta-Ofei.

22nd June, 1955.

Cross-
examination
- continued.

of the Stool, and all necessary custom is done about it, nobody takes it away from you except with your consent?

A. I know that land so granted can be taken back according to custom.

Q. Are you claiming this land as outskirts land of Osu Alata?

A. I claim that it is a land close to the Alata Quarter.

TO COURT:

I say this land comes under the Alata Manche as caretaker for the paramount Stool. It is portion of land under Osu Alata Manche.

Q. Do you say that the land in dispute is attached to Alata Quarter. A. Yes.

Re-examined: None.

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No. 14

C.A. Dowuona.

22nd June, 1955.

Examination.

No. 14

C. A. DOWUONA

CORNELIUS ADUMOA DOWUONA s.o.b. in English:

Retired Civil Servant, living Christiansborg. I am connected with the Osu Stool and a member of the Dzase. There are four quarters in Christiansborg. These quarters have lands over which they caretake for the Osu Stool. I knew the land west of Cantonment Road up to east of Dodowa Road. The western side of this land is attached to Ashanti Blohum.

20

I know the custom relating to granting land to subjects of Osu.

Q. If a subject wants land which is adjoining or in the area of a particular quarter, to whom would he apply? A. To the head of that quarter.

30

Q. Does the head make the grant as caretaker for the Stool? A. Yes.

Q. Is it correct that sometimes the Osu Stool itself makes direct grants? A. Yes.

Q. What happens if the same piece of land happens to be granted by the head of the quarter and the Osu Manche to two different people?

A. It is only a matter of change. If a particular land were to be given to me, and the same land has been given to another person, if one builds on it, and I cannot build, then I should get another piece of land.

In the
Supreme Court

Defendants,
Evidence

No. 14

10 Q. What happens if land had been granted to somebody a subject of the Stool, and he is not able to build, if some other subject is ready to build and requires that land?

A. The other person ready to build can build on the land and the person to whom the grant had been made would be given another land.

C.A. Dowuona.
22nd June, 1955.
Examination.
- continued.

Cross-examined by Enchill:

Cross-
examination.

Q. Sometime ago the plaintiff's mother asked you to conduct the case for the plaintiff at the Native Court? A. Yes.

20 Q. You told the plaintiff's mother that because you were related to the defendant you could not do it? A. No.

Q. You are related to the defendant not so?
A. I am related to both plaintiff and defendant.

Q. You knew you were coming to give evidence on custom? A. Yes.

Q. As an elder of the Osu Stool did you consult the elders of the Stool before coming here?
A. Yes - I consulted the Dsasetse.

30 Q. You did not consult the Osu Manche? A. No.

Q. Don't you know that the Osu Manche asked to be joined as a co-plaintiff in this case in the Native Court? A. No.

Q. You knew that the Osu Stool has been disputing the ownership of land in the area including land in dispute in this case with the Osu Alata Stool?
A. Yes.

NO COURT:

40 Alatas say that the land in this area belongs to the Alata Stool alone, and not Osu Stool land.

It is true the Osu Alata Manche has asserted claim to that part of the land as against the Osu Manche who claimed it as Osu Stool land.

In the
Supreme Court

Defendants'
Evidence

No. 14

C.A. Dowuona.

22nd June, 1955.

Cross-
examination
- continued.

Q. Do you remember the case Tawiah Anum had against Nii Kwabena Bonne III?

A. Yes - I stood as representing Tawiah Anum and conducted the case.

Q. Your claim in that case was that the land was given to Tawiah Anum by the Osu Manche?

A. Yes - that land is in the Alata Quarter the land is in the area which Alata claimed as their own. That case is still not decided.

TO COURT:

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If a subject starts building on a land granted to him and another subject challenges and asserts that the said land had already been given to him the person digging the foundation will have to report the matter to the person from whom he obtained the land. It is for him the person from whom you got the land to enquire into the matter. The quarter elder would have to make enquiries to find out whether the land had been granted to someone else.

20

Q. Supposing the person challenging has told the one going to build that he obtained an earlier grant from the Osu Manche himself, what happens?

A. The Quarter elder has to go and find out from Osu Manche and they would meet.

Q. Would the two chiefs call the two grantors before them? A. Yes.

Q. And then what would happen?

A. It would be there that a decision would be taken as to who should take the land, and the other would be given another land.

30

TO COURT:

It is not necessary to meet by all means; either one may institute an action for declaration of title before the Court. If one is building on the land the other is entitled to bring action without waiting for arbitration. The Court will decide which of the two rival claimants is the true owner.

Cross-examined: None.

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No.15

S. K. BANSONSAMUEL KOJO BANSON s.o.b. in English:

Registrar Land Court, Accra. I attend here on Subpoena. I have in my possession docket in Land Acquisition No.7/1953, in respect of land situate North of Ring Road and East Dodowa Road Accra. I have here the photostat copy of Certificate of Title issued by this Court, it is dated 28th April 1950 - put in Exhibit "9". I produce certified copy of judgment of this Court delivered 3rd January 1955 - put in, Exhibit "10" in the acquisition.

Cross-examined by Enchill: None:In the
Supreme CourtDefendants'
Evidence

No. 15

S.K. Banson.
22nd June, 1955.
Examination.

No. 16

S. L. ASHONGSHIPPI LARYEA ASHONG s.a.r.b. in Ga:

Live at Osu, Ashanti Blohum Stool - I am a Shippi of the quarter. Shippi is head of the Captains in the quarter. I am one of the elders of the Mankralo. I am not a member of the Dsase. As Shippi I know the custom relating to granting quarter lands to subjects of Osu. The head of the quarter may grant land to a subject. If the head of a quarter grants land to a subject and it turns out that the said land had been also granted to another subject by the same quarter then the person who is not in possession would be given another piece of land. By being in possession I mean occupation the man or person who has built or started doing something on the land then the other person would be replaced another land.

Cross-examined by Enchill:

Q. If it turns out that some quarter head has given land to a person and that land had already been given by the Osu Stool itself what happens?
A. If the person to whom the quarter head grants land comes to know that that land is Osu Stool land and had already been given out, the person to whom the quarter head has given the land would approach the Osu Manche and they would come to settlement.

No. 16

S.L. Ashong.
22nd June, 1955.
Examination.Cross-
examination.

In the
Supreme Court

Defendants'
Evidence

No. 16

S.L. Ashong.
22nd June, 1955.

Cross-
examination
- continued.

Q. Would you say that in every case if a person had already been granted land and he does nothing on it, and finds another person doing something on it, the original grantee must consent to it before he is given another land in replacement?
A. Yes, that is so.

Q. In case of disputed claims by two grantees, the quarter head will have to go to see the Osu Manche with both grantees?

A. Yes; if the two grantees do not go to see the Osu Manche nothing will happen. 10

Q. Supposing the earlier grantee who has not been doing anything on the land, but the subsequent grantee has started doing something on it what happens?

A. In that case the person doing something on it would have to stop his operations until the matter is gone into.

Q. Supposing the earlier grantee whether he has started doing something on it or not insists upon his grant what happens? 20

A. In that case the Manche can do nothing if the original grantee refuses to have another land in exchange then the subsequent grantee although he may start doing something on the land shall have to give it up, because it is bad for you to build on somebody's land. You stand to lose your house!

Re-examination.

Re-examined by Ollemu:

Q. What happens if the person to whom the Manche granted the land is not ready to build? 30

A. The land belongs to him, it cannot be taken from him against his will because any time he may be ready to build, he would build. How can a person build on a land which had been granted to some other person?

No. 17

E.W.A. Quainor.
23rd June 1955.
Examination.

No. 17

E.W.A. QUAINOR

EMMANUEL WINERED ADDO QUAINOR s.o.b. in Ga:

I am a merchant living X'borg. I know the defendant; he is my brother in law. I knew the land in dispute on which he has built. I supervised making blocks for him on the land in 1936. We made the blocks little by little. There was a cassada farm and mango trees on the land when we first went there. One Mr. Aryee claimed the cassada 40

farm and the mango trees. Wuta-Ofei went to see him; later Aryee told me something. Aryee is now dead. The mango trees are still on the land.

In the
Supreme Court

Defendants'
Evidence

No. 17

Cross-examined by Enchill:

Q. In 1936 there were no buildings in that area?

A. No, none at all.

E.W.A. Quainor.
23rd June, 1955.

Q. Where or what was the nearest building?

A. The Osu buildings and the Cantonments buildings were far far away from the plot at the time. It is only now, long after some talking about before buildings started to grow up there.

Examination
- continued.

Cross-
examination.

Q. You know that it was not until 1948 that the building on the land in dispute was put up?

A. I cannot tell the year in which the building was put up.

Q. Why can't you tell the year?

A. Because I had nothing to do with the building. I had only been asked to supervise the making of the blocks. I had nothing to do with the building itself. I was not called to supervise the building.

Q. Were you at Osu at the time? A. Yes.

Q. Because Wuta-Ofei did not call you when he started to build you cannot say when the building started? A. Yes.

Q. You said you supervised making block on the land in 1936?

A. Yes, it was in 1936 you started making some blocks there? - Yes.

Q. Were there any blocks on the land before you started supervising the making of blocks?

A. No; there were no blocks there whatsoever; we cleared the weeds and started making the blocks.

Q. What do you mean by making the blocks little by little?

A. Sometimes we had 18 bags or 20 bags cement and we made blocks from that. Then we stopped and waited after 2 or 3 months or so when we received some more consignment of cement we made the blocks.

In the
Supreme Court

Defendants'
Evidence

No. 17

E.W.A. Quainor.
23rd June, 1955.
Cross-
examination
- continued.

Q. Did the cement come from Leventis?

A. I do not know; what I know is we made all the blocks for the building.

Q. How have you fixed 1936?

A. Because my father died in 1933; I sat down doing nothing, that's how I remember.

Q. Would you revise your date if you were told that Wuta-Ofei himself gave 1935 as the year in which he started making blocks?

A. No; I am certain that it was in 1936 and not 1935.

10

Q. Up to what year did you cease supervising making the blocks?

A. I cannot remember but I supervised the job for about 4 years and had enough blocks for the building.

TO COURT:

We made about 4000 blocks on the land by the time I ceased supervising.

Re-examined: None.

20

No. 18

J.S. Akweter-Addoo.
23rd June, 1955.
Examination.

No. 18

J. S. AKWETER-ADDOO

JOEL SYLVANUS AKWETER-ADDOO s.o.b. in English:

Councillor Local Authority. I am a member of the Alata Dsase of Christiansborg. I knew the late Amen Bonne the predecessor of Nii Kwabena Bonne III, as head of the Alata Quarter. Nii Amen Bonne died in 1945; in the same year his successor Kwabena Bonne III was elected and duly installed head. I knew the defendant Wuta-Ofei. When Nii Amen Bonne was on the Stool, he made grants of lands to subjects of the Alata Quarter. During Amen Bonne's lifetime there had not been litigation between him and the Osu Manche in respect of grants of land to subjects made by him. He made a grant of land to Wuta-Ofei who has built on it. I was one of the people who went with the people and demarcated the land to Wuta-Ofei. This was in 1935 or so but I cannot be certain on the year.

30

Cross-examined by Enchill:

Q. How many times did you go to demarcate lands granted to Osu subjects by Nii Amen Bonne?

A. Several times -- I mean on about 6 or 7 occasions.

Q. Do you remember the people?

A. Yes, firstly C.M. Holm in about 1941 - same year, the second time, for P.S. Holm; thirdly Stephen Coleman also in 1941; fourthly one Odotei of the Electric Department also in 1941; fifthly one Tetteh Aku also in 1941; sixthly one Bonarparte, Posts and Telegraphs also in 1941 - only these I can remember.

BY COURT:

Q. You cannot remember any other case as between 1935 and 1941?

A. I can remember one to Richard Aryee 1936 or so I cannot remember any others. These are the only instances in which I can remember.

20 TO ENCHILL:

Q. Are any of these grants anywhere near the one you say you demarcated for Wuta-Ofei? A. No.

Q. Where are these grants you mentioned in 1941?

A. That is northwest side of Cantonments Road in the region of Kuky Hill - near Solomon Odamttten's house.

Q. Are you still an elder of the Alata Stool?

A. Yes! but at times I am not called.

30 Q. Did you witness the conveyance to Wuta-Ofei by Kwabena Bonne III?

A. No, I did not - I was out to business at the time.

Q. What time are you talking about?

A. The year 1947.

Q. Was it not 1949? A. No, in 1947.

Q. What size of land did you demarcate for Wuta-Ofei in 1935?

A. It is 20 years ago I cannot tell, unless I see the document.

40 Q. Which document?

A. I mean the conveyance made for him by Kwabena Bonne

In the
Supreme Court

Defendants'
Evidence

No. 18

J.S. Akweter-Addoo

23rd June, 1955.

Cross-
examination
- continued.

In the
Supreme Court

Defendants'
Evidence

No. 18

J.S.Akweter-Addoo

23rd June, 1935.

Cross-
examination
- continued.

Q. Do you say that if you had not been absent in business you have witnessed the execution of the document?

A. Yes, I knew that Wuta-Ofei had been given land and he would prepare a document.

Q. In all the 6 (six) cases you have mentioned were documents made?

A. Yes, in the cases of the two Holms and Stephen Coleman, the others I cannot remember whether there was a document or not.

10

TO COURT:

It was not the practice to make documents on the oral grants made by the head of the quarter.

TO BENCHILL:

Q. Were the documents to Holm and Stephen Coleman made in 1941?

A. I cannot remember, but I know that there were documents. In that year 1941 I was not amongst those who were selected to witness execution of documents on behalf of the Stool.

20

It was not until 1946 during the time of Kwabena Bonne III when I was made a Stool Secretary that my name was included amongst those selected to witness execution of documents on behalf of the Stool.

Q. Can you tell whether document was prepared in respect of Richard Aryee's grant in 1936?

A. I cannot remember.

Q. In the case of the three documents for the Holms and Stephen Coleman did Nii Amen Bonne execute the documents? A. Yes.

30

Q. When did you first become an elder of the Alata Stool? A. Since 1928.

Q. Are you one of the principal elders? A. No.

Q. About how many principal elders are there? A. About 20; I am not one of the principal elders.

Q. Do you say even up to today you are not one of the principal elders? A. No.

Q. Between 1935 and 1941 did you hear of any dispute or challenge about the land granted to Wuta-Ofei?

40

A. The first time I heard of any such dispute concerning this land was when this case was in the Iabadi Native Court - I mean the dispute between the plaintiff and Wuta-Ofei.

In the
Supreme Court

Defendants'
Evidence

No. 18

J.S.Akweter-Addoo
23rd June, 1935.

Cross-
examination
- continued.

Q. Did any of the elders complain about the grant made to Mr. Wuta-Ofei between 1935 and 1945?

10 A. Yes; when the land was demarcated for Wuta-Ofei I heard that some of the elders of the quarter felt reluctant in regard to the size. About some few months after we were called upon by Nii Amen Bonne to reduce the plots from six to four. This we did. This was in 1935. Now 1946 to 1947 when Nii Kwabena Bonne III came on the Stool and Wuta-Ofei was negotiating about a document he reduced the number to three - one to his wife and 2 to himself.

Q. What reason was given for reducing the number of plots.

20 A. Some of the elders were reluctant because of the number alleging that there were others in the town who might be coming for plots of land, and that six plots were too much for one person. This is what I heard.

Q. Do you know why Kwabena Bonne also reduced the number?

A. He also said four plots were too much for one person, because when he was Theodore Taylor and he asked for plot he was given only one plot. This was in 1947.

30 Q. Do you know that in January 1948, Nii Kwabena Bonne granted as many as 12 plots to Wuta-Ofei for £10/-/-?

A. I cannot very well remember.

COURT:

Let witness be shown Exhibit "J"

WITNESS: After seeing Exhibit "J", the document I now remember. I see my signature hereon as one of the elders and Councillors who signed as witness to the execution.

NO BENCHILL:

30 Q. Did you understand the grant as an outright grant of the 12 plots to Wuta-Ofei? A. Yes.

Q. I put it to you that you are not a credible witness and no grant was ever made to Wuta-Ofei during the time of Amen Bonne?

A. What I have said is true.

In the
Supreme Court

Defendants,
Evidence

No. 18

J.S.Akweter-Addoo

23rd June, 1935.

Cross-
examination
- continued.

Q. You have represented Kwabena Bonne III in several cases against grantees of land by the Osu Stool?

A. No; it was only in the instant case that I represented Kwabena Bonne III at the Labadi Native Court.

Q. What was the point which Kwabena Bonne III the co-defendant wished you to make in the dispute?

A. The point was that according to custom the grant made to the defendant Wuta-Ofei by the Alata Stool should prevail against the grant to the plaintiff by the Osu Manche because the Osu Manche cannot grant land unless through the Alata Stool because the land is attached to Alata Stool. Alata head is the caretaker of the land in that quarter for the Osu Stool. The custom is a grant made by the Osu Stool without the knowledge of the head of the quarter is invalid.

10

I say there is no land as Osu Stool land which the Osu Manche can validly grant to any subject without passing through the head of a quarter. All the Osu lands are for the Osu Stool, but are attached to one quarter or the other. The land in dispute is attached to the Alata quarter Stool, but I agree it is Osu Stool land.

20

Q. Is it the custom that where both the Osu Stool and a head of a quarter have granted the same piece of land to two different subjects that in a case of dispute the situation is reported, and the head of the quarter and the Osu Manche meet together to settle?

30

A. The two grantees rather meet together to discuss the matter between themselves; if possible to approach one of the heads for settlement; if not possible then he who has built on the land retains the land. The other party would be replaced.

Re-examination.

Re-examined:

I do not know what happened to the 12 plots which were granted to Wuta-Ofei in January 1948.

Case for Defence.

40

No. 19

ADDRESSES BY COUNSEL.

OLLENNU addresses:

Refers to the claim and Statement of Claim.

Question as to Title:

Submitted the Indenture of 1945 is of no effect because at the date when it was executed, the Osu Stool had no title to convey, the title then being vested in the government by Ordinance No.44/1940 - material date of vesting 24th September, 1939.

Since government became absolute owner from that date Osu Stool will have no title to convey to anybody in 1945 unless the government shall have before that date divested itself of the interest - section 2(3) of the Ordinance. Plaintiff has not been able to prove that any such Order has been made by government under section 2. Reference has been made to Exhibit "4" letter dated 13th January 1949 - referring to Exhibit "8A", Under Exhibit "8A" there is only an undertaking. Nothing to show that when cause of action arose, government has divested itself of its interest. Further defence is that the land in dispute is portion of Osu Stool land, and that it was granted on behalf of the quarter to an Osu subject. According to custom it is the head of the quarter to make a grant.

W.A.C.A. judgment refers to outskirts land. Submitted that all lands of Osu are Osu Stool lands but portions of it are directly under heads of quarters and they are the proper persons to give it cut to subjects of the Osu Stool; if they are selling it out to strangers then the Manche of Osu Stool would join. Refers to Exhibits "9" and "10" - Certificate of Title in the Land Acquired and the judgment. Position of the land acquisition is north west of the land in dispute. Refers to judgment in the Acquisition case, citing evidence of Ag. Osu Manche page 4. Submitted that grant to Wuta-Ofei is a proper grant.

We say even if government had divested itself and the land reverts to its original position is since head of the quarter is entitled to make grants of Osu lands to Osu subject in 1935 the grant is valid.

In the
Supreme Court

No. 19

Addresses by
Counsel.

23rd June, 1955.

For Defendant.

In the
Supreme Court

No. 19

Addresses by
Counsel.

23rd June, 1955.

For Defendant
- continued.

Further submits - it is admitted the Osu Manche can sometimes make direct grant; even if it were held that grant to the plaintiff by the Osu Manche is valid, we say defendant had a prior grant made to him 1935.

Since the Stool and its agent have made conflicting grants the only reasonable thing to do is for the Stool to make another grant to the plaintiff, and if the Stool so feels to direct defendant to make amends to plaintiff in respect of her loss. This is not a case of sale but customary grant of land to subjects.

10

We ask the Court to hold that the grant to the defendant is good. How the plots came to be reduced: If the grant is valid there is no necessity to argue reason for the reduction.

Adjourned until tomorrow 24/6/55 to hear Mr. Enchill's address.

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

20

24th June, 1955.

For Plaintiff.

24th June, 1955.

ENCHILL addresses;

Refers to Exhibit "A" - plaintiff's document executed December, 1945 and registered on 5/6/46 -- deed confirming grant made in March 1939 - This is a date prior to Exhibit "7B" dated 24/9/39. Cap.87 came into force on the 26th October, 1940. Refers to section 2.

Although an order published in the Gazette has not been made in accordance with such section (2) of sec.2 Government has entered into a binding covenant to make such an order releasing expressly land including the one in dispute. That binding covenant is in deed of Release and Covenant dated 6th February, 1948 Exhibit "8A". Refers to clause (4) in the recital.

30

Clause 2 the Governor will direct the release - this is sufficient. Submitted that the provisions of section 2(2) Cap. 87 have the effect of giving to all those persons who owned property prior to its acquisition by government in 1940 the legal ownership to the reversion expectant upon the determination by government of its legal title of ownership that is whenever the government decided to release the land the status quo ante is

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immediately restored. The plaintiff in this case was an owner prior to the acquisition and the government has decided and bound itself of the right to divest itself, and having so done has accorded to the Osu Stool the right to compel the Government to transfer the legal title. This position is clear - see Exhibit "4". Intention of Government made clear.

In the
Supreme Court

No. 19

Addresses by
Counsel.

24th June, 1955.

For Plaintiff
- continued.

10 "Equity looks on that as done which ought to be done" - Refers to Snell on Equity Walsh vs: Lonsdale.

Refers to Cap. 133 - Lands Registry Ordinance section 21(1). Plaintiff's title has precedence over defendant's if all other facts are equal.

Submitted:-

(1) Ownership is proved prior to acquisition by Government; there is provision saying that on release position as before is restored.

20 (2) Urged that as soon as government binds itself to release the beneficial enjoyment of that property expectancy is restored.

On the law on negotiation - assumption that both grants are both valid plaintiff's grant has priority, native custom notwithstanding.

Plaintiff's action started April 1948 - and Exhibit "8A" (Covenant of Release) is dated 6th February 1948; therefore the equitable right to enjoy the property had accrued to plaintiff when she instituted her action:

30 Submitted that decision in the Acquisition matter affecting Ashanti Blohum Stool land does not affect W.A.C.A. judgment in respect of Alata Stool outskirts land.

40 Submitted that on the question of the custom of exchange of land pleaded one of the defendant's witnesses conceded that an exchange can only be made if the grantee of the Stool agrees. In general the evidence given on custom is unsatisfactory and is repugnant to natural justice equity and good conscience section 87 Cap.4.

The evidence of a grant to Amen Bonne is not to be believed. Significant defendant has admitted

In the
Supreme Court

No. 19

Addresses by
Counsel.

24th June, 1955.

For Plaintiff
- continued.

all other grants made to him by the Alata or Osu Stools he had stamped and registered them. Conveyances he relies on in this case not registered. There is no recital of any prior grant to him by Amen Bonne. Also when Mr. Quist-Therson wrote warning defendant and expressly alleging root of plaintiff's title, defendant's reply alleging his root of title did not mention anything about Amen Bonne.

Story of reducing number of plots cannot be believed in view of as many of 12 plots had been given to defendant - Exhibit "J".

10

When application for interim injunction to restrain defendant from building on the land - defendant persisted on building and said he was improving the land. Built on land in dispute in defiance.

Plaintiff is entitled to a declaration as against both defendants (1) That she is entitled to the legal ownership of the reversion expectant upon the termination by the Gold Coast Government of its legal title of ownership to the land and hereditaments the subject matter of the suit pursuant to the covenants entered into by the said Government in the Deed of Release and Covenant dated 6th February 1948 - Exhibit "3A"; and (2) by virtue of the provisions of section 2(2) Cap.87.

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That plaintiff is currently the equitable owner entitled to the beneficial enjoyment of the said land and hereditaments the subject matter of the dispute by virtue of the said deed of Release.

30

It is urged that she is entitled to an Order for Recovery of possession and Injunction restraining the defendant as claimed. I would also urge that the defendant is his unlawful occupation of this property, notwithstanding that he has not committed acts of developmental waste, that the plaintiff is entitled to be paid the profits which has accrued from the land. Defendant has built on the land and the building is fetching good and substantial rents.

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Judgment reserved.

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

No. 20

J U D G M E N T

2nd September, 1955.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN
 JUDICIAL DIVISION (LANDS DIVISION) held at
 VICTORIABORG, ACCRA, on FRIDAY the 2nd day of
 SEPTEMBER, 1955, BEFORE VAN LARE, J.

In the
Supreme Court

No. 20

Judgment.

2nd September,
1955.

Transferred Suit
 No. L.42/1952.

10 MABEL DANQUAH, ... Plaintiff
 v.
 R.B. WUTA-OPEI ... Defendant
 NII KWABENA BONNE NII
 Osu Alata Mantse, Co-Defendant

JUDGMENT:

20 This case was transferred from the Ga Native
 Court "B", Accra, by an Order of Korsah, J., as a
 Land Judge and dated 31st December, 1952, to this
 Court for hearing and determination. Upon the
 30 matter coming before me for trial on the 16th July,
 1954, I ordered pleadings which had been duly filed.
 The dispute concerns a piece or parcel of Osu land,
 situate and lying along the Cantonments Road,
 Accra, and is particularly described in paragraph 5
 of the Statement of Claim. The identity of the
 land is not in dispute. It is the one more or less
 on which the 1st Defendant has built a house and at
 present in his occupation and possession. The case
 originated before the Native Court by summons dated
 30 10th April, 1948 at a time 1st Defendant started
 his building operation on the land, and has contin-
 ued the operations to a completion during the pen-
 dency of the suit in spite of repeated warnings.
 The structure is income yielding; the main build-
 ing has been fetching some good rent; there is a
 petrol selling station on the premises, and the
 1st defendant occupies the outhouse.

40 The Plaintiff's case is that in the year 1939
 she obtained a customary grant of the land in dis-
 pute from the Osu Stool, and the gift was later

In the
Supreme Court

No. 20

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2nd September,
1955.

- continued.

confirmed and evidenced in writing by an Indenture dated 31st December, 1945 and registered at the Accra Deeds Registry as No.381/1946. Early in the year 1948 the 1st defendant, claiming to have obtained a grant of the same land from the 2nd defendant, trespassed upon her said land, and began building operations thereon. The 2nd defendant is Osu Alata Mantse and head of the Alata Quarter of Osu. He applied and was joined as a co-defendant when the matter was pending before the Native Court. The Plaintiff in her Statement of Claim claims as follows: 10

(a) As against both defendants, a declaration of title of ownership to the said land and hereditaments;

(b) As against the 1st defendant only:-

(i) Recovery of possession; (ii) Mesne profits from the date of the writ in the Ga Native Court till possession is delivered to her; (iii) Perpetual injunction restraining the 1st defendant, his agents, tenants, servants or licensees from further trespass upon her said land. 20

The defence is that the alleged grant by the Osu Stool conferred no title in the land upon the plaintiff because 5 years before the grant to the plaintiff, that is to say, in or about the year 1935, the Osu Stool, acting by the head of the Alata Quarter, had granted the same land to the 1st defendant who alleges to have been in possession for about 10 years before he commenced to build thereon. It is further pleaded that the 2nd defendant as Mantse of Osu Alata Quarter is one of the principal elders of the Osu Stool and the proper person according to custom to allot portions of Osu Stool land to members of his quarter to which 1st defendant belongs. It is also the case of the defence that 1st defendant as a subject of the Osu Stool is entitled to occupy and build on any portion of the Stool lands of Osu, and that where such land occupied and built upon by him appears to have been also granted by the said Stool to another subject, he, notwithstanding the earlier grant, cannot in accordance with native customary law be ejected from and deprived of the said land in favour of the earlier grantee; it is suggested that in such circumstances the Stool would have to replace that another grantee with another piece of land. 30 40

During the trial and in the course of hearing the case for the defence, I granted an application on behalf of the defendants to add to their Statement of Defence the following:

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Supreme Court

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1955.

- continued.

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Paragraph 6. "By Ordinance No.44 of 1940 entitled Accra Town (Land) Ordinance now Cap.87 Government acquired an area of land including the land in dispute and shown in plan No.X1621 from Nii Noi Owoo II, Mantse of Osu; James Coleman, Acting Mankralo of Osu and other elders of Ashanti Blohum, Nii Adja Beblenseh and Nii Amen Bonne and others representing the Stool of Alata; Government undertook by Indentures of 6th February, 1948 to divest itself of that land at a later date. Even up to the present date Government has not divested its interest of the land. Therefore at the date of the action Plaintiff had no title to the land".

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Dealing with the facts of the case I accept the evidence of the plaintiff and of Mr. Adolphus Lokko and I am satisfied with the evidence supplied by the Deed of Conveyance Exhibit "A" and copy of the layout of the area, Exhibit "F", that in March, 1939 the Osu Stool made an oral grant of the land in dispute to the plaintiff and duly confirmed it by instrument. On the authorities I hold that it is the oral grant which is decisive and the written instrument is merely a confirmation. By reason of the said grant with effect from March, 1939 the plaintiff became owner and entitled to possession of the disputed land. I accept the evidence that at the time of the grant to the plaintiff the area including the land in dispute was unoccupied and unalienated Osu Stool land. I also find that the area is nowhere near the Alata Quarter, and not contiguous to it. It lies at a considerable distance away to the north of the Alata Quarter. I am not prepared to hold that the area is land which could be described as an Outskirt land of the Alata Quarter, and I have no evidence that the said area was at any time allotted to any quarter or recognised as belonging to the Alata or any other quarter

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1955.

- continued.

of Osu, Christiansborg. It is my view therefore that the area including the land in dispute was the property of the Osu Stool and not property of the Osu Alata Stool. In the result the recital alleging the Alata Stool as being seized in fee simple or its equivalent of the land as appearing in Exhibit "1", 1st defendant's instrument, is false and misleading being without any root of title.

In the matter of a certain piece of land much nearer the Alata Quarter than the one in the instant case, i.e. In re Land Acquisition, No.6/1950, the judgment of the West African Court of Appeal delivered on the 2nd April, 1954 (Exhibit "E") rejected an alleged customary right of alienation by the Alata quarter to extend beyond 100 feet immediately surrounding the buildings in the Alata Quarter. The judgment, confirming the findings of the trial Judge has held:-

"(i) That until land is allotted to a quarter by the Osu Stool it remains the property of the Osu Stool;

(ii) That members of a quarter may however extend their quarter by building on the land adjacent to or attached to a quarter up to a distance of about 80-100 feet of existing buildings. Such land the learned trial Judge described as outskirt land".

On the authority of this judgment as the land in dispute on the case before me is not contiguous to the Alata Quarter, but rather at a considerable distance north of it, it cannot possibly be described as Alata Quarter outskirt land; it was and still remains Osu Stool land which neither 2nd defendant nor any predecessor of his, could validly alienate to the 1st defendant over the head of the Osu Mantse. I go further in saying that the evidence does not satisfy me that the Alata Stool made a customary grant of the disputed land to the 1st defendant in the year 1935 as alleged. The witness Joel Akweter-Addoo called in support of this alleged grant is unimpressive and I reject his evidence. This witness appears also to be labouring under the erroneous impression that the land was and/or is attached to the Alata Quarter and also that the Osu Mantse cannot validly grant land in the area in question to a subject of the Osu Stool without acting through the head of that

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quarter. The witness Emmanuel Quainor who says he supervised the making of blocks on the land in dispute in the year 1936 at the instance of the 1st defendant has not impressed me as one on whom reliance can be placed and I also reject his evidence. I am unable to find any satisfactory evidence that 1st defendant obtained a grant or had been in an effective possession of the land in dispute before his alleged grant from the 2nd defendant in 1946 or 1947 as per Exhibit "1". I also refer to an admission of the 1st defendant contained in his letter, Exhibit "C", dated 23rd March, 1948, as follows:-

"The plot which I now occupy was given to me by Nii Kwabena Bonne III, Osu Alata Mantse".

The story of a grant by Amen Bonne, the predecessor of Kwabena Bonne III, must be rejected as a fabrication Exhibit "I" does not purport to be a confirmation of a previous grant. I declare therefore that the alleged grant by the Osu Alata Stool to the 1st defendant is of no effect, and the instrument Exhibit "1" is null and void on the grounds:-

- (i) That as portion of the Osu Stool land, the area in dispute had been previously and lawfully alienated by the Osu Stool to the plaintiff;
- (ii) That as the land did not fall within the Alata quarter, nor was it an outskirts Alata quarter land, the head of that quarter had no title which it could lawfully grant to the 1st defendant at any time.

I now turn to deal with a rather peculiar Osu custom propounded by way of an answer against the plaintiff's right of recovery of possession. The proposition in effect is that if an Osu subject occupies and builds upon a portion of Osu Stool land and it turns out that the land in question had been previously granted by the Stool to another subject, the subject who has occupied and has built upon the land cannot be ejected or deprived of the hereditaments in favour of the other subject, his earlier grant notwithstanding. The suggestion is that in such circumstances, the Stool would have to replace the earlier grantee with another piece of land. Whether or not the Stool can be compelled so to do is not clear.

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Supreme Court

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- continued.

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1955

- continued.

As in this case both plaintiff and 1st defendant are Osu subjects, I am, as it were, being asked to reject the plaintiff's claim as to her ownership and right of recovery of possession of her land and to find in favour of the 1st defendant because he has now built on the land to which he has had no title; and presumably also because plaintiff did not have the wherewithal to build on her said land at the time the 1st defendant started his building operations. To hold so, in my view, would be disastrous and nothing less than a denial of justice.

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Even if I were to assume that both plaintiff and 1st defendant obtained their respective grants from the Osu Stool, which of course is not the case, to concede to what I am asked to hold would amount in defeat of the legal consequences of Registration of Land in this country. Section 21(1) Cap.133 regulates the priority of instruments and enacts that every instrument shall, so far as regards any land affected thereby take effect as against other instruments affecting the same land from the date of its registration. Now, the plaintiff's instrument Exhibit "A" has been registered as No.381/1946 on the 5th June, 1946; but the 1st defendant's instrument Exhibit "1" has not been registered.

20

In my opinion the custom as pleaded may be reasonable for application in a primitive society with notions of communal or public rights in land but in our present progressive society in which individual ownership of land is fastly gaining ground as opposed to the previous notions of communal or public right. I share the view that "the introduction of European and particularly of English notions of rights in land and of dealings in land has influenced customary concepts. The steady impact of modern economics, coupled with progressing urban development, both residential and commercial, have increased values of land and this, in turn becomes a major factor in the process of evolution of rights, and as a result in progressive individualisation" - (per pogucki in Report on Land Tenure in Customary Law of the Non-Akan Areas of the Gold Coast Colony, Part II, Ga p.37/8). It would be necessary therefore in applying such custom as put forward, even if it were established, to proceed with grave caution because it may well favour the strong or

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wealthy man to the detriment of the weak and the poor. But be what it may, unfortunately for the 1st defendant in this case the witnesses called in support of this extraordinary and peculiar proposition do not appear to subscribe to it in its naked form, and I have formed the opinion that such a custom is not clearly well established.

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Supreme Court

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- continued.

10 I find on the evidence before me that in case of two adverse Osu-subject-grantees in respect of the same piece of Osu Stool land the person building on the disputed land refers the dispute to the head of his quarter who in turn refers to the Osu Manche with a view to a compromise or arbitration. It would appear that whenever possible the matter is settled in favour of the person building on the land, and the Osu Mantse could make a grant of another land to the other party; but it is a necessary prerequisite that reference be made to the Osu Mantse, the paramount overlord. I also find that
20 unless the earlier grantee is willing to give up his particular grant, the subsequent grantee, no matter what structure he might have on the land, cannot as of right claim the land as against the earlier grantee who could quite properly refuse to accept another grant in replacement of his land. It is my view that customary law respects priority of interest in land. I accept the opinion of the expert witness, Shippi Laryea Ashong, called by the defence, as follows :-

30 "If the original grantee refuses to have another land in exchange, then the subsequent grantee, although he may start doing something on the land, shall have to give it up, because it is bad for you to build on somebody's land. You stand to lose your house!"

This is clear evidence of native customary law conforming to the *lega maxim*: "Quicquid plantatur solo: solo cedit".

40 Under re-examination of this witness by Counsel, the following appears:-

Q. "What happens if the person to whom the Manche granted the land is not ready to build?"

A. "The land belongs to him; it cannot be taken from him against his will, because any time he may be ready to build, he would build. How can a person build on a land which had been granted to some other person?"

In the
Supreme Court

No. 20

Judgment.

2nd September,
1955

- continued.

In this connection I quote with approval, Pogucki (supra at page 59) as follows:-

"A gift is of an absolute nature, and no residuary right remains with the donor except a right of revocation because of gross disrespect or ungratefulness by the donee".

I also accept the evidence of another expert defence witness, Cornelius Adumua Dowuona, to the effect that it is not necessary for the adverse claimants to meet by all means either one may institute an action for declaration of title before the Court, without waiting for an arbitration, for a decision as to which of the two rival claimants is the true owner of the land. 10

In this case no reference appears to have been made to the Osu Manche and no settlement arrived at. The 1st defendant does not suggest that the Osu Manche has reconciled in his favour or that plaintiff has been offered another land. Considering all the surrounding circumstances I do not believe the plaintiff would have been prepared to waive her rights even if the dispute had been referred to the Osu Manche for reconciliation. I also cannot imagine the parties agreeing to a compromise or arbitration because they appeared in the first instance to have obtained from two contesting Stools. The Alata Manche had been disputing the right of alienation by the Osu Mantse in respect of lands in the area concerned; and the 1st defendant has been definitely unwilling to concede to plaintiff having any interest in the disputed land. By his letter Exhibit "D", dated 6th April, 1948, 1st defendant literally threatened the plaintiff as follows:- 20 30

"Dear Madam,

"Further to your letter to me through your Solicitor, it appears that you are continuing to interfere in the rights of the land on which I am building. 40

"Now, I want to make this quite clear to you. Don't misunderstand me. Should this matter go to the Court and I defend my title successfully, I shall have to go further and claim substantial damages from you. I repeat this, and it must be quite clear to you before you make any move, so that you should act with very clear vision".

"Yours faithfully,
(Sgd.) R. Ben Wuta-Ofei".

It has now turned out that 1st defendant has no title to defend against the plaintiff's claim.

In Exhibit "E", an affidavit dated 11th January, 1949, deposed to by the 1st defendant in opposition to application to stop him from building on the land during the pendency of the suit before the Court, he says, in paragraph 5, as follows :-

10 "That by the erection of a building on an empty land the value of the land is rather increased and does not constitute a trespass for the demand of an interim injunction".

There can be no better evidence that 1st Defendant was fully aware of the grave risk he was taking, and I am satisfied that he proceeded to build on the disputed land in an open defiance and contemptuous disregard of all warnings to him.

20 It now remains to deal with the rather belated defence pushed in at the eleventh hour. This I find to be nothing more than a mere technicality not affecting the honesty of the issue between the parties. It appears that by Ordinance Cap.87 of the Laws of the Gold Coast, certain lands including the disputed land became vested in the Crown as from the 26th October, 1940, and acquired for rehousing and other purposes connected therewith. It is provided by Section 2(2) of the Ordinance that when in the opinion of the Governor there is no longer any need for any particular part of such

30 lands to remain so vested the Governor may, I repeat may, by Order published in the Gazette direct that any particular part of such lands shall cease to be so vested etc., etc., and such particular part shall be held and enjoyed as though the same had never been assured or vested in trust to the Crown. It would appear that round about the year 1948 the Crown expressed its opinion of no longer having need for certain parts including the disputed land of the acquired area; and government

40 undertook to divest itself formally of the said unwanted parts. In the meantime, portions of the land to be divested including the land in dispute, have been released to the appropriate Stools by a Deed of Release and Covenant dated 6th February, 1948, Exhibit "8A", but a formal Divestment Order has been delayed, Exhibit "4", and appears to have remained delayed up to the present. It is not

In the
Supreme Court

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1955

- continued.

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- continued.

suggested that government still has any interest in the area released under Exhibit "8A", but it has been argued that in the absence of a formal Divestment Order, title in the released area including the land in dispute still remains in the Crown, and that plaintiff had no title in respect of which she could properly bring this action. It is my view that by the time 1st defendant started his building operations on the disputed land, and that is to say, and at the commencement of this action the Crown had covenanted to divest itself of its interest in the said land and by that undertaking sufficient declaration against interest had been made. I find that the Crown had legally undertaken to do a certain thing, that was to publish a formal divestment Order, and applying the rules of equity I look on as done what ought to be done. In deciding the honesty of the case I am to look at the intent rather than to form. If I were to hold otherwise I should be violating the rule contained in the maxim: "Equity will not suffer a wrong to be without a remedy".

Further I uphold Mr. Enchill's submissions which I consider a complete answer to this defence, and I therefore alternatively hold that at the commencement of the action the plaintiff was entitled to the legal ownership, as against the defendants, of the reversion expectant upon the termination by the Crown of its legal ownership to the land and hereditaments, subject matter of the suit, pursuant to the covenants entered into by the government Exhibit "8A", and also by virtue of the provisions of section 2(2) Cap.87 the plaintiff is currently the equitable owner entitled to the beneficial enjoyment of the disputed land and hereditaments, and therefore competent to bring this action.

In the result I find for the plaintiff. There will be judgment for a declaration of plaintiff's title to the land and hereditaments and for Recovery of Possession and Injunction as prayed, save that following the practice in Kwasi Agyako vs: Nazir Zok & Ors. 10 W.A.C.A. at page 282, the 1st defendant shall have the right at any time within three months from the date of this judgment to enter upon the said land by himself and/or servants and/or his agents and to remove therefrom whatever he may have put upon the said land provided that in so doing he does no greater damage to the said land than is reasonably necessary for the said purpose.

In the
West African
Court of Appeal

No. 21

Notice and
Grounds of
Appeal.

15th November,
1955.

- continued.

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.

2. The whole of the decision of the Lower Court.

3. Grounds of Appeal.

1. The Judgment is against the weight of evidence.

2. The Learned Judge misdirected himself on the onus of proof, and of the party upon whom it lay in this case.

3. The Learned Judge misdirected himself in holding that the plaintiff had title to the land at the date of issue of the writ.

4. The Learned Judge misdirected himself in holding that the equitable doctrine of "Equity regards that as done which ought to have been done" is applicable in this case.

5. The Learned Judge failed to direct himself properly on the Native custom and Native tenure of land.

6. The Learned Judge failed to direct himself properly on the Judgment of the Land Court in case of Land North of Ring Road, and East of Dodowa Road, acquired for the use of the Government of the Gold Coast.

7. Even if the Land Judge was right in his findings of fact and his directions on the law and Native custom having regard to the type and value of the defendant's buildings on the land the period of three (3) months which he gave to the Defendant to remove his property from the land is too short.

4. To reverse the decision of the Lower Court, and to give Judgment in favour of the defendants.

5. Mabel Danquah Accra.

DATED at LA CHAMBERS, ACCRA, this 15th day of November, 1955.

(Sgd.) N.A. Ollenu
SOLICITOR FOR DEFENDANT-APPELLANT.

The Registrar,
West African Court of Appeal
ACCRA.

And
TO the above-named Plaintiff-Respondent
Mabel Danquah
ACCRA.

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SUPPLEMENTARY GROUNDS OF APPEAL

IN THE WEST AFRICAN COURT OF APPEAL

GOLD COAST SESSION

ACCRA

Appeal No.28/56

R.B. WUTA-OFEI

Defendant-Appellant

versus:

MABEL DANQUAH

Plaintiff-Respondent

In the
West African
Court of Appeal

No. 22

Supplementary
Grounds of
Appeal.

17th October,
1956.

10

SUPPLEMENTARY GROUNDS OF APPEAL

PLEASE TAKE NOTICE that at the hearing of the above Appeal, the Appellant will ask leave of the Court to amend his grounds of Appeal by the addition of the following grounds:-

1. THE Learned Judge should not have given judgment for the Plaintiff on her claim in view of the Courts own finding that she was only entitled to the reversion expectant upon termination by the Crown of its legal ownership to the land.
2. IN view of the provisions of Ordinance No.44 of 1940, the Plaintiff had no title, right or interest in the land the subject-matter of the Suit at the date of the institution of the Suit to support a claim for ownership or for trespass, as she was in law neither the owner of or in possession of the said land.
3. THE Learned Judge was wrong in holding as follows:- "the identity of the land is not in dispute. It is the one more or less on which the 1st Defendant has built a house and at present in his occupation and possession"; in as much as the land in the occupation and possession of the Defendant-Appellant is larger than the area of land claimed by the Plaintiff-Respondent as is evident from the respective plans and description. The Learned Judge has therefore erroneously awarded to the

20

30

In the
West African
Court of Appeal

No. 22

Supplementary
Grounds of
Appeal.

17th October,
1956.

- continued.

Plaintiff-Respondent an area of land to which she does not lay claim and on which there exists a portion of Defendant-Appellant's building.

DATED at ADONTEM CHAMBERS, ACCRA, this 17th day of October, 1956.

(Sgd.) E.O. Asafu-Adjaye
P.P. E.O. ASAFU-ADJAYE & CO.
(SOLICITORS FOR APPELLANT)

The Registrar,
West African Court of Appeal,
ACCRA.
And to the above-named Respondent.

10

No. 23

Arguments of
Counsel.

13th November,
1956.

No. 23

ARGUMENTS OF COUNSEL

13th November, 1956.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST
SESSION: CORAM COUSSEY, P., KORSAH, C.J., and
VERITY, Ag. J.A. 28/56.

R.B. WUTA-OFEI

v.

MABEL DANQUAH

20

MR. E.O. ASAFU-ADJAYE for defendant-appellant.

MR. ENCHILL for respondent.

For Defendant
(Appellant)

MR ASAFU-ADJAYE -

Asks leave to argue Supplementary Grounds filed. No objection by respondent.

Leave granted.

Mr. Enchill draws attention of Court to Divestment Order L.N.110 published in Government Gazette Supplement of 5th May 1956.

30

MR. ASAFU-ADJAYE -

Claim by plaintiff in 1948 for declaration of title as owner when at date of writ, title to land.

was vested in Government. 1st defendant was in possession as against all the world except Government, title was in 1st defendant.

In the
West African
Court of Appeal

Grounds 2, 3 and Supplementary Grounds 1 and 2.

No. 23

At time of action legal title to land was vested in the Chief Secretary. 1st defendant was in occupation since nearly 20 years; had expended money in erecting buildings valued at £10,000.

Arguments of
Counsel.

13th November,
1956.

10 Accra Town Lands Ordinance Cap.87 Vol. 2 p.779. On passing of the Ordinance Crown only was entitled to legal possession and could maintain action against 1st defendant. Possession availed defendant-appellant. Only a legal ownership could avail against defendant-appellant.

For Defendant
(Appellant)
- continued.

Assher v. Whitlock 1896 L.R. 1 Q.B.D.

Judgment of Cockburn C.J.

Statement of Claim does not aver that plaintiff was ever in possession. In evidence said she placed 4 pillars on land.

20 Defence avers possession in defendant for about 10 years. Court held that as the Government had agreed to divest itself of title, plaintiff was entitled. The Court could not in the face of the Ordinance referred to make a declaration of title in future. But here the Court also decreed possession.

In view of sec. 5 of the Ordinance, no declaration in future could be made.

30 The same Ordinance Cap 87 was construed by the same Judge in Okantey v. Kwaddey, 29th June 1956. Held that at date of Writ plaintiff had no cause of action.

Judge held that plaintiff acquired land from Osu Stool in 1939 but submit she could not succeed as she was not in actual possession of land.

1. Plaintiff had no title at issue of Writ.
2. Plaintiff was not in possession of land.

40 When plaintiff's title ceased in 1940 - her right to possession ceased with the 1940 Ordinance see Cap.87 sec.5. She had no legal possession thereafter. No proof that plaintiff was in possession.

The Divesting Order is not before the Court for consideration.

In the
West African
Court of Appeal

No. 23

Arguments of
Counsel.

13th November,
1956.

For Defendant
(Appellant)
- continued.

As to possession plaintiff could not maintain
trespass until a new entry after the 1940 Ordin-
ance.

Brown v. Notley 154 E.R. 823.

Court invites Mr. Asafu-Adjaye to address us on
sec 2(2) of Cap. 87.

Sec 2(2) cannot be construed alone but with secs
5 to 9 of Cap 87 - Sec 2(2) does not take away any
rights existing at date of the Order. If a title
did not exist at that date, if a title had been
destroyed by non-claim under sec 5 of Cap 87, then
it is not revived on Revesting Order.

10

If a claim had been made under sec. 5 and
paid for, upon a revesting order, that claimant
would not have a further interest in the land.

Sec 5(4) provides that if no claim is made within
time specified, the right is deemed to have deter-
mined.

The plaintiff did not make a claim. Her rights
are extinguished. The divesting order is a partial
repeal of the Ordinance therefore only claims can
be revived of which notice has been given under the
Ordinance.

20

Adjourned 14th November 1956.

14th November,
1956.

14th November, 1956

MR. ASAFU-ADJAYE -

Ground 4 -

Plaintiff claimed that at date of issue of
writ she was entitled to a declaration as owner.
She did not establish title at that date so her
claim should have been dismissed. Cannot claim
title at a future unknown date. Court found that
she was entitled to a declaration in futuro. Be-
fore such a declaration can be made the right must
be ascertained and the effect of such a declara-
tion known.

30

Court also decreed recovery of possession. This
was wrong. Court invoked a maxim of equity which
is not applicable for two reasons.

- (1) Exhibit 8(a) the Deed of Release is be-
tween Government and the Osu Stool.
- (2) Plaintiff could not enforce the contract
in Exhibit 8(c)

40

13 Halsbury 89 page 82.

Only those who had an interest can enforce the equity. (1886) 31 Ch. D. p.596 at p.605.

In re Austin, Chetwynd v. Morgan.

There is no time limit in Exhibit 8(a) as to when the Order of Divestment would be made. It is in discretion of Government. As no order had been made by Government prior to Judgment in this case, the maxim could not be employed to give plaintiff judgment.

10 Further the maxim only applies where the Court can enforce the order. Court could not compel Government to publish the order. Plaintiff did not claim cesteri qui trust of the Government. The land was not acquired for her benefit in particular.

Emegware v. Nwaimo & Ors. 14 W.A.C.A. 348

20 Declaration only made where title established. We complain because it is a declaration in futuro with a present right to possession. That is wrong. We would not have complained so much if it had only been a declaration in futuro.

De Bears v. British S. Africa Co. 1912 A.C. 52 at 65, 66.

Court having found that plaintiff was not entitled at date of writ to recover possession should not have decreed possession. Should have dismissed suit and not made a declaration in futuro.

Refers again to Okantey v. Kwaddey.

30 The divesting order should be disregarded as far as present case is concerned. It was not in existence at date of judgment. Court of Appeal cannot take cognisance of the Divesting Order. It is new matter as to which there may be other defences - The defendant-appellant would say plaintiff did not make a claim when land was vested in Government. Here involves interpretation of the Accra Town Lands Ordinance Cap 87 sec 5(1) & sec 5(4). If claim made within 3 months as provided by sec 4, the right or interest shall be deemed to have determined.

40 Banco de Bilbao v. Sancha. 1938, 2 K.B.D. 193-194.

Occurrences after action and judgment should not be considered.

Does the Divesting Order relate back and

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No. 23

Arguments of
Counsel.

14th November,
1956.

For Defendant
(Appellant)
- continued.

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West African
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No. 23

Arguments of
Counsel.

14th November,
1956.

For Defendant
(Appellant)
- continued.

revive the plaintiff's title. An unsuccessful plaintiff cannot be helped. In this case the action had concluded before the relation back. That would be matter for a new action - pleadings, issue, evidence &c.

Ingall v. Moran 1944, 1 K.B.D. 160 at p.167, 169-170

Defendant claimed an original grant by Native Custom. Registration of plaintiff's deed was therefore not to be considered.

10

Moubarak v. Japour 10 W.A.C.A. 102.

Trial Judge was influenced by plaintiff's registration of her Deed.

Supplementary Ground 3 -

Plaintiff has been awarded land more than she claimed namely 35 x 105 more than she claimed.

Defendant has built on two plots of land. But has been put into possession of more land than the writ claims.

(This appears to be outside the record. We point this out and Mr. Asafu-Adjaye does not pursue the ground further.)

20

Ground 1 -

If judgment based on customary grant to plaintiff, it is against weight of evidence for the customary grant was not proved. No sufficient evidence of the grant. Such grants are publicly made. No proof. It was a fiction to bolster up Exhibit "A" made in 1945 when Osu Stool had been divested of land to the Government, and to avoid Cap 87. The plaintiff never went into possession under a 1939 grant.

30

Ground 6 -

Court below found that this was not outskirts land. But a judgment was referred to which had held that land at a greater distance away was outskirts land.

Ground 7 -

Court below should have given at least 6

months for defendant-appellant to remove his building. 3 months is too short.

Agyarko v. Zok 10 W.A.C.A.

Asafu-Adjaye asks to be heard if required, on effect of the Divesting Order.

INCHILL contra -

Ground 1 -

10 Plaintiff's case as to customary grant was not questioned - evidence p. 11 no cross-examination as to this.

Plaintiff's witness A.G. Lokko produced plan showing date of grant. Defence essentially admitted that this was Osu Stool land. Trial Judge disbelieved the customary grant to the defendant 5 years before 1939.

20 Not open to appellant to now say the plaintiff's grant by native custom was a fiction. It was not contested at trial. Defendant failed to show a grant by native custom from Nii Amen Bonne or Kwabena Bonne. Judge was right in disbelieving him.

What then was the position when Stool executed Exhibit 7(b) Covenant 3 p. 87 - It is true plaintiff did not act under clause - she was not bound to. In the normal course perhaps the Stool would inform her that the land had been granted to Government - Her claim was not adjusted.

The position before Exhibit 7(b) was restored when Government agreed to revest the land.

30 Cap 87 superceded Exhibit 7(b)

Cap 87(2)(2) - the lands upon reverting shall be held and enjoyed as though same had never been assured by the Stool.

By sec 2(1) & (2) of Cap 87 provide for a contingent reversion of the absolute title in specifiabile portions of land acquired in the persons owning such portions prior to 24.9.39.

40 Upon assumption by Government of an obligation to make an order as provided for by subsec 2, this contingent reversion vested in interest in the person owning the specifiabile portion of the land prior to 24.9.39.

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West African
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Arguments of
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14th November
1956

For Defendant
(Appellant)
- continued.

For Plaintiff
(Respondent)

In the
West African
Court of Appeal

No. 23

Arguments of
Counsel.

14th November,
1956.

For Plaintiff
(Respondent)
- continued.

Upon publication of the order this absolute title vested in Government. Subsec.1 of sec. 2 cuts off the title of the Stool and vests it in Government. Subsec.2 provides a remote possibility whereby the indefeasible title of Government may be brought to an end and the absolute ownership of the land vested in the person holding it prior to 24.9.39. This remote possibility is transferred into a reasonable expectation when Government enter into a covenant to revert at that stage persons owning land before 24.9.39 became persons to be vested with title. Their interest in the reversion has now vested for Government has declared that it no longer requires that area.

10

In whom ever the title vest in interest when the order is finally made. The operative words for subsec. 2, sec.2 "as though the land had never been assured" means as though land had never been acquired. The person who owned before 24.9.39 is the person who owns after the Revesting Order.

20

My answer to all the submissions made in sec. 5 (subsec. 4) is assuming it determines the interest of a grantee who has not claimed that interest could only have determined subsequent to 26 October 1940 when Cap.87 came in operation, for subsec. 1 gives 3 months for claims subsec. 4 provides that interests not claimed shall be deemed determined sec. 2 ss. 2 relate to a date prior to 24.9.39.

When Government covenants with the Stool, it covenants with the Stool and its assignees. Plaintiff is regarded by Stool as having title in this plot of land. She has the right to occupy - given by Stool. When the covenant is made under sec.2 ss.2 any person who claims a right under the Stool is a person his right has vested in interest under that covenant.

30

My answer to submission that maxim applied by Land Judge does not apply in that plaintiff is an assignee from the Stool.

The doctrine of conversion falls under the general maxim. When Government made this covenant it became a custom for any person who had a right to occupy the land. Plaintiff may be regarded as a certiori qui trust. It is analogous to a contract for the sale of land and completion of the sale by vesting.

40

Halsbury on Equity 4th Edition p.1063.

Government having declared that it no longer requires land, any person having a right may occupy, but he need not have an absolute title until the order is made.

He would be entitled to a declaration of that interest.

It would be a declaration as set out in the judgment and see submission at p. 38 line 18.

10 The prayer for a declaration at p.38 is worded as it is owing to the amendment of the defence raising Cap.87.

The Court declared that plaintiff had a better right to occupy than defendant and a right to possession: in effect it declared an equitable right to occupy - The Stool could not derogate from the right granted to the plaintiff.

20 As to the order for recovery of possession to which defendant in effect pleads pis tartri i.e. that title was not in plaintiff. Ask Court to accept findings of fact of trial Judge that plaintiff had been recently possessed. That she had pillars on land and that her mother had been caretaker of it was not controverted.

Assher v. Whitlock was approved in Perry v. Chissold 1907 A.C. 73.

30 This qualifies view that pis tartri can be pleaded where a person needed title has dispossessed another. Government has in effect said whoever has right to occupy may now do so. The Osu Stool says the plaintiff has that right. Defendant was a trespasser. Was given notice. Prompt action taken by plaintiff. Defendant persisted in building. Plaintiff bound to sue to protect her interest. Court was bound to protect her. She showed a better title than defendant.

Assher v. Whitlock and Perry v. Chissold support plaintiff's prayer for possession.

40 When an interest vest in interest it is a present fact. It takes effect when Revesting Order is made but a declaration can be made to meet such a situation. When the beneficial right to occupy has ceased. This right to immediate enjoyment was proved.

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West African
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Arguments of
Counsel.

14th November,
1956.

For Plaintiff
(Respondent)
- continued.

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No. 23

Arguments of
Counsel.

14th November,
1956.

For Plaintiff
(Respondent)
- continued.

The declaration was therefore in the terms of the judgment at p.48.

In view of the covenant, the matter became one between the individual and the Osu Stool. The Osu Stool backed the plaintiff. Was a Co-plaintiff in the Native Court.

The facts found are that plaintiff has prior possession interrupted by Cap.87 and then a subsequent entry by defendant against whom plaintiff proves a better title.

10

Doe v. Dyball 172 English Report 567.

The honesty of the issue before the Court was who had better right to occupy the land. It would have been inequitable to deny plaintiff her remedy.

I think I have covered grounds 1, 2 & 3 of the original grounds and 1 & 2 of the supplementary grounds.

To summarise reply to supplementary grounds 1 & 2 - So far as claim for declaration goes the Court declined that plaintiff had legal ownership of the reversion at the time of suit.

20

As plaintiff showed a better title than defendant she was entitled to order of possession. If declaration of title had been refused, recovery of possession could still have been ordered.

Ground 2 -

Plaintiff could not say she was absolute owner of legal estate but she could say as grantor recognised of the Osu Stool as Government no longer wants the land. I am person with best right to occupy land and I need be vested with full ownership when Government divest itself of title under the Ordinance. Incorrect to say that plaintiff had no title in the case. The action did not require that a legal title be vested at date of writ. Defendant could only say against plaintiff, that the Osu Stool had a better right, but plaintiff said she claims by virtue of the Osu Stool.

30

Adjourned 15th Nov.

(Intd.) J.H.C.

40

15th November, 1956.

ENCHILL - The docket shows that the Osu Stool were Co-plaintiffs in this suit. There were in fact cross actions, defendant-appellant issued a writ on same day as plaintiff's writ - The affidavit of the Osu Manche in docket shows that he granted the land in dispute to the plaintiff.

10 From the moment the Government, following the future interest created by statute, caused that interest to vest, specified what land they would divest themselves of, the question arose who should then occupy the land on a Divestment Order. A cause of action arose for determination of title to land which Government had no further use for. The contesting parties when Government divest itself are plaintiff and defendant - Plaintiff had backing of the Osu Manche and defendant was supported by the Osu Alata Manche.

20 It is immaterial if Cap 87 had operated to determine the plaintiff's interest. She came to Court with a grant in 1939 from the Osu Stool already showing that the Osu Stool had allocated to plaintiff the right to occupy the land.

13 Hailsham 129 par. 112.

The Osu Manche in making Exhibit "A", the confirmatory deed of 1945 made an absolute assignment to plaintiff of which interest the Stool had in the land. He had at least an interest in the contingent reversion upon the Government divesting itself.

30 Equity looks to substance rather than form of the transaction. Intention of Exhibit "A" is that plaintiff should occupy the land in dispute.

At time Exhibit 8a this Deed of Release was executed the question was who has right to occupy. Government no longer require the land. It is then Exhibit "6" was written to defendant and plaintiff warned him off the land.

40 8a and 8b could suggest that land would revest in the Osu Stool or the Quarter Stool. As far as Paramount Stool is concerned Exhibit "A" shows that the Osu Stool had placed plaintiff in possession of the plot as grantee -

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Arguments of
Counsel.

15th November,
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For Plaintiff
(Respondent)
- continued.

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15th November,
1956.

For Plaintiff
(Respondent)
- continued.

As to prior registration, assuming for argument that land is Alata Quarter land, defence admits p.36 that the Osu Stool can make a direct grant of such land - but defendant says he had a prior grant in 1935. The evidence of that prior grant was rejected by the trial Judge (p. 43) If Osu Stool can grant Osu Alata land as defendant admits and the Osu Stool has granted Exhibit "A", we come within full effect of Cap 133 sec 21(1) - Plaintiff's deed recites prior grant of 1939. Defendant's deed does not recite prior grant of 1935.

10

Plaintiff's deed is registered on a date prior to date of execution of defendant's deed.

Position is strange if land is not assumed to be Alata Quarter land. This leads to, -

Ground 6 -

Evidence of Lokko Caretaker and Exhibit "H". Two conflicting cases had been adjudicated by Court Judgment of Jackson J. In the Odofoley case the W.A.C.A. did not know where land was because no plan. In later case which dealt with land names Alata Quarter it was held that the land was not Quarter land.

20

Judgment of Jackson J. took fresh note of the Odofoley and examined the position carefully. Exhibit "G", was confirmed by W.A.C.A. There was no plan of land in Odofoley case.

Judgment G & H are the ruling decision.

The release by Government to all the Quarters does not stamp area surrounded as Alata land.

30

There was no purpose in sec.2(2) of Cap 87 in providing "as though the land had never been assured by indenture to Government". The two protagonists were Osu Stool and Alata Quarter - Their assignees fought the issue. Not necessary that the final Order of Divestment should first be made.

Submits, the Court can consider the Divesting Order.

It is argued that at its date the action was incompetent, that the Divesting Order was a prerequisite to found a cause of action and that the Divesting Order should be disregarded as it would offend the principle of Ingall case - Ingall v. Moran 1944, 1 K.B.D. 167 et seq. But it is

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erroneous to say that the Divesting Order was a prerequisite to action, because Perry v. Chessold is authority that even if title cannot be proved, in certain circumstances if a better right of possession can be shown recovery of possession can be granted. The plaintiff's prayer was for a declaration of her interest in the land against defendant who asserted a conflicting right.

Order 25 rule 5.

10 Here the defendant was asserting a right. Exhibits "C" and "D".

Chief Kodilinye & Ors. v. Anlogu.
Privy Council Appeal No. 39/51 delivered
 February '55.

20 While title remained in Government, land was being encroached upon. Privy Council observed that position created over the period could not be ignored. Plaintiff in this case had no alternative but to take steps to have her interest declared and recover possession against defendant who unduly intended to oust her from land.

At date of action Exhibit 8a had already been made. Government had bound itself to plaintiff's grantor to divest its title to land claimed by plaintiff.

Reversion by Statute created was by Exhibit 8a vested in interest. That is a covenant by Government with Osu Stool and its assignees i.e. plaintiff. The Rule of perpetuities does not apply.

30 Here it is grounded by Statute that when Government under S.2 ss.2 divests its interest in land the land is to be held and enjoyed as though Exhibits 7a & 7b had never been made. Reversion is then vested in possession in Stools grantor, the plaintiff.

40 When Exhibit 8a was made necessary implication Government declared it no longer required the land; there was therefore vested in who claimed a right to enjoy the land prior to the grant, a right vested in interest. Plaintiff went to Court cloaked with authority of the Osu Stools Assignment Exhibit "A".

As to Vesting in interest - Refers to Cheshire on Real Property.

(2) The question of the effect of the Divesting Order was put in issue by the last minute defence-

In the
 West African
 Court of Appeal

No. 23

Arguments of
 Counsel.

15th November,
 1956.

For Plaintiff
 (Respondent)
 - continued.

In the
West African
Court of Appeal

No. 23

Arguments of
Counsel.

15th November,
1956.

For Plaintiff
(Respondent)
- continued.

The reply to that defence is that there was existing a covenant to make the order of Divestment as Government no longer required the land. Persons who had a right to occupy land could then ask Court to declare their interest and obtain possession from persons ousting them. Who had right to occupy land before the Government and after the order of Revestment.

(3) This Court cannot ignore consequences of the Divesting Order. Legal consequences of the order are now in operation. It will take Judicial notice of them.

10

Trial Judge spoke of the honesty of the issues before him, i.e. who has better right to enter land when order is made.

The evidence and facts upon which such an order is made must be the same before and after.

The Declaration gives meaning and effect to the Divesting Order when made. In whom does title vest when Government divests itself of the land.

20

I do not rely on the Divestment Order. The plaintiff did not need it in order to found her action.

I am not prepared to say that if the plaintiff had no cause of action when she sued, she cannot take advantage of the Divesting Order subsequently made as relating back to give her a cause of action.

If the effect of s.2 ss.2 is that plaintiff's right is vested in interest then the covenant to make the order is related back to the covenant to make the Divesting Order.

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(As to Ground 7 -

The defendant built with notice after litigation had started. No excuse for defendant's conduct to ask for indulgence)

It has been argued that if plaintiff brought a fresh action, defendant might be able raise other defences that are open to him.

An answer is that it was an issue in the action, in whom would the order vest if made, not that the order had not been made therefore there was no claim to defend. Was plaintiff to suffer the ouster until the Government choose to make the

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order, having intimated that they intended to make the Divesting Order.

It was essential to determine in this action in whom title would vest when the order was made and upon that would follow who had the right to possession - There was no additional evidence or further defence that defendant could advance.

Ground 5 -

10 Defendant cannot contend that plaintiff as grantee of a Stool cannot sue in that right or that such a right cannot be evidenced by a deed executed and published by registration. That grant was not questioned. Court entitled to rely on it.

Ground 4 -

20 Already dealt with. By Exhibit 8a a position arose where grantee would enter land as Government did not require it. Divesting order a mere formality. It will be made as Government has covenanted. Court right to treat it as made and to declare on that basis.

It is sound that the Government covenant was with the Osu Stool and did not avail a volunteer. But assignment of a future interest is recognised in equity.

The covenant to the Osu Stool enures to benefit of the plaintiff for whom Osu Stool a trustee.

30 Trial Judge found plaintiff had possession - when Government released, that possession sprang into being again. Conduct of parties when undertaking made to give up possession is indicative. When latter revived from Government, defendant starts building and plaintiff sues for possession -

ASAFU-ADJAYE -

40 As to weight of evidence and Ground 5 i.e. Grounds 1 & 5 plaintiff case is based on a gift - There was no proof of the gift by native custom. Trial Judge bases finding that a grant was made by native custom - Refers to Odofoley case - The customary grant should have been proved by evidence other than that of the plaintiff.

(But this was not controverted. There was no cross-examination of plaintiff on this point. It was submitted for defendant that it was argued that

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15th November,
1956.

For Plaintiff
(Respondent)
- continued.

For Defendant
(Appellant).

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West African
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No. 23

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Counsel.

15th November,
1956.

For Defendant
(Appellant)
- continued.

as Osu Stool and its agent the Alata Manche had made conflicting grants see p.35)

Was the land Alata land. It clearly was. Alatas are Osus: it is therefore equally Osu land.

The deed Exhibit 7a between 3 quarters of Osu and Government in respect of same area of land. Significant that Government took two grants, one from Osu Stool alone. Deeds of Release were made to Osu Stool and separately to the quarters Exhibits 8a and 8b.

10

It was necessary for Stools to give covenants because they were embodied in the Ordinance Cap.87.

Sec.5 ss.4 was inserted on account of 7(1).

Refers to paras. 3,4,5,6 and 7 of Exhibit 7a. This was done because there might be conflicting claims to the land - If the customary occupant did not make a claim, within the time prescribed, the right was determined.

The trial Judge made the declaration as prayed in the Writ. Found plaintiff was owner of property, decreed possession. Judge was wrong to make declaration when title was vested in Government. Plaintiff's duty was to claim - she is deemed to have notice of the Osu Stool grant to Government. It was published in the Gazette. The Court should disregard the order otherwise evidence will have to be taken to identify the order with the plan and evidence will have to be taken that plaintiff submitted a claim.

20

At this date defendant has actual possession and title by possession.

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In 1948 when defendant's building was complete, he was a trespasser only as regard the Government. He was in possession. In law that was good against all but the rightful owner, the Government.

Therefore if in 1956 the Government abandons title, then defendant's title by possession prevail. For plaintiff to defeat defendant's title by possession, she must prove that she made a claim in 1940, otherwise her title has gone and the defendant only has a possessory title.

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Even if the Divestment Order is not disregarded,

the fact that plaintiff did not put in a claim is fatal to her case.

As to Sec.2 ss.2 and the Divesting Order, they are matters of law which can only be construed with secs. 5 - 9 of Cap. 87. Effect is not to put every one back in position of 1940. It only places those into position of 1940 who had complied with provisions of Cap. 87, otherwise the position is obscured.

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C. A. V.
(Intd.) J.H.C.

In the
West African
Court of Appeal

No. 23

Arguments of
Counsel.

15th November,
1956.

For Defendant
(Appellant)
- continued.

No. 24

J U D G M E N T

IN THE WEST AFRICAN COURT OF APPEAL

GOLD COAST SESSION

CORAM - COUSSEY, P.
KORSAH, C.J.
VERITY, Ag. J.A.

Civil Appeal No.28/56

29th November, 1956

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R. B. WUTA-OFEI Defendant-Appellant

NII KWABENA BONNE III,
OSU ALATA MANIASE, Co-Defendant

v.

MABEL DANQUAH, Plaintiff-Respondent

J U D G M E N T

VERITY, AG. J.A.: In this case the plaintiff sought by her writ declaration of title to the ownership of certain land, damages for trespass and an interim injunction. The suit was instituted in the appropriate Native Court but was transferred to the Land Division of the Supreme Court

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In the
West African
Court of Appeal

No. 24

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29th November.
1956

- continued.

where pleadings were ordered. By her Statement of Claim the plaintiff sought a declaration of title as against both defendants and as against the 1st defendant only recovery of possession, mesne profits and a perpetual injunction.

The issues between the parties arise from averments of the plaintiff that she was in 1939 given an oral grant of the land in dispute by the Osu Stool which gift was confirmed in 1945 by a deed dated 31st December 1945 reciting the earlier oral grant. The plaintiff testified that she went into possession and caused pillars to be placed at the four corners of the plot and further avers that the 1st defendant in 1948 commenced preparation to build upon the plot, erected a fence thereon and finally completed the building of a house in spite of repeated protests.

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The defendant on the other hand avers that he was given an oral grant of the same plot of land by the Osu Stool acting by the Head of the Alata Quarter of Osu five years before the alleged grant to the plaintiff, and that he entered into possession some ten years before he commenced to build thereon. He further avers that in 1947 the oral grant was confirmed by a deed which appears to have been dated 1st October 1946 the date having been subsequently altered to 1st February 1947 for some reason which is not quite clear. It is to be observed that this document contains no recital of the alleged earlier oral grant.

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In relation to this aspect of the case the learned trial Judge after full consideration of the evidence accepted that of the plaintiff as to the oral grant to her in 1939, which was not in fact seriously disputed at the trial, and rejected that of the defendants as to an oral grant to the 1st defendant in 1935. With this finding I am not disposed to disagree. It is a clear finding of fact based largely upon the credibility of witnesses whom he saw and heard and I see no reason to differ from the conclusion reached by the learned Judge. It was urged on behalf of the defendants that there is insufficient proof of the alleged grant to the plaintiff by native law and custom but in my view the oral testimony coupled with the recital in the deed of confirmation are in the circumstances of this case and in the absence of any serious challenge either in pleadings or at the trial sufficient proof that the grant was made in accordance with law and custom.

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It was contended at the trial that the land in dispute was "outskirt land" of the Alata Stool a fact which, if established might have been held to support the defendants' case that a grant had been made by the Head of the Alata Quarter. While for reasons which appear to me to be cogent the trial Judge held that the land did not fall within the "outskirt land" of the Alata Quarter, the point is of but secondary importance in view of the finding that no grant was in fact made in 1939 to the 1st defendant, for it would appear to be beyond doubt that the Paramount Stool could grant unallocated land even if it fell within the "outskirt land" of a Quarter.

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Were these the only issues to fall for determination the matter would be a simple one and the plaintiff clearly be entitled to the relief which the Court below granted to her but the question is complicated by an issue which arose from an amendment to the Defence introduced at a late stage of the proceedings. By this amendment it was averred that by Ordinance No.44 of 1940 (Cap 87 of the Revised Laws 1951) the plot of land in dispute as part of a larger area became vested in the Chief Secretary on behalf of the Crown and that the Governor having made no Order under that Ordinance directing that this particular part of the land shall cease to be so vested the plaintiff had no title thereto.

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It appears that in 1939 in order to provide accommodation for persons whose homes had been rendered uninhabitable by an earthquake the Government secured from the Osu Stool and from the Heads of the Quarters thereof grants by Indenture of the interest of the grantors in the area of land which includes the plot now in dispute. These indentures were dated the 24th September 1939 and by the Accra Town (Lands) Ordinance (Cap.87) which came into force on 26th October 1940 it was provided by section 2(1) that the lands comprised in the indenture to which I have referred shall be vested absolutely and indefeasibly in the Chief Secretary in trust for Her Majesty free from all competing rights of all kinds whatsoever.

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It is I think clear that by the enactment there was substituted for the title conferred on the Government by the indentures a statutory title in which all previous rights were merged and it is

In the
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to be observed that whereas by the indentures the estate conveyed was no more than "the right, title and interest of the grantors" (whatever they may have been) by the Ordinance the land itself was vested in the Chief Secretary free from all competing interests no matter what their nature. So wide are the terms of the enactment that not only were all rights of the Stools vested in the Chief Secretary but also all rights or interests which might hitherto have been held by any other person, saving only those relating to lands comprised in the Fourth Schedule to the Ordinance which admittedly does not include the area in dispute. 10

By sections 4 to 9, however, it is apparent that the extinction of all such competing rights was to be limited in its operation in relation to rights in respect of which claims might be made within a prescribed period such claims being dealt with and disposed of by compensation or otherwise in accordance with the provisions of these sections. 20

It is further to be observed that by section 5(4) it is provided that: "No claim shall be entertained unless the same is made in accordance with the provisions of this section and any right title or interest in respect of which no claim has been made within three months of the date of the notice mentioned in section 4 shall be deemed to have determined."

It is contended on behalf of the defendants that by reason of this sub-section the plaintiff could have no title to ownership in respect of which the Court could properly make a declaration unless it could be shown that a claim had been made under section 5 and further that no such claim has been shown to have been made. 30

On the other hand the plaintiff contends that by virtue of section 2(2) of the Ordinance the rights of the plaintiff would be restored upon the making of a divesting Order thereunder notwithstanding the provisions of section 5 and that the Government having undertaken to make such a divesting Order the plaintiff had an equitable interest in the land capable of declaration. It may be observed in passing that in point of fact such a divesting Order has been made since the determination of the suit. 40

The sub-section upon which this contention is based provides -

"When in the opinion of the Governor there is
 "no longer any need for any particular part of
 "such lands to remain so vested in the Chief Secre-
 "tary the Governor may by Order published in the
 "Gazette direct that any particular part of such
 "lands shall cease to be so vested and thereupon
 "such particular part of such lands shall be held
 "and enjoyed as though the same had never been
 "assured by indenture to the Governor of the Gold
 "Coast or vested under the provisions of this
 "Ordinance in the Chief Secretary for the time be-
 "ing in trust for Her Majesty."

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 1956
 - continued.

... The first issue to be determined in relation
 to these contentions is whether or not any rights
 which the plaintiff may have had prior to the
 indenture of 24th September 1939 were extinguished
 by reason of the apparent failure of the plaintiff
 to make any claim in accordance with section 5(1)
 of the Ordinance. In construing sub-section (4)
 of this section it is essential that the precise
 words thereof should be observed. It does not pro-
 vide that in the given circumstances any right,
 title or interest "shall be determined" but that it
 "shall be deemed to have determined." The true
 construction of this provision requires that effect
 be given to this distinction.

In ex part Walton (17 Ch.D.746) Lord Justice
 James laid down the principle to be observed in
 construing words similar to those used in section
 5(4):

"When a statute enacts that something shall be
 "deemed to have been done, which in fact and truth
 "was not done, the Court is entitled and bound to
 "ascertain for what purposes and between what per-
 "sons the statutory fiction is to be resorted to."

By the application of that principle I can
 only conclude that the use of the words "shall be
 deemed to have determined" expressed the intention
 of the legislature not that any such rights should
 be determined but that for the purposes of the
 Ordinance and as between the Chief Secretary and
 any claimant thereunder such rights should be
 deemed to have determined so that no person who
 had not made a claim in accordance with the sec-
 tion should be entitled after the expiration of
 the prescribed period to assert as against the
 Chief Secretary any such right whether by claim,

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1956

- continued.

action or otherwise, for so long as the land was vested in him. Upon the making of a divesting Order under section 2(2) the purposes of the Ordinance in respect of land covered thereby would be exhausted, the Chief Secretary be no longer an interested party and the provisions of section 5(4) be no longer applicable.

It was submitted on behalf of the appellant that if the sub-section be so construed then it would be open to any person whose claims under section 5(1) had been disposed of to lay claim again to any pre-existing rights and hold and enjoy both. I do not think that this is so for I am of the opinion that the principle enunciated by the Judicial Committee of the Privy Council in Kodilinye & Anor. v. Anotogu & Anor. (14th February 1955) in relation to the construction of an analogous provision in the Niger Lands Transfer Ordinance (Cap.149, Laws of Nigeria 1948) may properly be extended to the determination of rights during the vesting period as well as to their acquisition or accrual.

In my view, therefore, the rights of the plaintiff, acquired before the vesting period and not having been determined during such period either by the operation of the statute or by the disposal of any claim thereunder, would be revived upon the making of a divesting Order under section 2(2) and thereupon the plaintiff would be entitled to a declaration thereof.

I am not of the opinion, however, that at the date of either writ or judgment in the present proceedings the plaintiff's rights had been revived or that the plaintiff was entitled to a declaration of "title to ownership" as claimed by her for at that time no such title was vested in her. It may be that had she so claimed the Court might in its discretion have granted a declaration in futuro or of some present equitable estate or interest but I do not think that either of such declarations could properly be made on the pleadings as they stand nor do I think that it was incumbent on the Court below or is incumbent upon this Court to amend the pleadings in any such sense for no such amendment is necessary in order to determine the real issue between the parties which was and is which of them was entitled to possession at the time when the action was instituted. It is to this issue that I would now address consideration.

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In the
West African
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29th November,
1956

- continued.

The facts as they appear from the evidence accepted by the learned trial Judge are that the plaintiff having been given an oral grant in 1939, confirmed by deed in 1945, entered into actual possession of the land by placing pillars thereon to demarcate her area of occupation. In 1948 the 1st defendant entered upon the land and dispossessed the plaintiff who brought this action to recover possession. The simple question is whether this action is maintainable. I think that it clearly is. At the date of the 1st defendant's entry the plaintiff had been in possession for three years even if it is to be assumed that she did not enter into possession until the deed of 1945. It is true that at any time during the period the Chief Secretary in whom was vested title to the land could have ejected her but otherwise as against all the world the plaintiff was entitled to maintain her possession and if dispossessed to evict the intruder. This principle has been long established but perhaps I may cite the words of Cockburn C.J. in Assher v. Whitlock (L.R. 1 Q.B.): ".....I take it as clearly established that possession is good against all the world except the person who can show a good title; and it would be mischievous to change this established doctrine." and again at p.6 ".....if the lord has acquiesced and does not interfere, can it be at the mere will of any stranger to disturb the person in possession?".

The question was also dealt with by the Judicial Committee of the Privy Council in Sundar v. Parbiti (5 T.L.R.683) where in relation to persons whose possession was lawfully attained in the sense that it was not procured by force or fraud, no one interested opposing, their Lordships said: ".....it did not admit of doubt that they were entitled to maintain their possession against all comers except the heirs one or other of whom was the only person who could plead a preferable title. But neither of these possible claimants was in the field and the widows had therefore each of them an estate or interest in respect of her possession which could not be impaired by the circumstance that they might have ascribed their possession to one or more other titles which did not belong to them".

It is clear that the plaintiff attained her possession lawfully in the sense contemplated by their Lordships and that the only person interested,

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1956

- continued.

the Chief Secretary, did not interfere. It is equally clear that her possession so attained cannot be permitted to be disturbed at the "mere will" of the 1st defendant who had no lawful claim to title and that the circumstance that she ascribed her right to possession to a title which was not in law then vested in her does not impair her right to possession as against the 1st defendant.

While, therefore, I am of opinion that the learned trial Judge erred in making a declaration of her title to ownership in the present action in view of the fact that the ownership of the Chief Secretary had not then been terminated by a divesting order, he was in my view right to make an order for the recovery of possession and for mesne profits and I see no reason to extend the time given by him to the 1st defendant in which to enter upon the land and remove whatever he may have put thereon.

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I would allow the appeal only in so far as the judgment of the Court below relates to the declaration of title which I would set aside.

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In regard to the claim for substantive relief however I would dismiss the appeal. As to costs, the co-defendant having intervened in protection of an interest to which in my view he is not entitled should pay his own costs both here and in the Court below but the plaintiff having failed in her claim for a declaration as against him cannot recover any of her costs from him and the order for costs in the Court below should be varied to that extent. The plaintiff as against the 1st defendant should have her costs here and in the Court below.

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(Sgd.) JOHN VERITY
J.A.

COUSSEY, P.: I concur.

(Sgd.) J. HENRY COUSSEY,
P.

KORSAH, C.J.: I concur.

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

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E.O. ASAFU-ADJAYE for the appellant.
BENTSI-ENCHILL for the respondent.

No. 25

COURT ORDER ON JUDGMENT

29th November, 1956.

IN THE WEST AFRICAN COURT OF APPEAL,

GOLD COAST SESSION:

CORAM: COUSSEY, P., KORSAH, C.J. and
VERITY, Ag. J.A.

28/56.

~~R. B. WUTA-OFEI~~

v.

MABEL DANQUAH

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ORDER -

The judgment of the Court below granting the plaintiff a declaration of title is set aside.

As to the substantive relief claimed by the plaintiff, the defendant's appeal is dismissed.

2nd defendant appellant shall pay his own costs in Land Court and West African Court of Appeal - As against 1st defendant-appellant, the plaintiff is awarded costs in this Court allowed at £40. 0. 6d and in the Court below to be taxed.

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(Sgd.) J. HENLEY COUSSEY,
P.

No. 26

NOTICE OF MOTION BY APPELLANT FOR FINAL
LEAVE TO APPEAL TO PRIVY COUNCIL

IN THE COURT OF APPEAL

ACCRA - GHANA

MABEL DANQUAH - Plaintiff-Respondent
(Respondent to Privy Council)

versus

R.B. WUTA-OFEI - Defendant-Appellant
(Appellant to Privy Council)

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MOTION ON NOTICE by E.O. Asafu-Adjaye of

In the
West African
Court of Appeal

No. 25

Court Order on
Judgment.

29th November,
1956.

No. 26

Notice of
Motion by
Appellant for
Final Leave to
Appeal to Privy
Council.

16th April,
1957.

In the
West African
Court of Appeal

No. 26

Notice of
Motion by
Appellant for
Final Leave to
Appeal to Privy
Council.

16th April,
1957

- continued.

Counsel for and on behalf of the Defendant (Appellant to Privy Council) herein praying for an Order of this Honourable Court for Final Leave to Appeal from the Judgment of the West African Court of Appeal delivered herein on or about the 29th day of November, 1956 to Her Majesty's Judicial Committee of the Privy Council London, England AND/OR for any other Order or Orders as to this Honourable Court may seem meet.

Court to Be Moved on Monday the 23rd day of September, 1957 at 9 o'clock in the forenoon or so soon thereafter as Counsel for and on behalf of the Defendant (Appellant to Privy Council) can be heard.

DATED at ADONTENE CHAMBERS ACCRA, this 16th day of April, 1957.

(Sgd.) E.O.A. Adjaye.
P.P. E.O. ASAFU-ADJAYE & CO.
SOLICITORS FOR DEFENDANT (APPELLANT TO P.C.)

THE REGISTRAR,
The Ghana Court of Appeal ACCRA.
& To MABEL DANQUAH, Plaintiff
(Respondent to Privy Council.)
Herein of Christiansborg, Accra.

No. 27

Court Notes
granting Final
Leave to Appeal
to Her Majesty
in Council.

14th October,
1957.

No. 27

COURT NOTES GRANTING FINAL LEAVE TO APPEAL
TO HER MAJESTY IN COUNCIL

14th October, 1957.

IN THE COURT OF APPEAL

MONDAY the 14TH day of OCTOBER, 1957:

CORAM VAN LARE, Ag. C.J. GRANVILLE SHARP, J.A.
and ADUMUA-BOSSMAN, J.

Civil Motion 24/57.

MABEL DANQUAH

v.

R.B. WUTA-OFEI

MOTION ON NOTICE FOR FINAL LEAVE

E.O. ASAFU-ADJAYE for applicant.
ENCHILL for respondent.

Asafu-Adjaye moves in terms of motion paper and affidavit.
No opposition.

COURT - Application granted as prayed.

(Sgd.) W.B. Van Lare,

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Exhibit "7A" - DEED OF CONVEYANCE made between
 J.G. COLEMAN and GOVERNOR OF
 THE GOLD COAST COLONY

Defendant's
 Exhibits

"7A"

10 THIS INDENTURE made the 24th day of September,
 1939 BETWEEN JONAS GEORGE COLEMAN Acting Mankralo
 of the Stool of Osu Noi Sekan Klote Wulomo (Priest)
 and TETTEI BOTCHIEY Dsassetse acting for themselves
 and as the representatives of the ASHANTI BLOHUM
 QUARTER of Osu (Christiansborg) of the first part
 20 ADJAH ABEBLEMSEN Headman of the ANAHOR QUARTER
 Kwasi Adido Wulomo (Priest) and JOEL EMMANUEL SONNE
 Elder and Secretary acting for themselves and as
 the representatives of the ANOHOR QUARTER of Osu
 (Christiansborg) of the second part AMEN BONI
 Chief of the ALATA QUARTER KODJOE ANIEFI Dsassetse
 KOFI ADONKOR Osiahene acting for themselves and as
 the representatives of the ALATA QUARTER OF OSU
 (Christiansborg) of the third part all of Christians-
 30 borg in the Accra District of Eastern Province of
 the Gold Coast Colony (which said parties of the
 first second and third parts are for the purposes
 of this deed hereinafter collectively referred to
 as "the Grantors") and THE GOVERNOR OF THE GOLD
 COAST COLONY (hereinafter called "the Government"
 which expression shall wherever the context so ad-
 mits include the successors for the time being of
 the Government and his duly authorised officers and
 assigns) Sir Arnold Wienholt Hodson K.C.M.G.
 40 Governor and Commander in Chief of the Gold Coast
 Colony of the fourth part WHEREAS the Grantors
 have for the purpose hereinafter mentioned and in
 consideration of the covenants on the part of the
 Government hereinafter contained agreed to convey
 to the Government all the right title and interest
 of the Grantors to or in the land hereinafter des-
 cribed and intended to be hereby conveyed AND
 50 WHEREAS the Government has agreed to utilise the
 said land to be hereby conveyed for the purpose of
 erecting thereon two room structures for the tem-
 porary accommodation of subjects of the stools of
 the Ga state in Accra rendered homeless as a result
 of the Earthquake and by the demolition of build-
 ings for purposes connected therewith or necessi-
 tated thereby AND WHEREAS the Government has
 further agreed that as and when the provision of
 temporary housing accommodation has been completed
 and the necessary adjustments in respect thereof
 have been made the Government will subject to the
 approval of the Secretary of State thereupon con-
 struct (or arrange by means of contractors for the

Deed of
 Conveyance made
 between J.G.
 Coleman and
 Governor of the
 Gold Coast
 Colony.

24th September,
 1939.

Defendant's
Exhibits

"7A"

Deed of
Conveyance made
between J. G.
Coleman and
Governor of the
Gold Coast
Colony.

24th September,
1939

- continued.

construction of) more permanent and/or extensive residences upon the plots eventually allocated under this Agreement to those approved persons who shall at that time have expressed their desire of obtaining and permanently occupying a plot within the land intended to be hereby conveyed whether or not a two room structure shall have been constructed upon such plot or alternatively that where such person so allocated a plot as aforesaid shall elect himself to undertake the construction of such permanent and/or more extensive residence then the Government will assist such person in accordance with and to a maximum amount to be fixed by an approved Building Scheme to be devised by the Government AND WHEREAS the Grantors have also agreed with the Government that in furtherance of the proposals of the Government for the provision of temporary housing accommodation and of the land settlement scheme the Grantors will replace with grants of stool building land elsewhere any and all customary grants made prior to the date of these presents by the Grantors to their subjects of plots within the area comprised in and intended to be hereby conveyed AND also to use their best endeavours to make similar replacement of land to any other individual owner or owners of land within the said area which may be found by the Government to be requisite or desirable AND WHEREAS the Government has agreed with the Grantors that in the event of the failure of the Grantors in their endeavours the Government will dispose of any such claims by compulsory acquisition of the land effected upon payment of compensation which compensation shall however be reimbursed to the Government in manner hereinafter provided AND WHEREAS the Government has agreed to constitute by legislation or otherwise a Board of Arbitration to adjudicate upon any dispute as to title and upon any other matters in dispute which may arise as a result of or consequent upon the effectuation of the proposals of the Government for the temporary housing accommodation and the land settlement scheme AND WHEREAS for the consideration aforesaid the Grantors have agreed to abide and be bound by any decision of the said Board of Arbitration whether respecting title to the said land or otherwise AND WHEREAS the Government has agreed that the consideration payable for the conveyance in due course to those persons desirous of obtaining a plot or retaining the plot with a two room structure thereon which shall eventually have been

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allocated to them of such plot shall be limited to the customary drink fee prevailing according to the custom of the Grantors and that every such fee paid upon any such conveyance as aforesaid shall be paid by Government to the Grantors or to the owner of the land prior to the vesting of the same in the Government or where the title of the land is dispute then to the Grantors or person adjudicated by the said Board of Arbitration to be the rightful claimant thereto AND WHEREAS the Government has further agreed with the Grantors to reconvey to the Grantors or such Grantors or persons duly adjudicated as aforesaid to have been the rightful claimant thereto any plot (exclusive of plot or sites reserved or required for public purposes such as roads streets lanes latrines dustbins incinerators open spaces markets schools and such like purpose of public health and conveyance) within the area intended to be hereby conveyed which shall be found by the Government not to be required for the purpose of the land settlement scheme or in respect of which a conveyance to the allottee shall not have been granted as aforesaid AND WHEREAS the Grantors have agreed to pay to the Government prior to any such reconveyance as aforesaid the cost of construction or such other price as may be agreed upon with the Government of any two room structures which may have been constructed upon such plots NOW THIS INDENTURE WITNESSETH that in pursuance of the said hereinbefore recited agreements and in consideration of the covenants on the part of the Government hereinafter contained the Grantors do hereby grant and convey unto the said Governor of the Gold Coast his successors in office and assigns all the right title and interest of the Grantors in or to ALL THAT parcel of land situate within the Osudoku Layout in the Christiansborg District of the Municipality of Accra which said parcel of land is more particularly described and delineated on the plan hereto attached and thereon shewn tinted pink TO HOLD the same unto and to the use of the said Governor of the Gold Coast his successors in office and assigns absolutely EXCEPTING AND RESERVING all those plots within the said parcel of land which prior to the date hereof have been allocated granted or conveyed by the Grantors in conformity with the approved layout plan No.X1621 and upon which said plots have been erected buildings duly approved by the Building Authorities AND THIS INDENTURE FURTHER WITNESSETH that in further pursuance of the said hereinbefore

Defendant's
Exhibits

"7A"

Deed of
Conveyance made
between J. G.
Coleman and
Governor of the
Gold Coast
Colony.

24th September,
1939

- continued.

Defendant's
Exhibits

"7A"

Deed of
Conveyance made
between J. G.
Coleman and
Governor of the
Gold Coast
Colony.

24th September,
1939
- continued.

recited agreements the Grantors and the Government do hereby covenant with and to each other and on the part of the Grantors so as to bind all subjects of the Grantors as follows:-

1. The Government will construct two room structures duly laid out and demarcated upon the land hereby conveyed to a number to be decided by the Government PROVIDED that only one such structure shall be erected each plot and that the design and material of the said structures shall be decided by the Government. 10
2. The Government will in the first instance use the said two room structures for the purpose of providing temporary shelter for subjects of the stools of the Ga State in Accra and for such persons as may be nominated by the Chiefs of the said stools who have been rendered homeless as a result of the recent earthquake and by the demolition of buildings for purposes in connection therewith or necessitated thereby PROVIDED that every such allocation shall be by way of licence to occupy the same over a period of one year or such longer period as the Government shall be entitled to require any allottee to remove from the two room structure or portion thereof originally allocated to such allottee to another structure or corresponding portion thereof in the event of such removal being found necessary or desirable. 20
3. The Grantors will grant stool building land elsewhere to any person to whom stool customary grants within the land hereby conveyed shall have been made by the Grantors prior to the date of this deed and remaining unbuilt upon at such date and also will use their best endeavours to adjust claims by private individuals to land within the same area by similar means provided however that where it is not found to be possible to dispose of duly proved claims by private individuals by means of such exchange as aforesaid then the Government will dispose of the same by compulsory acquisition of the land so granted as aforesaid and upon payment of compensation AND PROVIDED further that the Government will charge any compensation so paid to the land settlement scheme for repayment thereunder. 30 40
4. The Government will provide by legislation or otherwise for the constitution of a Board of Arbitration to decide or adjudicate upon any disputes

as to title respecting the land hereby conveyed or respecting any other matter which shall or may be properly referred thereto.

Defendant's
Exhibits

"7A"

5. The Grantors will in the event of any such arbitration abide and be bound by the adjudication of the said Board of Arbitration respecting the title to the land hereby conveyed or respecting any other matter properly referred thereto.

Deed of
Conveyance made
between J. G.
Coleman and
Governor of the
Gold Coast
Colony.

24th September,
1939

- continued.

10 6. The Government will so soon as the provision of temporary accommodation shall have been completed and the necessary adjustments in respect thereof have been made and subject however to the prior approval of the Secretary of State construct (or arrange by means of contractors for the construction of) more permanent and/or extensive residences upon the plots eventually allocated under this agreement to those persons who shall at that time have expressed their desire of obtaining and permanently occupying a plot within the land hereby
20 conveyed whether or not a two room structure shall have been constructed upon such plot so allocated as aforesaid PROVIDED however that should such person elect to undertake himself the construction of such permanent and/or more extensive residence then that the Government will assist such person in accordance with and to a maximum amount to be decided by an approved Building Scheme to be devised by the Government.

30 7. The Government will in pursuance of the Land Settlement Scheme convey to each person who shall be desirous of obtaining and permanently occupying the plot of land eventually allocated to him by the Government such plot for the consideration price prevailing according to the custom of the Grantors of £5.10s. -d. and upon conditions for the payment of the costs to Government of construction of the two room structure where such exists upon the said plot and/or of the cost to the Government of the
40 construction of the said permanent and/or more extensive residence in accordance with clause 6 hereinbefore contained and of the said consideration price by instalments over a period of not less than Thirty Years.

8. The Government will pay to the Grantors or such Grantors or persons as shall have been duly adjudicated by the said Board of Arbitration to be the rightful claimants thereto every consideration

Defendant's Exhibits

"7A"

Deed of Conveyance made between J. G. Coleman and Governor of the Gold Coast Colony.

24th September, 1939

- continued.

price of £5.10s.-d paid by each allottee to the Government upon the conveyance to him of the plot allocated to him as aforesaid within the land hereby conveyed.

9. The Government will reconvey to the Grantors or to such Grantors or persons as shall have been duly adjudicated to be the previous owner thereof any plots situate within the land hereby conveyed which shall be found by the Government not to be required either for the purposes hereof or which shall not be required for public purposes such as roads streets lanes latrines dustbins incinerators open spaces markets schools and such like purposes of public health and convenience or which shall not have been conveyed to an allottee in accordance with clause 7 hereinbefore contained provided nevertheless that where a two room structure has been erected upon any plots so reconveyed to the Grantors as aforesaid the Grantors shall and do hereby covenant to pay to the Government prior to such reconveyance the cost of construction of such structure or such other price as the Government may agree to accept and in such manner as may likewise be agreed upon.

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10. The Government will layout and construct necessary roads or streets over and upon the land hereby conveyed and will provide the usual water and electricity supply facilities and the usual public health conveniences.

IN WITNESS whereof the parties hereto of the first second and third parts have hereunto set their hands and seals and the party hereto of the fourth part has set his hand and affixed the seal of the Gold Coast Colony the day and year first above written

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Signed by setting their marks hereto sealed and delivered by the said Jonas George Coleman, Noi Sekan, Tetteh Botchey after these presents had been read over and interpreted to them and the purport and effect thereof had been previously explained to them in the Ga language by Theodore Taylor of Accra when the said Jonas George Coleman, Noi Sekan and Tetteh Botchey appeared perfectly to understand the same in the presence of :

(Sgd.) J.G. Coleman his mark
Noi Sekan X
(Sgd.) Tetteh Botchey

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(Sgd.) Hugh Thomas
Secretary for Native Affairs.
(Sgd.) ? ?
District Commissioner, Accra.
(Sgd.) ? ?
Registrar D.C.'s Court

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Defendant's Exhibits

<p>10</p>	<p>Signed by setting their marks hereto Sealed and delivered by the said Adjah Abeblensch, Kwasi Adido, Joel Emmanuel Sonne after these presents had been read over and interpreted to them and the purport and effect thereof had been previously explained to them in the Ga language by Theodore Taylor of Accra when the said Adjah Abeblensch Kwasi Adido and Joel Emmanuel Sonne appeared perfectly to understand the same in the presence of:</p>	<p>Adjah Abeblensch (Sgd.) Joseph Torto Sai alias Kwasi Adido. (Sgd.) Joel Emmanuel Sonne.</p>	<p>his X mark</p> <p>Deed of Conveyance made between J. G. Coleman and Governor of the Gold Coast Colony. 24th September, 1939 - continued.</p>
<p>20</p>	<p>(Sgd.) Hugh Thomas Secretary for Native Affairs (Sgd.) ? ? District Commissioner, Accra. (Sgd.) ? ? Registrar, D.C's Court, Accra.</p>	<p>Signed by setting their marks hereto sealed and delivered by the said Amen Boni, Kodjoe Anifi, Kofi Odonkor after these presents had been read over and interpreted to them and the purport and effect thereof had been previously explained to them in the Ga language by Theodore Taylor of Accra when the said Amen Boni, Kodjoe Aniefe and Kofi Odonkor appeared perfectly to understand the same in the presence of:</p>	<p>Amen Boni (Sgd.) Kodjoe Aniefe (Sgd.) Kofi Odonkor.</p> <p>his X mark</p>
<p>30</p>	<p>(Sgd.) Hugh Thomas Secretary for Native Affairs. (Sgd.) ? ? District Commissioner, Accra.</p>	<p>(Sgd.) ? ? Registrar, District Commissioner's Court, Accra.</p>	<p>(Sgd.) A.Wienholt Hodson.</p>
<p>40</p>	<p>(Sgd.) E.G. ? Private Secretary, Accra.</p>	<p>(Sgd.) E.G. ? Private Secretary, Accra.</p>	<p>(Sgd.) E.G. ? Private Secretary, Accra.</p>
<p>50</p>	<p>Signed sealed and delivered by the said Sir Arnold Wienholt Hodson Governor of the said Gold Coast Colony in the presence of:</p>	<p>(Sgd.) A.Wienholt Hodson.</p>	<p>(Sgd.) A.Wienholt Hodson.</p>

Defendant's Exhibits

"7A"

Deed of Conveyance made between J. G. Coleman and Governor of the Gold Coast Colony. 24th September, 1939 - continued.

ORDINANCE I CERTIFY THAT IN THE OPINION OF THE COMMISSIONERS OF STAMPS THIS INSTRUMENT IS NOT CHARGEABLE WITH STAMP DUTY BEING GOVT. COPY.

COMMISSIONER OF STAMPS OFFICE ACCRA. 16.10.1939.

(Sgd.) ? Adjei

COMMISSIONER OF STAMPS.

"7B"

Deed of Conveyance made between Nii Noi Owuo II and the Governor of the Gold Coast Colony. 24th September, 1939.

Exhibit "7B". - DEED OF CONVEYANCE made between NII NOI OWUO II and the GOVERNOR OF THE GOLD COAST COLONY

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Gold Coast Five shillings Stamp Duties.

4733A/39.

THIS INDENTURE made the 24th day of September 1939 BETWEEN NII NOI OWUO II Manche of the Stool of Osu (Christiansborg) in the Municipality of Accra in the Accra District of the Eastern Province of the Gold Coast Colony acting for himself and as the representative of all members of the Stool of Osu whose consent to or concurrence in these presents is for the more perfect assurance of the provisions hereof requisite or desirable according to native customary law or to the customs of the said Stool of Osu which consent is sufficiently testified by the attestation of these presents by some of such members (hereinafter called "the Stool" which expression shall wherever the context so admits or requires include the said Nii Noi Owuo II his successors in title and assigns) of the one part and THE GOVERNOR OF THE GOLD COAST COLONY (hereinafter called "the Government" which expression shall wherever the context so admits include the successors for the time being of the Governor and his duly authorised officers and assigns) Sir Arnold Wienholt Hodson K.C.M.G. Governor and Commander in Chief of the said Colony of the other part WHEREAS the Stool has for the purposes hereinafter mentioned and in consideration of the covenants on the part of the Government hereinafter contained agreed to convey to the

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Government all the right title and interest of the Stool to or in the land hereinafter described and intended to be hereby conveyed AND WHEREAS the Government has agreed to utilize the said land to be hereby conveyed for the purpose of erecting thereon two room structures for the temporary accommodation of subjects of the Stools of the Ga State in Accra rendered homeless as a result of the earthquake and by the demolition of buildings for purposes connected therewith or necessitated thereby AND WHEREAS the Government has further agreed that as and when the provision of temporary housing accommodation has been completed and the necessary adjustments in respect thereof have been made the Government will subject to the approval of the Secretary of State thereupon construct (or arrange by means of contractors for the construction of) more permanent and/or extensive residences upon the plots eventually allocated under this Agreement to those approved persons who shall at that time have expressed their desire of obtaining and permanently occupying a plot within the land intended to be hereby conveyed whether or not a two room structure shall have been constructed upon such plot or alternatively that where such person so allocated a plot as aforesaid shall elect himself to undertake the construction of such permanent and/or more extensive residence then the Government will assist such person in accordance with and to a maximum amount to be fixed by an approved building Scheme to be devised by the Government AND WHEREAS the Stool has also agreed with the Government that in furtherance of the proposals of the Government for the provisions of temporary housing accommodation and of the land settlement Scheme the Stool will replace with grants of Stool land elsewhere any and all customary grants made prior to the date of these presents by the Stool to its subjects of plots within the area comprised in and intended to be hereby conveyed AND also to use its best endeavours to make similar replacement of land to any other individual owner or owners of land within the said area which may be found by the Government to be requisite or desirable AND WHEREAS the Government has agreed with the Stool that in the event of the failure of the Stool in its endeavours the Government will dispose of any such claims by compulsory acquisition of the land affected upon payment of compensation which compensation shall however be reimbursed to the Government in manner hereinafter provided AND

Defendant's
Exhibits

"7B"

Deed of
Conveyance made
between Nii Noi
Owuo II and the
Governor of the
Gold Coast
Colony.

24th September,
1939

- continued.

Defendant's Exhibits

"7B"

Deed of Conveyance made between Nii Noi Owuo II and the Governor of the Gold Coast Colony.

24th September, 1939

- continued.

WHEREAS the Government has agreed to constitute by legislation or otherwise a Board of Arbitration to adjudicate upon any dispute as to title and upon any other matters in dispute which may arise as a result of or consequent upon the effectuation of the proposals of the Government for the temporary housing accommodation and the Land Settlement Scheme AND WHEREAS for the consideration aforesaid the Stool has agreed to abide and be bound by any decision of the said Board of Arbitration whether respecting title to the said land or otherwise AND WHEREAS the Government has agreed that the consideration payable for the conveyance in due course to those persons desirous of obtaining a plot or retaining the plot with a two room structure thereon which shall eventually have been allocated to them of such plot shall be limited to the customary drink fee prevailing according to the custom of the stool and that every such fee paid upon any such conveyance as aforesaid shall be paid by Government to the Stool or to the owner of the land prior to the vesting of the same in the Government or where the title of the land is disputed then to the Stool or person adjudicated by the said Board of Arbitration to be the rightful claimant thereto AND WHEREAS the Government has further agreed with the Stool to reconvey to the Stool or such Stool or persons duly adjudicated as aforesaid to have been the rightful claimant thereto any plot (exclusive of plots or sites reserved or required for public purposes such as road streets lanes latrines dustbins incinerators open spaces markets schools and such like purposes of public health and convenience) within the area intended to be hereby conveyed which shall be found by the Government not to be required for the purpose of the land Settlement Scheme or in respect of which a conveyance to the allottee shall not have been granted as aforesaid AND WHEREAS the Stool has agreed to pay to the Government prior to any such reconveyance aforesaid the cost of construction or such other price as may be agreed upon with the Government of any two rooms structures which may have been constructed upon such plots NOW THIS INDENTURE WITNESSETH that in pursuance of the said hereinbefore recited agreements and in consideration of the covenants on the part of the Government hereinbefore contained the Stool doth hereby grant and convey unto the said Governor of the Gold Coast his successors in office and assigns all the right title and interest of the Stool in or to ALL THAT

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parcel of land situate within the Osudoku Layout in the Christiansborg District of the Municipality of Accra which said parcel of land is more particularly described and delineated on the plan hereto attached and thereon shown tinted pink TO HOLD the same unto and to the use of the said Governor of the Gold Coast his successors in office and assigns absolutely EXCEPTING AND RESERVING all those plots within the said parcel of land which prior to the date hereof have been allocated granted or conveyed by the Stool in conformity with the approved layout plan No.X1621 and upon which said plots have been erected buildings duly approved by the Building Authorities AND THIS INDENTURE FURTHER WITNESSETH that in further pursuance of the said hereinbefore recited agreements the Stool and the Government do hereby covenant with and to each other and on the part of the Stool so as to bind all members of the Stool as follows:-

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1. The Government will construct two room structures upon plots duly laid out and demarcated upon the land hereby conveyed to a number to be decided by the Government PROVIDED that only one such structure shall be erected on each plot and that the design and material of the said structures shall be decided by the Government.
2. The Government will in the first instance use the said two room structures for the purpose of providing temporary shelter for subjects of the stools who have been rendered homeless as a result of the recent earthquake and by the demolition of buildings for purposes in connection therewith or necessitated thereby PROVIDED that every such allocation shall be by way of licence to occupy the same over a period of one year or such longer period as the Government may from time to time decide and PROVIDED further that the Government shall be entitled to require any allottee to remove from the two room structure or portion thereof originally allocated to such allottee to another structure or corresponding portion thereof in the event of such removal being found necessary or desirable.
3. The Stool will grant stool land elsewhere to any person to whom Stool customary grants within the land hereby conveyed shall have been made by the Stool prior to the date of this deed and remaining unbuilt upon at such date and also will use its best endeavours to adjust claims by private

Defendant's
Exhibits

"7B"

Deed of
Conveyance made
between Nii Noi
Owuo II and the
Governor of the
Gold Coast
Colony.

24th September,
1939

- continued.

Defendant's
Exhibits

"7B"

Deed of
Conveyance made
between Nii Noi
Owuo II and the
Governor of the
Gold Coast
Colony.

24th September,
1939

- continued.

individuals to land within the same area by similar means provided however that where it is not found to be possible to dispose of duly proved claims by private individuals by means of such exchange as aforesaid then the Government will dispose of the same by compulsory acquisition of the land so granted as aforesaid and upon payment of compensation AND PROVIDED further that the Government will charge any compensation so paid to the land settlement scheme for repayment thereunder.

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4. The Government will provide by legislation or otherwise for the constitution of a Board of Arbitration to decide or adjudicate upon any dispute as to title respecting the land hereby conveyed or respecting any other matter which shall or may be properly referred thereto.

5. The Stool will in the event of any such arbitration abide and be bound by the adjudication of the said Board of Arbitration respecting the title to the land hereby conveyed or respecting any other matter properly referred thereto.

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6. The Government will so soon as the provision of temporary accommodation shall have been completed and the necessary adjustments in respect thereof have been made and subject however to the prior approval of the Secretary of State construct (or arrange by means of constructors for the construction of) more permanent and/or extensive residence upon the plots eventually allocated under this agreement to those persons who shall at that time have expressed their desire of obtaining and permanently occupying a plot within the land hereby conveyed whether or not a two room structure shall have been constructed upon such plot so allocated as aforesaid PROVIDED however that should such person elect to undertake himself the construction of such permanent and/or more extensive residence then that the Government will assist such person in accordance with and to a maximum amount to be decided by an approved Building Scheme to be devised by the Government.

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7. The Government will in pursuance of the land Settlement Scheme convey to each person who shall be desirous of obtaining and permanently occupying the plot of land eventually allocated to him by the Government such plot for the consideration price prevailing according to the custom of the

Stool of £5.10/- and upon conditions for the payment of the cost to Government of the construction of the two room structure where such exists upon the said plot and/or of the cost to the Government of the construction of the said permanent and/or more extensive residence in accordance with clause 6 hereinbefore contained and of the said consideration price by instalments over a period of not less than Thirty Years.

Defendant's
Exhibits

"7B"

Deed of
Conveyance made
between Nii Noi
Owuo II and the
Governor of the
Gold Coast
Colony.

24th September,
1939

- continued.

10 8. The Government will pay to the Stool or such Stool or person as shall have been duly adjudicated by the said Board of Arbitration to be the rightful claimant thereto every consideration price of £5.10/- paid by each allottee to the Government upon the conveyance to him of the plot allocated to him as aforesaid within the land hereby conveyed.

20 9. The Government will reconvey to the Stool or to such stool or person as shall have been duly adjudicated to be the previous owner thereof any plots situate within the land hereby conveyed which shall be found by the Government not to be required either for the purposes hereof or which shall not be required for public purposes such as roads streets lanes latrines dustbins incinerators open spaces markets schools and such like purposes of public health and convenience or which shall not have been conveyed to an allottee in accordance with clause 7 hereinbefore contained provided
30 nevertheless that where a two room structure has been erected upon any plot so reconveyed to the Stool as aforesaid the Stool shall and doth hereby covenant to pay to the Government prior to such reconveyance the cost of construction of such structure or such other price as the Government may agree to accept and in such manner as may likewise be agreed upon.

40 10. The Government will lay out and construct necessary roads or streets over and upon the land hereby conveyed and will provide the usual water and electricity supply facilities and the usual public health conveniences.

IN WITNESS whereof the party hereto of the first part has hereunto set his hand and seal and the party hereto of the second part has hereunto set his hand and affixed the Seal of the Gold Coast

Defendant's Exhibits

"7B"

Deed of Conveyance made between Nii Noi Owuo II and the Governor of the Gold Coast Colony.
24th September, 1939
- continued

Colony the day and year first above written.

SIGNED SEALED AND DELIVERED)
by the said NII NOI OWUO II (Sgd.) Noi Owuo II
in the presence of:) Osu Manche.

(Sgd.) ?
Registrar, Osu.

ATTESTED by the marks or signatures of the following members of the Stool:

(Sgd.) Robert D. Omaboe	Robert D. Omaboe	Robert D. Omaboe	X	10
Oshiahene	Oshiahene			
(Sgd.) Tawia Odartey Sroh	Tawiah Odartey Sroh	Tawiah Odartey Sroh	X	
Dsasehene	Dsasetse.			
(Sgd.) Odartey Papoe	Odartey Papoe	Elder	X	
" E.W.N. Ababio	E.W.N. Ababio	"	X	
" Robert Noi	Robert Noi	"	X	
			marks	
" S. Ayitey Tagoe	S. Ayitey Papoe	Councillor		
" Thos. E. Wilson	(Sgd.) Thos. E. Wilson			20
" G. E. A. Hammond	" G. E. A. Hammond			
" R. C. Hammond	" R. C. Hammond			
" A. K. Nortey Linguist	" A. K. Nortey Linguist			
" K. C. Dinsay	" K. C. Dinsay Councillor			
" A. W. Adjadoo Blenya	" A. W. Adjadoo Blenya	Captain.		
" Odiatuo Hene	" Odiatuo Hene	Captain.		
" C. T. Masopeh Linguist.	" C. T. Masopeh Linguist.			30
" Eddy Laryea Ohonuhene	" Eddy Laryea, Obosuhene.			

after these presents had been read over and interpreted to them and the purport and effect thereof had been previously explained to them in the Ga Language by S. E. Q. Papafio of Osu when they appeared perfectly to understand the same in the presence of:

(Sgd.) ?
Registrar, Osu.

SIGNED SEALED AND DELIVERED by)
the said SIR ARNOID WIENHOLT)
HODSON Governor of the said)
Gold Coast Colony in the pres-)
ence of :

Defendant's
Exhibits

"7B"

(Sgd.) E.L. ?
Private Secretary.
Accra.

Deed of
Conveyance made
between Nii Noi
Owuo II and the
Governor of the
Gold Coast
Colony.

10 IN ACCORDANCE WITH SECTION 18 OF THE STAMP
ORDINANCE I CERTIFY THAT IN THE OPINION OF THE
COMMISSIONERS OF STAMPS THIS INSTRUMENT IS
CHARGEABLE WITH STAMP DUTY OF FIVE SHILLINGS.

24th September,
1939

- continued.

COMMISSIONER OF STAMPS OFFICE
ACCRA. 16.10.1939
(Sgd.) ? Adjei
COMMISSIONER OF STAMPS.

Exhibit "A". - DEED OF CONVEYANCE made between
MANTSE OF OSU and MABEL DANQUAH

Plaintiff's
Exhibits

20 Gold Coast
One Pound
Stamp Duties.

Deeds Registry
No.381/1946.

"A"

Deed of Convey-
ance made
between Mantse
of Osu and
Mabel Danquah.

30 THIS INDENTURE made the 31st day of December, One
thousand nine hundred and forty-five (1945) BETWEEN
NII NOI OWUO the second Mantse of Osu (Christians-
borg) in the Accra District Eastern Province of
the Gold Coast Colony acting for himself and as
representing and with the consent of his principal
elders and Councillors and of all other the people
of the Stool of the said Mantse of Osu (Christians-
borg) whose consent is by the Native Customary law
and usages of Christiansborg aforesaid necessary
for the valid transfer alienation or dealing with
Tribal lands which consent is testified by some of
such Elders and Councillors subscribing their names
to the same as witnesses (hereinafter called the
"GRANTOR" which expression where the context so ad-
mits shall include his heirs and successors on the
Mantse Stool) of the one part and Mabel Danquah
40 also of Christiansborg Accra aforesaid (hereinafter
called the "GRANTEE" which expression where the
context so admits shall include her heirs execu-
tors administrators and permitted assigns) of the

31st December,
1945.

Plaintiff's
Exhibits

"A"

Deed of Convey-
ance made
between Mantse
of Osu and
Mabel Danquah.

31st December,
1945

- continued.

other part WHEREAS in or about March, 1939 the Grantor with the consent of his Principal Elders and Councillors in consideration of the love and affection that the Grantor and his said Elders and Councillors have for the Grantee as one of the people of the said Stool of the Mantse of Osu (Christiansborg) and in further consideration of the sum of Eleven pounds (£11) paid to the Grantor by the said Grantee did grant in accordance with Native Custom to the said Grantee and her heirs free of all incumbrances the land and hereditaments described hereunder being land attached to the Osu Mantse Stool AND WHEREAS the said Grantee entered into and has been in possession of the said piece of land ever since AND WHEREAS at the request of the said Grantee the said Grantor with the consent of his Principal elders and Councillors has agreed to execute these presents in favour of the Grantee as evidence of and in confirmation of the said grant to her by Native Custom NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the premises and of the said sum of Eleven pounds (£11) paid to the Grantor by the said Grantee (the receipt whereof the Grantor doth hereby acknowledge) the Grantor as such Mantse of Osu (Christiansborg) doth hereby grant and confirm unto the said Grantee her heirs and permitted assigns ALL THAT piece or parcel of land situate lying and being at Christiansborg Accra aforesaid bounded on the north by J.B. Danquah's property measuring Two hundred and five (205) feet more or less on the south by a Road measuring One hundred and fifty-five (155) feet more or less on the East by Osu Stool land measuring One hundred and fifty (150) feet more or less and on the west by Cantonments Road and measuring One hundred and sixty (160) feet more or less or howsoever otherwise the said piece or parcel of land may be bounded known described or distinguished and is more particularly delineated on the plan hereto attached and thereon coloured Red comprising an area of .64 acre TOGETHER with all ways rights liberties privileges easements and appurtenances whatsoever to the said piece or parcel of land and hereditaments belonging or in anywise appertaining or usually held or occupied and enjoyed therewith or reputed to belong or be appurtenant thereto AND ALL the estate right title interest claim and demand whatsoever of the said Stool of Mantse of Osu (Christiansborg) in to and upon the said land and hereditaments and every part thereof TO HAVE AND TO HOLD the land and hereditaments hereby granted or

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expressed so to be unto and to the use of the said
 Grantee her heirs and permitted assigns forever
 AND the said Grantor doth hereby for himself his
 heirs and successors on the said Stool of Mantse
 of Osu (Christiansborg) and on behalf of the elders
 and people of the said Stool covenant with the said
 (grantee her heirs and permitted assigns that NOT
 WITHSTANDING any act deed or thing by him the said
 Grantor or by any of his predecessors on the Stool
 or by any member of the said Stool of Mantse of
 Osu done or executed or knowingly suffered to be
 done to the contrary he the said Grantor as such
 Mantse as aforesaid now hath good right to grant
 the land and hereditaments hereby granted or ex-
 pressed so to be unto the use of the said Grantee
 her heirs and permitted assigns in manner afore-
 said AND that the Grantee her heirs and permitted
 assigns shall and may at all times hereafter peace-
 ably and quietly possess and enjoy the said land
 and hereditaments and receive the rents and profits
 thereof without any lawful eviction interruption
 claim or demand whatsoever from or by the said
 Grantor or any person or persons lawfully or equit-
 ably claiming from under or in trust for him or
 from the said Stool of the Mantse of Osu (Christ-
 iansborg) or his predecessors on the said Mantse
 Stool AND that free from all incumbrances whatso-
 ever made or suffered by the said Grantor or any
 person or persons lawfully or equitably claiming
 as aforesaid AND FURTHER that he the said Grantor
 and all persons having or lawfully or equitably
 claiming any interest or estate in the said land
 and hereditaments or any part thereof from under
 or in trust for him the said Grantor or from under
 the said Stool of the Mantse of Osu (Christians-
 borg) shall and will from time to time and at all
 times hereafter at the request and cost of the
 said Grantee her heirs or permitted assigns to and
 execute or cause to be done and executed all such
 acts deeds and things whatsoever for more perfectly
 assuring the said land and hereditaments and every
 part thereof unto and to the use of the said Grantee
 her heirs and permitted assigns in manner afore-
 said as shall or may be reasonably required PROVIDED
 ALWAYS and it is hereby agreed and declared that
 the Grantee her heirs successors or personal repre-
 sentatives shall not have the right to sell trans-
 fer assign or mortgage the land and hereditaments
 hereby granted to any European Asiatic or non-
 native of Osu (Christiansborg) without the consent
 in writing of the Grantor (Osu Mantse and his
 Elders).

Plaintiff's
 Exhibits

"A"

Deed of Convey-
 ance made
 between Mantse
 of Osu and
 Mabel Danquah.

31st December,
 1945

- continued.

sic.

IN WITNESS whereof the parties hereto have

Plaintiff's Exhibits

"A"

Deed of Conveyance made between Mantse of Osu and Mabel Danquah. 31st December, 1945 - continued.

hereunto set their hands and seals the day and year first above written.

SIGNED SEALED AND DELIVERED) by the said Nii Noi Owuo II) (Sgd.) NOI OWUO II Mantse of Osu in the pres-) ence of the undermentioned) Witness to signatures elders and Councillors:) and mark

(Sgd.) S. Ayitey Tagoe. (Sgd.) Thos. B.F. Francisco Ribeiro. " G.E.A. Hammond " R.C. Hammond " F.N. Annang " ? Adjadoo Blenya (Asafootse) --- E.C. Yartey his x mark (Sgd.) Thos. E. Wilson.

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SIGNED SEALED AND DELIVERED) by the said Mabel Danquah) (Sgd.) MABEL DANQUAH. in the presence of:)

(Sgd.) ?

IN ACCORDANCE WITH SECTION 18 OF CAP 179 I CERTIFY THAT IN THE OPINION OF THE COMMISSIONER OF STAMPS THIS INSTRUMENT IS CHARGEABLE WITH A DUTY OF ONE POUND.

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COMMISSIONER OF STAMPS OFFICE. ACCRA. 4. 2. 46.

(Sgd.) ? Nortey.

On the 5th day of June, 1946 at 11 o'clock in the forenoon this instrument was proved before me by the oath of the withinnamed Thomas B.F. Francisco Ribeiro to have been duly executed by the withinnamed Nii Noi Owuo II.

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GIVEN UNDER MY HAND

(Sgd.) P.N. Dalton AG. REGISTRAR OF DEEDS.

This is the instrument marked "A" referred to in the oath of Thomas Birch Freeman Francisco Ribeiro Sworn before me this 5th day of June, 1946.

(Sgd.) P.N. Dalton Registrar of Deeds.



Exhibit "1". - DEED OF GIFT made between NII
BONNE III to R.B. WUTA-OFEI.

Defendant's
Exhibits

314/47.

"1"

Deed of Gift
between Nii
Kwabena Bonne
III to R.B.
Wuta-Ofei.

1st February,
1947.

10 THIS INDENTURE made 1st day of February, One
thousand nine hundred and forty-seven (1947)
BETWEEN NII KWABENA BONNE III: Chief and Lawful
Representative at date hereof of the Alata Stool
of Christiansborg-Accra in the Eastern Province of
the Gold Coast for himself and as representing all
the elders councillors and people of the said Osu
Alata Stool and with the knowledge concurrence and
consent of the principal elders and councillors of
the said Stool whose knowledge concurrence and con-
sent are necessary or essential according to Native
Customary Law for the valid grant alienation or
transfer of any land or other property of the said
Stool - which knowledge concurrence and consent is
evidence by the signing of these presents by some
of the said principal elders and councillors as
20 witnesses (hereinafter called the Grantor which
expression where the context so admits shall in-
clude his successors and assigns) of the one part
And ROBERT BENJAMIN WUTA-OFEI also of Christians-
borg Accra aforesaid (hereinafter called the
Grantee which expression where the context so ad-
mits shall include heirs and assigns) of the other
part WHEREAS the said Stool of Alata Osu (Christ-
iansborg) per its lawful Representative the Grantor
aforementioned being seised at date hereof for an
30 Estate in fee simple in possession free from all
incumbrances of and being otherwise well truly and
properly entitled to the land hereinafter more
accurately described and intended to be hereby
granted and conveyed Hath agreed with the Grantee
herein for the Absolute Grant and Conveyance to him
of the land aforesaid by way of Gift in fee simple
in possession free from all incumbrances NOW
40 WHEREFORE THIS INDENTURE WITNESSETH that in pursu-
ance of the said Agreement and in consideration of
Divers Good Offices and Services rendered by the
said Grantee to the said Stool and in further con-
sideration of the sum of Five pounds five shillings
(£5.5/-) paid by the Grantee to the Grantor on or
before the execution hereof (receipt of which
Thank-Offering of Money the Grantor doth hereby
acknowledge) the said Grantor as Beneficial Owner
for and on behalf of the said Alata Stool Doth
hereby grant and convey unto the Grantee his heirs
and assigns "All that piece or parcel of land

Defendant's
Exhibits

"1"

Deed of Gift
between Nii
Kwabena Bonne
III to R.B.
Wuta-Ofei.

1st February,
1947

- continued.

situate lying and being at North-east Christians-
borg Accra and bounded on the north by property
belonging to the Osu Alata Stool measuring One
hundred and fifty feet (150') more or less on the
south by proposed road measuring ninety-five feet
(95') more or less on the east by property belong-
ing to Mrs. Wuta Ofei measuring One hundred and
forty-five feet (145') more or less and on the west
by the Cantonment Road measuring One hundred and
fifty-five feet (155') more or less and covering 10
an approximate area of .414 Acre" or howsoever
otherwise the same may be bounded known described
or distinguished and more particularly delineated
on the plan hereto attached and therein edged Pink
Together with all easements rights liberties rights
of way advantages and appurtenances whatsoever to
the said piece or parcel of land belonging or apper-
taining or with the same usually held occupied and
enjoyed or reputed as part thereof or appurtenant
thereto And all the estate right title interest 20
claim and demand whatsoever of the stool aforesaid
in to and upon the same To Have and To Hold the
said piece or parcel of land hereby granted or
expressed so to be unto and to the use of the
Grantee his heirs and assigns forever and the Grant-
or doth hereby for himself his successors and
assigns covenant with the Grantee his heirs and
assigns that notwithstanding any act deed or thing
by him or by his ancestors done or executed or
knowingly suffered to be done to the contrary He the 30
Grantor now hath good title and right to grant the
land hereby granted or expressed so to be unto and
to the use of the Grantee his heirs and assigns in
manner aforesaid And that the Grantee his heirs
and assigns shall and may at all times hereafter
peaceably and quietly hold possess occupy and en-
joy the said land and receive the rents and inter-
ests thereof without any lawful eviction interrup-
tion claim or demand whatsoever from or by the
Grantor or any person or persons lawfully or 40
equitably claiming from under or in trust for him
or from or under his ancestors and that free from
all incumbrances whatsoever made or suffered by
the Grantor or his ancestors or any person or per-
sons lawfully or equitably claiming any estate or
interest in the said land or any part thereof from
under or in trust for him the Grantor prior to
these presents and that the Grantor shall and will
from time to time and at all times hereafter at
the request and cost of the Grantee his heirs and 50
assigns do and execute or cause to be done and

executed all such acts deeds and things whatsoever for further and more perfectly assuring the said land and every part thereof unto and to the use of the Grantee his heirs and assigns in manner aforesaid as shall or may be reasonably required

Defendant's Exhibits

"1"

IN WITNESS whereof the parties hereto have hereunto set their respective hands and seals the day and year first above written.

Deed of Gift between Nii Kwabena Bonne III to R.B. Wuta-Ofei.

1st February, 1947
- continued.

10

SIGNED SEALED AND DELIVERED by the said NII KWABENA BONNE III for and on behalf of and as the act and deed of the Stool of Alata aforesaid in the presence of the principal elders and councilors as witnesses

(Sgd.) Nii Kwabena Bonne III
(Sgd.) Kofi Odonkor Osiahene
(Sgd.) H.A. Holm (Stool Treasurer)
(Sgd.) R.E. Aryee (Elder)

20

(Sgd.) P. Ayiso c/o Nii Bonne III Rolyat Castle P.O. Box 218, Accra.

Albert Kwamin Adam X Linguist. mark
(Sgd.) D.A. Akoto
(Sgd.) C.A. Nunoo Land Overseer.

30

SIGNED SEALED AND DELIVERED by the said ROBERT BEN WUTA-OFEI in the presence of (Sgd.) ? Schandorf c/o the Spectator Daily, P.O. Box 217, Accra.

(Sgd.) R. Ben Wuta-Ofei.

Received from Robert Ben. Wuta-Ofei, Esquire the sum of Five pounds five shollings (£5.5/-) being Thank-Offering in accordance with Native custom.

Dated at Christiansborg-Accra, this 1st day of February, 1947.

(Sgd.) Nii Kwabena Bonne III GRANTOR.

40

Witnesses: (Sgd.) ? ? Aryeetey (Sippi)

IN ACCORDANCE WITH SECTION 19 OF CAP 179 I CERTIFY

Defendant's
Exhibits

THAT IN THE OPINION OF THE COMMISSIONER OF STAMPS
THIS INSTRUMENT IS CHARGEABLE WITH DUTY OF FIFTEEN
SHILLINGS.

"1"

COMMISSIONER OF STAMPS OFFICE.
ACCRA. 25. 2. 48.

(Sgd.) H.A.H. Grant.
COMMISSIONER OF STAMPS.

Deed of Gift
between Nii
Kwabena Bonne
III to R.B.
Wuta-Ofei.

On the 1st day of February, 1947 at 9 o'clock in
the forenoon this Instrument was proved before me
by the Oath of the within named
to have been duly executed by the within-named NII
KWABENA BONNE III.

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1st February,
1947
- continued.

GIVEN UNDER MY HAND AND OFFICIAL SEAL.

Registrar, Divisional Court,
Accra.

Gold Coast
Ten Shillings
Stamp Duty

Gold Coast
Five shillings
Stamp Duty.

"2"

Exhibit "2". - DEED OF GIFT made between NII
KWABENA BONNE III to MRS.R.B.
WUTA-OFEI.

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Deed of Gift
made between
Nii Kwabena
Bonne III to
Mrs. R.B. Wuta-
Ofei.

314A/47.

1st February,
1947.

THIS INDENTURE made the 1st day of February One
thousand nine hundred and forty seven (1947) BETWEEN
NII KWABENA BONNE III: Chief and Lawful Representa-
tive at date hereof of the Alata Stool of Christians-
borg - Accra in the Eastern Province of the Gold
Coast for himself and as representing all the elders
and councillors and people of the said Osu Alata
Stool, and with the knowledge concurrence and con-
sent of the principal elders councillors and people
of the said Stool whose knowledge concurrence and
consent are necessary or essential according to
Native Customary Law for the valid grant alienation
or transfer of any land or other property of the
said Stool - which knowledge concurrence and con-
sent is evidenced by the signing of these presents
by some of the said principal elders and council-
lors as witnesses (hereinafter called the Grantor
which expression where the context so admits shall

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Defendant's
Exhibits

"2"

Deed of Gift
made between
Nii Kwabena
Bonnie III to
Mrs. R.B. Wuta-
Ofei.

1st February,
1947

- continued.

include his successors and assigns) of the one part
and MRS. ROBERT BENJAMIN WUTA-OFEI also of
Christiansborg Accra aforesaid (hereinafter called
the Grantee which expression where the context so
admits shall include her heirs and assigns) of the
other part WHEREAS the said Stool of Alata Osu
(Christiansborg) per its lawful Representative the
Grantor aforementioned being seised at date hereof
for an Estate in fee simple in possession free from
all incumbrances of and being otherwise well truly
and properly entitled to the land hereinafter more
accurately described and intended to be hereby
granted and conveyed hath agreed with the Grantee
herein for the absolute grant and conveyance to
her of the land aforesaid by way of Gift in fee
simple in possession free from all incumbrances
NOW THEREFORE THIS INDENTURE WITNESSETH that in
pursuance of the said Agreement and in considera-
tion of Divers Good Offices and Services rendered
by the said grantee to the said Stool and in fur-
ther consideration of the sum of Five pounds five
shillings (£5.5/-) paid by the Grantee to the
Grantor on or before the execution hereof (receipt
of which - torn - the Grantor doth hereby ac-
knowledge) the said Grantor as Beneficial Owner for
and on behalf of the said Alata Stool doth hereby
Grant and Convey unto the Grantee her heirs and
assigns All that piece or parcel of land situate
lying and being at North-east Christiansborg, Accra
and bounded on the North by Grantor Stool land
measuring Seventy-five feet (75') more or less on
the south by Proposed Road measuring Seventy-five
feet (75') more or less on the east by the Rehou-
sing Estate Buildings measuring One hundred and
forty-five feet (145') more or less and on the
west by property of Robert Benjamin Wuta-Ofei
measuring One hundred and forty-five feet (145')
more or less and covering an approximate area of
.25 acre or howsoever otherwise the same may be
bounded known described or distinguished and more
particularly delineated on the Plan hereto attached
and therein edged Pink Together with all easements
rights liberties rights of way advantages and
appurtenances whatsoever to the said piece or par-
cel of land belonging or appertaining or with the
same usually held occupied and enjoyed or reputed
as part thereof or appurtenant thereto And all the
estate right title interest claim and demand what-
soever of the Stool aforesaid into and upon the
same To Have and To Hold the said land hereby
granted or expressed so to be unto and to the use

Defendant's Exhibits

"2"

Deed of Gift made between Nii Kwabena Bonne III to Mrs. R.B. Wuta-Ofei.

1st February, 1947 - continued.

of the Grantee her heirs and assigns forever and the Grantor doth hereby for himself his successors and assigns covenant with the Grantee her heirs and assigns that notwithstanding any act deed or thing by him or by his ancestors done or executed or knowingly suffered to be done to the contrary he the Grantor now hath good title and right to grant the land hereby granted or expressed so to be unto and to the use of the Grantee her heirs and assigns in manner aforesaid And that the Grantee her heirs and assigns in manner aforesaid shall and may at all times hereafter peaceably and quietly hold possess occupy and enjoy the said land and receive the rents and interest thereof without any lawful eviction interruption claim or demand whatsoever from or by the Grantor or any person or persons lawfully or equitably claiming from under or in trust for him or from or under his ancestors and that free from all incumbrances whatsoever made or suffered by the Grantor or his ancestors or any person or persons lawfully or equitably claiming any Estate or interest in the said land or any part thereof from under or in trust for him the Grantor prior to these presents and that the Grantor shall and will from time to time and at all times hereafter at the request and cost of the Grantee her heirs and assigns do and execute or cause to be done and executed all such acts deeds and things whatsoever for further and more perfectly assuring the said land and every part thereof unto and to the use of the Grantee her heirs and assigns in manner aforesaid as shall or may be reasonably required IN WITNESS whereof the parties hereto have hereunto set their respective hands and seals the day and year first above written

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SIGNED SEALED AND DELIVERED by) (Sgd.) Nii Kwabena the said NII KWABENA BONNE III) Bonne III for and on behalf of and as) (Sgd.) Kofi Odonko the act and deed of the Stool) (Osiahene) of the Alata Stool aforesaid) (Sgd.) H.A.S. Holm in the presence of some of the) (Stool Treasurer) principal elders and council-) (Sgd.) R.?. Ayie lers as witnesses:) (Elder) (Sgd.) P. Ayiso c/o Nii Bonne III Rolyat Castle, P.O. Box 218, Accra. Albert Kwamin Adama his X mark Linguist.

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(Sgd.) C.A. Nunoo (Land Overseer)

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SIGNED SEALED AND DELIVERED)
by the said MRS. ROBERT) (Sgd.) Eva Wuta Ofei.
BENJAMIN WUTA-OFEI in the)
presence of:)

Defendant's
Exhibits

"2"

(Sgd.) ?
c/o The spectator Daily
P.O. Box 217, Accra.

Deed of Gift
made between
Nii Kwabena
Bonne III to
Mrs. R.B. Wuta-
Ofei.

10 Received from Mrs. Robert Benjamin Wuta-Ofei the
sum of Five pounds five shillings (£5.5/-) being
Thank Offering according to Native Custom.

1st February,
1947
- continued.

Dated at Christiansborg-Accra this 1st day of
February, 1947.

(Sgd.) Nii Kwabena Bonne III.
GRANTOR.

Witnesses:-

(Sgd.) E.?A. Aryee
(Sippi)

20 IN ACCORDANCE WITH SECTION 18 OF CAP. 179 I CERTIFY
THAT IN THE OPINION OF THE COMMISSIONERS OF STAMPS
THIS INSTRUMENT IS CHARGEABLE WITH A DUTY OF FIVE
SHILLINGS.

COMMISSIONER OF STAMPS OFFICE.
ACCRA. 25. 2. 1948.

(Sgd.) H.A.H. Grant
COMMISSIONER FOR STAMPS.

30 On the 1st day of February, 1947 at 9 o'clock in
the forenoon this Instrument was proved before me
by the Oath of the within-named
to have been duly executed by the within-named NII
KWABENA BONNE III.

GIVEN UNDER MY HAND AND OFFICIAL SEAL.

REGISTRAR, DIVISIONAL COURT,
ACCRA.

Defendant's Exhibits

Exhibit "5". - LETTER from KWABENA BONNE III OSU ALATA MANTSE to R.B.WUTA-OFEI

"5"

Letter from Kwabena Bonne III Osu Alata Mantse to R.B. Wuta-Ofei. 13th February, 1947.

NII KWABENA BONNE III OSU ALATA MANTSE AND OYOKOHENE OF TECHIMAN, ASHANTI.

P.O. Box 218, Accra. Gold Coast. West Africa.

No.19/NB/47.

13th February, 1947.

My Good Friend,

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I have discovered that the land granted to you is still Government property according to the lease of late Nii Bonne. The Land Commissioner has just told me that there it could not be passed. You are to hold your document as I am still negotiating with the Government for release of the land so to make your document valid.

I am sorry for the delay.

Yours Good Friend.

(Sgd.) Kwabena Bonne III OSU ALATA MANTSE.

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R. Ben Wuta-Ofei, P.O. Box 217, Accra.

"3"

Exhibit "3". - LETTER from COMMISSIONER OF STAMPS to R.B. WUTA-OFEI.

Letter from Commissioner of Stamps to R.B. Wuta-Ofei. 18th February, 1947.

No.D.1/38 S.F.L. The District Treasury Accra.

18th February, 1947.

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Sir,

Documents Nos.314/47 & 314A/47 - Deeds of Gift between Nii Kwabena Bonne III and Mr. & Mrs. R.B. Wuta-Ofei.

I have the honour to return herewith the above deeds submitted by you for stamping, and to inform you that the Ag. Commissioner of Lands advises that the lands referred to in the deeds are Crown Lands and that no interest in or title over these lands

can pass by virtue of these deeds.

2. If you want to pursue the matter further I advise you to take up the question direct with the Ag. Commissioner of lands in consultation with the Grantor.

I have the honour to be,
Sir,
Your obedient Servant,
(Sgd.) ? ?
Commissioner of Stamps.

10

R.B. Wuta-Ofei, Esqr.,
City Press Ltd.,
P.O. Box 217,
Accra.

Defendants
Exhibits

"3"

Letter from
Commissioner
of Stamps to
R.B. Wuta-Ofei.
18th February,
1947
- continued.

Exhibit "J". - DEED OF GIFT made between NII
KWABENA BONNE III, OSU ALATA MANTSE
and R.B. WUTA-OFEI.

Plaintiff's
Exhibits

"J"

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THIS INDENTURE made the 3rd day of January One thousand nine hundred and forty-eight (1948) BETWEEN NII KWABENA BONNE III Osu Alata Mantse of Christiansborg Accra in the Eastern Province of the Gold Coast on behalf of the Stool of Osu Alata Quarter of Christiansborg with the consent and concurrence of the Principal Headmen Elders and Councillors of the Stool of Osu Alata Quarter whose knowledge consent and concurrence is requisite or necessary according to Native Customary Law for the valid grant alienation or disposition of Osu Alata Stool lands and which knowledge consent and concurrence is evidenced by some of such persons by subscribing their names or marks to these presents as witnesses on behalf of themselves and other members of the said Stool (hereinafter called the Donor which expression where the context so admits shall include his successors in office and assigns) of the one part And ROBERT BENJAMIN WUTA-OFEI also of Christiansborg Accra aforesaid (hereinafter called the Donee which expression where the context so admits shall include his heirs executors administrators and assigns) of the other part WHEREAS the Donor is seised in fee simple in possession

Deed of Gift
made between
Nii Kwabena
Bonnie III, Osu
Alata Mantse
and R.B. Wuta-
Ofei.
3rd January,
1948.

Plaintiff's
Exhibits

"J"

Deed of Gift
made between
Nii Kwabena
Bonne III, Osu
Alata Mantse
and R.B. Wuta-
Ofei.

3rd January,
1948

- continued.

free from incumbrances of the hereditaments intend-
ed to be hereby conveyed and has expressed his
desire of making provision for the Donee AND
WHEREAS the Donor in order to give effect to such
his desire and determination has agreed to grant
and convey unto the Donee the land and heredita-
ments contained in the schedule hereunder in manner
hereinafter appearing NOW THIS INDENTURE WITNESSETH
that in consideration of the natural love af- 10
fection and goodwill that the Donor hath for the
Donee and in further consideration of the sum of
Ten pounds (£10) to the Donor paid by the Donee on
or before the execution of these presents (the
receipt whereof the Donor doth hereby acknowledge
and from the same doth hereby release the Donee)
and for divers consideration the Donor being
seised in fee simple in possession free from in-
cumbrances and family or tribal claims whatsoever
of the hereditaments hereby granted and conveyed
doth hereby grant and convey unto the Donee his 20
heirs executors administrators and assigns ALL THAT
piece or parcel of land contained in the schedule
hereunder Together with all fixtures rights ease-
ments privileges and appurtenances whatsoever to
the said piece or parcel of land belonging or apper-
taining or with the same are usually held occupied
and enjoyed or reputed as part thereof or appurten-
ant thereto and all the estate right interest claim
and demand whatsoever of the Donor in to and upon
the said premises TO HAVE AND TO HOLD the said 30
hereditaments and premises hereby granted or
expressed to be unto and to the use of the Donee
his heirs executors administrators and assigns for
ever and the Donor doth hereby for himself his
heirs and assigns that notwithstanding any act
deed or thing by him done or executed or knowingly
suffered to be done to the contrary He the Donor
now hath good right and title to grant the heredita-
ments and premises hereby granted or expressed so
to be unto and to the use of the Donee his heirs 40
executors administrators and assigns in manner
aforesaid And that the Donee his heirs executors
administrators and assigns shall and may at all
times hereinafter peaceably and quietly hold possess
occupy and enjoy the said hereditaments and prem-
ises and receive the rents and profits without any
lawful eviction interruption claim or demand what-
soever from or by the Donor or any person or persons
claiming lawfully or equitably from under or in
trust for him or from or under his ancestors and 50
that free from all incumbrances whatsoever made or

suffered by the Donor or his ancestors or testators or any person or persons lawfully or equitably claiming any Estate or interest in the said hereditaments and premises or any part thereof from or in trust for him the Donor prior to these presents AND THAT the Donor shall and will from time to time and at all times hereafter at the request and cost of the Donee his heirs executors administrators and assigns do execute or cause to be done and executed all such acts deeds and things whatsoever for further and more perfectly assuring the said hereditaments and premises and every part thereof unto and to the use of the Donee his heirs executors administrators and assigns in manner aforesaid as shall or may be reasonably required. IT IS ALSO AGREED that if the Donee shall at any time desire to lease or sell the said hereditaments and premises hereby granted to any person or persons the said Osu Alata Stool shall be entitled for three-fourths (3/4) share of whatever proceeds that may be accrued therefrom.

Plaintiff's Exhibits

"J"

Deed of Gift made between Nii Kwabena Bonne III, Osu Alata Mantse and R.B. Wuta-Ofei.

3rd January, 1948

- continued.

THE SCHEDULE above referred to

ALL THAT piece or parcel of Land situate lying and being at North-East Christiansborg, Accra, aforesaid and bounded on the north by the Osu Alata Stool land measuring two hundred feet (200'.0") more or less on the south by Osu Alata Stool land measuring two hundred feet (200'.0") more or less on the East by a Proposed Road measuring six hundred and fifty (650'.0") more or less and on the West by Cantonments Road and measuring six hundred and fifty (650'.0") more or less and comprises an area of 2.982 acres which said piece or parcel of land is more particularly described and delineated on the Plan attached hereto and edged Pink.

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first above written

SIGNED SEALED AND DELIVERED)
 by the said NII KWABENA)
 BONNE III in the presence)
 of:)

(Sgd.) Nii Kwabena
 Bonne III
 Osu Alata Mantse
 L.S.

(Sgd.) A. Nunoo.

Plaintiff's Exhibits

"j"

Deed of Gift made between Nii Kwabena Bonne III, Osu Alata Mantse and R.B. Wuta-Ofei.

3rd January, 1948 - continued.

SIGNED OR MARKED AND DELIVERED } (Sgd.) Kofie Odonkor
 by some of the said Headmen } (Osiabene)
 Elders and Councillors of the } " J.S.A. Adoo.
 Osu Alata Stool on behalf of }
 themselves and the other Head } (Mkd) Albert K. Adama
 men Elders and Councillors of } his x mark
 the said Stool signifying their } (Linguist)
 consent and concurrence to }
 these presents after the same } (Sgd.) S. Odoi
 had been read over and explain- } (Councillor) 10
 ed to them in the Ga Language }
 by when they }
 seemed perfectly to understand } (Sgd.) D.A. Akoto.
 the same before subscribing }
 their names or making their }
 marks thereto in the presence }
 of: }

SIGNED SEALED AND DELIVERED }
 by the said ROBERT BENJAMIN }
 WUTA-OFEI in the presence } (Sgd.) R. Ben Wuta- 20
 of: } Ofei L.S.

(Sgd.) P.E. Bruce Vanderpuije.

Received from Mr. R.B. Wuta Ofei of Christansborg the sum of Ten pounds (£10) being the consideration money named herein.

Dated at Accra, this 3rd day of January, 1948.

(Sgd.) Nii Kwabena Bonne III.

Witness:

(Sgd.) A. Nunoo.

In accordance with Section 18 of Cap.179 I certify 30
 that in the opinion of the Commissioner of Stamps
 this Instrument is chargeable with a duty of
 Three Pounds.

Commissioner of Stamps Office, (Sgd.) H.A.H. Grant
 COMMISSIONER OF STAMPS
 Gold Coast Commissioner
 of Stamps Duties.

GOLD COAST LAND REGISTRY
 Registered as No. 348/1948.
 (Sgd.) D.H. Shackles. 40
 Registrar of Deeds.

This is the Instrument marked "A" referred to in
 the oath of Joel Silvanus Akuarter Addoo sworn
 before me this 15th day of April, 1948.

(Sgd.) D.H. Shackles.
 REGISTRAR OF DEEDS.

Exhibit "8A". - DEED OF RELEASE AND COVENANT made between OSU STOOL and the GOVERNOR OF THE GOLD COAST COLONY.

Defendant's Exhibits

"8A"

Gold Coast
Six Pounds
Stamp Duty.

Deed of Release and Covenant made between Osu Stool and Governor of the Gold Coast Colony.

6th February, 1948.

10 THIS INDENTURE made the 6th day of February, 1948
 BETWEEN NOI OWUO II Manche of the Stool of Osu
 (Christiansborg) in the Municipality of Accra in
 the Accra District of the Eastern Province of the
 Gold Coast Colony acting for himself and as the
 representative of all members of the Stool of Osu
 whose consent to or concurrence in these presents
 is for the more perfect assurance of the provisions
 hereof requisite or desirable according to native
 customary law or to the customs of the said Stool
 of Osu which consent is sufficiently testified by
 the attestation of these presents by some of such
 20 members (hereinafter called "the Stool" which ex-
 pression shall wherever the context so admits or
 requires include the said Noi Owuo II his success-
 ors in title and assigns) of the one part and THE
 GOVERNOR OF THE GOLD COAST COLONY acting by George
 Wentworth Stacpoole, Esquire Commissioner of Lands
 of the said Colony (hereinafter called "the
 Government" which expression shall wherever the
 context so admits include the successors for the
 time being of the Governor and his and their duly
 authorised officers and assigns) of the other part
 30 WHEREAS:-

40 (1) By an Indenture (hereinafter called "the Prin-
 cipal Indenture") made the 24th day of September,
 1939 between the Stool its successors in title and
 assigns of the one part and the Government of the
 other part All that parcel of land situate within
 the Osudoku Layout in the Christiansborg District
 of the Municipality of Accra which said parcel of
 land is edged yellow on the plan numbered L.D.219
 hereunto annexed was granted and conveyed to the
 Government excepting and reserving as in the Prin-
 cipal Indenture more particularly mentioned and
 the Stool and the Government did in the Principal
 Indenture enter into certain covenants with and to
 each other with regard to the user by the Govern-
 ment of the said land and payment to the Stool of
 certain moneys and otherwise.

(2) By the Accra Town (Lands) Ordinance 1940

Defendant's
Exhibits

"8A"

Deed of Release
and Covenant
made between
Osu Stool and
Governor of the
Gold Coast
Colony.

6th February,
1948

- continued.

(hereinafter called "the said Ordinance") the lands described and delineated in the Principal Indenture together with other lands were declared to be vested absolutely and indefeasibly in the Colonial Secretary for the time being in trust for His Majesty subject to the reservations described in the Fourth Schedule to the said Ordinance but otherwise free from all competing rights titles interests trusts claims liens demands and restrictions of all kinds whatsoever and it was provided by Section 2(2) of the said Ordinance that the Governor might by Order published in the Gazette direct that any particular part of such lands should cease to be so vested and thereupon such particular part of such lands should be held and enjoyed as though the same had never been assured by Indenture to the Government or vested under the provisions of the said Ordinance in the Colonial Secretary for the time being in trust for His Majesty.

10

20

(3) By virtue of the Accra Town (Lands) Divesting Order 1943 made under the said Section 2(2) of the said Ordinance it was ordered that (inter alia) All those ten pieces of land in the said Order more particularly described and edged red on the said plan numbered L.D.219 hereunto annexed should forthwith cease to be vested in the Colonial Secretary.

(4) It has been agreed by and between the parties to these presents that in consideration of the release by the Stool of the Government from the covenants by and on the part of the Government in the Principal Indenture contained the Government will by a further Order to be made under and by virtue of the said Section 2(2) of the said Ordinance divest itself of certain further pieces of land comprised in the Principal Indenture and in the said Ordinance.

30

NOW THAT THIS INDENTURE WITNESSETH that in pursuance of the said agreement the Stool hereby fully and freely release and discharges the Government from the obligations of all the covenants by and on the part of the Government in the Principal Indenture contained to the intent that the said covenants may and shall be void and of no effect from the date of these presents.

40

2. The Government hereby covenants with the Stool that the Government will by Order made under

the hereinbefore recited section 2(2) of the said Ordinance direct that All those pieces of land edged blue on the said plan numbered L.D.219 hereunto annexed shall cease to be vested in the Colonial Secretary for the time being in trust for His Majesty.

Defendant's Exhibits

"8A"

Deed of Release and Covenant made between Osu Stool and Governor of the Gold Coast Colony.

6th February, 1948

- continued.

10

IN WITNESS whereof the party hereto of the first part has hereunto set his hand and seal and the part hereto of the second party hereto of the second part has hereunto set his hand and affixed the Seal of the Lands Department of the Gold Coast Colony the day and year first above written

SIGNED SEALED AND DELIVERED)
by the said NOI OWUO II in) (Sgd.) Noi Owuo II
the presence of:)

(Sgd.) ?
Ag. D.C.
4/6/47.

20

ATTESTED by the marks or signatures of the following members of the Stool:-
(Sgd.) J.I. Omaboe
Osiahene, successor to Robert D. Omaboe decd.
Robert Noi his x mark.

30

(Sgd.) Thomas E. Wilson
" G.E.A. Hammond
" R.C. Hammond
" K.C. Dinsey
" A.W. Adjadoo Blenya

after these presents had been read over and interpreted to them and the purport and effect thereof had been previously explained to them in the Ga language by A.W. Addy of Accra when they appeared perfectly to understand the same in the presence of :

40

(Sgd.) ?
Ag. D.C.
4/6/47.

Defendant's Exhibits

"8A"

Deed of Release and Covenant made between Osu Stool and Governor of the Gold Coast Colony.

6th February, 1948
- continued.

SIGNED SEALED with the Seal of the Lands Department and DELIVERED by the said GEORGE WENTWORTH STACPOOLE for and on behalf of the Governor of the Gold Coast Colony in the presence of: (Sgd.) G.W.Stacpoole.

(Sgd.) ? Thos. Addy
2nd Division Clerk,
Lands Department,
Accra.

10

IN ACCORDANCE WITH SECTION 18 OF THE STAMP ORDINANCE I CERTIFY THAT IN THE OPINION OF THE COMMISSIONERS OF STAMPS THIS INSTRUMENT IS CHARGEABLE WITH A DUTY OF ONE POUND AND A PENALTY OF £5.

COMMISSIONER OF STAMPS OFFICE
ACCRA.

(Sgd.) ? Grant
COMMISSIONER OF STAMPS.

20

"8B"

Deed of Release and Covenant made between Osu Stool and the Governor of the Gold Coast Colony.

6th February, 1948.

Exhibit "8B". - DEED OF RELEASE AND COVENANT made between OSU STOOL and the GOVERNOR OF THE GOLD COAST COLONY.

874/48.

THIS INDENTURE is made the 6th day of February 1948 BETWEEN NARH YEBUAH Ag. Mankrolo of the Stool of Osu Sekan Klote (Priest) and TETTEY BOTCHEY for themselves and as the representatives of the Ashanti Blohum Quarter of Osu (Christiansborg) of the first part ADJAH ABEBLENSH Headman of the Anahor Quarter KWASI ADIKO (Priest) and ROBERT JONNAH SONNE Elder and Secretary acting for themselves and as the representatives of the Anahor Quarter of Osu (Christiansborg) of the second part NII KWABENA BOWNE III Chief of the Alata Quarter CUDJOE ANIEPI Dsasetse and KOFI ADONKOR Osiahene acting for themselves and as the representatives of the Alata Quarter of Osu (Christiansborg) of the third part all of Christiansborg in the Accra District of the Eastern Province of the Gold Coast Colony (which said parties of the

30

40

first second and third parts are for the purposes of this Indenture hereinafter collectively referred to as "the Grantors") and the Governor of the Gold Coast Colony acting by George Wentworth Stacpoole, Esquire, Commissioner of Lands of the said Colony (hereinafter called "the Government" which expression shall wherever the context so admits include the successors for the time being of the Governor and his and their duly authorised officers and assigns) of the fourth part WHEREAS:-

Defendant's
Exhibits

"8B"

Deed of Release
and Covenant
made between Osu
Stool and the
Governor of the
Gold Coast
Colony.

6th February,
1948

- continued.

10

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30

40

(1) By an Indenture (hereinafter called "the Principal Indenture") made the 24th day of September 1939 between the Grantors or their predecessors in office of the one part and the Government of the other part All that parcel of land situate within the Osudoku Layout in the Christiansborg District of the Municipality of Accra which said parcel of land is edged yellow on the plan numbered L.D.219 hereunto annexed was granted and conveyed to the Government excepting and reserving as in the Principal Indenture more particularly mentioned and the Grantors and the Government did in the Principal Indenture enter into certain covenants with and to each other with regard to the user by the Government of the said land and payment to the Grantors of certain moneys and otherwise.

(2) By the Accra Town (Lands) Ordinance 1940 (hereinafter called "the said Ordinance") the lands described and delineated in the Principal Indenture together with other lands were declared to be vested absolutely and indefeasibly in the Colonial Secretary for the time being in trust for His Majesty subject to the reservations described in the Fourth Schedule to the said Ordinance but otherwise free from all competing rights titles interests trusts claims liens demands and restrictions of all kinds whatsoever and it was provided by Section 2(2) of the said Ordinance that the Governor might by Order published in the Gazette direct that any particular part of such lands should cease to be so vested and thereupon such particular part of such lands should be held and enjoyed as though the same had never been assured by Indenture to the Government or vested under the provisions of the said Ordinance in the Colonial Secretary for the time being in trust for His Majesty.

(3) By virtue of the Accra Town (Lands) Divesting Order 1943 made under the said Section 2(2) of the

Defendant's Exhibits

"8B"

Deed of Release and Covenant made between Osu Stool and the Governor of the Gold Coast Colony.

6th February, 1948

- continued.

said Ordinance it was ordered that (inter alia) All those ten pieces of land in the said Order more particularly described and edged red on the said plan numbered L.D.219 hereunder annexed should forthwith cease to be vested in the Colonial Secretary.

(4) It has been agreed by and between the parties to these presents that in consideration of the release by the Grantors of the Government from the covenants by and on the part of the Government in the Principal Indenture contained the Government will by a further Order to be made under and by virtue of the said Section 2(2) of the said Ordinance divest itself of certain further pieces of land comprised in the Principal Indenture and in the said Ordinance.

10

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement:

(1) The Grantors hereby fully and freely release and discharge the Government from the obligations of all the covenants by and on the part of the Government in the Principal Indenture contained to the intent that the said covenants may and shall be void and of no effect from the date of these presents.

20

2. The Government hereby covenants with the Grantors that the Government will by order made under the hereinbefore recited Section 2(2) of the said Ordinance direct that All those pieces of land edged blue on the said plan numbered L.D.219 hereunto annexed shall cease to be vested in the Colonial Secretary for the time being in trust for His Majesty

30

IN WITNESS whereof the parties hereto of the first second and third parts have hereunto set their hands and seals and the party hereto of the fourth part has hereunto set his hand and affixed the seal of the Lands Department of the said Colony the day and year first above written

SIGNED by setting their marks)
hereto SEALED AND DELIVERED)
by the said:)
Narh Yebuah his x mark)
Sekan Klotey his x mark)
Tetty Botchey his x mark)
after these presents had been)
read over and interpreted to)
them and the purport and)
effect thereof had been pre-)
viously explained to them in)

40

50

the Ga language by (Sgd.) ?
of Accra when the said Narh
Yebuah Sekan Klote Tetteh
Botchey appeared perfectly
to understand the same in
the presence of :

(Sgd.) ? D.C.

Defendant's
Exhibits

"8B"

Deed of Release
and Covenant
made between Osu
Stool and the
Governor of the
Gold Coast
Colony.

6th February,
1948
- continued.

10

SIGNED by setting their marks
hereto SEALED AND DELIVERED
by the said Adah Aboblensah
Kwasi Adiko
Robert Jonna Some

his x mark
his x mark
his x mark

after these presents had been
read over and interpreted to
them and the purport and
effect thereof had been pre-
viously explained to them in
the Ga Language by (Sgd.) ?
of Accra when the said Adjah
Aboblensah Kwasi Adiko Robert
Jonnah Some appeared perfect-
ly to understand the same in
the presence of :

(Sgd.) ? D.C.

20

30

SIGNED SEALED AND DELIVERED
by the said Nii Kwabena Bonne
III Cudjoe Aniefi Kofie
Adonkor after these presents
had been read over and inter-
preted to them and the purport
and effect thereof had been
previously explained to them
in the Ga language by
of when the said Nii
Kwabena Bonne III Cudjoe
Aniefi Kofie Odonkor appeared
perfectly to understand the
same in the presence of :

(Sgd.) Nii Kwabena
Bonne
(Sgd.) Cudjoe
Aniefi
(Sgd.) Kofie
Odonkor .

(Sgd.) ? D.C.

40

SIGNED SEALED with the Seal
of the Lands Department and
DELIVERED by the said George
Wentworth Stacpoole for and
on behalf of the Governor of
the Gold Coast Colony in the
presence of :

(Sgd.) G.W.Stacpoole.

(Sgd.) ? Addy
2nd Division Clerk,
Lands Dept., Accra.

50

IN ACCORDANCE WITH SECTION 18 OF THE STAMP

Defendant's Exhibits

"8B"

Deed of Release and Covenant made between Osu Stool and the Governor of the Gold Coast Colony.

6th February, 1948
- continued.

ORDINANCE I CERTIFY THAT IN THE OPINION OF THE COMMISSIONERS OF STAMPS THIS INSTRUMENT IS NOT CHARGEABLE WITH STAMP DUTY IT BEING A GOVERNMENT DOCUMENT.

COMMISSIONER OF STAMPS OFFICE
ACCRA. 23. 2. 1948.

(Sgd.) ? ? Grant
COMMISSIONER OF STAMPS.

"6"

Letter from Kwabena Bonne III, Osu Alata Mantse to R.B. Wuta-Ofei.

10th February, 1948.

Exhibit "6". - LETTER from KWABENA BONNE III, Osu Alata Mantse to R.B. WUTA-OFEI.

10

NII KWABENA BONNE III
OSU ALATA MANTSE AND
OYCKOHENE OF TECHIMAN, ASHANTI.

P.O. Box 218,
Accra, Gold Coast,
West Africa.
10th February, 1948.

No.30/MB/48.

My Good Friend,

We are now glad to inform you that the Government has released the land to my stool and you are accordingly to stamp the old document dated 1st July, 1947 at once.

20

All that piece of land north-east Christiansborg Accra and bounded on the north by property belonging to the Osu Alata Stool measuring one hundred and fifty (150') more or less, on the south by proposed road measuring ninety five feet (95') more or less, on the east by property belonging to Mrs. Wuta-Ofei measuring one hundred and fifty five (155') more or less, on the west by Cantonment Road measuring one hundred and fifty five (155') more or less covering approximate area of 414 acres known as the Osu Alata Stool land.

30

The Stamp Commissioner informed me yesterday that he has waived the penalty as no fault of ours. This letter makes your document valid from today's

date and I am accordingly reverting the plot to your possession.

Defendant's Exhibits

Your Good Friend,

"6"

(Sgd.) Kwabena Bonne III
OSU ALATA MANTSE.

Letter from Kwabena Bonne III, Osu Alata Mantse to R.B. Wuta-Ofei.

(Sgd.) ?
Linguist

10th February, 1948
- continued.

10 " Kofi Odonkor ?
Elder
(Osiahene)
Osu Alata Quarter.

R. Ben Wuta-Ofei,
P.O. Box 217,
Accra.

Exhibit "B". - LETTER from QUIST-THERSON to R.B. WUTA-OFEI.

Plaintiff's Exhibits

15th March, 1948.

"B"

Dear Sir,

Letter from Quist-Therson to R.B. Wuta-Ofei.

20 Mrs. Mabel Danquah of Christiansborg that you have trespassed on her land situate at Christiansborg and described as follows:-

15th March, 1948.

30 "All that piece or parcel of land situate lying and being at Christiansborg Accra aforesaid bounded on the north by J.B. Danquah's property measuring Two hundred and five (205) feet more or less on the south by a Road measuring One hundred and fifty-five (155) feet more or less on the east by Osu Stool land measuring One hundred and fifty (150) feet more or less and on the west by Cantonments Road and measuring One hundred and sixty (160) feet more or less comprising an area of .64 acre".

Mrs. Danquah obtained a grant of this land from the Osu Mantse as far back as the year 1939 and has a Deed relating to it duly stamped and registered.

Plaintiff's
Exhibits

"B"

The trespass committed by you may be due to a misapprehension as to the true ownership of the land in question, but my client desires me to make it quite clear that unless the said trespass ceases forthwith she will be reluctantly compelled to resort to drastic legal action.

Letter from
Quist-Therson
to R.B. Wuta-
Ofei.

I hope you will by a prompt appreciation of the position make it unnecessary for my client to take further steps in regard to this matter.

15th March,
1948
- continued.

I am,
Dear Sir,
(Sgd.) J. Quist-Therson
Solicitor for Mabel Danquah.

10

R.B. Wuta-Ofei Esq.,
Christiansborg,
Accra.

"C"

Exhibit "C". - LETTER from R.B. WUTA-OFEI to
QUIST-THERSON

Letter from
R.B. Wuta-
Ofei to
Quist-Therson.

R.B. WUTA OFEI.

Accra.

23rd March,
1948

March 23, 1948.

20

J. Quist-Therson, Esqr.,
P.O. Box 113,
Accra.

Sir,

I am in receipt of your letter dated 15th March, 1948, relative to a parcel of land which is claimed by Mrs. Mabel Danquah.

I was never aware that she had any land in the area. The plot which I now occupy was given to me by Nii Kwabena Bonne III, Osu Alata Mantse.

30

Incidentally, it is strange that although she holds Title Deed on the land as you assert, from the Osu Mantse, Mrs. Danquah, only a short time ago should have approached Nii Kwabena Bonne suggest that the very land should be reconveyed to her.

I am,
Yours faithfully,
(Sgd.) R.B. Wuta Ofei.

Exhibit "D". - LETTER from R.B. WUTA-OFEI to MABEL DANQUAH

Plaintiff's Exhibits

R.B. WUTA-OFEI.

"D"

To Mrs. Mabel Dove-Danquah
c/o Messrs. A.G. Leventis & Co., Ltd.,
Accra.

Letter from
R.B. Wuta-Ofei
to Mabel
Danquah.

Dear Madam,

6th April, 1948.

10 Further to your letter to me through your Solicitor, it appears that you are continuing to interfere in the rights of the land on which I am building.

Now I want to make this quite clear to you. Don't misunderstand me. Should this matter go to the Court and I defend my title successfully, I shall have to go further and claim substantial damages from you. I repeat this, and it must be quite clear to you before you make any move, so that you should act with very clear vision.

Yours faithfully,

20 (Sgd.) R.B. WUTA-OFEI.

Exhibit "E". - AFFIDAVIT of R.B. WUTA-OFEI Opposing an Application for an Interim Injunction.

"E"

Affidavit of
R.B. Wuta-Ofei
Opposing an
Application
for an Interim
Injunction.

IN THE GA NATIVE COURT "B" ACCRA
EASTERN PROVINCE GOLD COAST
DIVISION 3 LABADI.

11th January,
1949.

MABEL DANQUAH Plaintiff
NII NOI OWUO II Osu Mantse, Co-Plaintiff

versus

30 R.B. WUTA OFEI, Defendant
NII KWABENA BONNE III, Co-Defendant

AFFIDAVIT of Defendants herein
in reply to plaintiffs

I, ROBERT BENJAMIN WUTA-OFEI, Journalist, make oath and say as follows:-

Plaintiff's Exhibits

"E"

Affidavit of R.B. Wuta-Ofei Opposing an Application for an Interim Injunction.

11th January, 1949
- continued.

1. That I am the defendant herein.
2. That I make this affidavit with the knowledge, consent and concurrence of the co-defendant herein.
3. That I have read the affidavit of the plaintiff wherein she seeks an interim injunction against defendant herein to discontinue further trespass on the land the subject matter of this suit.
4. That in respect of similar claim of trespass which came before Mr. Justice Korsah an injunction sought for by the plaintiff was ruled out in case Nii Adjei Onano V, La Mantse versus Okwei Noi and ors. 10
5. That by the erection of a building on an empty land the value of the land is rather increased and does not constitute a trespass for the demand of interim injunction.
6. That from the commencement the defendant herein took action against the plaintiff in respect of the same land and it was scheduled for hearing at Azuma House but consequently this action was given precedence. 20
7. That plaintiff's affidavit is just a repetition of her summons and injunction referred to in paragraph 6 supra, a suit which is before this panel and hearing is nearing completion.
8. That I am already in occupation of the land and all thereon and any such injunction means my being shut-up in my own house, a procedure which is against natural justice common law. 30
9. That my ownership of the land is unchallengeable and have evidence to prove that the plaintiff's document is valueless.
10. That considering paragraphs 6, 7, 8 and 9 supra, the application for the interim injunction should not be countenanced.

SWORN at Accra this 11th day)
of January, 1949) (Sgd.) R.B. WUTA-OFEI. 40
Before me

(Sgd.) K.O. Quansah
COMMISSIONER FOR OATHS.

Exhibit "4". - LETTER from COMMISSIONER OF LANDS
to R.B. WUTA-OFEI.

Defendant's
Exhibits

No.99491/95
Lands Department
Cantonments
P.O. Box 558,
Accra, Gold Coast.
13th January, 1949.

"4"

Letter from
Commissioner
of Lands to
R.B. Wuta-Ofei.
13th January,
1949.

Sir,

10

ACCRA TOWN (LANDS) ORDINANCE 1940

I have the honour to acknowledge the receipt of your letter of today's date enclosing a Deed of Gift dated 1st February, 1947 and made between Nii Kwabena Bonne III and yourself, and to inform you that the land affected by that Deed is contained in the area vested in the Crown by virtue of the above Ordinance and the Conveyances noted in the first schedule thereto.

20

It is Government's intention formally to divest itself of certain parts (one of which contains the plot in which you are interested) of the land acquired, but the Divestment Order is delayed pending the preparation of survey plans. In the meantime the portions of land to be divested, including land claimed by you and mentioned above, have been released to the appropriate Stools by a Deed of Release and Covenant dated 6th February, 1948.

30

The enclosures forwarded by you are returned herewith.

I have the honour to be,
Sir,
Your obedient Servant,

(Sgd.) ?
for Commissioner of Lands.

R.B. Wuta-Ofei, Esqr.
P.O. Box 217,
Accra.

Defendant's Exhibits

Exhibit "9". - COPY of CERTIFICATE OF TITLE.

"9"

Deeds Registry No.533/1951

Copy of Certificate of Title.

28th April, 1951.

CERTIFICATE OF TITLE
TO LAND SITUATE NORTH OF RING ROAD & EAST OF DODOWA ROAD AT ACCRA & REQUIRED FOR EXTENSION TO RESIDENTIAL AREA.

It is hereby declared and certified that pursuant to the Public Lands Ordinance, the title in and to all (a) THAT piece or parcel of land situate north of Ring Road and east of Dodowa Road at Accra in the Accra District of the Eastern Province of the Gold Coast Colony and bounded on the north-east by Crown land measuring 1275 feet more or less on the south-east by Crown land measuring 985 feet more or less on the south-west by Ring Road measuring 1275 feet more or less and on the north-west by Dodowa Road measuring 965 feet more or less and comprising an area of approximately 28.5 acres which piece or parcel of land is more particularly delineated on plan No.L.D.822/17202 attached hereto and thereon edged pink is vested in the Governor and his successors in office to the use of His Majesty, according to the true intent and meaning of the said Ordinance.

10

20

Dated the twenty-eight day of April, 1951.

(Sgd.) J. Jackson
Judge of the Supreme Court.

(Sgd.) Dugbartey Nornor
Registrar.

30

This Instrument was delivered to me for registration by the Commissioner of Lands of Accra at 10.30 o'clock in the forenoon this 16th day of May, 1951.

(Sgd.) R.H. Murphy
Registrar of Deeds.

Gold Coast Land Registry
Registered as No.533/1951.

(Sgd.) R.H. Murphy
Registrar of Deeds.

40

Exhibit "G". - JUDGMENT of LAND COURT in LAND ACQUISITION No.6/50.

Defendant's Exhibits

24th July, 1951.

"G"

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN JUDICIAL DIVISION, LAND DIVISION, HELD AT VICTORIABORG, ACCRA, on TUESDAY the 24th day of JULY, 1951, BEFORE JACKSON, Ag. C.J.

Judgment of Land Court in Land Acquisition No.6/50.

24th July, 1951.

Land Acquisition Suit No.6/1950.

10 IN THE MATTER of the PUBLIC LANDS ORDINANCE
- and -

IN THE MATTER of LAND acquired for the service of the Gold Coast Colony and Ashanti situate east of and adjoining the road from Cantonments to Christiansborg At Christiansborg Accra in the Accra District of the Eastern Province of the Gold Coast Colony.

- 20 1. NII KWABENA BONNE III, Osu Alata Mantse
2. SAMUEL ARMAH HAMMOND
3. MENSAH SHANG
4. WILLIAM MENSAH
5. JACOB OKAI
6. ROBERT NOI
7. DAVID EMMANUEL NIKOI KOTey
8. STEPHEN JULIUS BRAINDT
9. H.R. WULFF
10. MOUSBAH CAPTAN
30 11. A. OFORI TAVIAH
12. A.G. HEWARD MILLS
13. J.A. BROWN-LARTEY alias ARKU BROWN
14. E.K. LAMPTEY
15. ODARKOR LAMPTEY
16. S.H. ADDO
17. J.C.O. LAMPTEY and J.A. LAMPTEY
18. THERESA ESTHER BANNERMAN
19. G.E. MICAH
20. E.A. LARYEA
40 21. S.A.N. KOTey
22. J.A. MENSAH, Caretaker of the Stool of King Asa of Christiansborg and Asamani of Christiansborg Castle - Claimants.

J U D G M E N T

This Enquiry arises under the provisions of

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Section 7 of the Public Lands Ordinance and relates to an area of land acquired by the Government on the 31st March, 1947, and which land is described in the certificate of Title admitted and marked as No.4.

There were 22 claimants. The 1st claimant, Nii Kwabena Bonne III claims that the whole area so acquired is a part of the land owned by the Alata Quarter of Osu (Christiansborg) and of which he is the Head.

10

The 10th claimant, Mousbah Captan, claims compensation by reason of a conveyance made to him by Nii Kwabena Bonne on the 17th March, 1947, of approximately one half of the area acquired in an estate in fee simple for a sum of £600. I refer to the deed admitted and marked as No.10. He claims further in respect of a lease of the residue of the land acquired which was leased to him on the same day by Nii Kwabena Bonne for a term of 50 years and an option for a further 25 years. I refer to the deed admitted and marked as No.9.

20

The 7th, 13th, 16th and 17th claimants namely D.E.N. Kotey, Brown-Lartey, S.H. Addo and Lamptey did not appear to prosecute their claims and those claims I dismiss for want of prosecution.

The 22nd claimant, who by his letter to the Commissioner of Lands dated the 10th March, 1948, claimed on behalf of the Stool of King Asa which he evidenced was the Stool in the Kinkawe Quarter and under the Osu Paramount Stool. He stated that he claimed on behalf of the Osu Stool. I ruled that there was no claim before me made by the Osu Stool and that my jurisdiction was limited to those claims lodged with the Commissioner of Lands within the statutory period of three months. The claimant did not wish to press the claim on behalf of the Kinkawe Stool and it was treated as having been withdrawn.

30

The remainder of the claimants claimed that the titles to the land had been derived as the result of grants made to them by the Osu Stool at various times prior to the commencement of the World War of 1939-1945.

40

As between the 1st and 10th claimants and the others before me the issue resolved itself into this.

"Was the owner in possession at the time
 "of the acquisition the property of the Osu
 "Stool or that of the Alata Quarter of Osu?"

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10 There has been a considerable amount of litigation, and certainly since 1933 (Nunoo v. Tettey Ababio and C.A. Tutterodt), as to what the Quarter Elders have to grant land to their subjects for the purpose of building independently of any concurrence by the Osu Mantse, and during the course of this period the lands, which are said to be the subject of such independent rights of the Quarter Elders, have been described by the coined words "outskirt lands".

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What were the powers of the Quarter Elders in these matters was referred to recently by the West African Court of Appeal in the suit Aryee v. Odofoley and those rights or powers have been discussed in several actions relating to these so-called "outskirt" lands.

20 But nowhere has it ever been defined with any degree of certainty as to what are their limits. And that is the matter which occasions difficulty.

The town of Osu (Christiansborg) consists of four Quarters, namely Kinkawe, Asanti-Blohum, Alata and Anahor.

30 I am satisfied that of the pure Osu stock Kinkawe is the senior, and from which quarter the Osu Mantse is elected, then comes Asanti-Blohum with the Mankralo at its Head. The position of Anahor who are of Labadi stock, is difficult to determine - but they were certainly on the land before the Alata Quarter and possibly even before any of the other Quarters.

40 Facing the sea Kinkawe occupies the western portion of Osu, then immediately adjacent are found the houses of the Ashanti Blohum Quarter and then further east and from where is now the Scottish Mission Church (formerly the Basel Mission) there is a conglomeration of houses occupied variously by people of the Blogodo section of the Kinkawe Quarter and people of the Alata Quarter, and the latter appear to have moved gradually northwards in a thin wedge not more than 50 yards wide or so, up from the place of their first residence when they came as labourers to assist in the building

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of Christiansborg Castle, and when they first settled near the sea shore where the gardens of Government house are situate today. To the east again are dwellinghouses of the Anahor people and my findings upon my inspection of this area on the 20th June are found recorded in the proceedings heard on the 21st.

North of this mixed settlement of Kinkawe and Alata is the market and north of the market is the large site occupied by the Scottish Mission. 10

To the north of this Mission site the land (for very many years) has been laid out in plots in accordance with a Town Plan, and this is shown very clearly in the Accra Town Plan of 1933 which I have admitted in evidence and marked as No.39.

This is the land which the claimant Nii Kwabena Bonne III avers is the "outskirt" land of this quarter.

He lays stress upon the decision given by the Court of Appeal in the suit Aryee v. Odofoley (Exhibit 24) which related to a plot of land which on Exhibit 39, I have marked as "XA" and which on the plan admitted and marked as No.32 is shown as "Odofoley Elizabeth 2916/46" and which on the 8th March, 1951, the West African Court of Appeal held was land attached to the Alata Quarter. 20

But on that same day (8th March, 1951) in the suit Baddoo v. Ayorkor (Exhibit 25) the same Court, and constituted by the same members, and in an appeal which related to land about a quarter of a mile to the south-west of the land in Aryee v. Odofoley and which on Exhibit 39 I have marked as "XB" and which on Exhibit 32 is shown as "J.A. Nortey 11/6/38" was found not to be Alata Quarter land. 30

Now these decisions were made in the absence of plans and by an acceptance of a Native Court finding of fact in each case. A perusal of the evidence in the suits shows that at no time was any evidence given to illustrate how the Native Court had arrived at the conclusion as to whether these sites were or were not Osu or Alata Quarter land, and it is unfortunate that a plan was not available to the West African Court of Appeal before they made these decisions, and especially so 40

when it is realised that the site of the land in the suit Aryee v. Odofoley is about one mile to the north of the market to which I have already referred and which lies to the north of Alata Quarter.

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What are the limits of these lands on the outskirts of Alata Quarter and have they ever been defined?

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10 The earliest record of any decision which attempted to define what was, or what was not, Quarter land is to be found in an award made by John Church (said to have been a District Commissioner) on the 11th February, 1910, and which award Counsel both for Nii Kwabena Bonne and for the other claimants relied upon and argued to the effect as one binding upon the parties as a judicial decision.

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20 If I could find that the Enquiry had been held under any statutory authority e.g. the Commission of Enquiry Ordinance, I would agree, but that has not been proved. It had no force as an arbitration, since the Arbitration Ordinance did not come into existence until the 30th March, 1928. It is however of great value as a record of opinion at that early date and by Counsel's admissions as being accepted by the parties.

Mr. Church said:

30 "I find as a fact that it has been the practice of a member of a quarter to build only on the land adjacent to or attached to that quarter and on obtaining the plot of land to give a present to the Head of that Quarter
"...."With regard to farming, the position is not so clear. Probably the member of a quarter who wishes to farm on land belonging to another quarter, but I doubt whether he could have been hindered from farming if he failed to do so.

40 "The position can I think be fairly summed up by saying that the lands near each quarter are town lands in which that particular quarter has a special interest, the quarters not being entirely separate bodies but each being a closely connected part of the whole community. It is impossible to draw a line on one

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"side of which land is to be regarded as
"attached to a quarter and on the other
"common to the whole town.

"The suggestion which was made that the
"Municipal boundary should be regarded as
"this line is merely ludicrous".

It is quite clear that the learned Arbitrator was quite unable to define in 1910 where Town lands began or ended, or to what limit did lands "attached to" a quarter cease to be quarter lands and when they commenced to become Town lands. 10

This matter of customary law was referred to by the West African Court of Appeal in the recent case of Aryee and Others v. Odofoley on the 8th March, 1951, when Blackall, P. said:

"After a full consideration of the authorities quoted it seems to me that under
"Christiansborg (Osu) customary law the
"position as to outskirt lands is this: Where
"unalienated land is on the charge of the
"head and elders of a quarter the Osu Mantse
"may not grant any part of such land without
"prior consultation with the head and elders
"of the quarter. I think that the Native
"Court went too far in stating that the consent and approval of the subordinate chief
"and his elders must be obtained. 20

"The final decision in my opinion rests
"with the Osu Mantse and his elders, for the
"fact that unalienated land of the Osu Stool
"is by custom placed in charge of the several
"quarters does not alter its fundamental
"character, or derogate from the right of the
"Osu Mantse and his elders to dispose of any
"part of it that has not already been alienated by the Quarter Head and Elders. But the
"Osu Mantse may not do so until the head and
"elders of the Quarter concerned have been
"afforded an opportunity of putting forward
"any objection they may have to the proposed
"grant and the customary way of doing this is
"to hold a meeting of those concerned". 30 40

That there never has been in existence any recognition as to what are the boundaries of such "lands" in charge of the Quarter is manifest. The earliest evidence of that absence of definition is found in the award made by John Church in 1910

and when it was suggested to him that the then existing Municipal Boundary should be regarded as the northern limit the arbitrators dismissed the suggestion as being ludicrous.

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Later the evidence before me shows that the Osu Mantse attempted to demarcate such boundary some years ago and which resulted in the case of Sampson v. Lutterodt and Simpson (Exhibit 38) where Coussey, J. said:

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"I am satisfied that this demarcation was contrary to custom as it was without the knowledge and concurrence of the heads of the Quarters of Ashanti Blohum, Alata and particularly of Anahor".

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Now what is the evidence before me as to what are the limits of the land "in charge" of the Alata Quarter. Nii Kwabena Bonne III in reply to his Counsel said:

20

"I was told that in the past any quarter had the right to make grants of vacant land which lay in the immediate vicinity of the dwelling houses.

"In the olden days all the people of Osu were one and the people of Kinkawe gave away these lands to Government. After lands such as those situate at the Cantonments were known as Osu Stool lands. In that case if it was wanted to give such lands away all of the people would be consulted and the Manche told.

30

"Manche would cause gong-gong to be beaten and the elders and Okyeamis (Linguists) would inform the people about the nature of the meeting.

"Q. If people wanted to acquire land what procedure is followed?

"A. It was that person who would first see the Manche and also would inform the Quarter Heads and who would then meet at the Manche's place".

40

That evidence represents, in my judgment, a very accurate account of the native customary law that governed these matters. Neither the Manche nor the Quarter Chiefs attempted to act independently. They acted together and with the full knowledge of the people.

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Up to this point it cannot be said that any land at Osu was in the charge of any individual Quarter. Under cross-examination, for the first time, the claimant when pressed attempted a definition of the boundaries of the land "in charge" of the Alata Quarter.

He was asked:

"Q. It is not true that your land stretches
"from Basel Mission on the west to Obenesu on
"the east?

"A. That is correct".

10

The answer meaning that these were the western and eastern boundaries. That for the first time gives some definition of what are claimed to be the limits to the west and the east. But what is the evidence as to how far this land stretches to the north? There was not a tittle of evidence from the claimant in that respect, and he is the Head of the Quarter, and the principal person who would be in charge of land attached to that Quarter. And no further evidence was given by the witnesses for this claimant so as to establish any limits to the lands alleged to be Alata Quarter lands.

20

Throughout the enquiry not a soul could give me any indication of what were these limits. When Nii Okwe Omaboe, the Acting Mantse of the Osu Stool gave evidence he said:

"When the Alatas grew in numbers they used
"to build on Anahor land and Anahor would
"complain to the Osu Manche. The Osu Mantse
"would tell them that they were not doing
"wrong as they were only putting up buildings
"and that they should be allowed to do it.
"Because of these complaints the Osu Mantse
"decided to give the Alatas some lands. This
"happened in my lifetime, but the Mantse
"died before this was carried out. This was
"about 30 years ago.

30

"The new Mantse was enstooled a year later.
"He said nothing more about it and the elders
"did nothing has been done up to today. The
"Osu Stool grants land in the whole area to
"people".

40

In reply to me as to whether the erection of all buildings in a Quarter required the ratification by the Mantse and his elders and Councillors I asked:

"Q. When must they go and get permission and when need they not obtain permission?
 "A. Everyone must ask permission. He must ask permission outside of 1000 feet - about "100 feet".

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Another witness Mensah Shang (3rd claimant) a man of the Kinkawe Quarter answered me as follows:

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10 "Q. Up to what distance from existing houses would he have to seek that permission?

"A. Up to about 80-100 feet away.

"Q. And if he wanted to build beyond that distance from existing houses what would he have to do - again I speak of vacant land?

"A. He must then ask permission from that Mantse - because that land belongs to anyone"

There is nothing in the evidence which advances the matter beyond that point.

20 I inspected Alata Quarter on the 20th June and my findings are found recorded in the proceedings on the following day, and to illustrate these findings I have made references to the Gold Coast Department Accra Town Plan (Southern Section) 1933 Edition and which I have marked as Exhibit "39".

On that plan I have marked as "XA" and "B" the two sites which were the subjects of two recent cases namely Baddoo v. Ayorkor and Nortey (Exhibits 25 and 26) and that of Aryee and Aryee v. Odofoley (Exhibits 24 and 30).

30 The former case related to a plot of land marked by me as "XB" which is situate just north of the land which is the subject of this enquiry and the latter case - (Aryee and Odofoley) is situated about a quarter of a mile or so to the north east of the other site.

The judgment of the Native Court the earlier in time was that given in the case of Aryee v. Odofoley when on the 7th April, 1948, the Native Court held that the land situate at "XA" was the property of the Alata Quarter.

40 But in the case of Baddoo v. Ayorkor and Nortey the same Native Court, but with different sitting members, found that land situate to the south i.e. the site marked by me as "XB" could not

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be granted without the knowledge consent and approval of the Stool concerned and that the Osu Stool at the time it made the grant in 1938 had the right to do so.

That decision was affirmed by the Land Court (Wilson, C.J.) and an appeal from that decision was dismissed on the 8th March, 1951, by the West African Court of Appeal when Lwey, J.A. commented on the absence of a plan which he observed was unfortunate.

10

How apt that comment was is to be illustrated when following the course of the other case referred to namely Aryee and Aryee v. Odofoley and where the Land Court (Wilson, C.J.) reversed the decision of the Native Court and held that the grant made by the Osu Stool being earlier in time prevailed over that made by the Head of the Alata Quarter.

That decision was overruled by the West African Court of Appeal on the same day (13th March, 1951) i.e. on the same day that they had affirmed the decision in Baddoo v. Ayorkor, and where the issue was quite clearly whether that land situate to the north of the land discussed in that case was land which the Alata Quarter had the right to grant independently of any concurrence by the Osu Mantse.

20

It is indeed unfortunate that no plan was ordered since the effects of these judgments are that whilst land immediately to the north of the land now the subject of this enquiry "was not within the control of the Alata Quarter but was part of the Osu Stool lands" the other decision, given on the same day finds, that land a quarter of a mile still further remote from the Alata Quarter "was attached to the Alata Quarter".

30

There were no plans available in these cases and the Judges accepted without hesitation the Native Court's findings as to whether it was Quarter land or not. A study of the evidence given before the Native Court shows there was no attempt made to prove any such limitation of those lands and what the Native Court's inspection revealed were never stated.

40

It is manifestly clear that not a soul in Osu is able to say today what are the limits of the

lands owned by each quarter other than to say that lands upon which their ancient houses were built, and those I inspected, are built upon land which may be said to be the property of the Alata Quarter.

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10 The evidence tends to show that the subjects of such a quarter might extend their buildings say to a distance of 80 to 100 feet without seeking any higher permission than that of the Quarter Chief and in practice, and I would say that the practice has become an established usage, and is reasonable usage and has now become a part of the customary law, and it follows that part of John Church's 1910 award where he found:

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"I find it as a fact that it has been the practice of a member of a quarter to build only on the land adjacent to ... that quarter, and on obtaining the plot to give a present to the head of that quarter."

20 I have deliberately omitted from that quotation the words "or attached to" for it is this phrase which in my judgment has no actuality - since there is no evidence whatever that any lands other than those already built upon or extended upon as described above have ever been "attached to" any Quarter.

30 And that was the difficulty with which the arbitrator found himself confronted with and why he appeared so puzzled as to farming rights and in my judgment he was correct when he finally said:

"but I doubt whether he could have been hindered from farming if he failed to do so".

He clearly could not be hindered from farming on Osu Stool land which was vacant and unappropriated, from whatever Quarter he came and when the arbitrator referred to town land "in which that particular quarter has a special interest" there is nothing to show the nature of that special interest.

40 The solution lies in the communal, indivisible and indestructible nature of land interests which are administered by the Manche with his Quarter Chiefs and Elders. Let one work without the other and there is chaos, discontent and expensive litigation. Make them work together in accordance with customary law and these differences are ironed out in the meetings.

Each quarter must necessarily develop its

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building land and it develops it according to its own domestic needs by a gradual extension and ultimately enveloping within its several quarters so much of Osu Stool land as meet the requirements of each quarter; but it cannot extend its quarter lands by staking a claim a mile distant from the quarter and then argue that the land in between now constitutes the "outskirt" land of the quarter. The absurdity of such an argument is too obvious to need further elaboration, other than to say that by a stroke of a pen and the demarcation of a 100 foot plot 7 miles to the north, the Alata quarter could "attach" to itself the whole of Osu Stool land. It is equally abortive to argue, as learned Counsel argued, that the quarter land is the land which extends to the north. I can only say that if that were so, then without further evidence other than that afforded by the plan (Exhibit 39) the Alata quarter would be immediately out of Court. 10

Today the tendency of the more disreputable Heads of quarters or Mantse is to assert a right to sell outright to foreigners lands entrusted by their ancestors to their charge and for the mutual benefit of their community, and but for that tendency conflicting claims of this nature could not arise. 20

Now what was the evidence of the dealings in the lands in the close environs of the land in dispute. It is shown very clearly by the evidence of A.G. Lokko and the plan which he tendered and which was admitted in evidence and marked as No. "32". That plan by reference to the Accra Town Plan (Exhibit 39) shows the land which is situate immediately to the north and north east of the lands leased to the Scottish Mission and which plan shows that as far back as 1939 there were a large number of buildings in existence between the Alata Quarter (which almost without exception is situate south of the Market Site and the land which is now the subject of this enquiry) and on that Town Plan is situate immediately north of Pillar G.C.G.4/6635. 30 40

Mr. Lokko's evidence was that he made this plan in 1924 upon the instructions of the then Osu Mantse and that he was appointed to be a kind of caretaker for the land. He is by profession the Senior Building Inspector to the Accra Town Council and these duties he appears to have carried out in his spare time. His duty was to indicate

the sites of plots which had been allocated to various persons by the Osu Mantse and he would accompany the grantee to the plot together with the Osu Linguist.

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10 Mr. Lokko testified that the names and dates inscribed by him on that plan had been made on the original of which the one tendered is a copy at the time each grant was made. I accept that evidence and it follows that since 1924 and until today most of the land between the Scottish Mission and the land the subject of this enquiry has been the subject of grants made by the Osu Mantse. There is no evidence which I can accept that any grant in this area or near this area was made by the Head of the Alata Quarter, acting independently of the Osu Mantse, until the claimant Nii Kwabena Bonne III became the Head of the Alata Quarter within recent years and the earliest of which there is any written record is the one evidence by the deed admitted and marked as No."28" and which is dated the 20th December, 1946.

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20 That buildings have been in existence since 1928 or thereabouts is evidenced to the hilt, apart from the evidence of the Accra Town Plan made in 1933 and these buildings have been erected and maintained for more than twenty three years without the right to build having been challenged in any manner whatsoever and in the circumstances obtaining in Osu, appear to me to be as cogent evidence as any Court could expect to receive to assure it that the grantors of these lands had the right to grant, and that by its silence the Alata Quarter has acquiesced in that legal right, and that everything then had been done which should have been done according to customary law.

30 In effect the land "attached to any quarter" extends no further than the lands actually built upon by the subjects of the quarter or their tenants or that immediately adjacent and by the word "immediate" is meant within 100 feet of existing buildings.

40 I can find no evidence whatsoever that there are any other lands attached or under the charge of any of the quarters of Osu beyond that, and the vacant land around appears never to have been apportioned or delineated so as to operate to make it any less than Osu Stool land and in the charge of the Mantse, his elders and councillors.

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I am satisfied upon the evidence that each one of the claimants who has claimed land within the area of the land acquired and who has obtained possession by reason of a grant to build through the Osu Mantse did acquire a valid and inextinguishable interest in land provided he built, maintained the building, recognised the ownership of the Osu Stool, and did not alienate the property without the consent of that Stool. It was in each case subject to these conditions a lease in perpetuity of those lands.

10

The claimants were prevented from building by reason that the land was requisitioned by the Military Authorities during the last war (1939-1945) and that before it became de-requisitioned it became the subject of acquisition under the provisions of the Public Lands Ordinance.

Following my decision in the matters of the lands acquired for the Dairy Farm, Remand Home and Reception Hostel in which I gave judgment on the 23rd August, 1948, and which judgment was upheld on appeal by the West African Court of Appeal and which I held there that the owner in possession was the person deemed to have the right to possess and enjoy without hindrance from any other person with the exception of the rights of the Stool.

20

Now this is a compulsory scale, but for the purposes of valuation I must treat it as if it were a private scale in which the "market value" of the land acquired shall be taken to be the amount which the land might have been expected to realize if sold in the open market by a willing seller at the date of the publication of the Gazette of the notice of acquisition under Section 4 of the Ordinance (Section 7A (1)(a) of Ordinance No.23 of 1945) together with the further consideration set out in (b)-(d) of that sub-section.

30

They must be placed in the position as if they had been able to satisfy the very onerous condition as to sales of land imposed by customary law and had obtained the consent of the Osu Stool to that sale. What is due from them to the reversion is no matter for consideration here. All that I have to assess is the market value of the land.

40

The only evidence led before me as to the value of the land was that given by Mr. Hipgrave a valuer by profession and a member of the Lands

Department. The claimants gave no evidence as to the market value other than by the production of a deed showing that approximately 3.4 acres of this land had been sold on the 17th March, 1947, for a sum of £600 and which acreage represents rather more than one half of the total acreage amounting to 5.947. I am of the opinion that the valuation arrived at by Mr. Hipgrave namely £604 is a fair and reasonable one and I do enter judgment accordingly.

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24th July, 1951
- continued.

I find the following claimants have established their claims to be the owners in possession of these plots of land, within the area acquired, as shown upon the plan admitted in evidence and marked as Exhibit No.14:

2. S.A. Hammond
3. Mensah Shang
4. William Mensah
5. Jacob Okai
6. Robert Noi
8. S.J. Braindt
9. H.R. Wulff
11. A.O. Tawaih
12. A.G. Heward Mills
14. E.K. Lamptey
15. Odarkor Lamptey
18. T.E. Bannerman
19. G.E. Micah
20. E.A. Laryea
21. S.A.N. Kotey

and that each one of these claimants is entitled to a sum which represents a proportionate share of the sum of £804 as the acreage of each of their claims bears to the total acreage of 5.947 acres. These sums I leave to the parties and their Counsel to settle and when settled to move the Court for judgment in the terms of these settled amounts.

I do further dismiss the claim made by Nii Kwabena Bonne III, who failed to establish any title, and the claim of Mousbah Captan who derives his title from Nii Kwabena Bonne.

The successful claimants are each entitled to their costs which are to be taxed. I assess Counsel costs at 50 guineas.

J. Jackson,
AG. CHIEF JUSTICE.

Counsel:

Mr. Lamptey for Osu Alata Manche.
Mr. Quist-Therson for Osu Stool.

Plaintiff's
Exhibits

Exhibit "H". - JUDGMENT of W.A.C.A. in LAND
ACQUISITION NO.6/50.

"H"

WEST AFRICAN COURT OF APPEAL

Judgment of
W.A.C.A. in
Land Acquisition
No. 6/50.
2nd April, 1954.

GENERAL SITTING HELD AT ACCPA,

2ND APRIL, 1954

CORAM POSTER-SUTTON, P., COUSSEY, J.A. &
WINDSOR-AUBREY, J.

Civil Appeal
No.90/52

Land Acquisition
No. 6/1950.

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IN THE MATTER of the PUBLIC LANDS ORDINANCE

- and -

IN THE MATTER of LAND situate east of and
adjoining the road from Cantonments to
Christiansborg at Christiansborg, Accra in
the Accra District of the Eastern Province
of the Gold Coast Colony:

NII KWABENA BONNE III, Osu Alata
Mantse & others,

Claimants

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(1) NII KWABENA BONNE III,
Osu Alata Mantse,

Claimant-Appellant

v.

S.A. HAMMOND, MENSAH SHANG, WILLIAM MENSAH
JACOB OKAI, S.J. BRIANDT, H.R. WULFF,
A.O. TAWIAH, A.G. HEWARD-MILLS, E.K. LAMPTEY,
ODARKOR LAMPTEY, THERESA E. BANNERMAN, G.E.
MICAH, E.A. LARYEA, and S.A.N. KOTey,

Claimants-Respondents

(2) MOUSBAH CAPTAN,

Claimant-Appellant

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v.

S.A. HAMMOND, MENSAH SHANG, WILLIAM MENSAH,
JACOB OKAI, ROBERT NOI, S.J. BRIANDT, H.R.
WULFF, A.O. TAWIAH, A.G. HEWARD-MILLS, E.K.
LAMPTEY, ODARKOR LAMPTEY, THERESA E. BANNERMAN,
G.E. MICAH, E.A. LARYEA, S.A.N. KOTey.

Claimants-Respondents

J U D G M E N T

WINDSOR-AUBREY, J.: In this appeal the claimants-
appellants Nii Kwabena Bonne III, Osu Alata Mantse,

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and Mousban Captan Appeal against the judgment of Jackson, J., dismissing their claims for compensation in respect of land acquired for the service of the Gold Coast Colony and Ashanti under the Public Lands Ordinance.

Plaintiff's
Exhibits

—————
"H"

The area acquired is described in the Certificate of Title, Exhibit "4", and a plan thereof is shown in Exhibit "7".

Judgment of
W.A.C.A. in
Land Acquisition
No. 6/50.

10 The claimant Nii Kwabena Bonne III as head of the Alata Quarter of the Osu Stool, one of the four Quarters of that Stool, claimed that the whole area so acquired formed part of the land owned by the Alata Quarter.

2nd April, 1954.
- continued.

20 The claimant Mousbah Captan derived title from Nii Bonne III who conveyed to him about half the area acquired, by an indenture of conveyance dated the 17th March, 1947. The residue of the land acquired was leased to Mousbah Captan by Nii Bonne III by an indenture lease dated the 17th March, 1947, for a period of 50 years with an option of renewal for a further period of 25 years. The claimants-respondents claimed that their titles to the land had been derived as the result of grant made to them by the Osu Stool at various times prior to the commencement of the World War of 1939-45.

30 During that war military authorities requisitioned the major portion of the land acquired, but subject to that interruption, the claimants-respondents have been in possession throughout. I am of the opinion that the temporary possession by the military authorities must be held for the purpose of the Public Lands Ordinance to be possession by the respondents.

It is important to bear in mind that section 12 of the Public Lands Ordinance raises a presumption of ownership in favour of parties in possession of land at the time when it is acquired under the Ordinance.

40 That section reads as follows:-

"In all cases where any question shall arise respecting the title to any lands to be acquired under this Ordinance the parties in possession of such lands as being the owners thereof at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands,

Plaintiff's Exhibits

"H"

Judgment of W.A.C.A. in Land Acquisition No.6/50.

2nd April, 1954 - continued.

"unless the contrary be shown to the satisfaction of the Court, and such parties shall be entitled to receive the purchase money or compensation for such lands, but without prejudice to any subsequent proceedings against such parties at the instance of any person have or alleging a better right there- to".

Counsel for the claimant-appellant Nii Bonne III based his claim on two grounds:-

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(1) that the land acquired is north of the area occupied by the Alata Quarter and that each quarter has the customary right to extend its quarter northwards as quarter lands required for the inhabitants of its quarter without reference to the Osu Stool;

(2) that Nee Noi Owuo the Second Osu Mantse on behalf of the Osu Stool by a deed dated the 27th May, 1947, made between himself and the claimant-appellant Mousbah Captan confirmed all grants made to the said Mousbah Captan by all quarters of the Osu Stool, which includes, as already stated, the Alata Quarter of which 1st claimant-appellant is the head.

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As regards ground (1), Counsel relies to a considerable extent on the judgment of the West African Court of Appeal in the case of Aryee v. Odofoley (Exhibit "24") in which the Court held that land about one mile to the north of the area acquired was land attached to the Alata Quarter. On the other hand on the same day the Court of Appeal held that land about a quarter of a mile to the south-west of the land in the Aryee v. Odofoley case did not belong to the Alata Quarter.

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As the learned trial Judge pointed out these judgments were made in the absence of plans and on an acceptance of a Native Court of findings of fact in each case.

This Court pointed out to Counsel that if his contention was correct there were no limits whatsoever to the distance northwards to which a quarter could extend its area and that a quarter could acquire land which was not contiguous to the area occupied by it. Counsel was not able to refute this suggestion.

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The learned trial Judge dealt very fully with this aspect of the case, and I am of the opinion that he correctly held and that there was sufficient evidence of custom to support his findings -

Plaintiff's
Exhibits

"H"

(1) that until land is allotted to a quarter by the Osu Stool it remains the property of the Osu Stool;

Judgment of
W.A.C.A. in
Land Acquisition
No.6/50.

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(2) that members of a quarter may, however, extend their quarter by building on the land adjacent to or attached to a quarter up to a distance of about 80-100 feet of existing buildings. Such land the learned trial Judge described as outskirts land.

2nd April, 1954
- continued.

The land acquired is not contiguous to the Alata quarter and cannot possibly be described as outskirts land, and, was therefore the property of the Osu Stool and lawfully granted by that stool to the claimants-respondents.

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As regards the deed of the 27th May, 1947, a landowner cannot derogate from his own grant. The grants to the claimants-Respondents were made prior to 1939, and consequently the deed of 27th May, is of no legal effect.

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The onus of proving that they had a better title than the claimants-respondents who were in possession was upon the claimants-appellants, and they signally failed to discharge that onus. It follows that, the decision of the trial Judge in this case in favour of the claimants-respondents ought to be upheld.

I would, accordingly, dismiss both appeals.

FOSTER SUTTON, P. - I concur.

COUSSEY, JA., - I concur.

Defendant's Exhibits

Exhibit "10". - JUDGMENT of MANYO-PLANGE, J. in re LAND ACQUISITION No.7/1953.

"10"

3rd January, 1955.

Judgment of Manyo-Plange, J. in re Land Acquisition No.7/1953.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN JUDICIAL DIVISION (LAND DIVISION) held at VICTORIABORG, ACCRA, on MONDAY the 3rd day of JANUARY, 1955, BEFORE MANYO-PLANGE, J.

3rd January, 1955.

Land Acquisition No.7/1953.

IN THE MATTER of the PUBLIC LANDS ORDINANCE

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- and -

IN THE MATTER of LAND acquired for the service of the Colony and Ashanti situate north of Ring Road and East of Dodowa Road at Accra in the Accra District of the Eastern Province of the Gold Coast

- and -

- 1. NII NORTEY AFRIYIE II Osu Mankralo
- 2. NII OKWEI OMABOE, Acting Osu Mantse
- 3. M. CAPTAN,

Claimants

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J U D G M E N T

This is a dispute about the title to the land the descriptions of which are set out in Exhibit "A" the acquisition notice dated 3rd October, 1950, and, it has come before this Court by virtue of section 8 of the Public Lands Ordinance, for the determination of person lawfully entitled to the land and so to the compensation payable therefor.

There were originally three claimants one of whom the Acting Osu Mantse has subsequent to the matter coming before the Court, withdrawn his claim. Therefore there are just two claimants; the first claimant Nii Nortey Afriyie II, Osu Mankralo who claims the land to be land of the Ashanti Blohum Stool of which he is the occupant and M. Captan who claims to be the owner of the land by purchase from the Ashanti Blohum Stool represented by the then Acting Mankralo Narh Yebuah and, relies on a deed of conveyance dated 18th December, 1947, Exhibit "E". It is not in dispute that the occupant of the Ashanti Blohum Stool is always the Mankralo of Osu and the proper person to dispose of the Quarter Stool lands with

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the consent of his elders. It is not also in dispute that at the date of Exhibit "E", Narh Yebuah the grantor was the Acting Mankralo and that he sold the land to M. Captan. The first claimant's case is that, the Acting Mankralo in selling the land, did so without the consent of his elders which was contrary to Native law and custom and so the sale to Captan is invalid or void and, that Captan bought the land after warning a copy of which is Exhibit "G". According to the evidence of the 1st claimant and his witness the Dsasetse Nortey Yebuah, the Mankralo can only make a valid disposition of the Quarter's land with the consent of his principal elders who are the heads of the (7) seven houses of Ashanti Blohum and that, with the exception of Adotei Twi II none of the signatories to Exhibit "E" Captan's Conveyance is any of the principal elders. According to 1st claimant and his witness the Dsasetse, all these (7) seven principal elders must sign the document disposing of the land to signify their consent. I must point out also that it is not in dispute that the land is a portion of what are known as Osu "outskirts" lands. It is to be noted that neither Nii Nortey Afriyie, 1st claimant nor his witness Nortey Yebuah gave the names of these principal elders whose consent is essential. They admit also that from 1945, when Narh Yebuah was made Acting Mankralo he had been making grants of the Stool lands to Syrians including Captan as well as to African non-natives up to 1947, when he made the grant of the land in question to Captan and, that other Syrians like Turqui Brothers Abboud Brothers and others have built on the lands granted to them by Narh Yebuah and, that they and the elders knew that in 1948, Captan was building on this land. They both admit that none of these grants by Narh Yebuah has even been challenged by them and that at the time all these grants were made, Nortey Yebuah was Acting Dsasetse. M. Captan who is out of the country is represented by his brother Salim Ibrahim Captan who hold Mr. Captan's Power of Attorney Exhibit "H". S.I. Captan gave evidence on behalf of M. Captan. He knew Narh Yebuah, who was Acting Mankralo of Osu. According to him M. Captan bought about 10 different pieces of land from Narh Yebuah and is in possession of all except one or two which he has sold. He says his brother put up a building on a portion of the land subject of this acquisition which he has since sold to Government for £7,000. He says that until the acquisition

Defendant's
Exhibits

"10"

Judgment of
Manyo-Plange,
J. in re Land
Acquisition
No.7/1953.

3rd January,
1955

- continued.

Defendant's
Exhibits

"10"

Judgment of
Manyo-Plange,
J. in re Land
Acquisition
No.7/1953.

3rd January,
1955

- continued.

notice for this land was filed, nobody had chal-
lenged his brother's title to any of these lands
sold to him by Narh Yebuah as Acting Mankralo ex-
cept one, which Narh Yebuah granted to one Okwei
Yebuah who sold it to his brother; photostat
copies of the title deeds are Exhibits "J" and
"J1". He says one Susuana Millow trespassed on
this land by proceeding to build on the land; that
his brother sued Susuana Millow for declaration of
title and damages for trespass; that Narh Yebuah 10
from whom his brother derived his title joined his
brother as co-plaintiff and one Ofei Darko who claimed
to have given her the land joined Susuana Millow
as co-defendant - and his brother and Narh Yebuah
got judgment and a conveyance by the Dsasetse to
Ofei Darko on which he based his title was set aside.
The writ, the pleadings, order for joinder and
judgment in that case are Exhibits "F" and "F3".
On behalf of M. Captan, the Acting Osu Mantse and
one Lokko were called. The Acting Osu Mantse Okwei 20
Omaboe says he has been Acting Mantse since 1949
and, that he is the Osiahene of Osu. He says the
Osiahene is the next in rank to the Mantse and when
the Stool is vacant he acts as Mantse until a
Mantse is elected and enstooled. He says all land
in Osu belongs to the Osu Stool and that the 4
quarters in Osu control the land in their respect-
ive quarters and any of them can grant any of the
land under its control to any Osu man but no quar-
ter can sell any such land without the consent of 30
the Osu Stool.

He says the consent of the Osu Stool is given
by the Osu Mantse who signifies such consent by
taking part in the grant himself, or sending some-
body to act for him. He says in Ashanti Blohum the
persons who can make a sale are the Mankralo, the
Osiahene and the Wolomo. He says the other elders
such as the Dsasetse may take part in a sale but
they are not essential for the validity of a sale; 40
but the Osu Mantse or his representative must always
be a party to signify the consent of the Osu Stool.
He says no quarter can sell land of the quarter
without the consent of the Osu Mantse. He says
Adotei Twi II the Osiahene and Noi Sikan the Wolomo
are signatories to Exhibit "E"; that in addition
to them there are Acquah of Sanshishi, Awuku of
Mankowe, R.A.M. Abbey of Akonwe, Nortey Yebuah of
Adumuawe, Owusu Abbey of Akonwe and Yebribi Yebuah
of Adumuawe, all elders of Ashanti Blohum; he says
Wilson and Hammond two other signatories to Exhibit 50
"E" are linguists of the Osu Stool. He says he

withdrew his claim that is, claim of the Osu Stool when he found the land had been sold to Captan. He says in 1949, there was a disunity in Ashanti Blohum, it had started in or about 1947, over the election of a Mankralo. The other witness for Captan is Mr. Lokko. He is a Christiansborg man and from Ashanti Blohum; he was granted a plot of land in 1945 on which he has built a house; he has another plot of land which was originally granted to his brother-in-law, Graham who transferred it to him, both grants by the Acting Mankralo Narh Yebuah. His title to these two lands has never been challenged by anybody. The conveyance of these two pieces of land are Exhibits "K" and "L". Captan's case was closed with Lokko's evidence.

Defendant's
Exhibits

"10"

Judgment of
Manyo-Plange,
J. in re Land
Acquisition
No.7/1953.

3rd January,
1955

- continued.

As I have already stated, it is admitted by 1st claimant that the Acting Mankralo Narh Yebuah had the right to alienate the stool land but he said that for any such alienation by him to be valid it must be with the consent of the heads of the seven houses of Ashanti Blohum. His case therefore, is that, the sale of the land the subject of this acquisition to Captan is invalid, because the sale was with the exception of one house represented by Adotei Twi II without the consent of the heads of the houses of Ashanti Blohum and so the title to the land is still vested in the Ashanti Blohum Stool. He says that the consent of the Heads of the seven houses must be signified by their signatures on the deed of grant and, that on Exhibit "E" on which Captan relies as his title, only the signature of Adotei Twi II out of the seven Heads appear. Since it is the 1st claimant who challenges the validity of the sale to Captan, the burden of proving the sale invalid rests on the 1st claimant the Mankralo. The only evidence adduced by him in discharge of this burden is only his own evidence and that of the Dsasetse. I must at once say that I do not accept their evidence that the consent of the elders of Heads of the seven houses can only be signified by their signatures. The signatures are nothing but only evidence of their agreement or consent to the grant or disposition and, this agreement need not be express, it can be tacit. I am also unable to accept their evidence that this agreement must be by each of the seven Heads. There have been grants of the Ashanti Blohum Stool lands before Narh Yebuah was made Acting Mankralo and since then, there has been a number of grants by the 1st claimant since he himself became Mankralo. If, as he

Defendant's
Exhibits

"10"

Judgment of
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3rd January,
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- continued.

says, the consent of all the seven Heads is essential to a valid grant, then it is very significant that he the 1st claimant did not see fit to produce a single one of these grants to show not only that all these Heads must sign but also who are the proper persons who must consent. The presumption from the failure to produce any of these grants is that had any been produced, it would not have supported the evidence of the 1st claimant and his witness the Dsasetse. As to the persons whose consent is essential to a valid grant, I accept the evidence of the Acting Osu Mantse who must be regarded as an independent witness in this matter whose evidence if anything should be inclined in favour of the 1st claimant, because his stool would if 1st claimant succeeded get something out of the compensation money. This is what he said "In Ashanti Blohum to make a valid sale, it must be by the Mankralo, the Osiahene and the Wolomo. The other elders such as the Dsasetse may take part in the sale if available but they are not essential for the validity of the sale". This vital evidence given by him and which knocks out the bottom of 1st claimant's case was not challenged by cross-examination. This witness may not know of actual sales but would know the custom of Ashanti Blohum and the other quarters of Osu. This evidence of the Acting Osu Mantse is in my view supported by the case of Wilson A. Quarm vs. Omanehene Bekire Yanka II and I.B. Ephraim I. W.A.C.A. page 80, which shows that all the elders or councillors of a Stool or chief need not be parties to a grant of Stool land. I agree that the decision in that case is based on Fanti customary law, but I think it is applicable also to the Gas and, if not, then it should for the reasons given by Deane C.J. in his judgment at page 84 in that case. In this case, the question is, who are the signatories to Exhibit "E" and are they sufficient to bind the Mankralo Stool of Osu Ashanti Blohum? We have amongst the signatories, the Mankralo, the Osiahene who is admittedly one of the principal elders of Ashanti Blohum and the Wolomo the Osu Klotey Priest who is of Ashanti Blohum and one who ranks next after the Mankralo in the whole of Osu. Adotei Twi is the Osiahene and Noi Sekan is the Wolomo Koltey Priest. That Noi Sekan is the Wolomo (Osu Koltey Priest) and the next in rank to the Mankralo is not disputed by the 1st claimant. Apart from these persons, the Acting Osu Mantse gave also the following signatories to Exhibit "E" as elders of

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Defendant's
Exhibits

"10"

Judgment of
Manyo-Plange,
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- continued.

Ashanti Blohum:- Acquah of Sanshishi House, Awukuk of Mankowe House, R.E.A. Abbey of Makowe, Nortey Yebuah of Adumuawe, an uncle of 1st claimant the Mankralo; Nortey Yebuah apart from being an elder is also a linguist. Owusu Abbey of Akonwe and Yebribi Yebuah of Adumuawe. This evidence of the Acting Osu Mantse is also not challenged by cross-examination. So that in addition to the Mankralo, the Osiahene and the Wolomo, there are five other
10 elders of Ashanti Blohum - Signatories to Exhibit "E". As I have already stated, there is no dispute that the land the subject of this acquisition is part of what is known as Osu "Outskirt land" attached to Ashanti Blohum, Quarter. Now the case of Ben O. Aryee and Ors. versus Madam Odofoley, W.A.C.A. Selected judgments, August - December, 1950 and January - April, 1951, page 66 shows that
20 all such "outskirts" land belong to the Osu Stool but under the control of the Quarters and that the Osu Mantse has the right to dispose of such "outskirt" land without the consent or approval of the Quarter under whose control such land is, provided such land has not already been alienated by the Quarter and that after consultation with the Quarter concerned. The case referred to shows further that this consultation is merely for the purpose of Osu Mantse hearing any objections the Quarter may have and, that the final decision rests solely with the Osu Mantse. In this case there is no
30 question of any prior alienation of the land subject of the acquisition and in addition to the Mankralo and the elders of Ashanti Blohum I have already referred to, there is the concurrence of the Osu Mantse in the grant to Captan signified by his two representatives his Chief Linguist Wilson and Hammond one other of his linguists. On the evidence of the acting Osu Mantse which I accept and the authorities I have referred to, I am
40 satisfied that the Mankralo need only the concurrence of the Osiahene and the Wolomo to make a valid grant. In this case not only was the grant by the Acting Mankralo to Captan with the concurrence of the Osiahene, the Wolomo, and some others of the elders of the Quarter but it had also the concurrence of the Osu Mantse as signified by his two linguists. I therefore hold the grant of the land to Captan evidenced by Exhibit "E" to be a valid grant. It is admitted that the Acting
50 Mankralo had the right to sell the land but must exercise the right with the concurrence or consent of the principal elders. Therefore if even there

Defendant's
Exhibits

"10"

Judgment of
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- continued.

were any doubt as to the concurrence of all the proper persons as alleged by 1st claimant, this omission would not make the sale by the Acting Mankralo to Captan void; it would only make it voidable and, it is up to those challenging the validity of the sale to institute an action to have the sale set aside; but they must avail themselves of this right to have the sale set aside "timeously and under circumstances in which, upon the rescinding of the bargain, the purchaser can be fully restored to the position in which he stood before the sale". See Quassie Beyidie vs. Kwamina Mensah (F.C.L. 150) approved in Kwesi Manko & Ors. versus Bosno & Ors. and Aba Kokodey and Ors. 3 W.A.C.A. page 62. In the present case, the sale to Captan was in 1947. By the admission of the 1st claimant, he and his elders were fully aware of the sale to Captan and also knew that Captan was building on the land and completed a substantial building on the land and, which building also, there is undisputed evidence that Captan has sold to the Gold Coast Government for £7,000. Neither the 1st claimant nor his elders have up to this day taken any steps to avoid the sale. Until that sale is avoided, it must be held a valid sale. In any case, the 1st claimant and his elders have in my judgment acquiesced in the sale by their conduct. The first claimant and his elders by their admission knew from 1945 that the Acting Mankralo had been selling the Stool lands to Captan, other Syrians and African-non-natives of Osu who have built houses on these lands. None of them have taken any legal steps to challenge the validity of a single one of these sales by the Acting Mankralo. In March, 1948, Captan sued one Susuana Millow an Osu woman for declaration of title and trespass in respect of a piece of the Ashanti Blohum Stool lands sold to him by an Osu man to whom the Acting Mankralo had granted the land. This case which was heard and determined in March, 1950, in favour of Captan was to the knowledge of the 1st claimant and his elders, yet, not one of them joined in that suit to challenge the validity of the grant by the Acting Mankralo Narh Yebuah who joined the suit as grantor from whom Captan derived his title. The only complaint ever made by the elders of Ashanti Blohum is in the letter Exhibit "G" alleged to have been sent to Captan. There is no evidence as to how and by whom this letter was delivered to Captan and, there is no evidence of any acknowledgment of it by Captan whose representative said on

Defendant's
Exhibits

"10"

Judgment of
Manyo-Plange,
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3rd January,
1955

- continued.

oath that he saw the letter for the first time in Court. There is therefore no evidence that Captan received it. It is to be noted that although the letter purports to be a copy of what was sent to Captan it is signed by the Solicitor who wrote it. Even if this letter was received by Captan, the subsequent conduct of the elders of Ashanti Blohum would justify Captan in ignoring it. The letter is dated 17th February, 1947, and it challenged the validity of a conveyance of Ashanti Blohum Stool land to him in November, 1945, almost 14 months after the grant. Although the letter stated that Narh Yebuah was at the date of the letter no longer Acting Mankralo, yet by the evidence of the very man who caused the letter to be written, Narh Yebuah was at date of the letter still the Acting Mankralo because according to him Narh Yebuah was removed in either October or November, 1946, and was reinstated a month later. Again the letter called upon him to remove all pillars and structures from the land within a week, failing which, the owners would be compelled to take legal steps to enforce their rights against him. Captan did not comply with the ultimatum and the elders of the Ashanti Blohum did nothing. I am satisfied that but for the dispute in 1947, over the election of a Mankralo, that letter Exhibit "G" would never have been written. Then in December, 1947, Captan bought this land the subject of this acquisition from the Acting Mankralo, this sale came to their knowledge, they knew he was building on it and still they did nothing. It was only on 30th December, 1950, after the Notice of Acquisition three years after the sale and after Captan had built on a portion of the land and sold it, that they wrote challenging the validity of the sale and asserting title to the land. As I have said even if there were any doubts about the validity of the sale, the 1st claimant and his elders are by their conduct estopped from challenging it. That Captan has been in possession of the land subject of the acquisition as owner since December, 1947 and was in such possession at the time the land was acquired is not in dispute. Therefore by virtue of section 14 of the Public Lands Ordinance, Captan must be deemed to be the person lawfully entitled to this land and so the person entitled to receive the compensation; because for the reason I have already given; the 1st claimant the Mankralo has failed to show the contrary to my satisfaction and so I accordingly give

Defendant's
Exhibits

"10"

Judgment of
Manyo-Plange,
J. in re Land
Acquisition
No.7/1953.

3rd January,
1955

- continued.

judgment for the 3rd claimant M. Captan with costs
assessed at 60 guineas inclusive 50 guineas Coun-
sel's costs.

(Sgd.) J.S. Manyo Plange.
JUDGE.

Counsel:

Mr. Koi Larbi for the 1st claimant
2nd claimant in person.
Mr. Akufo Addo for the 3rd claimant.
