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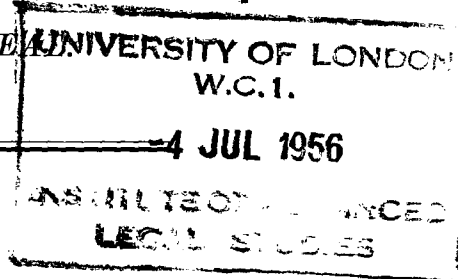
No. 23 of 1953.

In the Privy Council.

ON APPEAL

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

43540



BETWEEN

THE STOOL OF ADANSI represented by NANA
BONSRA ADJEI II (Plaintiff) *Appellant*

AND

10 THE STOOL OF BRENASE represented by NANA
AMOABAN OKO II (Defendant) *Respondent.*

Case for the Respondent.

RECORD.

1. This is a Plaintiff's Appeal from a judgment of the West African Court of Appeal of the 17th day of March, 1952, dismissing an Appeal from a Judgment of a Divisional Court, Kumasi, of the 13th day of January, 1950. p. 72, seq. p. 56, seq.

20 2. By his Statement of Claim the Plaintiff sought to establish title to certain land, more particularly described therein, and he claimed that his predecessor in title to the land in question was one Kwa Ntwi Barima, who had derived it from the then Asantehene Nana Osei Yaw, and that the land had remained in the possession of the Plaintiff's Stool ever since. No plan was filed with the Statement of Claim. p. 1.

30 3. In his Statement of Defence the Defendant pleaded that his ancestor Yaw Frempon migrated from Kokofu in Ashanti and founded the village of Brenase, having cleared the virgin forest over the land in dispute; that within its boundaries the Defendant's ancestor founded many villages, including Nsese, Huntoadu, Framasi, Supome, Asaa, Akukobonumasu, Nteteim and Busumpimasu; that of all animals killed by hunters within the said boundaries portion was, according to custom, sent to Yaw Frempon and his successors; and consequently the Defendant denied the allegation in the Plaintiff's Statement of Claim that the Plaintiff p. 3.

Stool had been in possession since Osei Yaw's time and averred that the Plaintiff Stool had never been in possession of the land the subject matter in dispute.

The Defendant filed a plan along with the Statement of Defence.

p. 6. 4. In proceedings before the Divisional Court, Kumasi, on the 5th November, 1949, Plaintiff's Counsel made application that a plan dated the 24th December, 1947, and which was prepared by the Defendant in a case instituted by him in the Divisional Court at Cape Coast should be admitted for the purpose of identifying only the area in dispute, and this Plan was admitted by consent and marked as Exhibit No. 1. The Exhibit 10 in question has been sent over in original to the Registrar of the Privy Council and copies will also be available on the hearing of the Appeal.

5. The following narrative appears from the judgment of the trial Court (Jackson, J.) :—

p. 57, l. 24. " The first paragraph of the writ of Summons is one which seeks to establish title to the area of land there described and which Mr. Mead, Counsel for the Adansi Stool, avers is the same as that area shown as delineated in pink on the plan exhibited and marked as No. 1.

* * * * *

p. 57, l. 34. " Although the title claimed is not set out with any particularity, i.e., whether title to possession, title of ownership, absolute or qualified, the trial proceeded on the clear and unmistakable basis that the title claimed by the Plaintiff Stool was one of absolute ownership and the defence was a traverse of the Plaintiff's claim to ownership and possession and setting up, but not by way of counterclaim, one of absolute ownership and possession being vested in the Defendant Stool."

pp. 56-66. 6. After recording evidence, both oral and documentary, the learned Judge delivered judgment dismissing the Plaintiff's claim with costs.

p. 59, l. 35. In the course of his judgment, the learned trial Judge dealt with 30 certain documents, being Plaintiff's Exhibits Nos. 6 (dated 1st February 1909), 3 (dated 1st February, 1909) and 2 (dated 3rd February, 1909), which had been put in by consent. It was conceded by Counsel for both parties that those Exhibits and the facts recorded by them referred principally to land situate to the north of the area now in dispute and described on the plan as Government land situate north of the confluence of the Rivers Prah and Anum.

p. 91. Exhibit No. 6 was in the following terms :—

" I, Kobina Fah, Chief of Beronase [Brenase], and nephew and successor of Coffee Boontoe, Plaintiff in *Coffee Boontoe v. Pataquin* 40 and *Quaw Mensah* Coram Smith J. and of Anno Defendant in *John Daniel v. Anno* Coram Redwar J. and in *Daniel v. Andor* Coram Griffith C.J. hereby declare that in consideration of a present of the sum of Fifty Pounds (£50) by the Government, I hereby renounce all claim to land and property on the right bank of the

Prah River to which I may have been entitled under that above mentioned Judgments as successor to Coffee Boontoe and Anno or Andor.

KOBINA FAH,
Chief of Brenase.

His
X
mark

Witness
KOFI AHINKURA
Omanhin of Akim Soadro

His
X
mark

10

KOBINA EWURU
Chief of Amantia

His
X
mark

KOFI EWUAH
Head Linguist of Akim Soadro

His
X
mark

Witness to marks :

(Sgd.) A. B. JOSIAH Jnr.

(Sgd.) W. B. DSANE.

Before us at Beronase this first day of February, 1909.

20

(Sgd.) E. C. ELLIOT, C.C.P.

(Sgd.) C. H. ARMITAGE, Commr. S.P.A.”

Exhibit No. 3 was in the following terms :—

p. 92.

“ I KOFI AHINKURA AMANHIN OF AKIM SOADRO on behalf of myself my heirs and successors and we, the undersigned Sub-Chiefs and Elders of Akim Soadro on behalf of ourselves our heirs and successors, and, together with the said Kofi Ahinkora, on behalf of the people of Akim Soadro hereby declare as follows :—

30

That in consideration of the Government of the Gold Coast Colony having taken over certain land on the right bank of the River Prah, bounded as follows :—

On the North by the road from Anwiaso from the point where it crosses the Anum River to the point where, after passing in an Easterly direction through the villages of JADAMWA, BANKA, TOKWE and KOKOBEN, it crosses Prah River to AKONTANSE—On the East by the Prah River—On the South by the Prah River—On the West by Anum River, and of the said land becoming the property of the Government, and of a present of Seventy five Pounds (£75), by the Government to the said Kofi Ahinkora, we hereby renounce all claim we may have possessed to the said land or property situated thereon.

2. We further declare that we hereby renounce all claim or rights we may have possessed to other lands or property situated on the right bank of the Prah River in the Southern and Central Provinces of Ashanti.

KOFI AHINKORA Omanhin of Akim Soadro	Their X	
KOBINA FAH Chief of Brenase	X marks	
KOBINA EWURU Chief of Amantia	Their X	10
KWAKU ADAI—Etufuhin	X	
KWAKU BEN—Safohin	X	
KWASI EWUAH Head Linguist of Akim Soadro	X	
YOW YEBOA Chief of Ofuasi	X marks	
Witnesses to marks :		20
(Sgd.) A. B. JOSIAH Jnr.		
(Sgd.) W. B. DSANE.		

Before us at Beronase this first day of February 1909.

(Sgd.) E. C. ELIOT,
Commissioner—Central Province.

(Sgd.) C. E. ARMITAGE,
Commissioner—Southern Province, Ashanti.”

Exhibit No. 2, dated the 3rd February, 1909, was a letter addressed by Messrs. Elliot and Armitage to the Chief Commissioner of Ashanti, forwarding to him the above two documents. Dealing with Exhibit No. 3 30 (*supra*) they state in paragraphs 5 and 6 of their letter as follows :—

p. 94, ll. 11-29.

“ 5. An agreement, which we attach, and by which in consideration of the disputed area becoming Government property, and of a present of £75 to Kofi Ahinkora, the Omanhin and his chiefs renounced all the claims to land or property on the right bank of the Prah was drawn up and signed in our presence by the Omanhin and his principal chiefs and headmen.

6. This document was framed as simply as possible, and must be read with the following rules to which we agreed :—

(i) Those Headmen and people living on Government area to 40 choose within six months whether they will remain or cross into the Colony to serve the Omanhin of Akim Soadro. All communications with the Omanhin of Akim Soadro's Court to be discontinued by those who remain.

(ii) The Omanhin of Akim Soadro to retain the ferry across the Prah between Beronase and Amantia.

(iii) The Akim Soadro's to have fishing rights on both banks of the Prah between the points where the Anum River flows into it, and where the road to Akontanse crosses it.

(iv) For the present Akim Soadros may hunt in the Government area with the concurrence of the chiefs of Banka, Mironam, or Amantia.

10 (v) It is understood that these people at present living on the Government area who choose to remain shall not be placed under any Ashanti Chief, but shall communicate with the Commissioner of the Southern Province *through the Chief of Banka.*"

Dealing with Exhibit No. 6 (*supra*) they state in paragraph 7 of their letter as follows :—

20 "7. With regard to the Chief of Beronase's claim, an agreement whereby the Chief renounced any rights he may have possessed, including those under the judgments referred to in para. 3 above, to land or property situated on the right bank of the Prah in consideration of a present of £50 was drawn up and signed by the chief, and witnessed by Kofi Ahinkora and others. We attach this agreement, which must be read with the following rules, as agreed to by the Omanhin and chiefs :—

(i) No Akim Soadro to possess any lands or rights on the right bank of the Prah south of the confluence of the Prah and Anum Rivers.

30 (ii) Fishing rights on the left bank of the Prah to be held by Akim Soadros. Their right to place nets across the whole breadth of the river to be discussed with the Omanhin of Adansi, after which the Commissioner of the Southern Province of Ashanti will communicate with the Commissioner of the Central Province of the Colony on the subjects, and a *modus vivendi* arrived at."

40 7. The learned trial Judge, in dealing with these documents, referred to the evidence of Kwasi Adai, the first witness to be called for the Plaintiff, who stated in cross-examination that the meeting between Messrs. Elliot and Armitage was convened as the result of a land dispute between Adansi and Brenase, and that it was decided that they (Adansi) should pay to Brenase sums of £75 and £50 and that they (Adansi) were made to understand that these sums had been paid to Brenase and Akim Soadro as moneys for "buying the boundaries of the River Prah." The learned trial judge then stated :—

"There was no suggestion by this witness that Adansi ever objected in any form to such payments, and that payment, if true, would, standing by itself, afford some evidence that some interest in land or rivers which had not formerly been enjoyed by them (Adansi) had been purchased from Brenase, and it would by itself afford evidence in rebuttal of the claim to possession as the result of any grant from the Asantehene in the past."

* * * * *

p. 60, l. 28, *seq.*

“It is quite clear that under these agreements the Plaintiff Stool can acquire no interest in the land unless they can show that they have had a subsequent assignment of these rights from Government, and that they have not been able to show or even attempted to show.”

8. The learned trial Judge then dealt with the evidence of acts of ownership as displayed by the Adansi Stool since the date of those documents, viz., February, 1909, and said :—

p. 61, l. 21, *seq.*

“Apart from these instances of occupation within recent years of areas south of the Asaa River and principally around Nsese and to its south, there was apart from the evidence of occupation at Supom and Amakom—no evidence of occupation, that I could accept, north of River Asaa.”

A perusal of the plan Exhibit No. 1, already referred to in paragraph 4 of this Case, will show that the River Asaa is well towards the middle of the property in dispute, and that the village and river of Nsese are towards the southernmost extremity of the plan. Moreover, Supom (marked as a Defendant's village) and Amakom (marked as a Plaintiff's village) are shown on the plan as “ruined.”

p. 62, l. 29.

9. The learned trial Judge then dealt with the case put by the Defendant Stool, and asked whether events within living memory tended to corroborate their tradition. He referred to three judgments set out in Exhibit No. 2, and printed on pages 77 to 90 of the Record, which had been tendered by the Plaintiff Stool and came to the conclusion that “a study of these judgments does afford some support for the evidence given by the Defendant” and he concluded on this part of the case as follows :—

p. 65, l. 21, *seq.*

“In summary I would say that prior to the meeting of the Commissioners at Brenase in 1909 I can find no evidence that any person subject to the Adansi Stool ever occupied any part of the land, with the possible exception in the village of Busumamasu, but what was the nature or quality of their title to occupy that place there is insufficient evidence to afford any justification for any positive finding.”

There is ample evidence that prior to 1909 some people of Brenase who had migrated from Kokofu in Asante did possess interests in land west of the Prah and land which to the community was valuable to hunters alone. By customary law the first establishment of a right to hunt would establish an interest in land which would be regarded by custom as having been acquired from the Stool to which the hunters owed allegiance, i.e., in this case the Kokofu Stool, but which later might become established as a subordinate stool to the parent stool.”

10. The learned trial Judge, in dismissing the Plaintiff's claim with costs, said as follows :—

p. 66, l. 25, *seq.*

“In conclusion I would say that the Plaintiff's claim to any declaration for title has neither been evidenced by any root or by any evidence upon which the Court could come to any reasonable

conclusion that they were entitled as owners to exclusive possession. Such 'rights' as they sought to acquire were those of squatters on land acquired from Brenase, land which appears to have been abandoned by Government and which on abandonment reverts to the original owners (Brenase) and who, justifiably regarded the Adansi as mere trespassers."

11. The Plaintiff Stool being dissatisfied with the judgment of the Divisional Court, Kumasi, dated the 13th day of January, 1950, appealed to the West African Court of Appeal on the 21st day of July, 1950. p. 67, seq.

10 12. On the 17th day of March, 1952, the West African Court of Appeal (Foster-Sutton, P., Coussey and Manyo-Plange, J.J.) gave judgment dismissing the appeal with costs, the judgment (in which the other two Judges of Appeal concurred) being one delivered by his Honour, Coussey, J. p. 72, seq.

13. In agreement with the judgment of the learned trial Judge as to the effect of the documents executed in February, 1909, the Court of Appeal found that they do support substantially the Defendants' tradition and evidence of acts of ownership, and the judgment concluded as follows :—

20 " The evidence of occupation and user preponderates in favour of the Defendant Stool ; the sum total of them characterises ownership. I would not dissent therefore from the view of the learned trial Judge that such 'rights' to the land the Plaintiffs sought to acquire were as squatters on land acquired by Government from Brenase, and abandoned and not reasserted by Government. On relinquishment by Government the land would revert to the original owners, the Defendant Stool ; but I would dismiss the appeal on the ground that the Plaintiffs have failed to prove a root of title or any title or that they have had such exclusive possession of the land as would entitle them to a declaration in their favour confirming a title." p. 75, l. 40, seq.

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14. Being aggrieved by the judgment of the West African Court of Appeal of the 17th day of March, 1953, the Plaintiff Stool applied for leave to appeal to Her Majesty in Council, and on the 20th day of October, 1952, final leave to appeal was granted. p. 76, l. 10, seq.

15. The Respondent respectfully submits that the Appeal should be dismissed with costs for the following, among other,

REASONS

- 40 (1) BECAUSE the matters in dispute were matters of fact, and there are concurrent findings of both Courts below amply justified by the state of the Record—
- (a) that the evidence of occupation and user preponderates in favour of the Defendant Stool ;

(b) that the Plaintiff Stool, on whom the burden of proof rested throughout, failed to prove a root of title or any title or such exclusive possession of the land in dispute justifying a declaration as to title in its favour.

(2) BECAUSE the judgment of the West African Court of Appeal was otherwise right and ought to be affirmed.

GILBERT DOLD.

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Solicitors for the Respondent.

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In the Privy Council.

ON APPEAL

*from the West African Court of Appeal
(Gold Coast Section).*

BETWEEN

THE STOOL OF ADANSI

represented by NANA BONBRA

ADJEI II (Plaintiff) . *Appellant*

AND

THE STOOL OF BRENASE

represented by NANA AMO-

ABAN OKO II (Defendant) *Respondent.*

Case for the Respondent.

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