

Privy Council Appeal No. 110 of 1923.

R. J. Gharthey - - - - - *Appellant*

v.

No. 2 Company of Winnebah, *per* Kwesi Affaidzi and another - *Respondents*

FROM

THE SUPREME COURT OF THE GOLD COAST COLONY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 22ND DECEMBER, 1924.

Present at the Hearing :

LORD SUMNER.

LORD WRENBURY.

LORD CARSON.

[*Delivered by* LORD CARSON.]

The respondents brought an action in the Native Tribunal of Gomoah calling upon the appellant to show cause why he should not be stopped from further dealings with the land situate at Winnebah, from the Moni Lagoon to Ndamba. This proceeding was taken by the respondents in consequence of a proposal made by a lighterage company to the appellant to acquire from him a portion of the Ndamba lands by purchase at the price of £150. The respondents disputed the title of the appellant not only to the Ndamba lands but also to the Oyantsiadzi lands which were also included in the writ under the description already set forth. The Native Tribunal by a judgment dated the 6th December, 1918, gave judgment for the plaintiffs (respondents) and ordered the defendant (appellant) to withdraw himself from further use of the lands, *i.e.*, both from the Oyantsiadzi land and the Ndamba lands.

The appellant appealed to the Provincial Court at Winnebah, and the Acting Commissioner decided by a judgment (the date of

which does not appear upon the record) that the appellant was entitled to certain portions of the Oyantsiadzi lands and Ndamba lands the boundaries of which were shewn on a map made in accordance with a survey directed by the Commissioner.

As regards the Ndamba lands, the Commissioner upheld the judgment of the Native Tribunal of Gomoah except as regards a house and adjoining land, the boundaries of which are set out and which were held to be the property of the appellant. The appellant appealed to the Full Court of the Gold Coast Colony who, by a judgment dated the 20th April, 1921, altered the judgment of the Acting Commissioner as to the Oyantsiadzi land by substituting more extensive boundaries contained in a certain indenture of lease dated the 14th February, 1884, of the boundaries as settled by the Acting Commissioner. As regards the Ndamba lands, the Court, by a majority (Logan, J., dissenting), affirmed the judgment of the Acting Commissioner.

The present appeal relates only to the Ndamba lands and the appellant claims that he should be declared the owner of such lands and that the judgment of the Full Court should be varied accordingly. It is thus to be observed that the Native Tribunal, the Acting Commissioner and the Full Court of the Gold Coast have all decided against the claim of the appellant to the lands in question in this appeal, and their Lordships are unable to find any sufficient reason for coming to a different conclusion.

The lands in question form a considerable area of territory near the town of Winnebah, and were claimed by the plaintiffs as part of the Stool lands of Winnebah, and were originally held under some kind of communal tenure. Apparently the occupier of the Stool of Winnebah had the right along with his chiefs to lease or sell the lands. The case of the appellant as to the Ndamba lands, shortly stated, was that his father the late Ghartey IV, the then Ohene of Winnebah, in the year 1878 had given him the land, but no document of any kind was produced to establish his title or to corroborate his statement. Nor indeed was there any evidence that his father Ohene Ghartey IV had ever validly acquired the land as his own property from the Oman of Winnebah. An attempt was made to show that the Ndamba lands were included in a certificate of purchase dated the 19th November, 1901, whereby one, C. F. Johnson (who afterwards transferred the lands therein mentioned to the appellant), was declared the purchaser of certain lands therein mentioned by metes and bounds. The Acting Commissioner, however, who had the lands surveyed, states that he is unable to accept that view, and this Board cannot find anything in the description of the parcels in the said certificate to lead them to a different conclusion. It was also attempted to show certain dealings by the appellant with some of the Ndamba lands to prove acts of ownership. The evidence given, however, is not at all satisfactory and was not supported by any details or documents, nor does it amount to much, and apparently from time to time objection was taken

to some, at all events, of such acts, and eventually, when an attempt was made by the appellant to sell some of the land to the lighterage company, the present action was brought.

The learned Chief Justice in the Court below evidently considered that such acts as were proved were "in the nature of dashes or gifts" and did not amount to proof of ownership according to native law and custom. Their Lordships are therefore of opinion that there is no ground for coming to a different conclusion from that arrived at by the majority of the Supreme Court of the Gold Coast Colony, and that this appeal should be dismissed with costs. Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

R. J. GHARTEY

v.

No. 2 COMPANY OF WINNEBAH, *per* KWESI
AFFAIDZI AND ANOTHER.

DELIVERED BY LORD CARSON.

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