

17, 1956

In the Privy Council.

ON APPEAL

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

BETWEEN:

- 10 (1) MARY VANDERPUYE
- (2) ANNA VANDERPUYE
- (3) PETER JACOB VANDERPUYE
- (4) JACOB NEE VANDERPUYE
- (5) ISAAC VANDERPUYE
- (6) JOHN VANDERPUYE
- (7) EMILY VANDERPUYE
- (8) BETTY VANDERPUYE
- (9) JACOBA VANDERPUYE
- (10) ELLEN VANDERPUYE
- (11) MARIA VANDERPUYE
- (12) ABRAHAM KOJO VANDERPUYE
- 20 (13) JOANA VANDERPUYE
- (14) JERSEY NA OYO VANDERPUYE
- (15) DINA VANDERPUYE
- (16) JACOB NEE VANDERPUYE (Junior) and
- (17) RICHARD VANDERPUYE

(Plaintiffs) *Appellants*

— and —

MARY AKUA BOTCHWAY (substituted for JOEL DOUGLAS KWAKU BOTCHWAY deceased, original Defendant) as Head of the Family of the said JACOB VANDERPUYE deceased - - - - *Respondent*

UNIVERSITY OF LONDON  
W.C.1.

19 FEB 1957

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30 CASE FOR THE RESPONDENT.

RECORD.

1. This is an appeal by the Plaintiffs by final leave from a judgment of the West African Court of Appeal dated the 8th March 1951 whereby that Court dismissed the appellants' appeal from the judgment of the Supreme Court of the Gold Coast (Land Court) given on the 29th September 1948 p. 39. p. 28.

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whereby the Supreme Court allowed the original defendant's appeal from a judgment of the Grade A Native Court of Accra, Ga State, Eastern Province, Gold Coast, given on the 25th November 1947. The original defendant died shortly before the hearing in the Court of Appeal and the respondent was substituted for him.

2. Three questions are raised by the appeal. The first is whether appeal lay from the Native Court to the Land Court and whether the Court of Appeal had jurisdiction in the circumstances to hear and determine the appeal. The second is whether the Court of Appeal was correct in its interpretation and application of the native customary law prevailing in Ga State. It was not disputed that the native customary law applicable to the dispute was that of Ga. The third is whether the findings of the Court of Appeal as to the nature and effect of the relevant native customary law are findings which ought to be disturbed. 10

3. The appellants are children by "six cloth marriage" of the late Jacob Vanderpuye (hereinafter called "the deceased") who died intestate on the 5th October 1918. The original defendant was a material cousin of the deceased and in 1935 became, in succession to one Solomon, head of the Vanderpuye family, including the appellants.

4. At his death the deceased left self-acquired real estate consisting of 20 seven properties in Ga State.

p. 2. §

5. The appellants alleged in the Native Court as follows:—

(1) that by a judgment of the Divisional Court, Accra, of the 30th October 1945, in suit Solomon and Vanderpuye v. Botchway, they were declared "six cloth" children of the deceased and entitled to a share of the deceased's estate,

(2) that the original defendant as head of the family had since June 1935 been in exclusive possession of the said estate and had not admitted the appellants to a share in the rents and profits thereof,

(3) that notwithstanding their requests the original defendant had 30 declined to admit them to share.

The appellants claimed:—

(a) a declaration of the share to which they were entitled and appropriation of sufficient of the estate to represent such share,

(b) an account of rents and profits and payment of their share due upon such account.

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6. The original defendant admitted allegation (1) above and that he had been head of the family since 1935 but submitted that, in accordance with the customary right and duty of the head of the family, he had allotted and appor-

tioned to the appellants a share of the said estate, that such apportionment was fair and reasonable, and that, the apportionment having been made, the appellants had no right to the relief sought in the Native Court or any relief.

7. The Native Court held that the mere appointment of a head of a family did not constitute succession to a deceased's self-acquired property and that there was no prevailing native custom whereby a head of a family who was not a brother or a nephew of a deceased inherited his property. The Native Court further held that in Ga custom no cousin can succeed to the self-acquired estate of a deceased while his children are alive. Accordingly the Court, acting logically upon its findings, went beyond the appellants' claim and declared that they were entitled not to a share but to the whole of the said estate subject to a small provision for the original defendant and his sister during their lives only, and ordered accordingly.

8. The original defendant appealed to the Land Court, where the appellants took a preliminary point that appeal did not lie to the Land Court in as much as their suit was "a cause other than a land cause" and the subject of appeal only to the Magistrate's Court pursuant to section 48 of the Native Courts Ordinance 1944. The Honourable Mr. Justice Smith ruled that the suit was a land cause, varied the Native Court's judgment by substituting a declaration that the appellants were entitled to one third of the deceased's said estate, and remitted the case to the Native Court for the division of the estate and for the necessary consequential accounts.

9. The appellants thereupon appealed to the West African Court of Appeal. By order of the 30th January 1951 the Court of Appeal substituted for the original defendant, who had died, the respondent who was now the duly appointed head of the family.

10. The Court of Appeal, after first ruling that it had jurisdiction to hear and determine the appeal, took the view that the Native Court had misunderstood and misapplied the Ga native customary law and had overlooked the fact that the property, though self-acquired, did upon the death of the deceased vest in the family as family property before the original defendant had been appointed head of the family. Its findings on the relevant native customary law were:—

(a) that the members of a family are traced through the maternal ancestor and the family is the unit for the purpose of ownership of property,

(b) that the interest of the children of a deceased is a right of support out of the estate and has no effect upon the ordinary rule that property descends through the female line,

(c) that the head of the family inherits family property, and decides the extent of the share to be allocated to the support of the children,

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(d) that the original defendant had made and communicated to the appellants an allotment of property in satisfaction of their said right of support which was binding and effective. Accordingly, the Court of Appeal held that, notwithstanding the appellants' said right of support, they were not entitled to relief at the hands of the Court since there was no evidence that it was necessary for them to come to the Court to obtain their rights from the head of the family.

p. 47.

The appeal was therefore dismissed and the order of the Land Court declaring the appellants entitled to a third of the estate was set aside as also the further order remitting the suit to the Native Court to give effect to the 10 declaration.

11. It is submitted on behalf of the respondent that the ruling and judgment appealed from are right and should be affirmed for the following, among other:—

## REASONS

(a) that the suit was a land cause and that appeal lay from the Native Court to the Land Court,

(b) that the Court of Appeal had jurisdiction to hear and determine the appeal, and the ruling of the Honourable Mr. Justice Coussey was correct. 20

(c) that the Court of Appeal's findings as to the relevant native customary law were supported by authority and evidence,

(d) that the findings of the Court of Appeal as to the relevant native customary law are conclusive unless they could be shown to be perverse or wholly unsupported by authority or evidence, which they cannot,

(e) for the reasons set out in the judgment of the Honourable Mr. Justice Coussey.

L. G. SCARMAN.

In the Privy Council.

**ON APPEAL**

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

BETWEEN:

MARY VANDERPUYE and Others *Appellants*

— and —

MARY AKUA BOTCHWAY - - *Respondent*

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**Case for the Respondent.**

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*Respondent's Solicitors.*