

Hayibor Tepre of Anfoega - - - - - *Appellant*

v.

Damanka IV, Acting Divisional
Chief of Vakpo Afeyi - - - - - *Respondent*

FROM

THE WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 30TH JULY, 1947

Present at the Hearing:

LORD SIMONDS
LORD NORMAND
LORD MACDERMOTT

[*Delivered by* LORD SIMONDS]

In this appeal, which is brought from a judgment of the West African Court of Appeal allowing an appeal of the present respondent from a judgment of the Acting Deputy Provincial Commissioner, Eastern Province of the Gold Coast Colony, and restoring the judgment of the magistrate at Kpandu, the substantial question is as to the title to and ownership of an area of land in the territory formerly German but since the first world war known as British Mandated Togoland.

The parties are rival chiefs, the appellant representing the stool of Anfoega and the respondent the stool of Vakpo, and that they sue or are sued in their representative capacity, asserting their respective tribal claims, is no longer in dispute, though in the Court of the Acting Deputy Provincial Commissioner the matter was allowed to go off upon a technicality.

The case presents this peculiar feature, that it is unnecessary to make researches into the early history of the land in dispute. For both parties agreed that the tribal boundary regarding which the contest has arisen had been fixed during the period of German rule by one Doctor Gruner the then German Commissioner at Misahohe, and the only question was what was the boundary so fixed.

Before their Lordships' Board an attempt was made to question the validity and finality of Dr. Gruner's decision whatever it may have been, but their Lordships, while prepared to concede some latitude to parties who at least in the earlier stages of the proceedings were without legal assistance, agree with the Court of Appeal in thinking that it is not open to the appellant to withdraw from a position which he had so finally taken up at the hearing before the magistrate, no doubt in the belief that the boundary fixed by Dr. Gruner would be found to be favourable to himself.

The question then is what was the boundary so fixed. And it appears to their Lordships that, this being the question, it is superfluous to ask what was the capacity, executive or judicial, in which he gave his decision, or to examine the evidence of possession, itself conflicting and confused, upon which the appellant now seeks to rely.

This is a question of fact, which was as the Court of Appeal has held and their Lordships agree, fully and carefully investigated by the magistrate, who not only heard oral evidence but inspected the territory and was able on the spot to form conclusions which any appellate tribunal would be very reluctant to reject.

Having had these advantages the magistrate found that the boundary line as fixed by Dr. Gruner was substantially that for which the respondent contended. That he had ample material on which he could reach this conclusion, their Lordships, having considered the evidence, have no doubt. The substantial question was whether the northern boundary line of the Vakpo territory was, as the respondent contended, the river Atiadeke from its junction with the river Ahato to the point where the river Dayi flows into it, or, as the appellant contended, ran somewhat south of the river Atiadeke, leaving an area south of that river in the territory of the appellant. The learned magistrate came to the conclusion from oral evidence of what Gruner had done, from certain maps which Gruner was presumed to have had in his possession showing the boundary as then already fixed, and from the action taken by British political officers in 1922, that the river Atiadeke was the boundary. His conclusion has been challenged on the ground that he placed a reliance on one of these maps which was inconsistent with the decision of this Board in *Abotche Kponuglo v. Adja Kodadja* 2 West African Appeals 24. But in their Lordships' opinion this is a misconception. In the first place the maps which the learned magistrate had before him were on a very different scale from that rejected in the case cited and it is at least doubtful whether they are open to the same criticism: but in the second place the question is not what, if anything, the maps, being admissible, prove, but what Gruner decided, and it is clearly cogent evidence of what he decided that there should have been then in existence and in his possession maps which show with sufficient precision just the boundary which the other evidence indicates as that determined by him.

Their Lordships finding themselves in agreement with the Court of Appeal do not think it necessary to examine in further detail a case which depends on facts which were so carefully and thoroughly scrutinised by the learned magistrate.

For these reasons their Lordships will humbly advise His Majesty that this appeal should be dismissed. The appellant must pay the costs of the appeal.

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HAYIBOR TEPRE OF ANFOEGA

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DAMANKA IV, ACTING DIVISIONAL
CHIEF OF VAKPO AFEYI

DELIVERED BY LORD SIMONDS

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