

62, 1948

No. 50 of 1944.

# In the Privy Council.

## ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL (GOLD-COAST SESSION)

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
44354

BETWEEN

NKWANTAHENE NANA KWAME BOAKYE  
TROMU II substituted for NANA ADU KOFI III  
(on behalf of the Stool of Nkwanta) (Plaintiff) *Appellant*

AND

BECHEMHENE NANA FOSU GYEABUOR II  
(on behalf of the Stool of Bechem) (Defendant) - *Respondent.*

## Case for the Respondent.

RECORD.

1. This is an appeal from a judgment of the West African Court of Appeal (Gold Coast Session) dated the 3rd June, 1941 which set aside the judgment of the Asantehene's Court "A" dated the 19th August 1940 and the judgment affirming it of the Chief Commissioner's Court dated the 5th October 1940 and which restored the judgment of the trial court (the Asantehene's Court "B") dated the 28th November 1938.

2. The proceedings were begun by a civil summons in the "B" Court calling upon the Respondent to show cause why, on land which the Plaintiff (who was the Appellant's predecessor in title) claimed to be the Plaintiff's land, the Respondent had started farming and had prevented the Plaintiff's tenants from farming. The proceedings thus raised the question of title to a large tract of land edged yellow in the plan which forms part of the record.

3. The Plaintiff and the Respondent both relied on the terms of settlement of a previous land dispute recorded before the Acting District Commissioner on the 22nd May 1913. The Plaintiff contended that these terms declared the Stool of Nkwanta to be entitled to all land north-east and north-west of the River Kosu or Kwasu and therefore to the land in dispute. The Respondent on the other hand contended that the terms of settlement showed that the land north-west of the Kwasu beyond the point where it joins the Boa was not recognised as belonging to the Stool of Nkwanta.

4. The Plaintiff called no detailed evidence of any occupation or user of the land in dispute beyond the fact that the Plaintiff put a man to farm there who was promptly turned out by the Respondent. Suggestions of occupation put to the Respondent's witnesses were all denied.

CASE FOR THE RESPONDENT

p. 2, l. 31 ;  
p. 4, l. 13.  
pp. 8-12.

5. On the other hand the Plaintiff admitted that subjects of the Respondent had a large number of farms on the disputed land, and the Respondent's witnesses gave evidence of occupation and user from time immemorial.

p. 13.  
p. 48, l. 44 ;  
p. 49, l. 14 ;  
p. 49, l. 25.

6. The Court appointed four messengers and a surveyor to view the land. During the view the Respondent pointed out on land other than that in dispute the sites which he identified as the farms and hunting huts mentioned in the terms of settlement, whereas the Plaintiff sought to say that these farms and huts were on the disputed land. The messengers made a unanimous report in favour of the Respondent.

10

p. 46, l. 33 ;  
p. 47, l. 9 ;  
p. 47, l. 19.  
p. 50, l. 19.

7. It is clear from the notes of Mr. Fell, the Commissioner who heard the claim which was settled in 1913, that only land up to the point where the Obuokrukrua River joins the Kwasi was then in dispute, and the terms of settlement show equally clearly that the boundary then agreed upon was from the point where the Kumasi Road crosses the Obuokrukrua along the valleys of the Obuokrukrua, Adingkra and Boa to the point where the Kwasi joins the Boa. The Respondent submits that accordingly the agreed demarcation of 1913 stopped at the confluence of the Boa and Kwasi and that until the present proceedings the land now claimed by the Appellant was undisputedly Bechem land.

20

p. 45, l. 1.

p. 44, ll. 17-19.

8. By judgment dated the 28th November 1938 Court " B " upheld the Respondent's contentions and declared itself satisfied that the land in dispute did not belong to the Plaintiff.

pp. 14-15.

p. 16.  
pp. 19-22 ; 26.  
p. 51.  
pp. 52-53.  
p. 24, l. 9.  
pp. 24-26.  
p. 25, ll. 44-50.

9. The Plaintiff appealed to Court " A " in which further evidence was given by both parties. The Court appointed five messengers to view the land. Two of the messengers reported in favour of the Plaintiff and three in favour of the Respondent. The Court, however, set aside the report and sent a surveyor to make a plan of the land. The surveyor prepared a plan and gave evidence concerning it and the survey on which it was based. He stated that in the disputed area there were farms and villages owned by both Nkwanta and Bechem subjects.

30

pp. 26-27.

10. By judgment dated the 19th August 1940 Court " A " allowed the appeal, holding that the villages and camp mentioned in the 1913 proceedings were all in the disputed land, and that therefore the disputed land must have been included in the 1913 settlement.

11. The names and situations of these villages were, however, in dispute. In the Respondent's submission the allegations of the Plaintiff that they are in the disputed land should have been rejected as against the weight of evidence. In any case these contradicted allegations cannot overrule and prevail against the clear and unambiguous description of the land claimed in 1913. That description, in the Respondent's submission, cannot be read to include any of the disputed land.

40

p. 28.  
pp. 33-34.

12. On an appeal by the Respondent, the Acting Assistant Chief Commissioner by judgment dated the 5th October 1940 affirmed the decision of Court " A " on the grounds that the 1913 settlement implies that the Kwasi was to be the boundary from its junction with the Boa, for otherwise it is inconceivable (the Acting Assistant Chief Commissioner

thought) that the parties should have omitted to say what was the boundary from that point ; that the Bechem claim to land up to Donkotor cannot be maintained ; and that both parties had been using the disputed land.

13. The Respondent submits that there is no evidence that in 1913 there was any dispute about the boundary beyond the point where the Kwasu joins the Boa and that the settlement agreement of 1913 in clear and specific terms is concerned with the boundary up to the junction of the rivers and not beyond.

10 14. The Respondent appealed to the West African Court of Appeal pp. 34-36.  
which by judgment dated the 3rd June 1941 held that there is no justifica- pp. 40-42.  
tion for extending the 1913 settlement beyond what appears on its face. The Court unhesitatingly upheld the view of Court " B " that the agreement stopped at where the Boa and Kwasu rivers join. The present case, in the opinion of the Court, turns on the question of fact as to the ownership of the land, and on that question there was ample evidence to support the well-reasoned judgment of Court " B ". The Court pointed out that the contrary decisions were based, not on the evidence, but on misconceptions about the effect of the 1913 agreement. Accordingly the judgment of Court " B " was restored.

20 15. The Plaintiff sought to appeal to the Privy Council and on the pp. 43-44.  
26th November 1942 the Appellant was substituted for the Plaintiff, who had been destooled, and final leave to appeal was granted.

16. The Respondent submits that the decisions of Court " B " and of the West African Court of Appeal on the effect of the 1913 settlement agreement were obviously right, and that on the question of fact the evidence was overwhelmingly in favour of the Respondent.

17. Accordingly the Respondent respectfully submits that this appeal should be dismissed for the following amongst other

### REASONS

- 30 (1) BECAUSE the land which was in dispute in 1913 did not include the land now in dispute.
- (2) BECAUSE the written boundary agreement made in 1913 must be construed according to its terms, and on its proper construction excludes from its scope the land in dispute.
- (3) BECAUSE the evidence, so far from establishing the Appellant's claim to the land in dispute, conclusively negatives that claim.
- 40 (4) BECAUSE the Asantehene's Court " B " reached a proper decision on the evidence and there were no valid grounds for reversing that decision.
- (5) BECAUSE of the other reasons given by Court " B ", by the West African Court of Appeal, by the messengers who viewed the land at the instance of Court " B ", and by the majority of the messengers who viewed the land at the instance of Court " A ".

FRANK GAHAN.

**In the Privy Council.**

---

**ON APPEAL**

*From the West African Court of Appeal  
(Gold Coast Session).*

---

BETWEEN

**NKWANTAHENE NANA KWAME  
BOAKYE TROMU II** substituted for  
Nana Adu Kofi III (on behalf of the  
Stool of Nkwanta) (Plaintiff) *Appellant*

AND

**BECHEMHENE NANA FOSU  
GYEABUOR II** (on behalf of the Stool  
of Bechem) (Defendant) *Respondent.*

---

**Case for the Respondent**

---

SOLE, SAWBRIDGE & CO.,

62 New Broad Street, E.C.2,

*Solicitor for the Respondent.*