

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ohia and others v. Yao Ntikora, from the Supreme Court of the Gold Coast Colony (P.C. Appeal No. 15 of 1912); delivered the 17th February 1913.*

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PRESENT AT THE HEARING :

EARL LOREBURN.

LORD ATKINSON.

LORD MOULTON.

[DELIVERED BY EARL LOREBURN.]

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This case comes before their Lordships in an unsatisfactory manner, both in respect of the evidence and of the information which is supplied by the Courts below. The reasons for the Judgment appealed from are not given, or are very scantily given, the plans are not clearly identified and their effect is not satisfactorily known.

The Court of first instance decided upon the evidence in favour of the Appellants. There was evidence both ways, and certainly evidence which would support the decision at which the Court of first instance arrived, and it cannot here be questioned nor is it, indeed, seriously questioned. But when the case came to the Court of Appeal the decision of the Court of first instance was reversed, obviously upon the ground that fresh evidence could be looked at which had been rejected, evidence of a prior Judgment as it is called. Their Lordships think

that this so-called prior Judgment was not, in fact, admissible, and they would not themselves describe it as a Judgment at all. The occupier of lands in the Gold Coast under licence, or tenancy, or whatever term is most applicable, from a Chief has some interest. It would be quite superfluous to describe the interest, nor is it necessary to dwell upon the particularities of the law applicable to the Gold Coast, in which, perhaps, there may be more kinds of interest, in the nature of tenancy, than one; but, at all events, a person who is an occupier is entitled to protect himself in Courts of Law, and in this case the Appellants were obviously in possession of whatever interest was created by the licence of the Chief. Then they, as occupiers, are sued by the Chief of another tribe for trespass to this land by cutting down palm trees or exercising rights of ownership. Now the previous so-called Judgment was put in evidence and accepted in the Court of Appeal and Mr. Danckwerts maintains that it was rightly accepted in evidence. Their Lordships are not able to take that view. The Plaintiff could not show his title by proving that Jatchi entered into an agreement with the Plaintiff after his predecessor had given a title to the Defendants, otherwise one man might dispose of another man's interest behind his back.

The consequence is that their Lordships will humbly advise His Majesty that this Appeal ought to be allowed. They have nothing to add, except that this decision must not be understood as concluding any other proceeding upon different evidence which raises the question of title to this land, and it certainly does not conclude any question of tribal title or the title of any Chief.

The Respondent will pay the costs of the Appeal and those in the Courts below.

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In the Privy Council.

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OHIA AND OTHERS

*v.*

YAO NTIKORA.

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