Privy Council Appeal No. 66 of 1945

Akumfi Ameyaw III, Omanhene of Techiman - - *Appellant*

v.

Kwasi Safo - - - - - - - - - *Respondent*

FROM

THE WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 22ND MAY, 1947

Present at the Hearing:

LORD DU PARCQ

LORD NORMAND

LORD MORTON OF HENRYTON

[*Delivered by* LORD DU PARCQ]

This is an appeal from a Judgment of the West African Court of Appeal given on the 8th December, 1941, by which an appeal by the Krontihene of Techiman from a Judgment of His Honour Mr. Justice Fuad in the Supreme Court of the Gold Coast was dismissed.

The present appellant has now taken the place by substitution, there having been intermediate substitutions, of the Krontihene of Techiman.

The question which came before the Courts in Africa was whether certain land at Offuman, in the Colony of Ashanti, was the property of the Techiman Stool as alleged, or was the property of the Offuman Stool. The question arose in an Interpleader issue. Judgment had been given in an action in favour of the present respondent, Kwasi Safo, against the Offuman Stool and, he, by the appropriate proceedings, attached the land now in question for sale. The Interpleader issue was heard in accordance with Order 44, Rule 25, of the Third Schedule to the Courts Ordinance of the Gold Coast, it being alleged by the Techiman Stool that the land was not in possession of the Offuman Stool on its own account or as its own property, and that in so far as it was in its possession it was held on account of or in trust for the Techiman Stool.

Mr. Justice Fuad found against the contention of the Techiman Stool, on whom the burden of proof lay.

The question was substantially one of fact and indeed their Lordships think that it may be said to have been entirely a question of fact.

Mr. Duncan, who appeared for the appellant, dealt with the matter with his usual frankness and appreciated fully the fact that he was faced by a well established rule of practice of this Board, that their Lordships do not advise any interference with a decision where there are concurrent findings of fact by two Courts in the country from which the appeal comes. Mr. Duncan very properly sought to find some ground on which he might urge their Lordships to depart from their practice in this case, but when the nature of the case is considered it becomes apparent that in so far as it differs from the normal, the differences tend against the view that there should be any departure from the rule of practice, for as was said in the recent case of *Srimati Bibhabati Devi* v. *Kumar Ramendra Narayan Roy* [1946] A.C. 508—" the Board will always be reluctant to depart from the practice in cases which involve questions of manners, customs

or sentiments peculiar to the country or locality from which the case comes, whose significance is specially within the knowledge of the Courts of that country ". In this case the Courts had to consider native customs and to hear evidence as to tradition, and so forth, and it was obviously right that their Lordships should not be asked to review concurrent findings of fact.

One point, however, Mr. Duncan very properly urged. There was one piece of evidence before the Courts of a different character from that which has been mentioned. In 1912, Mr. Commissioner Fell had sat to consider and decide upon the question as to the delimitation of boundaries, and in the course of his decision he said: " After the removal of Prempeh the Omanhin of Tekiman returned and Wofuma and Nchira resumed their positions as his sub-chiefs and as such re-occupied the same lands they had held before the Tekiman war with Coomassie and Nkoranza ". Wofuma is apparently another way of describing the Offumans. That decision of the Commissioner was approved by Sir Francis Fuller, Chief Commissioner of Ashanti, and, by an Ordinance dated 30th April, 1929, was validated and invested with legal force. The Ordinance is at Chapter 120 of the Laws of the Gold Coast, 1936 Revision; Ordinances Nos. 7 of 1929 and 14 of 1935; Ashanti.

It was not contended and could not be contended, before this Board that the decision has the effect of *res judicata*. The suggestion is that the statement by the Commissioner that " Wofuma and Nchira resumed their positions as his sub-chiefs and as such re-occupied the same lands they had held before the Tekiman war " was evidence that, although the Offumans were in possession of the lands, they were only holding them on behalf of, or on account of, or in trust for, the Techiman Stool.

That point was before both Mr. Justice Fuad and the Court of Appeal, although when the matter came before this Board it was stated in a somewhat different way, because it was argued in the Courts below, as it could not really be argued with any force, that it amounted to *res judicata*. It does not amount to *res judicata* because Mr. Commissioner Fell was not concerned directly to decide what were the legal rights in the matter before the Board, and, even if it had been a judgment of a Court it would not have been *res judicata* between these parties.

When the matter came before Mr. Justice Fuad he dealt with it clearly, and their Lordships think with accuracy. He said that it was " argued that once the Offuman lands were within the boundaries of the Techiman division, they must be assumed to belong to the Stool of Techiman unless the contrary is proved." He said that was not a sound argument, and went on: " The mere fact that certain lands are within the administrative boundaries of a certain division could not raise the presumption that they belong to the Stool of the Paramount Chief of that division; they might belong to another Stool within the division, to another Stool outside the division or to a private individual. I see nothing in these decisions which even remotely indicates that the Offuman lands belong to the Techiman Stool. The way the decisions are expressed conveys to my mind that it was the intention of the Commissioner to fix not only the boundaries between Techiman and Nkoranza but to settle the ownership of individual lands within the Techiman and Nkoranza boundaries." The learned Judge then quoted a passage which perhaps it is not necessary to recite in full, and went on to say: " All this in my view clearly shows that their decision was that Offuman lands belong to Offuman. Techiman is not even mentioned when decisions are taken with regard to these lands and when tribute between them and Nchira and Nkoranza is eliminated."

In the Court of Appeal the present point is dealt with shortly and clearly. The Court said—" it should be explained that the Offumans served the Asantehene through the Dadiasuabahene from the time they settled on the land until Prempeh was sent into exile "—that, their Lordships were reminded, was in the year 1896—" then they were placed by the British Government under the Techimanhene until the Ashanti Confederacy was restored in 1935, when they reverted to the service of the Asantehene

through the Dadiasuabahene. It was during the period that they were serving the Techimanhene, namely, 1912, that the Divisional Boundaries between Techiman and Nkoranza were fixed by Mr. T. E. Fell and later given legally binding effect under the Boundary, Land, Tribute and Fishery Disputes (Executive Decision and Validation) Ordinance "—that is the Ordinance to which their Lordships have already referred. " The Offuman land naturally fell within the boundaries of the Techiman Division, but we agree with the contention of Respondent's Counsel that this did not have the effect of passing the ownership in Offuman land to the Techimanhene and consequently does not operate as *res judicata* in favour of the appellant."

Their Lordships agree with that view, and it seems to their Lordships clear that Mr. Fell was not intending to find that these lands were Techiman lands and that his decision, however much weight is given to it, does not really assist the case of the appellant.

Their Lordships have only one other observation to make. In the respondent's case, reference having been made to the Order dealing with the Interpleader issue which has already been referred to, an argument is set out on which their Lordships have not heard Mr. Ramsay because it has not become necessary to do so. The argument is that the appellant has " neither alleged nor attempted to prove that the Stool of Offuman was in possession of the lands on account of, or in trust for, the Stool of Techiman. Their case was that the radical title to the lands was in the Stool of Techiman and that the possession thereof by the Stool of Offuman for some 200 years was subject to the Stool of Techiman as overlord." Then the submission is made " that, even if the claim of the Stool of Techiman to the radical ownership were to be sustained . . . . it was not a claim which enabled the appellant to object to the sale of such subordinate right title and interest as the Stool of Offuman, even on the basis of the claim of the Stool of Techiman, had in the lands of which they were in possession, which was all which could be disposed of by an execution sale, as appears from Rule 34 of Order 44," which is set out in the Case.

As to that argument their Lordships wish to say that it must not be thought that they are expressing any view adverse to it; in fact they are not expressing any view upon it one way or the other.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed, and the appellant must pay the respondent's costs of the appeal.

(58224) Wt. 8013—20 90 6/47 D.L. G. 338

In the Privy Council

AKUMFI AMEYAW III,
OMANHENE OF TECHIMAN

v.

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DELIVERED BY LORD DU PARCQ

Printed by HIS MAJESTY'S STATIONERY OFFICE PRESS,
DRURY LANE, W.C.2.

1947