

Kweku Baa, since deceased (Kwesi Donkor substituted), and another

*Appellants*

*v.*

Nyaru Kweku IV

*Respondent*

FROM

THE WEST AFRICAN COURT OF APPEAL

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 22ND JULY 1935.

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*Present at the Hearing:*

LORD ATKIN.

LORD TOMLIN

LORD RUSSELL OF KILLOWEN.

[Delivered by LORD ATKIN.]

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This is an appeal from a judgment of the West African Court of Appeal which dismissed the appellants' appeal from the decision of Yates J. in the Divisional Court for the Central Province of the Supreme Court of the Gold Coast Colony.

The title of the action is "Kweku Baa of Nsaba, Head of the Stool Family of Agona, for and on behalf of The Stool of Nsaba [he has died since the action was begun and another man, Kwesi Donkor, has been substituted], and Abontendohene Kofi Atta, also of Nsaba, for and on behalf of the Oman of Nsaba." Their Lordships are told he represents the municipality of Nsaba. The action is against "Nyarku Kweku IV, Ohene of Nyarkrome, officially known as Omanhene of Agona, for and on behalf of the Stool of Nyarkrome."

The endorsement on the writ was: "The Plaintiffs for and on behalf of the Stool of Nsaba and the Oman of Nsaba respectively jointly and severally claim against the Defendant as occupant of the Stool of Nyarkrome a perpetual injunction restraining the Defendant and/or anybody acting or purporting to act on behalf of the Defendant as occupant of the Stool of Nyarkrome and acting for or on behalf of the said Stool from exercising any authority under the Native Administration Ordinance as Omanhene of Agona over any person or persons stool or stools subject to and owing allegiance to the said Stool of Nsaba."

Their Lordships express no opinion as to whether such an action as that would lie. It sounds as though it was a rather remarkable action on the part of subjects disclaiming the authority of the Sovereign. But that is not a matter which arises on this hearing.

By the procedure on the Gold Coast it apparently is not necessary to have pleadings. Pleadings were not asked for.

The action came on for hearing before the Court and thereupon it was objected to by Counsel for the defence on the ground that it was in violation of certain sections of the Native Administration Ordinance, Chapter 111 of the Laws of the Gold Coast, which deal with the jurisdiction of the Civil Courts in such matters.

As there are no pleadings, and the learned Judge gave effect to that contention, and he delivered a short judgment, and the Court of Appeal apparently delivered a still shorter judgment, their Lordships have not many facts before them in order to ascertain what the point at issue is, and rely upon the useful assistance which Mr. Minty, Counsel for the appellants, has given them in respect of the matter.

On those materials the case appears to be of this nature. In the State of Agona there was a Paramount Chief, Omanhene, whose Stool was at Nsaba. There was also a Subordinate Chief at Nyarkrome, Ohene of Nyarkrome. In 1930 the Paramount Chief of Nsaba was destooled. Apparently there was for a time a vacancy in the position of Paramount Chief of that State. In 1932 the Governor, purporting to act under section 121, making an amendment of schedule 1 of the Native Administration Ordinance, substituted for "Nsaba" in that schedule the word "Nyarkrome", which was intended to have the effect of providing that the Chief at Nyarkrome should thereafter be the Paramount Chief for the whole District of Agona. Whether he had authority to do that or not their Lordships do not know, and they express no opinion about it. It is one of the matters which would have been apparently disputed if there had been jurisdiction in the Court to determine the question. But the matter did not rest there. On the 2nd April, 1932, the Governor notified that Nyarku Kweku IV, Ohene of Nyarkrome, had been elected and installed as Omanhene of Agona with effect as from the 30th January, 1930. So there can be no question that in the opinion of the Governor the Ohene of Nyarkrome was elected and installed as Paramount Chief of the State.

The action is undoubtedly brought to dispute his position as Paramount Chief of the State. It is said that at Nsaba they do not recognise him and they wish an injunction to restrain him from exercising the functions of Paramount Chief at Nsaba.

The plaintiffs are met by what appear to their Lordships to be the plain terms of section 26 of the Native Administration Ordinance: "The Court shall not have jurisdiction to entertain either as of first instance or on appeal any civil cause or civil matter instituted for the trial of any question relating to the election, installation," and it goes on "deposition or abdication of any Paramount Chief or Divisional Chief."

There is a proviso which does not apply. Those words appear quite plain to cover the dispute in this case. It is a question relating to the election and installation of a Paramount Chief. It is the election and installation which the plaintiffs seek to dispute. It is that election and installation which the Ordinance says the Court shall not have jurisdiction to entertain. That is the ground taken by the Court of Appeal in West Africa.

It appears to their Lordships that it is impossible to say that that decision is wrong. It appears on the materials before their Lordships to be right and in accordance with the meaning of the words of the section, and, therefore, their Lordships will humbly advise His Majesty that the appeal should be dismissed. As the respondent does not appear there will be no order as to costs.

In the Privy Council.

KWEKU BAA, SINCE DECEASED (KWESI  
DONKOR SUBSTITUTED),  
AND ANOTHER

vs.

NYARKU KWEKU IV

DELIVERED BY LORD ATKIN

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