

Privy Council Appeal No. 86 of 1922.

Manche Anege Akue - - - - - *Appellant*
v.
Manche Kojo Ababio IV. - - - - - *Respondent*

FROM

THE SUPREME COURT OF THE GOLD COAST COLONY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 8TH MAY, 1923.

Present at the Hearing :

VISCOUNT HALDANE.
LORD SHAW.
LORD PARMOOR.

[*Delivered by* VISCOUNT HALDANE.]

This is an appeal brought by special leave from an order of the Full Court of the Gold Coast Colony. The leave granted extends only to appeal from certain preliminary objections to the hearing of the appeal, on the allowance of which objections the order complained of was based. In the Court of First Instance Smyly, C.J., had decided in favour of the respondent. The question before him was whether the respondent or the appellant was entitled to certain compensation payable by the Government of the Gold Coast Colony for lands taken compulsorily for water-works purposes under the Public Lands Ordinance, 1876, of the Colony. On appeal the Full Court refused to enter on the merits, holding that the appeal failed by reason of the appellant not having complied with conditions which under the law of the Colony must be complied with by an appellant before he could become entitled to have his appeal heard.

The amount of compensation for the land taken was agreed with the Colonial Secretary of the Colony at a certain sum. The question which emerged being who was entitled to this sum

came before Smyly, C.J., for decision. He tried the question as between the appellant and the respondent, subject to the possible establishment of claims by other persons with minor titles, who, along with the Colonial Secretary, did not intervene at the hearing. The decision was given on the 24th July, 1918. The appellant, as was required by the Procedure Rules, applied *ex parte* for leave to appeal. The application stood over till the 13th December, 1918, when the appellant was given conditional leave to appeal on terms of paying money into Court and of giving notice to all parties affected by the appeal. The appellant duly paid the money into Court and, on the 7th January, 1919, gave notice of appeal to the respondent and not to anyone else. On the 31st January, 1919, he was given final leave to appeal.

The appeal came on on the 3rd March, 1921, before Smyly, C.J., and Porter and Wilkinson, J.J., when the respondent took the following preliminary objections: (1) that the appellant had not complied with Section 6 (8) of the Public Lands Ordinance, 1876, the only notice of appeal given to the respondent not being such as was required by the section; (2) that notice had not (as required by the Order of the 13th December, 1918) been given to the parties other than the respondent affected by the appeal.

The Full Court reserved judgment, and on the 7th March, 1921, dismissed the appeal. All three of the Judges who heard the case agreed in holding that the appellant had not complied with Section 6 (8) of the Public Lands Ordinance, 1876. Smyly, C.J., was of opinion that the respondent's further objection to the appeal, on the second ground, that there were other persons directly affected, was invalid. But Porter, J., and Wilkinson, J., thought that the second objection also was valid, and held that all the parties on the record ought to have been served with notice.

In the event special leave to appeal to His Majesty in Council was given, but limited to the preliminary second question stated as to failure to give proper notice of appeal to the Full Court, and not as extending to the general merits.

The Public Lands Ordinance of 1876 enacts by Section 6 (7) that any final judgment in any such case as the present is to be subject to the like appeal to which other final judgments of the Court making the same are subject. By subsection 8 of the same section the Ordinance enacts that—

“The party who may desire to appeal against such judgment shall give notice to the other party and to the Court of his intention to appeal and proceed in other respects to perfect his appeal according to the Rules of Court for the time being regulating appeals, and if such notice is not given and the appeal perfected within the period prescribed the judgment of the Court shall be final.”

By the Supreme Court Ordinance, 1876, the appellant is, in addition to other conditions which in the present case were complied with, to give notice of the appeal to all parties directly

affected by the appeal, and to such others as respondents as the Court below thinks fit to direct. If the conditions prescribed have been complied with, and if application for final leave to appeal has been filed in the Court below not later than seven days after the expiration of a month, then the Court below must give leave to appeal, provided that where the conditions of appeal shall not have been perfected within such period as aforesaid or where the appeal shall for any reason have lapsed or been abandoned and the appellant shall again make application for leave to appeal, the Court may either refuse to grant leave or may impose any terms that it thinks proper in addition to the terms above mentioned. By Rule 8 it is enacted that in every final judgment the Court of Appeal may give leave to appeal on such terms as that Court thinks just.

The Full Court gave judgment on the 7th March, 1921, upholding both preliminary objections, and dismissed the appeal with costs without going into the merits. Smyly, C.J., based his decision, as already stated, only on the first ground, that the conditions prescribed by Section 6 (8) of the Public Lands Ordinance, 1876, had not been complied with. He did not think that the Colonial Secretary, who had retired from the case, or the other claimant, who had taken no part in the proceedings, were parties "directly affected." But the other two Judges were in favour of the respondent on both the preliminary objections, holding that notice of the appeal ought to have been given to the Colonial Secretary of the Colony and to the other original claimants.

On the 31st January, 1919, the Court of First Instance had granted leave to appeal. Various motions for leave to appeal had previously been made *ex parte*, and the respondent was notified on the 7th January, 1919, that, conditional leave having been granted by the Court below, the appellant intended to appeal.

The substantial question before their Lordships is whether there was such a defect in the notice required as made the appeal incompetent. Smyly, C.J., as has already been observed, took the view that two notices were essential, one that prescribed by Section 6 (8) of the Public Lands Ordinance of 1876, and the other such a notice, together with the proper procedure, as was required by the Rules of Court for the time being regulating appeals. The other two Judges concurred with him in this view, but also held that the conditions of the procedure Order LIII, Rule 7, had not been complied with. Differing from the Chief Justice, they considered that it was not sufficient that the respondent alone should have been served, but that the Colonial Secretary and the other claimants should have been notified, the former as having to pay the amount of the compensation, the latter as being entitled to establish a right to compensation if the right to the amount were established.

Their Lordships are unable to agree with the view taken by the latter two Judges. In his original judgment, on the 24th July, 1918, the Chief Justice who tried the case, made it quite clear that the amount of the compensation to be paid was treated as having been agreed to by the claimants to the ownership of the lands in question. The Colonial Secretary was therefore not required as a party to the appeal. He went on to state that it had been decided to try the question of ownership as between the appellant and the respondent only, and that the amount awarded should be subject to the claims of the two other claimants if they should succeed in establishing their claims. He again made this clear at the end of his judgment. Their Lordships agree with what the Chief Justice said when sitting in the Court of Appeal on the 7th March, 1921, to the effect that neither the Colonial Secretary nor the claimant who, it had been argued, should have been served with notice of appeal, were under these circumstances parties directly affected.

But their Lordships are unable to concur in the opinion which the Chief Justice expressed that the notice of intention to appeal must be a separate notice independent of the notice and procedure required by the Rules of Court. It is, of course, true that the Public Lands Ordinance enacts by Section 6 (8), already quoted, that the party who desires to appeal is to "give notice to the other party and to the Court of his intention to appeal and to proceed in other respects to perfect his appeal according to the rules of the Court for the time being regulating appeals." But their Lordships do not read these words as rendering it necessary that the notice made essential by them must be given in a separate form or on a physically separate piece of paper. All that is required is that it should be clear that the other party has been notified of the desire to appeal and that the procedure in the appeal should be in accordance with the Rules of Court. The appellant has only in any sufficient fashion to make clear his intention to appeal and then, it may be *uno flatu*, to proceed with his appeal in proper form. Taking this to be the true meaning of the subsection, their Lordships think that there was no defect in the procedure followed in the bringing of the appeal before the Full Court.

As the special leave given to appeal to the King in Council was confined to the objections raised to procedure and excluded any discussion on the merits, their Lordships will humbly advise His Majesty that the judgment of the Court below should be reversed in so far as it gave effect to the respondent's contention as to procedure, and that the appeal should go back to the Court of Appeal to be dealt with on the merits. The respondent will pay to the appellant the costs of the appeal to this Board, and in the Appellate Court below. All other costs will be dealt with in the Court below.



In the Privy Council.

MANCHE ANEGE AKUE

v.

MANCHE KOJO ABABIO IV.

DELIVERED BY VISCOUNT HALDANE.

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