Privy Council Appeal No. 53 of 1927.

Kwesi Bediaku - - - - - - - - - *Appellant*

v.

Akosua Mainoo - - - - - - - - - *Respondent*

FROM

THE SUPREME COURT OF THE GOLD COAST COLONY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 15TH NOVEMBER, 1928.

Present at the Hearing:

VISCOUNT SUMNER.
LORD BLANESBURGH.
LORD WARRINGTON OF CLYFFE.

[*Delivered by* VISCOUNT SUMNER.]

This is a suit between the appellant, who was then plaintiff, and the respondent, defendant, with regard to the right to certain lands in Ashanti called Krobo. In accordance with practice the parties attended before the Native Tribunal, on which sundry chiefs sat, and evidence was given, with the result that the Tribunal was in favour of the appellant.

The practice under Section 30 of the Ashanti Administration Ordinance of 1902 fixes 30 days as the time after the date of the decision of a cause by a Native Tribunal within which the party aggrieved, if he desires to appeal, shall address to the Commissioner having jurisdiction in the district a letter stating the grounds on which he applies to be allowed to appeal.

There was accordingly an appeal by the defeated defendant to the District Commissioner, who reversed the decision of the chiefs. Thence an appeal was taken by the present appellant to the Chief Commissioner, who affirmed the District Commissioner; and thence again to the Supreme Court, from which Court the appeal comes to their Lordships.

The evidence which was given in the Native Tribunal was before the subsequent Courts, and in each of the appeals—that is, to the District Commissioner and the Chief Commissioner—some further evidence was given. It is not necessary to consider what it was or why it was admitted. No objection has been taken to its admission, and the result is that the evidence upon which the case has been ultimately dealt with was only completed before the Chief Commissioner and in his Court. It follows that there are two decisions upon the completed facts of this case, that of the Chief Commissioner and that of the Chief Justice, Sir Crampton Smyly, in the Supreme Court, and they concur in deciding the case against the appellant. No ground has been pointed out for dealing with their decisions other than as decisions on questions of fact. It is true that there is some allusion to some previous decisions by King Prempeh at some date not stated which are alleged to throw light on the right to this land, but they certainly do not appear to have been between the same parties nor, so far as can be ascertained, directly between the predecessors in title of the parties themselves, if in any view of Ashanti law there is such a thing as a predecessor in title. The value of these previous decisions, therefore, appears to be evidential. That being so, the case raises a pure question of fact where no error of law is suggested. There are concurrent findings against the appellant and by them their Lordships, following the usual practice, must be bound.

Nothing need be said about the possibility of a difference in the practice had the evidence all been completed before the first Court, except that their Lordships do not desire to encourage the view that that would have made any difference at all, and no special circumstances have been pointed out upon which their Lordships could legitimately depart from the strict practice of the Board. On the merits, therefore, there is no ground for admitting the appeal.

There is, however, a point which, although it may be called technical, is of importance. The appeal under the rule had to be within a limited time and, according to the documents in the case, until the hearing before the Chief Justice there was no assertion that the rule had not been complied with. No objection was taken to the appeal as being too late, and no endeavour was made to stop the progress of these appeals upon that ground.

Putting aside, not as immaterial, but as one that need not be pursued, the question whether this could be anything more than an irregularity in procedure which was waived by the conduct of the appellant in not taking an objection, but proceeding to contest the appeal on the merits, the question seems to reduce itself to this, whether, when the objection was ultimately taken before the Chief Justice in 1926—about four years after the original hearing—the course which he then took was justified by the materials which he had before him. Briefly it stands thus. Objection was taken by the plaintiff-appellant's counsel

that the judgment appealed against had actually been given on the 14th September, 1922, the very day on which the hearing commenced, and more than 30 days before the application for leave to appeal. Submission that that made the whole proceedings incompetent. Reliance placed in support of the submission on the copy of the proceedings certified by the registrar of the Chief Commissioner's Court.

The learned Chief Justice, who no doubt knows much more about the regularity of the official records than their Lordships do, observes that this was not enough to satisfy him, and accordingly went on not to decide but to hear the arguments on the merits and withheld judgment for further enquiry to be made as to the actual date when judgment was delivered by the Native Tribunal. The materials then brought before him were on an affidavit filed by the appellant's advocate, in which he exhibited a telegram from the trial chiefs, or some of them, whose names were appended, saying, "Decision given on 14th September, 1922," in favour of the now appellant. This, which was, of course, a very informal mode of giving the evidence, led the Chief Justice to direct that the respondent should be summoned to give evidence orally and to be cross-examined, and that the registrar of the Native Tribunal should be summoned to produce the record book of the Native Tribunal. There is nothing whatever to show that he would not have willingly heard any other evidence that the parties had desired him to hear, which appeared to be relevant; but no application was made to him to hear other evidence. The registrar was not only summoned to produce the registrar's book, but he was allowed to give evidence and he was cross-examined. The result of the hearing was that the Chief Justice came to the conclusion that the evidence of the registrar, which was to the effect that the true date was the 14th September, could not be relied upon; that the book that he produced as the contemporary record of the Court was kept in a manner so suspicious, as well as so irregular, that he could not place any reliance upon it in itself, and that the evidence of the respondent should be accepted to the effect that the date of the conclusion of the hearing and of the judgment in the case was the day before the notice of appeal was given. If her evidence was right, that disposed of the matter and, without going through it in detail, or considering what comment might have been made on it, she said what was necessary to support her case and the Chief Justice, with the witness before him, accepted it.

Their Lordships think it unnecessary to review the careful examination which this evidence has received at the hands of Counsel. They are greatly impressed by the fact that the appellant, who must have known the facts and certainly has not shown that he did not know the regulation, took no objection at the time when objection ought to have been taken. Thus the matter, turning upon a mere question of dates, was **not**

raised so that it could be investigated until it was stale, and for some reason or other other witnesses, who must have been available at the hearing before the Chief Justice and had been present at the hearing before the Native Tribunal, were not called to add to the evidence or correct the evidence of the registrar.

Without going into the matter in further detail, their Lordships think that it is quite impossible for them to say that the conclusion of the learned Chief Justice was wrong or to arrive at a different conclusion for themselves; and quite impossible also that any further enquiry should be allowed or that the case should be remitted to take any further evidence. Seeing that the parties have had every opportunity of raising the merits of this particular technical question at the time and in the place where it could be investigated, they have no one but themselves to blame if they failed to take advantage of it.

Their Lordships will humbly advise His Majesty that the appeal should be dismissed with costs.

In the Privy Council.

KWESI BEDIAKU

v.

AKOSUA MAINOO.

DELIVERED BY VISCOUNT SUMNER.

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