

G.H.B.C. 1/1

9, 1961

IN THE PRIVY COUNCIL

No.33 of 1959

ON APPEAL

FROM THE GHANA COURT OF APPEAL

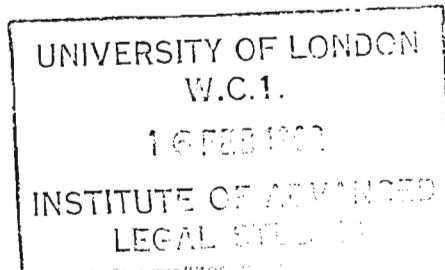
B E T W E E N:

KOJO ASANTE (Plaintiff) Appellant

- and -

COMPAGNIE FRANCAISE
DE L'AFRIQUE OCCIDENTALE
(Defendants) Respondents

RECORD OF PROCEEDINGS



63504

A.L. BRYDEN & WILLIAMS,
53, Victoria Street,
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Solicitors and Agents for the
Appellant.

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London, S.W.1.

Solicitors and Agents for the
Respondents.

IN THE PRIVY COUNCILNo.33 of 1959

ON APPEAL
FROM THE GHANA COURT OF APPEAL

B E T W E E N:

KOJO ASANTE (Plaintiff) Appellant

- and -

COMPAGNIE FRANCAISE DE
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RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>IN THE SUPREME COURT OF THE GOLD COAST</u>		
1	Writ (as amended)	17th February 1955	1
2	Statement of Claim	16th February 1955	3
3	Statement of Defence	1st March 1955	4
	<u>Plaintiff's Evidence</u>		
4	Kojo Asante	16th June 1955	5
5	Kwabena Abire	16th June 1955 and 7th July 1955	6 8
6	Ama Adade	7th July 1955	8
7	Notice of Amendment of Writ	5th September 1955	9
8	Court Notes ordering property to be released from attachment	11th October 1955	10
	<u>Plaintiff's Evidence (Continued)</u>		
9	Kojo Asante (recalled)	18th October 1955	10
10	Harrison Tuburu	18th October 1955	11
11	Kwame Nkontire	25th October 1955	12
	<u>Defendants' Evidence</u>		
12	Robert Christian Yeboah	25th October 1955	13
13	Addresses of Counsel	25th October 1955	14
14	Judgment	25th October 1955	15

No.	Description of Document	Date	Page
	<u>IN THE WEST AFRICAN COURT OF APPEAL</u>		
15	Notice and grounds of Appeal	6th January 1956	17
16	Additional Grounds of Appeal	6th October 1956	19
17	Notice of Motion to adduce fresh evidence on behalf of Defendants	6th October 1956	20
18	Affidavit in Support of Motion to adduce fresh evidence	4th October 1956	21
19	Court Notes granting Application to adduce fresh evidence	27th November 1956	23
20	Court Notes of Hearing	27th and 28th November 1956	24 26
21	Reasons for Judgment	28th November 1956	27
	<u>IN THE GHANA COURT OF APPEAL</u>		
22	Court Notes granting Final Leave to Appeal to Privy Council	21st April 1958	31

EXHIBITS

Mark	Description of Document	Date	Page
	<u>IN THE SUPREME COURT OF THE GOLD COAST</u>		
	<u>Plaintiff's Exhibits</u>		
"A"	Agreement	5th April 1954	37
"B"	Agreement between Abire & Others and Asante	1st June 1954	38
"C"	Receipt for £837.6/-	5th November 1954	40
"D"	Writ of Summons D.K.Awuah & Another and P.K.Asante	11th November 1954	41
"E1"	6 Receipts for £10 each in favour of Asante	16th June 1954	42
-		28th July 1954	42
"E6"		30th August 1954	42
		29th September 1954	42
		30th October 1954	43
		31st November 1954	43
	<u>Defendants' Exhibits</u>		
"1"	Lease between C.F.A.O. and Abire	30th April 1953	33
"2"	Application for Credit Facilities	17th February 1954	35

sic.

Mark	Description of Document	Date	Page
	<u>IN THE WEST AFRICAN COURT OF APPEAL</u>		
"W.A.C.A.(1)"	Notice on Motion for Application to discharge Order granting Interim attachment and Affidavit in Support	26th January 1955 28th January 1955	43 44
"W.A.C.A.(2)"	Affidavit of Andoh Essar	3rd February 1955	46
"W.A.C.A.(3)"	Court Notes of Order refusing application to discharge Order granting Interim attachment	5th February 1955	48

LIST OF DOCUMENTS TRANSMITTED BUT NOT REPRODUCED

Description of Document	Date
<u>IN THE SUPREME COURT</u>	
Memorandum of Appearance	22nd February 1955
Court Notes of adjournment	27th September 1955
<u>IN THE WEST AFRICAN COURT OF APPEAL</u>	
Notice of Intention to Appeal to Privy Council	15th December 1956
Motion for Conditional Leave to Appeal to Privy Council	15th December 1956
Affidavit in Support	17th December 1956
Affidavit opposing any Stay of Execution	10th January 1957
Court Notes granting Conditional Leave to Appeal to Privy Council	14th January 1957
Motion for approval of Sureties	11th March 1957
Affidavit in Support	11th March 1957
Joint Affidavit of proposed Sureties	11th March 1957
Court Notes approving Sureties	1st April 1957
Bond for Cost on Appeal	1st April 1957
Justification of Sureties	1st April 1957
Motion on Notice for Final Leave to Appeal to Privy Council	October 1957
Affidavit in Support of Application	4th November 1957
Affidavit opposing Grant of Final Leave	14th April 1958

1.

IN THE PRIVY COUNCIL

No.33 of 1959

ON APPEAL
FROM THE GHANA COURT OF APPEAL

B E T W E E N:

KOJO ASANTE (Plaintiff) Appellant

- and -

COMPAGNIE FRANCAISE
DE L'AFRIQUE OCCIDENTALE
(Defendants) Respondents

10

RECORD OF PROCEEDINGS

No. 1.

WRIT (As amended)

IN THE SUPREME COURT OF THE GOLD COAST
ASHANTI JUDICIAL DIVISION
DIVISIONAL COURT
KUMASI

No.D.C.39/1955

Between:- Kojo Asante, House No.21/22
Krobo District, Kumasi Plaintiff

20

- and -

Compagnie Francaise de L'Afrique
Occidentale, Kumasi Defendants

ELIZABETH THE SECOND, by the Grace of God, of the
United Kingdom of Great Britain and Northern Ire-
land and of Our other Realms and Territories, Queen
head of the Commonwealth, Defender of the Faith;

To:

Compagnie Francaise Occidentale, Kumasi
in the District of Ashanti

30

We command you that within eight days after the
service of this Writ on you inclusive of the days
of such service, you do cause an appearance to be
entered for you in an action at the suit of

Kojo Asante

And take notice that in default of your so doing,

In the Supreme
Court of the
Gold Coast

No. 1.

Writ
(as amended)
17th February,
1955.

In the Supreme Court of the Gold Coast

No. 1.

Writ (as amended)

17th February, 1955 - continued.

Amended by Order of Court dated 25/10/55

the Plaintiff may proceed therein, and judgment may be given in your absence.

Witness: Mark Wilson, Knight Bachelor Chief Justice of the Gold Coast, the 17th day of February in the year of Our Lord One thousand nine hundred and fifty-five (1955).

The Plaintiff's claim is for :-

- (1) An Order of this Court releasing the attachment of the Plaintiff's property in the "Coronation Bar". 10
- (2) Five hundred pounds (£500) damages for wrongful and unlawful attachment of the Plaintiff's goods in the Coronation Bar + and for loss of reputation and goodwill and general inconvenience.
- (b) And in addition the Plaintiff claims for loss of profits of Five pounds (£5) per day or any part of the day during which the Plaintiff's business and goods have been attached up to the time when the Defendants will release the Plaintiff's goods or when the Court will order the release of the attachment + 20
- (3) In the alternative the Plaintiff claims Two thousand two hundred pounds (£2,200) damages being as to One thousand two hundred pounds (£1,200) value of goods attached in the store or Coronation Bar and as to One thousand pounds (£1,000) loss of profits and goodwill and general inconvenience. 30

This Writ was issued by JOSEPH EMMANUEL CONDUA LUTTERODT of Kumasi whose address for service is MBROM No.65 Solicitor for the said Plaintiff who resides at House No.0.I.222.

Sgd. J.E.C. LUTTERODT.

No. 2.

STATEMENT OF CLAIM

(Title as No. 1)

In the Supreme
Court of the
Gold Coast

No. 2.

Statement of
Claim.

16th February,
1955.

10

1. The Plaintiff is the owner of the "Coronation Bar" situated in the House Nos.21/22 Kumasi.
2. The goods in the said Bar were sold out to the Plaintiff by three partners for the sum of Eight hundred and thirty-seven pounds six shillings (£837.6/-) under an Agreement dated 1st June, 1954.

20

3. Under a receipt dated 5th November, 1954, the Plaintiff paid the whole of the purchase price of Eight hundred and thirty-seven pounds six shillings (£837.6/-) of the business to the partners, namely, Kwabena Abire, D.K.Awuah and Yaw Manu.
4. Since the 1st day of June, 1954, the Plaintiff has been the sole owner of the Bar and has been buying drinkables and other foodstuffs from the other stores for the purpose of the business and has been responsible for the payment of wages of all workmen attached to the business.

30

5. The Plaintiff is a sub-tenant of the store and has been paying monthly rentals of Ten pounds (£10) to Kwabena Abire, and the Plaintiff does not owe any arrears of rent.
6. The Plaintiff does not owe the Defendants. On 24th January, 1955, the goods in the Plaintiff's Store-Bar were wrongfully and unlawfully attached and the store was sealed up under the instructions of the Defendants.
7. The Plaintiff has lost considerable profits by the Defendants' act.

DATED at Efaina Chambers, Kumasi, this 16th day of February, 1955.

J.E.C.Lutterodt
SOLICITOR FOR THE PLAINTIFF

40

The Registrar,
Divisional Court,
Kumasi.

In the Supreme
Court of the
Gold Coast

No. 3.

STATEMENT OF DEFENCE

(TITLE As No. 1)

No. 3.

Statement of
Defence.

1st March,
1955.

1. The Defendants deny paragraphs 1, 2, 3 and 4 of the Plaintiff's Statement of Claim.
2. The Defendants are not aware of any relationship of Landlord and Tenant existing between the Plaintiff and Kwabena Abire. The Defendants state that premises 21/22 Krobo District Kumasi were let by them to Kwabena Abire against whom there is an action pending in the Land Court for arrears of rent and an order for ejection. 10
3. The Defendants further state that the said Kwabena Abire who owns the Coronation Bar had been the Defendants' customer buying from them drinkables, provisions and other lines until September, 1954, when he could not settle his accounts properly and by December, 1954, an action was taken against him in the Divisional Court for an amount of £1,739.15.2d. 20
4. Upon information received, the Defendants in that action applied for Interim attachment of the said Coronation Bar which application the present Plaintiff opposed unsuccessfully, and has now instituted this action.
5. The Defendants say that in November, 1954, the said Abire had already become indebted to the Defendants in the sum of over £1,800, the business transaction dating back as far as February, 1954, and that any purported sale of the Coronation Bar to the Plaintiff as alleged in his Statement of Claim was made to defraud Abire's creditors - the Defendants herein. 30
6. The Defendants will contend that there is some collusion between the said Kwabena Abire and the Plaintiff, and that the Plaintiff is not entitled to any relief at all.

DATED at Kumasi this 1st day of March, 1955.

Delivered by: 40
Sgd. J. Boateng Siriboe
pp. Asafu-Adjaye & Co.,
SOLICITORS FOR MESSRS. C.F.A.O.
Defendants herein.

The Registrar,
Divisional Court,
Kumasi/Ashanti.

PLAINTIFF'S EVIDENCE

No. 4.

KOJO ASANTEKOJO ASANTE, s.a.r.b. in Twi -In the Supreme
Court of the
Gold CoastPlaintiff's
Evidence.

No. 4.

Kojo Asante.
16th June, 1955.

Examination.

10 I am the Plaintiff and I live at Kumasi. I am
a cocoa farmer. I have two cocoa farms. I know
the Coronation Bar. I used to have my meals there.
On one visit I decided to buy the business. I ap-
proached D.K.Awuah and Yaw Manu and Kwabena Abire.
They said they could not find a suitable bar to
sell to me but I could join them as partners. They
asked me to pay some money in order to join them.
They asked for £500. I paid it to them. I was
made to sign an agreement. Tendered in evidence
- not stamped - Lutterodt undertakes to pay penalty
and stamping fees. Marked "A". I was not given a
receipt for the £500. I later paid £110.15/- to
Manu & Others for the purpose of buying a frigid-
aire. I was not given a receipt. I did not pay
20 any other money to them. I was then given a paper
Exhibit "A". Madam Ama Dede the mother of Awuah
was present. Kwabena Atta a brother of Abire was
also present. After the agreement I worked with
the partners. I found that the partners did not
attend business. I made a report to Ama Dede. They
said they did not wish to continue as partners.
This was 2 months after I had signed the agreement.
They suggested that I should buy their shares. I
agreed and paid £337.6/-. They entered into an
30 agreement with me. Agreement tendered in evidence
- not stamped - Lutterodt undertakes to pay penalty.
Not objected to and marked "B". I paid the £337.6/-
to Abire as the 2 other partners were away. Receipt
tendered in evidence - not objected to and marked
"C".

By Court -

By Court.

I was not given an inventory of the goods I
bought.

Examination - continues -

40 There were 2 frigidaires, an electric fan,
counter and chairs, cooking utensils, £30 worth of
beer - gin, schnapps, whisky and spirits - the
other partners wrote to the Kumasi Municipal Coun-
cil to change the spirit licence in my name. The

In the Supreme Court of the Gold Coast

Plaintiff's Evidence.

No. 4.

Kojo Asante.

16th June, 1955

Examination - continued.

licence was not altered and the place was attached. I met the bailiff who did the attachment. D. K. Awuah and Manu sued me at the Native Court. Writ of Summons tendered in evidence and marked "D". Abire is a member of the Asona family to which I belong. I paid rents for the store to Abire. Receipts dated 26th June, 1954, 28th July, 1954, 30th August, 1954, 29th September and 30th December, 1954 and 31st November, 1955, tendered in evidence and marked "E1" - "E6". I made a profit of £5 per day. The total amount of goods in the store was £1,050. I cannot say the quantity of goods which has been attached. I remember that a case of E.K. Gin was in the store. I did not know that Abire owed C.F.A.O.

sic.
sic.
10

Cross-examined by Asafu-Adjaye -

Cross-Examination.

It was agreed that the amount of £110.15/- I paid for the frigidaire should be deducted from the price I was paying for the business. I was told that the value of the goods in the bar was £837.6/-. I spent about £150 a month in running the bar. This is on food alone. It includes wages for stewards. It excludes the rents I paid. It is not true that I know that Abire owed C.F.A.O. before I bought the goods. The sale was not fictitious. I was not given any inventory. Abire is not related to me. He is not my nephew.

20

Re-examined -

Re-examination.

Apart from the drinks I see in the bar I prepare fufu, rice and dough nuts for sale.

30

No. 5.

Kwabena Abire.

16th June, 1955.

Examination.

No. 5.

KWABENA ABIRE

KWABENA ABIRE, s.o.c. in Twi -

I live at Kumasi and I am a trader. I am a tenant in the premises K.O. 21/22 Kumasi belonging to the Defendants. I pay rent of £65 a month. There is a Bar known as Coronation Bar. I owed it with 2 others - Manu and Awuah. We ran the bar for about one year. I know the Plaintiff. He is my country man. He belongs to the Asona family to

sic.

40

which I belong. The Plaintiff used to come and have his meals at the bar. He said he wished to do that kind of work. I could not find a similar business for him to buy. We decided to have him as a partner. He joined us. We demanded £500 from him. He paid it. We gave him a receipt for £500. When he joined us he gave us £110.15/- to buy a frigidaire. We bought the frigidaire. We made an agreement with him. It is Exhibit "A".

10 After this we worked for about 2 months. There was a dispute and the Plaintiff made a complaint to the mother of one of the partners. A meeting was held and we agreed to sell the business to him for £837.6/-. The Plaintiff agreed to buy it. We entered into an agreement. He paid £337.6/- in addition to what he had paid as the full purchase price.

By Court -

20 We took inventory of the goods in the store. The letter writer who prepared the agreement destroyed it.

I bought goods from the C.F.A.O. They were iron sheets, cement, sugar. I owe them £1078.7.7. I received a writ of summons on the 24th January, 1955. I did not sell any of the goods I received on credit from C.F.A.O. in the bar. After we had sold the business to the Plaintiff we applied for a transfer of the business in the name of the Plaintiff. We were told to come in January.

30 Cross-examined by Asafu-Adjaye -

40 I did not inform C.F.A.O. before I sub-let the premises to Plaintiff. The amount of £337.6/- was paid to me alone. The other partners were not present. I only obtained beer, cement, iron sheets, soup and sugar from C.F.A.O. The beer is St. Pauli Brand. Apart from running the bar I was a trader. I obtained goods from other firms and sell to customers. I had Pass Books from U.A.C. and Nassar. I did not sell any of the goods I obtained from C.F.A.O. to the Plaintiff.

In the Supreme
Court of the
Gold Coast

Plaintiff's
Evidence.

No. 5.

Kwabena Abire.
16th June, 1955.

Examination
- continued.

By Court.

Cross-
Examination.

Adjourned 23rd June, 1955.

S.O. Quashie-Idun

J.

In the Supreme Court of the Gold Coast

7th July, 1955.

Witness Kwabena Abire, still on oath -

Cross-Examination (Continued)

Plaintiff's Evidence.

No. 5.

Kwabena Abire.
7th July, 1955

Cross-Examination - continued.

I did not tell the Defendants that I was working in partnership with Manu and Awuah. I bought iron sheets, cement, lorries and St. Pauli beer. I did not transfer any of those goods to the Plaintiff. I also bought cases of sardines and sugar from C.F.A.O. I did not sell any of the goods I bought from the C.F.A.O. to the Plaintiff. I had made the "Chop Bar" I had a wholesale on the premises I rented from the Defendants where I kept the goods. I did not sell the goods in order to defraud the C.F.A.O. Plaintiff is not a relation of mine.

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No. 6.

Ama Adade.
7th July, 1955.

Examination.

No. 6.

AMA ADADE

AMA ADADE, s.o.b. in Twi -

I live at Kumasi and I know the last witness. I also know Awuah. He is my son. I know Manu. I also know the Plaintiff. I know the Coronation Bar. It was owned by Abire, Manu and Awuah. Later Plaintiff became their partner. I was present when the arrangements were made between Awuah, Abire, Manu and the Plaintiff. This was in April, 1954. After this Plaintiff ran the bar with the others. Later they sold the business to Plaintiff. The Plaintiff continued to run the business. It was a bar for selling drink and food.

20

Cross-examined by Asafu-Adjaye -

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Cross-Examination.

I was present when Plaintiff paid Abire and his partners monies for the business. Plaintiff first paid £500. He bought a frigidaire for £110. He later paid £337.6/-. All were paid in my presence. The articles which were sold in the bar were cooked food and drinks.

Adjourned 14th July, 1955, for settlement.

S.O. Quashie-Idun.

No. 7.

NOTICE OF AMENDMENT OF WRIT(Title as No.1)In the Supreme
Court of the
Gold Coast

No. 7.

Notice of
Amendment
of Writ.5th September,
1955.

TAKE NOTICE that at the trial of the above-named case Counsel for the Plaintiff will ask leave of Court to amend the Writ in the following particulars:-

1. Mark the second paragraph "2(a)".
2. Delete the full stop at the end of the second paragraph and add: "and for loss of reputation and goodwill and general inconvenience.

(b) AND IN ADDITION the Plaintiff claims for loss of profits of Five pounds (£5) per each day or any part of the day during which the Plaintiff's business and goods have been attached up to the time when the Defendants will release the Plaintiff's business and goods or when the Court will order the release of the attachment".

3. Read the third paragraph as follows :-

IN THE ALTERNATIVE the Plaintiff claims Two thousand two hundred pounds (£2,200) damages being as to One thousand two hundred pounds (£1,200) value of goods attached in the store or Coronation Bar and as to One thousand pounds (£1,000) loss of profits and goodwill and general inconvenience.

4. The amended writ is attached hereto.

DATED at Efaina Chambers, Kumasi, this 5th day of September, 1955.

J.E.C. Lutterodt

SOLICITOR FOR THE PLAINTIFF.

The Registrar, Divisional Court, Kumasi.

and

To the Defendants or their Solicitors,
Messrs. A. Adjaye & Co., Kumasi.

In the Supreme
Court of the
Gold Coast

No. 8.

COURT NOTES ORDERING PROPERTY TO BE RELEASED
FROM ATTACHMENT

No. 8.

Court Notes
ordering
property to be
released from
attachment.

11th October, 1955.

In the Supreme Court of the Gold Coast, Ashanti,
at the Divisional Court held at Kumasi on Tuesday
the 11th day of October, 1955, before Quashie-
Idun, J.

Kojo Asante

v.

C.F.A.O.

11th October,
1955.

10

Lutterodt for Plaintiff.

Siriboe for Defendant (with Asafu-Adjaye)

Siriboe asks for order to release the property at-
tached under interim injunction pending the deter-
mination of the case.

By Court:

Ordered accordingly.

Bailiff who attached the property to check
the inventory and the goods in the presence of
parties or their representatives.

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Case adjourned for hearing on the 18th day of
October, 1955.

S.O. Quashie-Idun,
J.

Plaintiff's
Evidence
(Continued)

No. 9.

KOJO ASANTE (recalled)

No. 9.

Kojo Asante
(recalled)

18th October, 1955.

Lutterodt for Plaintiff

Siriboe and Asafu-Adjaye for Defendant.

30

18th October,
1955.

Mr. Siriboe asks for leave to recall Plaintiff.

By Court:

Leave granted.

By Court.

KOJO ASANTE, still on oath -

Abire wrote to the police to change the licence in my name.

In the Supreme
Court of the
Gold Coast

Note by Court -

Plaintiff's
Evidence
(Continued)

No. 9.

10 Siriboe repeats question already put to the witness by Asafu-Adjaye. Before I became a partner and before I bought the business Abire was selling whisky and beer. I bought the goods in the store. I do not live in Abire's house when I come to Kumasi. I was a cocoa farmer before I decided to run the bar. I know that Abire was a tenant of the C.F.A.O. I also knew that Abire was working with the C.F.A.O. I know of the claim of the C.F.A.O. when the business was attached. I did not know that Abire had been sued by the C.F.A.O. in December. After I had bought the business I bought my own drinkables for running the bar. I deny that this is an attempt on my part to save the store from Abire.

Kojo Asante
(recalled)

18th October,
1955

- continued.

20 Re-examined - None.

No. 10.

HARRISON TUBURU

HARRISON TUBURU, s.o.b. in English -

No.10.

Harrison Tuburu.

18th October,
1955.

30 I am a Police Corporal stationed at Kumasi I know the Plaintiff. In January, 1955, he brought an application for a transfer of a house in his name. I visited the store and submitted a report. Before this was done the Plaintiff's finger prints were taken and sent to Accra. The application was marked and given back to the Plaintiff to take to the Kumasi Municipal Council. Actually the application was made to the Kumasi Municipal Council who asked us to verify as to whether applicant was of a good character. I sent my recommendation to my Senior Officer.

Examination.

Cross-examined by Siriboe -

The store I inspected was a spirit store. I was told that the licence was with the Kumasi Municipal Council.

Cross-
Examination.

In the Supreme
Court of the
Gold Coast

By Court -

There was a food bar attached to the business I inspected.

Plaintiff's
Evidence
(continued)

Lutterodt applies for adjournment as his other witnesses have not appeared.

By consent adjourned 25th October, 1955.
Costs for Defendants assessed at £5.5/-.

No.10.

Harrison Tuburu.

18th October,
1955

S.O. Quashie-Idun,
J.

- continued.

25th October, 1955.

10

By Court.

Lutterodt for Plaintiff.

S.Asafu-Adjaye for Defendant (with him A. Asafu-Adjaye)

Lutterodt applies for amendment for his claim as by notice filed on the 7th September, 1955.

By Court -

Application granted.

No.11.

No. 11.

Kwame Nkontire.

KWAME NKONTIRE

25th October,
1955.

KWAME NKONTIRE, s.o.b. in Twi -

20

Examination.

I am also known as D.K.Awuah. I am a contractor. I know the Plaintiff. I live at Kumasi. About 2 years ago Abire hired a store from the C.F.A.O. He, Manu and myself used 2 rooms as a chop bar which we named Coronation Bar. Manu and I contributed £300 and Abire also contributed £300. We carried on the business for about 8 months. The Plaintiff used to come there for his meals. He said he would like to purchase a business similar to ours. About a month later we asked the Plaintiff to join us as we needed money to run the business. He agreed and paid us £500. We went to a letter writer and prepared an agreement. Plaintiff bought a frigidaire for £110.5/-. This is the agreement which was prepared and signed by us (Exhibit "A"). We all ran the bar for about 2 months. Abire did not come to work with us. He was trading on his own. Manu and I also decided not to attend the business. Plaintiff made a

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complaint to my mother Ama Adade. Yaw Manu and I decided to sell the business to the Plaintiff. Plaintiff agreed to buy it. We agreed to sell the business to him for £837.6/- including the amounts he had paid. In June, 1954, Abire, Manu and I and Plaintiff signed Exhibit "B". Plaintiff informed Manu and me that he had paid an amount of £100 to Abire. We sued him at the Native Court. Later Abire admitted that Plaintiff had paid £100 to him. We discontinued the action. In November the Plaintiff paid us the balance and on behalf of ourselves Abire gave a receipt Exhibit "C" in full discharge. We sold all the goods in the store including furniture in the bar.

Cross-examined by Asafu-Adjaye -

Before I entered into partnership with Abire and Manu I was a trader. Abire, Manu and I entered into a written agreement before Plaintiff joined us when he did, we discharged the first agreement. We ran a drink and chop bar. Before we commenced the business Abire was trading with C.F.A.O. and U.A.C. While Abire was trading on his own Manu and I became angry because Abire was not showing interest in the business. Abire sold the goods he bought from C.F.A.O. and U.A.C. to his own customers. I did not know that Abire was indebted to any firm. C.F.A.O. car used to bring goods to Abire. They were iron sheets, pans and beer. I did not buy any goods from Abire. When we discontinued the action against Plaintiff Abire had paid us the £100.

Case for Plaintiff closed.

DEFENDANTS' EVIDENCE

No. 12.

ROBERT CHRISTIAN YEBOAH.

ROBERT CHRISTIAN YEBOAH, s.o.b. in English -

I am the Chief Clerk C.F.A.O. I know Abire. He was a customer of the C.F.A.O. The company agreed to sublet House on plot Number 21/22 Antoa Road. A lease was entered into between the

In the Supreme Court of the Gold Coast

Plaintiff's Evidence (Continued)

No.11.

Kwame Nkontire.

25th October, 1955.

Examination - continued.

Cross-Examination.

Defendants' Evidence.

No.12.

Robert Christian Yeboah.

25th October, 1955.

Examination.

In the Supreme
Court of the
Gold Coast

Defendants'
Evidence.

No.12.

Robert Christian
Yeboah.

25th October,
1955.

Examination
- continued.

Company and Abire. Asafu-Adjaye tenders copy of the lease dated 20th April, 1953, between C.F.A.O. and Abire. Not objected to and marked "1". Abire also signed an agreement which I produce - tendered in evidence not objected to and marked "2". Abire's store was attached on application of C.F.A.O. I was present when the inventory in the bar was taken. Abire was not present. I have met the Plaintiff on about 2 occasions in the store - when the inventory was being taken one Atta sent for Plaintiff. Awuah was not present. Plaintiff came. The bailiff said he had come to take inventory. He said nothing. I think the value of the goods we attached was about £400. Abire had been buying goods from the C.F.A.O. about a year before he was given a pass book. He at first bought cement and iron sheets. Later he bought cement, beer and brandy. I cannot say that the goods we attached were supplied by the C.F.A.O. I cannot say whether or not the goods sold by C.F.A.O. to Abire were delivered to Abire at the Coronation Bar. C.F.A.O. did not sell gin to Abire.

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Cross-examined by Lutterodt -

Cross-
Examination.

I used to go to the bar to demand payments from Abire. I often saw Abire, Awuah, Manu and Asante at the bar. I believed they were assistants to Abire in the bar. There were two frigidaires in the premises. The goods sold to Abire by the C.F.A.O. were always delivered to Abire's customers on the Company's lorry on the directions of Abire.

30

Case for Defence closed.

No.13.

Addresses of
Counsel.

25th October,
1955.

No. 13.

ADDRESSES OF COUNSEL

Lutterodt addresses Court -

Refers to claim before the Court. Plaintiff has proved that he bought the property from Abire, Awuah and Manu. The property was attached on the 24th January, 1955, and were released on the 11th October, 1955. Defendants have not proved any fraud on the part of the Plaintiff. Submits that attachment is unlawful and that he has suffered damages.

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Asafu-Adjaye addresses Court -

Submits that Abire has defrauded the C.F.A.O. in transferring the business to the Plaintiff. In respect of damages, submits that the claim for damages has been grossly exaggerated.

In the Supreme
Court of the
Gold Coast

No.13.

Addresses of
Counsel.

25th October,
1955

- continued.

No. 14.

JUDGMENT

No.14.

Judgment.

25th October,
1955.

10

The Plaintiff claims damages for the wrongful attachment of his business and the goods with which he says he runs his bar and restaurant. His case is that bar and restaurant originally belonged to Abire, Manu and Awuah who invited him to join them as a partner and who subsequently sold the whole business including drinkables and frigidaire to him. After he had bought the business he ran it until it was attached by the Defendants on an application for an interim order of attachment made against Abire who owed the Defendant. I have carefully considered the evidence of the Plaintiff and of the

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other witnesses he has called to prove that he had bought the business before it was attached. I have considered the conduct of Abire in the whole transaction and I have come to the conclusion that whatever the conduct of Abire has been towards the Defendants, I accept the evidence that the Plaintiff bought the business and was an innocent purchaser for value. I am satisfied that after buying the business he made an application for the licence to be transferred into his own name. The transfer was

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not made before the attachment. The Defendants contend that they were entitled to assume that the business belonged to Abire. This may be reasonable but after the attachment when the Plaintiff instituted his action and after evidence had been led by the Plaintiff, it must have been obvious to the Defendant's Counsel at least that the evidence that Plaintiff had bought the business could not be challenged, as indeed it has not been challenged, by the fact that the spirit licence was still in

40

the name of Abire.

In the Supreme
Court of the
Gold Coast

No.14.

Judgment.

25th October,
1955

- continued.

The Plaintiff's case is that apart from the bar and the selling of spirit, he also ran a restaurant or "Chop Bar" as is popularly called. While the trial was going on the Defendants agreed to release the goods on the 11th October. Any damage suffered by the Plaintiff by the wrongful attachment of the business must be calculated on the date of attachment up to the 11th October.

The Defendants' contention that Abire was not entitled to sublet the premises and that they were entitled to assume that Abire was the owner of the business is not acceptable to me. 10

The action of the Defendants as far as the business was concerned was not in the nature of application for ejection. Whether Abire was entitled to sub-let the premises or not is a different matter. Another contention of the Defendants is that after the attachment the Plaintiff moved the Court to set aside the order and that the application was refused. In my view the refusal of the Court to set aside the interim order on the motion of the Plaintiff does not preclude the Plaintiff from instituting this present action. The Plaintiff's evidence is that he made a profit of £5 per day. Although this has not been contradicted by the Defendant, I think a nett profit of £3 per day is a reasonable one. 20

The Plaintiff has not claimed special damages although he has led evidence as to the amount of profits he has lost. I allow the Plaintiff £669 being the total amount of profits he has lost for the period during which the business was attached. 30

I enter judgment for the Plaintiff accordingly for £669. Costs for Plaintiff assessed at £70.15/- to include Counsel's costs of 40 guineas.

S.O. Quashie-Idun,
J.

No. 15.

NOTICE AND GROUNDS OF APPEAL

IN THE WEST AFRICAN COURT OF APPEAL
GOLD COAST SESSION,
VICTORIABORG,
ACCRA

In the
West African
Court of Appeal

No.15.

Notice and
Grounds of
Appeal.

Kojo Asante, House Nos.21/22

Krobo District, Kumasi

Plaintiff-Respondent

v.

6th January,
1956.

10 Compagnie Francaise de
L'Afrique Occidentale,
Kumasi

Defendants-Appellants

NOTICE OF APPEAL (RULE 12) WEST AFRICAN COURT OF
APPEAL RULES, 1950.

20 TAKE NOTICE that the Defendant-Appellant be-
ing dissatisfied with the whole of the Judgment of
the Divisional Court. Kumasi, contained in the
Judgment of His Lordship Mr. Justice Quashie-Idun
dated 25th day of October, 1955, as stated in
paragraph (Two) 2 do hereby appeal to the West
African Court of Appeal on the grounds set out in
paragraph Three (3) and will at the hearing of the
appeal seek the relief set out in paragraph four
(4):

The Appellants further state that the name and
address of the person directly affected by the ap-
peal is that set out in paragraph Five (5)

(2) The whole of the Judgment of the 25th Octo-
ber, 1955.

30 (3) PRELIMINARY GROUNDS OF APPEAL:

1. The learned Judge failed to direct him-
self on the point that the Plaintiff's
claim had once been brought before the
learned Judge by way of a motion and af-
fidavit upon the same set of facts as
contained in his Statement of Claim, but
was dismissed by him on the 5th day of
February, 1955, without costs.

40 2. The learned Judge failed to give due con-
sideration to the question of collusion
between the Plaintiff and Kwabena Abire
raised in the Appellant's Statement of

In the
West African
Court of Appeal

No.15.

Notice and
Grounds of
Appeal.

6th January,
1956

- continued.

Defence as regards the alleged Sale of the Coronation Bar:

- (i) Because although the Plaintiff claimed to have purchased the said Coronation Bar as far back as 1st June, 1954, yet he did not renew the licence of the Bar in his name either during the 2nd half year of 1954, or the early part of the year.
- (ii) Because the Plaintiff's contention that he purchased the Coronation Bar from three partners was not supported by the evidence, in that up to the 24th January, 1955, when the Coronation Bar was attached, the Spirit Licence for running it was in the name of Kwabena Abire alone. 10
- (iii) Because there were invoices which showed that even some months after the date of the alleged sale of the Coronation Bar, the said Kwabena Abire was still obtaining goods from the Appellants in the name of the Coronation Bar. 20
3. There was ample evidence to justify the Appellant's original application made for the interim attachment of the Coronation Bar which was granted by the learned Judge, after it had been unsuccessfully opposed by the Plaintiff, and that being the case, the same learned Judge was wrong in subsequently awarding damages to the Plaintiff on the ground that the said attachment was wrongful. 30
4. There was, in fact, no satisfactory proof of the Special Damage claimed by the Plaintiff.
5. The learned Judge did not seriously consider this vital point that if there was any sale at all as alleged by the Plaintiff, having regard to the general nature of the transaction between the Appellants and Kwabena Abire that sale was made merely to defraud that Abire's creditors, particularly the Appellants to whom he was already indebted. 40
6. The learned Judge erred in disallowing

Appellant's application to tender in evidence the motion and affidavit filed by the Plaintiff to have the said bar released from attachment which was dismissed.

In the
West African
Court of Appeal

No.15.

Notice and
Grounds of
Appeal.

6th January,
1956

- continued.

7. The Judgment was very much against the weight of evidence.

(4) Relief sought is for the reversal of the learned Judge's decision.

10 (5) The person directly affected by the appeal is:

Kojo Asante, House Nos.21/22. Krobo
Dist. Kumasi/Ashanti.

DATED AT Kumasi this 6th day of January, 1956.

Sgd. J. Boateng Siriboe
pp. Asafu-Adjaye & Co.,
Solicitors for Defendant-Appellants.

The Registrar,
West African Court of Appeal,
Accra.

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No. 16.

No.16.

ADDITIONAL GROUNDS OF APPEAL

Additional
Grounds of
Appeal.

IN THE WEST AFRICAN COURT OF APPEAL
GOLD COAST SESSION,
ACCRA.

6th October,
1956.

Suit No.D.C.39/1955

KOJO ASANTE
House No.21/22,
Krobo District, Kumasi Plaintiff-Respondent

30

versus

COMPAGNIE FRANCAISE DE
L'AFRIQUE OCCIDENTALE,
KUMASI Defendants-Appellants

ADDITIONAL GROUNDS OF APPEAL

1. The learned Judge was wrong in receiving inadmissible evidence in that the Plaintiff-Respondent not having pleaded Special Damage, the Court was not entitled to receive evidence relating to Special Damages.

In the
West African
Court of Appeal

2. In the circumstances of this case the learned
Judge was wrong in granting damages in respect
of loss of profit.

No.16.

DATED AT Adontene Chambers, Accra, this 6th day of
October, 1956.

Additional
Grounds of
Appeal.

(Sgd.) A.Asafu Adjaye
pp. E.O.Asafu-Adjaye & Co.

SOLICITORS FOR DEFENDANTS-APPELLANTS.

6th October,
1956
- continued.

The Registrar,
West African Court of Appeal,
Accra.

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No.17.

No. 17.

Notice of
Motion to
adduce fresh
evidence on
behalf of
Defendants.

NOTICE OF MOTION TO ADDUCE FRESH EVIDENCE ON
BEHALF OF DEFENDANTS

IN THE WEST AFRICAN COURT OF APPEAL
GOLD COAST SESSION
ACCRA

6th October,
1956.

Suit No.D.C.39/1955

KOJO ASANTE
House Nos.21/22

Krobo District, Kumasi Plaintiff-Respondent

20

versus

COMPAGNIE FRANCAISE
DE L'AFRIQUE OCCIDENTALE,
Kumasi

Defendants-Appellants

MOTION ON NOTICE

MOTION ON NOTICE by E.O.ASAFU-ADJAYE of Coun-
sel for and on behalf of the Defendants-Appellants
herein praying for an order of this Honourable
Court for leave to adduce further evidence during
the hearing of the above Appeal and/or for any
other order or orders as to this Honourable Court
may seem meet.

30

COURT to be MOVED under Rule 30 of the West
African Court of Appeal Rules 1950 on Monday the
5th day of November, 1956 at 9 o'clock in the
forenoon or soon thereafter as Counsel for and on

behalf of the Defendants-Appellants can be heard.
DATED AT ADONTWNE CHAMBERS, this 6th day of October, 1956.

(Sgd.) A.Asafu Adjaye
pp. E.O.ASAFU-ADJAYE & CO.,
(SOLICITORS FOR DEFENDANTS-APPELLANTS)

The Registrar,
West African Court of Appeal,
Accra.

In the
West African
Court of Appeal

No.17.

Notice of Motion
to adduce fresh
evidence on
behalf of
Defendants.

6th October,
1956
- continued.

10

No. 18.

AFFIDAVIT IN SUPPORT OF MOTION TO ADDUCE
FRESH EVIDENCE

IN THE WEST AFRICAN COURT OF APPEAL
GOLD COAST SESSION,
ACCRA.

Suit No.D.C.39/1955

KOJO ASANTE
House No.21/22
Krobo District, Kumasi Plaintiff-Respondent

versus

COMPAGNIE FRANCAISE
DE L'AFRIQUE OCCIDENTALE,
Kumasi Defendants-Appellants

AFFIDAVIT OF KOFIE ANDOH ESSAR

I, KOFIE ANDOH ESSAR Clerk of Kumasi make Oath and say as follows:-

1. That I am an employee of the above-named Defendants Appellants and have been asked by the District Agent to depose to the facts herein.

30 2. That in a previous Suit entitled Compagnie Francaise De L'Afrique Occidentale versus Kwabina Abire an application for interim attachment of Kwabine Abire's property was granted by the Divisional Court, Kumasi.

No.18.

Affidavit in
Support of
Motion to
adduce fresh
Evidence.

4th October,
1956.

In the
West African
Court of Appeal

No.18.

Affidavit in
Support of
Motion to
adduce fresh
Evidence.

4th October,
1956
- continued.

3. That following the Court's order granting the interim attachment, the Plaintiff-Respondent herein (Kojo Asante) in Suit No.D.C.336/1954 filed a motion paper and affidavit praying the Court to release the attachment.
4. That the Defendants-Appellants filed an Affidavit in opposition to the said (Kojo Asante's) application for release of the attachment.
5. That the said Kojo Asante's application for release of the attachment was refused by His Lordship Mr. Justice Quashie-Idun. 10
6. That at the trial of the above Suit in the Divisional Court reference was made to the fact that the Court had refused an application by Kojo Asante for release of the attachment of Kwabena Abire's properties in re Compagnie Francaise De L'Afrique Occidentale versus Kwabena Abire.
7. That at the trial of the above suit in the Divisional Court Defendants-Appellants' Counsel contended that the Court had refused an application (Suit No.D.C.336/1954) by Kojo Asante for release of the attachment of Kwabena Abire's properties in re Compagnie Francaise De L'Afrique Occidentale versus Kwabena Abire. 20
8. That in his judgment at page 20/21 of the Appeal record the Learned Judge has made reference to this fact.
9. That the statement contained in paragraph 7 above forms the 1st ground in the above-named Appeal. 30
10. That I am informed by Counsel and verily believe that the said case of Compagnie Francaise De L'Afrique Occidentale versus Kwabena Abire and the application of Kojo Asante referred to previously will have a material bearing on the determination of this Appeal.
11. That I therefore swear to this Affidavit in support of Motion on my behalf asking leave of the Court to tender the following documents in evidence during the hearing of this Appeal:- 40
 - (a) The Motion paper and Affidavit filed by Kojo Asante for release of the attachment of his property in Compagnie Francaise De L'Afrique Occidentale versus Kwabena Abire.
 - (b) The Affidavit filed by Compagnie Francaise

De L'Afrique Occidentale in opposition to
the said Kojo Asante's application
and

(o) The Order of His Lordship Mr. Justice Quashie
Idun dismissing the Motion filed by Kojo
Asante.

SWORN AT KUMASI this 4th)
day of October, 1956) Sgd. K. Andoh Essar
DEPONENT.

Before me,

10 (Sgd.) John Haizel
Commissioner for Oaths.

In the
West African
Court of Appeal

No. 18.

Affidavit in
Support of
Motion to
adduce fresh
Evidence.

4th October,
1956

- continued.

No. 19.

COURT NOTES GRANTING APPLICATION TO ADDUCE
FRESH EVIDENCE.

27th November, 1956.

IN THE WEST AFRICAN COURT OF APPEAL,
GOLD COAST SESSION.

Cor: Coussey, P., Korsah, C.J. and Verity, Ag. J.A.

Civil Motion No. 69/56

20

C. F. A. O.

v.

KOJO ASANTE & C.

Motion on Notice for leave to adduce further evi-
dence.

Mr. Asafu Adjaye mover.

Mr. Lutterodt for opposer.

Mr. Asafu Adjaye moves under Rule 30.

30 The judgment appealed from refers to the in-
terim attachment proceedings. They should there-
fore be before the Court on hearing of the appeal.

Mr. Lutterodt - withdraws objection.

By Court:

Leave granted to adduce further evidence

No. 19.

Court Notes
granting
Application
to adduce
Fresh evidence.

27th November,
1956.

In the
West African
Court of Appeal

No.19.

Court Notes
granting
Application to
adduce fresh
Evidence.

27th November,
1956

- continued.

referred to in application i.e.

1. Motion paper by Kojo Asante dated 28th January, 1955 with Affidavit in support sworn to on 28th January, 1955.
2. Affidavit of C.F.A.O. in opposition sworn, 3rd February, 1955.
3. Minutes of Div. Court dated 5th February, 1955.

Above admitted as W.A.C.A. 1-3.

(Intd.) J.H.C.

10

No.20.

Court Notes
of Hearing.

27th November,
1956.

No. 20.

COURT NOTES OF HEARING

27.11.56.

No.21/56

C. F. A. O.

v.

KOJO ASANTE.

Mr. Asafu Adjaye for Appellant.

Mr. Lutterodt for Respondent.

Mr. Asafu Adjaye applies for leave to argue additional grounds served.

No objection. Leave granted.

Mr. Asafu Adjaye. Original grounds 2 and 5.

20

Collusion

Having regard to all circumstances, clear that alleged transfer of goods of Abire to Respondent was made with intent of defeating a delaying creditor.

Statute 13 Eliz. Cap. 5 applicable.

Ground 2 reads:

A spirit licence had to be obtained renewable half yearly. If contended alleged sale took place 1st June 1954 licence had to be taken on 1st July 1954 and again 1st January 1955.

30

10 Circumstances show attempt by Abire to transfer goods to Respondent because Abire indebted to Appellants is over £1,000. Knew proceedings about to be taken. Dated a genuine sale to make it appear. None of documents supporting transfer had been stamped. Abire was disposing of all his assets to Respondent knowing that he owed the Appellants. Appellants had let premises to Abire who was their customer. Agreement. Respondent says store was sub-let to him. No consent given for sub-letting. If genuine transaction, Abire would have obtained consent to sub-letting. Significant fact (p.42) monthly receipts - bear consecutive numbers. All similarly stamped. Agreement Exh. A, partnership agreement is converted into a sale by Exh, B.

20 Then comes a Receipt by Abire in Nov. Exh. C. On 11th November Respondent was sued for £100. But on 5th November he had paid whole £837. Although Abire had transferred store on 1st June 1954, he sic. will still receiving goods from the C.F.A.O. on account of the Chop Bar business.

The partnership was a hoax. Abire says £337.6/- was paid to himself.

Throughout Abire had intention to defraud creditors. Was owing £1097 to C.F.A.O. When he receives payment on account of goods supplied does not pay amount in on account.

30 If partnership Spirit Licence would not be in name of Abire only.

Under 13 Elizabeth Cap.5 clear from surrounding circumstances that transfer was made to defeat creditors. Braithwaite v. Folarin, 4 W.A.C.A. 76
Re Holland, 1902, 2 Ch. 360 at 372
Freeman v. Pope, L.R. 5 Ch. 538.

Grounds 1 and 3

40 Plaintiff had failed in proceedings to set aside an interim attachment of the same property. See Exh. W.A.C.A.1., W.A.C.A.2. He did not appeal from the order. Instituted action for damages.

The order of the Court refusing the application to set aside attachment intervened so as to dis-entitle Plaintiff to sue for anything done under the attachment.

In the
West African
Court of Appeal

No.20.

Court Notes
of Hearing.

27th November,
1956

- continued.

In the
West African
Court of Appeal

Plaintiff did not claim special damage. Only
general damages could be awarded - but special
damage was awarded as general damage.

No.20.

Mougrabi v. Mansour, 3 W.A.C.A. 26.

Court Notes
of Hearing.
27th November,
1956
- continued.

Mr. Lutterodt contra.

A finding of fact supported by evidence. Be-
fore judgment Defendants Counsel agreed to Claim 1
and asked Court to release property from attach-
ment. This is admission of Plaintiff's claim.

Adjourned 28th November,
J.H.C.

10

28th November,
1956.

28th November, 1956.

Same Counsel.

Mr. Lutterodt continued.

Asante was an innocent purchaser for value.
He did not know Abire was defrauding his creditors.
Nor was responsible for his conduct.

Q. Is it necessary for the assignee to know that
the assignor intends to defeat his creditors, for
13 Eliz. Cap. 5 to operate.

20

Was not effect of assignment have to defeat a
creditor. At time of attachment goods in store
were property of Asante not of Abire and his
friends. General damages were awarded for loss of
profits for 10 months.

Plaintiff was not estopped by his failure on appli-
cation to set aside interim attachment.

Mr. Asafu Adjaye not called on to reply.

By Court: Appeal allowed. Costs for Appellants
£29.14.3. Reasons to be filed.

30

(Sgd.) J. Henley Coussey
P.

No. 21.

REASONS FOR JUDGMENT

IN THE WEST AFRICAN COURT OF APPEAL
GOLD COAST SESSION

28th November, 1956.

Civil Appeal No.21/56

Coram: Coussey, P.
Korsah, C.J.
Verity, Ag. J.A.

In the
West African
Court of Appeal

No.21.

Reasons for
Judgment.28th November,
1956.

10 Compagnie Francaise De L'Afrique
Occidentale, Kumasi, Defendants-Appellants

v.

Kojo Asante, House No.21/22
Krobo District, Kumasi Plaintiff-Respondent

REASONS FOR JUDGMENT

20 COUSSEY, P.: The question we had to decide on this
appeal is whether the transaction evidenced by an
alleged Agreement between Kwabena Abire, D.K.Awuah
and Yaw Manu all of Kumasi of the first part and
the Plaintiff-Respondent, Kojo Asante, of the sec-
ond part whereby the Plaintiff-Respondent purported
to buy for £837.6.0. the stock in trade of the
parties of the first part in the Coronation Spirit
and Chop Bar was made to defraud Abire's creditors,
the Defendants-Appellants as they plead in para-
graph 5 of the Statement of Defence.

30 The Plaintiff sued the Defendants-Appellants
for an order releasing from attachment the stock
of goods in the said Coronation Bar which had been
attached by the Defendants-Appellants for satisfac-
tion of any judgment that might be awarded against
Kwabena Abire in the suit of C.F.A.O. v. Abire
then pending in the Divisional Court, Kumasi.

The Plaintiff-Respondent also claimed, and was
awarded by the Court below, £669 damages against
the Defendants-Appellants for loss of business con-
sequent on the attachment of the goods in the store.

40 The Plaintiff-Respondent, a cocoa farmer, says
he entered into an Agreement on the 5th April, 1954
with Kwabena Abire, Yaw Manu and D.K.Awuah, whereby
he paid £610.15.0. as capital to enter as a partner
the business of the Coronation Bar then run by the

In the
West African
Court of Appeal

No.21.

Reasons for
Judgment.

28th November,
1956

- continued.

three other persons named. The contribution of the other parties is not stated in the Agreement, Exhibit "A", although the Agreement provides that profits should be shared between them. Kwame Nkontire alias D.K. Awuah says in evidence that he and Manu jointly contributed £300 while Abire contributed £300 as capital. If this is true it is strange that it is not so stated in Exhibit "A".

The Plaintiff states further that he paid two sums of £500 and £110.15.0. before Exhibit "A" was signed. About two months after, he claims, he bought out the other partners by an Agreement made on 1st June 1954, Exhibit "B", whereby he was to pay £100 at the end of July 1954 and £237.6.0. at the end of November 1954.

10

Kwabena Abire had been obtaining goods on credit from the Defendant Company which, between February and November 1954, amounted to over £1,800.

In December 1954 the Defendant Company issued a writ against Abire for £1,739.15.2. balance due for goods supplied and obtained an order for interim attachment of the goods in the Coronation Bar as already stated. The Plaintiff-Respondent, Asante, was present in the Bar when the inventory of goods was taken by the Court bailiff but he did not then advance any claim to the goods. Later, however, he applied to the Court for the attachment to be set aside. This application was refused, whereupon he instituted the present action.

20

Before I come to the finding of the learned trial Judge there are some other features of this case that must be referred to.

30

The Coronation Bar premises were held by Abire on a tenancy agreement with the Defendant Company which contained a covenant on the part of Abire not to assign or underlet the premises. Notwithstanding this covenant the Plaintiff-Respondent says he became a sub-tenant of Abire without the consent of or notice to the Defendants-Appellants.

The Agreements, Exhibits "A" and "B" were not stamped by the Plaintiff-Respondent until after their production in evidence in the suit. The Plaintiff did not take receipts for the sums of £500 and £110.15.0. which he says he paid on

40

account. He did not take an inventory of the goods he said he bought. According to the law the spirit licence of the premises should have been taken out in the Plaintiff-Respondent's name on the 1st July 1954 if he bought the business on the 1st June as he says. This was not done.

In the
West African
Court of Appeal

No.21.

Reasons for
Judgment.

28th November,
1956

- continued.

10

The Agreement, Exhibit "B" provides for the final payment of £237.6.0. at the end of November 1954. The Plaintiff-Respondent who, apparently, had defaulted as to the instalment of £100 due at the end of July 1954, was ready to pay the whole amount of £337.6.0. before the due date. He produces Exhibit "C" signed by Kwabena Abire and dated 5th November for £337.6.0. in "full payment of the cost of all the properties belonging to me and D.K. Awuah and Yaw Manu in our Coronation Spirit and Chop Bar which we have sold transferred and delivered to him. Henceforth all the properties in the said Coronation Spirit and Chop Bar remain the absolute properties of the said Panin Kojo Asante &c."

20

On the 11th November, D.K. Awuah and Yaw Manu sued the Plaintiff-Respondent in the Kumasi Municipal Court for the £100 being all their property in the Coronation Spirit and Chop Bar "bought" by the Defendant and Defendant promised "payment on instalment basis as per Agreement in hand". But the Receipt, Exhibit "C", of the 5th November 1954 purports to evidence that the £100 had been paid already.

30

A careful examination of the documents referred to and of the receipts for rents produced by the Plaintiff-Respondent satisfies me without going into further details, that these are all fictitious documents and badges of the fraud designed to shield the debtor Abire who in fact owned the goods and to defeat his creditors of whom the Defendant Company were pressing their claim in December 1954, Abire being perfectly aware long before that date that proceedings against him were imminent.

40

If the Defendants had expressly pleaded the Statute, 13 Eliz. Cap. 5, the issue in the Court below might have been clearer, but I think it was sufficiently raised by the statement of defence. The preamble to the Statute which has been held to be applicable to the Gold Coast, recites that

In the
West African
Court of Appeal

No.21.

Reasons for
Judgment.

28th November,
1956

- continued.

"grants, alienations, conveyances, bonds, suits, judgments and executions, have been and are devised and contrived of malice, fraud, covin, collusion or guile, to the end, purpose and intent, to delay, hinder or defraud creditors and others of their just and lawful actions", and so forth. The operative part of the Statute proceeds to set aside every conveyance made "to or for any intent or purpose before declared and expressed".

Unfortunately the learned trial Judge did not consider this aspect of the case. He came to the conclusion that "whatever the conduct of Abire had been towards the Defendants-Appellants he accepted the evidence that the Plaintiff-Respondent bought the business and was an innocent purchaser for value". I find myself in disagreement with this finding. In failing to stamp the Agreements, Exhibits "A" and "B", assuming that they were made on the dates they bear, which I do not believe, the Plaintiff was keeping secret the purchase of the business. Exhibit "C" was clearly prepared and was accepted by the Plaintiff in anticipation of a claim against and seizure of Abire's goods, while the action in the Kumasi Municipal Court was designed to cloak the fraud with a semblance of circumstantial truth, and was badly timed.

"But fraud is infinite in variety, sometimes it is audacious and unblushing; sometimes it pays a sort of homage to virtue, and then it is modest and retiring; it would be honesty itself if it could only afford it. But fraud is fraud all the same; and it is the fraud, not the manner of it, which calls for the interposition of the Court". Per Lord Macnaghten in Reddaway v. Banham 1896 A.C.199 at p.221.

I think the transaction set up by the Plaintiff in support of his claim is entirely fictitious to his knowledge and, if it is not fictitious, that it was embarked upon with intent to delay and hinder the creditors of Abire and had that effect and that it is therefore clearly fraudulent and void under the Statute of Elizabeth and with the principle of Twyne's case 3 Reps. 80b.

For these reasons we allowed the appeal, set aside the judgment of the Court below and entered

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judgment for the Defendants-Appellants with costs in this Court allowed at £29. 14. 3. and in the Court below to be taxed.

(Sgd.) J.Henley Coussey, P.

KORSAH, C.J.: I concur. (Sgd.) K.A.Korsah, C.J.

VERITY, Ag.J.A. I concur. (Sgd.) John Verity,
Ag. J.A.

In the
West African
Court of Appeal

No.21.

Reasons for
Judgment.

28th November,
1956

- continued.

No. 22.

COURT NOTES GRANTING FINAL LEAVE TO APPEAL
TO PRIVY COUNCIL

In the Ghana
Court of Appeal

No.22.

21st April 1958

Civil Motion No.12/58

IN THE COURT OF APPEAL, Monday the 21st day of
April, 1958. Cor: Sir Arku Korsah, C.J.,
Granville Sharp, J.A. and Ollennu, J.

Court Notes
Granting Final
Leave to Appeal
to Privy
Council.

Kojo Asante Plaintiff (Appellant to Privy
Council)

21st April,
1958.

v.

C.F.A.O. Defendants (Respondents to
Privy Council)

Motion on Notice for an Order for Final Leave
to Appeal to Her Majesty's Judicial Committee
of the Privy Council, England, etc.

Mr. Benjamin for Appellant.

Mr. Albert Asafu-Adjaye for Respondents.

Counsel for Appellant: moves in terms of papers
filed. All the conditions have been fulfilled, and
I now apply for final leave.

Mr. Asafu Adjaye opposes cites case of Bako v. Quao
etc. 2 W.L.R. p.181 also refers to appeal to Privy
Council Order. Applicant should give cogent reasons
but none given.

Court: While we sympathise with Respondents who

In the Ghana
Court of Appeal

No.22.

Court Notes
granting Final
Leave to Appeal
to Privy
Council.

21st April,
1958
- continued.

oppose this application we are clearly of the opinion that the circumstances in this case do not warrant the exercise of the Court's discretion to refuse final leave to appeal. We do not consider the grounds upon which the Court refused similar leave to Bako v. Quao apply to this case. We therefore refuse to exercise our discretion in favour of Respondents.

This application is granted, i.e. final leave.

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

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(Sgd.) G.Granville Sharp, J.A.

(Sgd.) N.A.Ollennu, J.

E X H I B I T S"1" - LEASE, C.F.A.O. and K. ABIREExhibits"1"Lease,
C.F.A.O. and
K. Abire.30th April,
1953.

10 THIS AGREEMENT made the 30th day of April in the year of Our Lord One thousand nine hundred and fifty-three (1953) BETWEEN Messrs. Compagnie Francaise de L'Afrique Occidentale a Company registered in the Republic of France and having its Registered Office situate at 32 COURS PIERRE OUGET MARSEILLES FRANCE by its true and lawful Attorney

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RENE J. GOIG of Kumasi in Ashanti aforesaid (hereinafter called "the Company" which expression shall where the context so requires or admits include its successors in office and assigns) of the one part and also of Kumasi aforesaid (hereinafter called "the Tenant" which expression shall where the context so required or admits include his executors administrators successors according to Native Customary Law and assigns) of the other part WHEREBY IT IS AGREED as follows :-

20

1. THE Company agree to let and the Tenant agrees to take on hire ALL AND SINGULAR the whole of the Company's premises situate and known as Plots Nos. 21/22 on the Krobo District (Antoa Road) Kumasi with the EXCEPTION OF THE WHOLESALE situate opposite the Main Building in the Yard of the said premises

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2. THE Tenancy shall be for a term of Two (2) Years certain from the 1st day of April, 1953, with an option on the part of the tenant to renew it at the expiration thereof for a further term of Four (4) Years renewable at intervals of Two (2) years at a time upon terms and conditions then to be agreed upon.

3. Ground Rent, Town & Water Rates payable in respect of the premises shall be borne exclusively by the Company.

4. THE rent shall be Sixty-five pounds (£65.0.0) per month payable in advance on or before the 1st day of each month.

40

THE TENANT AGREES AS FOLLOWS:-

(a) To pay the rent at the times and in manner aforesaid.

Exhibits

"1"

Lease,
C.F.A.O. and
K. Abire.

30th April,
1953
- continued.

- (b) The cost of putting the premises into habitable condition and painting etc. at the time of the commencement of the term shall be borne by the Tenant.
- (c) To keep the demised premises in good and tenantable condition and repair during the continuance of the Tenancy.
- (d) To permit the Company or their Agent at all reasonable times to enter upon and view the state of repair of the premises and forthwith to repair and amend any defects of which written notice shall have been given to the Tenant or left at the premises. 10
- (e) Not to assign underlet or part with the demised premises or any part thereof.
- (f) Not to carry on or permit to be carried on upon any part of the demised premises any offensive noisy or dangerous trade or business or occupation and not to permit the premises to be used for any illegal or immoral purposes so as to cause nuisances annoyance or inconvenience to the Company or to those in the neighbourhood. 20
- (g) Quietly to yield up the demised premises at the determination of the Tenancy in good and tenantable repair and condition

THE COMPANY AGREE AS FOLLOWS:-

5. TO permit the Tenant the use of electricity and water installed in the demised premises provided bills for consumption of water and electricity are promptly paid by the Tenant. 30
6. THAT the Tenant paying the rent and observing and performing the stipulation on his part herein contained shall peaceably enjoy the demised premises without any interruption by the Company or any person rightfully claiming under them.
7. IF the rent or any part thereof shall be in arrear for fourteen (14) days (whether formally demanded or not) or if the Tenant shall cause any damage to the demised premises and/or shall neglect to perform or observe any stipulation or agreement on his part herein contained the Company may at any time thereafter re-enter upon the demised premises or any part thereof in the name of the whole 40

and thereupon this demise shall absolutely determine but without prejudice to any right of action of the said Company in respect of any breach of the Agreement and stipulations herein contained:

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

Exhibits

"1"

Lease
C.F.A.O. and
K. Abire.
30th April,
1953
- continued.

10 SIGNED by the said Rene J. Roig)
as the True and Lawful Attorney)
of Messrs. C. F. A. O. in the) RENE J. ROIG.
presence of :-)

20 MARKED by the said Kwabena)
Abireh after the foregoing had)
been duly read over interpreted)
and explained to him in the Twi)
language by) KWABENA ABIRE.
when he seemed perfectly to un-)
derstand the same before making)
his mark and affixing his left)
thumb print hereto in the pres-)
ence of:)

"2" - APPLICATION BY K.ABIRE FOR CREDIT FACILITIES

"2"

Application by
K. Abire for
Credit Facilities
17th February,
1954.

1. Christian Name (in block capitals) - KWABENA
2. Surname (in block capitals) - ABIREH
3. Name of Firm, Dept., etc. by employed
and to whom reference may be made
CORONATION BAR
4. If in Govt. Service, please state
in what capacity -
- 30 5. If self-employed, please state in
what capacity -
6. Address when not in Gold Coast
(i.e. U.K. or elsewhere) -
7. Private address in Gold Coast - P.O.Box 715,
Tel. 619 Anton Road 21/22.

Exhibits
 "2"
 Application by
 K. Abire for
 Credit
 Facilities.
 17th February,
 1954
 - continued.

8. Business address in Gold Coast - P.O.Box 715,
 Tel. 619 Anton Road 21/22.
9. Communications to be sent to
 Private/Business Address -
10. My Bankers in Gold Coast are - Barclays at
 Ksi to whom reference may be made.
11. Year and Month of arrival in Gold Coast on
 present tour -
12. Approximate date of departure on leave -
13. Branches C.F.A.O. with which you have
 previously had an account - 10
14. Normal Credit required - £200 (Two hundred
 pounds per month)
15. The attention of customers is drawn to the
 general conditions shown overleaf (Deposit £50)

<u>FOR USE BY COMPANY</u>	<u>ACCOUNT NO.</u>	<u>SIGNATURE OF APPLICANTS.</u>
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Approved for immediate/
 deferred action
 (Sgd.) ?
 Manager

K. ABIREH

Dated 17th February, 1954

Pass book issued on:

20

CREDIT ACCOUNT
GENERAL CONDITIONS

1. All accounts are opened on the understanding
 that all bills for normal requirements incurred
 during any one month will be settled by the
 25th of the following month.
2. Should the above condition not be complied with,
 the Management reserves the right to withdraw
 credit facilities at any time without notice.
3. Customers are kindly requested to render prompt
 advice of any change of address. 30
4. For accounting purposes, all accounts are closed
 on the 20th of each month, purchases made after
 this date will appear on the following month's
 account.
5. Customers are kindly requested to provide the
 Company with at least three days notice before
 closing this account on their departure from
 Gold Coast, so that complete and up to date
 statements of account may be submitted. 40

"A" - AGREEMENT, O.K.ASANTE and OTHERS

Exhibits

4364/55

"A"

THIS IS TO CERTIFY that we, the undermarked and signed Nos.1 Opanin Kojo Asante 2. Kwabina Ebire, 3. Yaw Manu and 4. D.K.Awuah, all of Kumasi/Ashanti have this day agreed to form as Company of making a chop bar and drinkables in the premises of No. K.O.21/22, Antoa Road, Kumasi as styled "Coronation Bar".

Agreement,
O.K.Asante
and Others.
5th April,
1954.

- 10 2. That the first man (Opanin Kojo Asante) has already paid the sum of £610.15/- (Six hundred and ten pounds fifteen shillings) as a capital to the Company for the business.
- 3. That it is mutually agreed by both of us, that should any profit which shall be realised from the business, it shall be divided equally among by all of us, i.e. four persons.
- 4. That same shares shall be given to each person if there any deficit arise in the business.

20 I CERTIFY that the parties to within-named Agreement have fully understood the nature and terms of this Agreement and entered into the same voluntarily of their own will.

DATED AT KUMASI THIS 5th day of April, 1954.

1. Opanin Kojo Asante	}	Their
2. Kwabina Ebire		X
3. Yaw Manu		X
)	marks.
4. (Sgd.) D.K.Awuah		

Personal surety for Kwabena Abire is
.....(L.T.P.)

30 Personal Surety

The personal Surety for Messrs.Yaw Manu & D.K.Awuah

Ama Ade her
X (L.T.P.)
mark

Sig:

W/W to marks & Sgd. ? ? ?

Exhibits

"A"

Agreement,
O.K.Asante
and Others.
5th April,
1954
- continued.

Lic.No.35023/54/Ksi.Odum Street, Kumasi.

Reward 4/- Org. & Copy.

Left thumb prints of (1) (2) and (3).

In accordance with Section 20 of Cap.168 I certify that in the opinion of the Commissioners of Stamps this instrument is chargeable with a duty of Two Shillings.

(Penalty - Five Pounds (£5)).

Commissioner of Stamps Office
Kumasi - 28.12.1955.

(L.S.) 10

Sgd. ?

for Commissioner of Stamps.

"B"

Agreement
between
K.Abire and
Others and
P.K.Asante.
1st June, 1954.

"B" - AGREEMENT BETWEEN K.ABIRE and OTHERS
and P.K.ASANTE

MEMORANDUM OF AGREEMENT made and entered into this 1st day of June, 1954, between Messrs. Kwabena Abire, D.K.Awuah and Yaw Manu of Kumasi of the first part and Panin Kojo Asanti of Antoa-Adeisina-Ashanti now residing at Kumasi of the second part WHEREBY IT IS MUTUALLY AGREED upon by both parties as follows:- 20

- (1) The first party have agreed to sell to the second party and the second party has also agreed to buy from the first party, all the properties in the first party's Coronation spirit and Chop Bar in house No.K.O.21/22 Kumasi at £837.6/- (Eight hundred and thirty seven pounds six shillings).
- (2) Out of the said amount of £837.6/- the first party have received £500 (Five hundred pounds) from the second party: leaving balance of £337.6/- (Three hundred and thirty seven pounds six shillings) to be paid to the first party by the second party under the below mentioned instalments/terms:- 30

£100. at the end of July, 1954

£237.6/- at the end of Nov. 1954

£337.6/-

10 (3) According to this Agreement, if the second party fails the above-mentioned instalments/terms, the first party shall have the full right to take action against the second party in any Court of Justice for the recovery of the whole balance and in case the second party still fails to make payment of it, the first party shall be rightful to apply for writ of Fi.Fa. against any properties belonging to the second party which they shall come in contact with and sell them for money to liquidate or cover the debt and any costs of the action by the virtue of this Agreement.

Exhibits

"B"

Agreement between K.Abire and Others and P.K.Asante.
1st June, 1954
- continued.

DATED at Kumasi this 1st day of June, 1954.

		Their
	1. Kwabina Abire	x
	2. (Sgd.) D.K.Awuah	
	3. Yaw Manu	x
	The first Party	
20	4. Panin Kojo Asante	x
	Second Party	marks

Witnesses:

1. (Sgd.) ? his
2. Kwabina Attah x
mark
3. (Sgd.) Kwabina Attah
4.
W/Witness to marks and sig:
Sgd. S.K.Nti.
Lic.No.35071/54
House No.K.O.40.Ksi
30 Fee 8/- for orig. & copies.

In accordance with Section 20 of Cap.168 I certify that in the opinion of the Commissioners of Stamps this instrument is chargeable with a duty of Two shillings and six-pence:

Penalty - Five pounds (£5)

COMMISSIONER OF STAMPS OFFICE (L.S.)
KUMASI 28.12.1955.

Sgd. ?
for COMMISSIONER OF STAMPS.

Exhibits"C" - RECEIPT BY KWABENA ABIRE FOR £837.6.0.

"C"
 Receipt by
 Kwabena Abire
 for £837.6.0.
 5th November,
 1954.

Gold Coast
 Two Shillings and sixpence
 Stamp Duties. 5075/55
 £837.6/-

Received from Panin Kojo Asanti of Antoa-Adeisina-Ashanti now residing at Kumasi, cash the sum of £837.6/- (Eight hundred and thirty seven pounds six shillings) being full payment of the cost of all the properties belonging to me and D.K.Awuah and Yaw Manu in our Coronation Spirit and Chop Bar in House No.K.O.21/22 Kumasi which we have sold, transferred and delivered to him. 10

Henceforth all the properties in the said Coronation Spirit and Chop Bar in House No.K.O. 21/22 Kumasi remain the absolute properties of the said Panin Kojo Asanti by the virtue of this receipt I. D.K.Awuah and Yaw Manu have no right in them.

DATED at Kumasi this 5th day of November 1954. 20

his
 Kwabena Abire x
 mark

The Manager Coronation Spirit and Chop Bar, House No. K.O. 21/22 Kumasi for myself and on behalf of Messrs. D.K. Awuah and Yaw Manu.

W/Witness to mark:
 S.K. Nti
 Lic. No.35071/54
 House No.K.O.40 Ksi.
 Fee 3/10. 30

In accordance with Section 20 of Cap.168 I certify that in the opinion of the Commissioners of Stamps this instrument is chargeable with a duty of Two shillings and sixpence.

COMMISSIONER OF STAMPS OFFICE
 KUMASI.

(L.S.)

(Sgd.) ?

3/1/55

ExhibitsEXHIBITS "E1" to "E6" - RECEIPTS"E1" - "E6"Exhibit "E1"Receipts

No. 37

16/6/1954

"E1"
16th June, 1954.RECEIVED from Kojo Asante the sum of Ten pounds
- shillings and - pence being store rent for June,
1954.

£10. 0. 0.

K. Abireh.

"E2".Exhibit "E2"

28th July, 1954.

No. 38.

28/7/1954

RECEIVED from Asante the sum of Ten pounds -
shillings and - pence being store rent for July, 10
1954.

£10. 0. 0.

K. Abireh.

"E3".Exhibit "E3"30th August,
1954.

No. 39.

30/8/1954

RECEIVED from Kojo Asante the sum of Ten pounds
- shillings and - pence being store rent for
30/8/54.

£10. 0. 0.

K. Abireh.

"E4".Exhibit "E4"29th September
1954.

No. 40.

29/9/1954 20

RECEIVED from Kojo Asante the sum of Ten pounds
- shillings and - pence being store rent for
September 1954.

£10. 0. 0.

K. Abireh.

Exhibit "E5".

No. 41. 30/10/1954
RECEIVED from Kojo Asante the sum of Ten pounds
- shillings and - pence being store rent for
October, 1954.
£10. 0. 0. K. Abireh.

Exhibits
"E1" - "E6"
Receipts
(Continued)
"E5".
30th October,
1954.

Exhibit "E6".

No. 42. 31/11/1954
RECEIVED Kojo Asante the sum of Ten pounds being
store rent for 31.11.54.
£10. 0. 0. K. Abireh.

"E6".
31st November,
1954. sic.

"W.A.C.A.(1)" - NOTICE ON MOTION FOR APPLICATION
TO DISCHARGE ORDER GRANTING INTERIM ATTACHMENT
AND AFFIDAVIT IN SUPPORT

"W.A.C.A.(1)"
Notice on Motion
for Application
to discharge
Order granting
Interim attach-
ment and
Affidavit in
Support.
26th and 28th
January, 1955.

IN THE SUPREME COURT OF THE GOLD COAST
ASHANTI
JUDICIAL DIVISION - DIVISIONAL COURT, KUMASI.

Suit No.D.C.336/1954

20 BETWEEN: COMPAGNIE FRANCAISE DE L'AFRIQUE
OCCIDENTALE Plaintiffs

- and -

KWABINA ABIRE, HOUSE NOS.21/22
KROBO DISTRICT, KUMASI Defendant

KOJO ASANTI, HOUSE NOS. 21/22
KROBO DISTRICT, KUMASI Applicant

30 MOTION ON NOTICE by JOSEPH EMMANUAL CONDUA
LUTTERODT Counsel for and on behalf of the Appli-
cant herein praying this Honourable Court to
make an order releasing the attachment of the Ap-
plicant's goods in the House No.K.O.21/22, Kumasi
in accordance with the accompanying Affidavit and
for such further order or orders as to this Court
may seem meet, in the premises.

Exhibits
 "W.A.C.A.(1)"
 Notice on Motion
 for Application
 to discharge
 Order granting
 Interim attach-
 ment and
 Affidavit in
 Support.

26th and 28th
 January, 1955.

Notice of Motion
 and
 26th January,
 1955
 (continued)

Affidavit
 in Support.
 28th January,
 1955.

COURT TO BE MOVED ON SATURDAY the 5th day of
 February, 1955 at 8.30 o'clock in the forenoon or
 so soon thereafter as Counsel for and on behalf of
 the Applicant can be heard.

DATED at Efaina Chambers, Kumasi this 26th day of
 January, 1955.

Sgd. J.E.C.LUTTERODT
 SOLICITOR FOR THE APPLICANT.

The Registrar,
 Divisional Court,
 Kumasi

10

To the above-named Plaintiffs or
 their Solicitor Mr.S.Asafu-Adjaye,
 Kumasi.

IN THE SUPREME COURT OF THE GOLD COAST
 ASHANTI
 JUDICIAL DIVISION - DIVISIONAL COURT, KUMASI

Suit No.D.C.336/1954

BETWEEN: COMPAGNIE FRANCAISE DE L'AFRIQUE
 OCCIDENTALE Plaintiffs

20

and

KWABINA ABIRE, HOUSE NOS.21/22
 KROBO DISTRICT, KUMASI Defendant

KOJO ASANTI, HOUSE NOS.21/22
 KUMASI Claimant

I, KOJO ASANTI, of Kumasi, make Oath and say
 as follows :-

1. That I am the Claimant in the above-named case.
2. That on Monday the 24th January, 1955 the goods 30
 in my store or Bar popularly known as "Corona-
 tion Bar" in the House No.21/22 Kumasi were
 attached and the store or Bar was sealed up.
3. That I am not in any way indebted to the Plain-
 tiffs or the Defendant.
4. That I am a Tenant of the Defendant and I do
 not owe any arrears or rent.

- 5. That on or about the 5th day of November, 1954 I bought from the Defendant and two others all the goods and utensils in the said Bar: and the said Store or Bar was transferred to me.
- 6. That I paid the sum of Eight hundred and thirty-seven pounds six shillings (£837.6/-) to the said three persons, namely D.K.AWUAH, YAW MANU and KWABINA ABIRE who were the owners of the goods utensils and other things in the Store or Bar.
- 7. That the receipt for the said payment was stamped by the Government Treasury on the 3rd January, 1955.
- 8. That on the 4th January, 1955 a formal application was made to the Licensing Authority, Kumasi Municipal Council for my name to be substituted for Kwabina Abire in respect of the Licence for the said Bar.
- 9. I swear to this Affidavit and say that the Defendant has no right title or interest whatsoever in the said goods so attached and I pray this Honourable Court to grant an order to release the attachment to enable me to carry on with my business.

Exhibits
 "W.A.C.A.(1)"
 Notice on Motion for Application to discharge Order granting Interim attachment and Affidavit in Support.
 26th and 28th January, 1955.
 Affidavit in Support.
 28th January, 1955
 - continued.

30 SWORN AT KUMASI this 28th day of)
 January, 1955 by the said Kojo)
 Asanti after the foregoing had)
 been duly read over interpreted)
 and explained to him in the Twi)
 Language by F.A.K.SAM when he)
 seemed perfectly to understand)
 the same before making his mark)
 and affixing his thumb print)
 hereto:)

KOJO ASANTI
 his
 x
 mark

Before me,

Sgd. JOHN HAIZEL
 COMMISSIONER FOR OATHS.

Exhibits
 "W.A.C.A.(2)"
 Affidavit of
 Andoh Essar.
 3rd February,
 1955.

"W.A.C.A.(2)" - AFFIDAVIT OF ANDOH ESSAR

IN THE SUPREME COURT OF THE GOLD COAST
 ASHANTI JUDICIAL DIVISION
 DIVISIONAL COURT KUMASI

Suit No.D.C.336/1954

BETWEEN: COMPAGNIE FRANCAISE DE L'AFRIQUE
 OCCIDENTALE Plaintiffs

and

KWABINA ABIRE, HOUSE NOS.21/22
 KROBO DISTRICT, KUMASI Defendant 10

KOJO ASANTI, HOUSE NOS. 21/22
 KROBO DISTRICT, KUMASI Applicant

AFFIDAVIT OF KOFIE ANDOH ESSAR

I, KOFIE ANDOH ESSAR of Kumasi Clerk make oath and say as follows:--

1. That I am an employee of the Plaintiff-Company and have been asked by the District Agent to depose to the facts herein for and on behalf of the Plaintiff-Company
2. That the Plaintiff-Company have read the Motion paper and affidavit of the Applicant herein praying for an Order for the release of the property attached by the Order of this Honourable Court dated the 18th day of January, 1955 in the above suit. 20
3. That the business transactions between the Defendant and the Company the subject matter herein dates as far back as February, 1954 and the last amount paid by the Defendant in part satisfaction of his indebtedness with the Plaintiff-Company was made some time in November, 1954. 30
4. That some time in September 1954 the Defendant gave to the Plaintiff-Company in part satisfaction of his indebtedness a cheque for One thousand three hundred pounds (£1,300) but the said cheque was returned unpaid by the Bank upon presentation thereof in October 1954.
5. That if even paragraph 5 of the Applicant's Affidavit is true, it was only done to evade any decree that may be passed against the Defendant in the event of the Plaintiff-Company 40

taking action to recover the amount due in respect of the Defendant's business transactions with the Plaintiff-Company.

Exhibits
"W.A.C.A.(2)"

Affidavit of
Andoh Essar.

3rd February,
1955

- continued.

10

6. That the Defendant is a tenant of the Plaintiff-Company in premises situate and known as Plots Nos.21/22 in the Krobo District of Kumasi under an Agreement dated the 30th day of April, 1953 and executed by the Plaintiff-Company on the one hand and the Defendant on the other hand.

20

7. That Clause 4(e) of the said Agreement precludes the Defendant from assigning underletting or parting with the demised premises or any part thereof and as such paragraph 4 of the Applicant's Affidavit cannot be true.

8. That the Defendant again gave 2 post-dated cheques to the Plaintiff-Company for Four hundred and ninety pounds (£490) in part payment of account but again the said cheques were dishonoured by the Bank upon presentation thereof on the 7th October, 1954 with the words "Refer to Drawer" thereon written.

9. That the transaction between the Applicant and the Defendant if even is true was not a genuine one in that it was made purposely to prevent the Plaintiff-Company from realising what is due to them by the Defendant.

30

10. That in effect the transaction took place after the Plaintiff-Company had intimated to the Defendant its intention to take immediate Court action against him for the recovery of the amount due, if the Defendant failed to honour his cheque to the Company.

40

11. That Plaintiff-Company say in reply to paragraph 8 of the Applicant's Affidavit that the Defendant may have had Notice of the Plaintiff-Company's application for Interim attachment of the Store and Bar and hence his application to the Licensing Authorities to transfer the Store to the Applicant.

12. That I make this Affidavit on behalf of the Plaintiff-Company in strong opposition to the Applicant's application for the release of the property attached herein.

Exhibits
 "W.A.C.A.(2)"
 Affidavit of
 Andoh Essar.
 3rd February,
 1955
 - continued.

SWORN by the above-named)
 Deponent at Kumasi this)
 3rd day of February, 1955,) Sgd.
) KOFIE ANDOH ESSAR.
 Before me
 Sgd. NEE SAI ANNAN
 Commissioner for Oaths.

CERTIFICATE OF SERVICE

Upon the 5th day of February, 1955, copies of this Affidavit were served by me on Mr.Lutterodt, Solicitor for the Applicant Kwabina Abire personally at Kumasi. 10

Sgd. M.A. Nunoo,
 Bailiff.
 5.2.55.

"W.A.C.A.(3)"
 Court Notes
 of Order
 refusing
 Application
 to discharge
 Order granting
 Interim
 Attachment.
 5th February,
 1955.

"W.A.C.A.(3)" - COURT NOTES OF ORDER REFUSING
 APPLICATION TO DISCHARGE ORDER
 GRANTING INTERIM ATTACHMENT

5.2.55.

IN THE SUPREME COURT OF THE GOLD COAST, ASHANTI,
 at the Divisional Court held at Kumasi, on Satur- 20
 day the 5th day of February, 1955 before Quashie-
 Idun, J.

C. F. A. O.

v

KWABINA ASANTI

MOTION ON NOTICE by Kojo Asanti for order to
 discharge order granting Interim attachment.

Lutterodt for Applicant.

Albert Asafu-Adjaye for Plaintiffs.

Lutterodt moves in terms of Motion Paper and Affi- 30
 davit.

BY COURT:-

Application refused. No order as to costs.

(Sgd.) S.O. Quashie-Idun
 J.