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31153 No. 56 of 1948. CITY OF LONDON
 W.C.
 28 MAR 1951
 INSTITUTE OF ADVANCED
 LEGAL STUDIES

In the Privy Council.

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

BETWEEN :

Dr. F. V. NANKA-BRUCE of Accra, as Head and
 Representative of the Family of OKAI TISEH, late of
 Accra (Plaintiff) *Appellant*

10 and

TETTEY GBEKE, as Representative of all other Members
 of the ATUKPAI Family of Accra, and A. A. ALLOTEY,
 of Accra (Defendants) *Respondents.*

Case for the Appellant

RECORD.

1. This is an appeal from a judgment of the West African Court of Appeal delivered on the 7th March, 1944, which ordered the judgment of the Supreme Court of the Gold Coast, dated the 1st December, 1942, to be amended by deleting therefrom the words " and the action dismissed ", but, subject to this amendment, dismissed the appeal. p. 120.
p. 101.

20 2. The plaintiff-appellant on the 24th March, 1942, caused a Writ of Summons, in the Tribunal of the Paramount Chief of the Ga State, Gold Coast, to issue against the defendants-respondents in the following terms :— p. 1.

" The Plaintiff's claim is for a declaration that all that land situate between Avenor and Akalade villages, Accra, bounded on the north by lands of Tetteh Azau and Okai Gbeke respectively, on the south by land of Awulu and others, on the east by land of Norteye and Akaladi, and on the west by Odaw or Odor stream, is the property of the Family of Okai Tiseh of which the plaintiff is the head.

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The plaintiff further claims an injunction restraining the defendants, their servants and agents from trespassing on or erecting buildings on the said land or interfering with the plaintiff's title thereto."

The case was transferred to the Supreme Court of the Gold Coast by an Order of the Provincial Commissioner, dated the 15th April, 1942. p. 6.

p. 101, l. 21. 3. The action relates to a small piece of land about 3 miles to the north of Accra on the Accra-Nsawam road in what are now the suburbs of the town.

p. 102, l. 2.
p. 20. A survey and plan of the land claimed by the plaintiff were made at the order of the Court, and the plan is exhibit 1, which is a separate document made by Licensed Surveyor, K. Armah Kwantreng on the 22nd August, 1942, and whose evidence was given on the 22nd October, 1942. The land claimed by the plaintiff is shown with a pink border to the right or east of the Accra-Nsawam road and by a brownish-grey border to the left or west of the said road. The defendants made no claim to the latter part. 10

p. 163. The first defendant claimed the part with a pink border as well as a larger area edged in green, but the part outside the area edged in pink was not in issue. A piece of land edged in purple of rectangular shape, within and without the pink edged part, was claimed by the second defendant under a conveyance from the first defendant, dated the 24th October, 1939.

p. 16, l. 15. 4. A 100 years ago the large area of land behind Accra is said to have been a dense forest and it devolved upon the Korle Webii (Korle family) who were in charge of the Korle lagoon, and were also a hunting family, to look after and be caretakers for the community of the lands outside Accra. The Korle Webii supplied the Korle priest, who is the head of their family and it was within his powers to grant lands within this area outside Accra to individuals from time to time. 20

p. 102, l. 23. One, Nii Addu, a former Korle priest, some time in the 1860's or late 1850's, granted the land now claimed by the plaintiff to one Okai Tiseh, the progenitor of the family of which the plaintiff is now the head.

The grant was made orally and not by deed as deeds were practically unknown in these days. In pursuance of the grant Okai Tiseh put a number of his servants or slaves upon the land to work and occupy it on his behalf. The principal servant or slave was one Kabadu, who built a swish compound house on the land to harbour himself and the other members of the household of Okai Tiseh, who visited the land from time to time. 30

p. 102, l. 32.
p. 138, l. 36. A family domestic of Okai Tiseh married a relative of the Korle priest, Nii Addu, and this would be an inducement, a favourable circumstance and possibly a consideration, for the grant to Okai Tiseh. The grant was also a natural thing to make to Okai Tiseh who was an "Oshipi" or head captain of the Ga fighting men. When Kadabi died in or about 1880, one Adabu looked after the land on behalf of the family. On his death Tetteh Kobla was appointed to look after the land on behalf of the family in or about 1896. 40

p. 134. Acts of user such as plucking mangoes and cashews and acts of dominion over the land continued without interference until 1926, when the then acting Korle priest, Tetteh Kwei Molai, sued the present appellant with others, claiming title to the land.

p. 104, l. 48. By a judgment of the Court in 1928 the said priest was non-suited. Samuel Addy, head of the Atukpai, the present 1st respondent's predecessor, stood by and made no claim to the land. The Atukpai supported the Korle Webii on that occasion.

The Atukpai, through the 1st respondent, now claim the land through the Korle priest who was non-suited in 1928.

Although the plaintiff has not pleaded *res judicata* it would appear that the said judgment of 1928 is final as against the Atukpai inasmuch as they took no action then to assert their own title to it, although they now say it was derived from the Korle Webii.

If their title is derived from the Korle Webii subsequent to the decision of 1928 the non-suiting of the Korle priest knocks them out.

If the title was derived from a date prior to 1928, they, having
10 knowledge of the claim of the Korle priest, ought to have asserted it in 1928.

They failed to do so, although the evidence shows that they knew of the then claim of the Korle priest for himself and not as agent for, or on behalf of, the Atukpai.

5. Oral evidence was adduced on behalf of the parties and exhibits
were filed. pp. 20-86.
pp. 155-182.

6. Judgment was delivered by Mr. Justice C. A. G. Lane on the 1st December, 1942, when it was held that the plaintiff had not established his case and was non-suited. As regards the two defendants he found against them in the following terms:—

20 “ It is not necessary to consider the Defendants' case at length since the Plaintiff has not established his case. It is sufficient to say that the Atukpai would appear to me to have no claim to the pink-edged land; they stood aside and watched their alleged interest being litigated and made no claim until 1937 or 1938. Their claim seems to me to be entirely bogus and there is no satisfactory evidence of a grant by the Ga Manche Teki Komi as they claim. The fact that Atukpai people live in the adjoining villages—Akrade and Kokomlemle—does not prove their title to this land. There were discrepancies in their claim: they began by saying it was a direct grant from Teki Komi, later they altered it to say it was made with the approval of the Korle Priest (this had never been suggested in the 1926-28 case), and later a witness, the Nai priest, said it was made with the permission of the then Nai priest. The evidence was that the founder of Akrade village, Tete Churu, an Atukpai man, was given the grant in 1827: but that the village he lived in (Akrade) was founded in 1893. The grant to Kwartei was shown to have been made by the Korle priest, while the Defendants' case was that it was made by the Atukpai 35 years ago. Clearly the Atukpai only made the conveyance to Hammond (Kwartei's successor) for purposes of their own in 1941.”

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40 “ It is not registered.

There was a discrepancy as to the northern boundary of the larger green area: it was claimed as theirs; but it is clear that Lutterodt and Reindorf had grants many years ago out of this area, and apparently not from the Atukpai. A number of other grants purporting to have been made by the Atukpai in the green area were brought in issue. Although they do not affect this case, I may say that I was not at all impressed with their validity.

As regards the 2nd Defendant's case, it is only necessary to say that the Plaintiff has failed to establish his case against him. But I cannot see that 2nd Defendant's title through the Atukpai could have held water if the Plaintiff's claim had been established. In the 1928 case Adams claimed title from the Korle priest: it is clear that Adams had asserted title to the land long ago and had marked his boundaries with pillars and sisal plants on the northern and southern boundaries. The sisal has spread but it can be seen where the original plants were.

So far as the pink-edged area is concerned, probably with the 10 exception of Hammond's portion (in respect of which there is a grant from the Korle priest), title would seem to remain in the Gbese stool, and their caretakers the Korle Webii. This however is not directly in issue and is merely an expression of opinion.

The Plaintiff is non-suited and the action dismissed with costs, as regards his claim to the portion on the right of the road.

Costs of the application for the interim injunction are granted to the Defendants.

Counsel's costs assessed at 85 guineas for each Defendant :
Remainder to be taxed." 20

It will thus be seen that as regards the plaintiff—

- (A) he was non-suited
- (B) his action was dismissed
- (C) he was ordered to pay costs to the defendants who had failed to establish title to the land in question.

While the judgment in effect says that the land to the left of the road belongs to the plaintiff, it treats the land to the right of the road as a sort of "no man's land."

Aradzie v. Adiankah (1923) Full Court Judgments 1923–1925, p. 55
decides that in the Gold Coast no land is without an owner. 30

p. 102, l. 19.

7. In his judgment the Trial Judge first stated the plaintiff's case and then stated the case for the defendants.

p. 103, l. 13.
p. 104, l. 15.

Thereafter he gave a history of the 1926–1928 litigation. Having done this, he said that the plaintiff must succeed on the strength of his own title and not on the weakness of the defendant's case.

He then took up the plaintiff's case by considering the evidence of—

- (1) the grant
- (2) the extent of any such grant, i.e. its boundaries
- (3) use and occupation by the plaintiff's family
- (4) the plaintiff's right to sue. 40

p. 105, l. 27.

(1) *The Grant.*

The Trial Judge said that the land was forest 80 or 90 years ago; that the Korle Webii, whose head was their priest, were in charge of it

under the Gbese Stool under the Ga federation ; that in practice the Korle priest made disposition of land ; that land was of no value except for cultivation and that the Gbese people were entitled to go and settle on the land and cultivate it sometimes with and sometimes without the approval of the Korle priest ; that the Korle priest in some cases collected tolls but that there was no evidence that they did so in regard to this land ; that evidence of an absolute grant by the Korle priest is lacking ; that the plaintiff's evidence about the grant is what he was told in 1926 ; that the evidence of his sister, Emma, about the grant is what she was
 10 told by her aunt, Jessie Tego, and an old woman, Ajua Fiu (sister-in-law of Okai Tiseh) who gave evidence in the 1928 case, and Tetteh Kobla, who gave evidence in the 1928 case and in the present case.

(Tetteh Kobla was aged 76 when he gave evidence in the 1928 case and aged 90 when he gave evidence in the present case.)

The evidence of Tetteh was to the effect that Kadabi, a slave of Okai Tiseh, first lived on the land and cultivated it with other slaves of the family ; that Kadabi built a hut on the hill, on the pink portion, and farmed there, later moving to Avenor village on the left of the road and farming both on the left and right of the road ; that Kadabi was
 20 caretaker of the land on both sides claimed by the Okai Tiseh family ; that Kadabi died about 1880 ; that he, Tetteh Kobla, had been living at Avenor village before this date ; that one Adabu was looking after the land after Kadabi's death ; that he Tetteh Kobla was made caretaker of the land by Mrs. Florence Hutton-Mills, the elder sister of the plaintiff, who was then in charge of the family property (and who died in 1923) and that he had remained in charge ever since 1896 ; that he gave no evidence of an absolute grant to Okai Tiseh ; that the fruits of the land were regularly sent to the Okai Tiseh family first represented by Mrs. Christiana Bruce (mother of Mrs. Florence Hutton-Mills, the plaintiff,
 30 and Mrs. Emma Hutton-Mills.)

The Trial Judge went on to say that nothing was done to perfect the title until the encroachment of one Adams was seen about 1923 when Emma Bruce (now Hutton-Mills) instructed Tetteh Kobla to notify the neighbours and declare the boundaries, and clear them.

This he did, showing them to Emma, Anan Tego (nephew of Okai Tiseh) and others.

The Trial Judge then used these words (quoted in the West African Court of Appeal) :—

“ I therefore say that on Tetteh Kobla's evidence, together
 40 with what other evidence is available, there is no clear evidence of a direct grant to Okai Tiseh ; merely evidence of permission to him for his slaves to squat on the land, that the slaves did so, and that members of the family visited the land, that the fruits of the soil were taken to the plaintiff's family and rights of ownership exercised ”.

“ They successfully upheld their rights in the 1926-28 case so far as the Korle Webii were concerned, the Atukupai not intervening.”

p. 106, l. 38.

“ It seems clear, therefore, that the plaintiff’s family have consistently exercised rights of ownership in respect of some of the land, if not all.”

The Trial Judge, in dealing with the question of a grant, appears to take the view that a deed had to be produced to show what he calls “ a direct grant ”.

The case for the plaintiff was that the grant was verbal or oral grant which could be proved by evidence of exercising the rights of ownership from the 1860’s or late 1850’s.

The finding of the Trial Judge as regards exercising the rights of ownership is in favour of the plaintiff. Accordingly, he ought to have found that, although no grant had been made by deed, the oral grant had been proved by the exercise of the rights of ownership. It is submitted that on his own finding the Trial Judge should have applied the principles laid down in *Bokitsi Concession* (1902) Sarbah’s Fanti Law Report, page 148 at page 160, where it was decided that where land has been occupied for a long period in circumstances which would cause occupiers to believe themselves the owners and to improve the land, the Court will not apply strict native law and will not restore the land to its original owner who slept on his rights. 20

This case has been frequently approved and acted upon, e.g. *Weytingh v. Bessaboro* (1906) Renner 430 ; *Aradic v. Adiankah* (1923) Full Court Judgments 1923–1925, p. 52 ; *Abeka v. Duker* (1927) Full Court Judgments 1926–1929, p. 264 ; *Aduwah v. Ninson* (1929) Full Court Judgments 1926–1929, p. 465, and in the *Accra Water Works* appeals.

Further it was held in *Wiapa v. Solomon* (1905) Renner, p. 411, that prolonged occupation of land is strong evidence that entry on land was lawful.

(2) *The extent of any such grant, i.e. its boundaries.*

p. 106, l. 47,
p. 107, l. 51.
p. 108, l. 1.
p. 122, l. 17.
p. 122, l. 19.

In dealing with this point the Trial Judge says “ Tetteh Kobla’s evidence is the lynch-pin of the case ” and that “ allowing for his advanced years, Tetteh Kobla’s evidence seems unsatisfactory and does not suffice in my opinion to establish the plaintiff’s case so far as the boundaries are concerned ”. 30

(Both sentences were quoted by the West African Court of Appeal.)

The Trial Judge found that in olden days boundaries were not by any means strictly laid down, certainly not in the case of a squatting right in forest land ; that a person who intended to build and farm on a piece of land would indicate to the authority, in this instance the Korle priest, and would then proceed to build and farm at his own will ; that Okai Tiseh got permission for his or his father’s slaves to squat there ; that Kadabi built on the right of the road and farmed there for a time ; that he and the other slaves farmed consistently on the left of the road but that the evidence as to farming on the right of the road is conflicting ; that their cultivation had been shifting ; that the boundaries which Tetteh Kobla pointed out in 1926 to Emma and Anan Tego and which were said to have been then defined, were the same which were pointed out to the surveyor and appear 40

as pink edging in exhibit 1 ; that Anan Tego (nephew of Okai Tiseh) pointed them out to the surveyor in 1942 ; that on an examination of the evidence of Tetteh Kobla in the 1928 case and in the present case, he found some inconsistencies ; and that the evidence of boundaries in the Writ of Summons, the plan (exhibit 1) and Tetteh Kobla's evidence appear to be conflicting or obscure. The Trial Judge here fails to appreciate the effect of the 1928 decision on the whole land claimed. He failed to appreciate the evidence about " shifting occupation ", whereby farming operations had to be changed from one part to another on account of heavy rains.

10 Exhibit 1 was ordered to be made by the Court.

It was his duty to have asked questions from the surveyor and others giving an opportunity to show where the boundaries mentioned in the Writ of Summons actually appeared, if the Surveyor had not clearly named them in his plan. If he had done so, the boundaries would have been clearly shown and the location of the places written on the plan in accordance with the Writ of Summons and the evidence.

20 He failed to fully appreciate that Tetteh Kobla, when he gave his evidence in the present case, was 90 years of age and being unable to go with the Surveyor personally to show him the boundaries on account of bad feet he had to depute the nephew of Okai Tiseh and others to show the boundaries on his behalf.

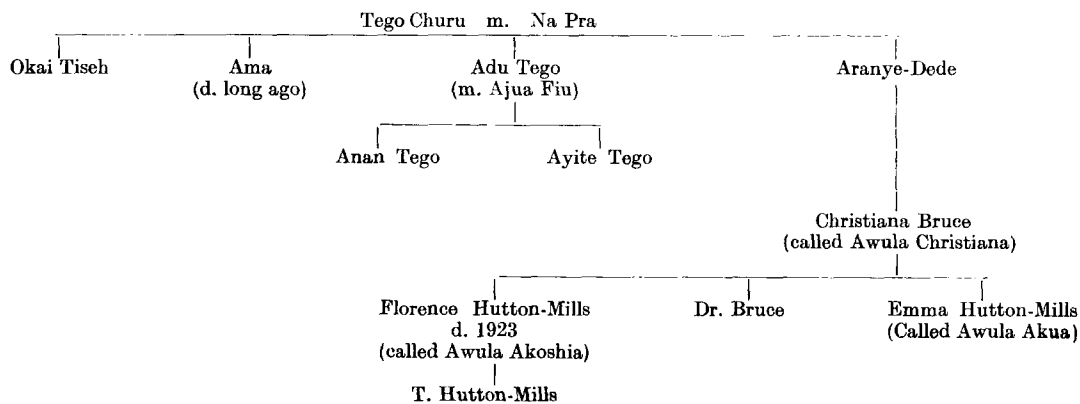
When the Trial Judge found that " one is left with the impression that the line so shown in 1926 was fixed arbitrarily by him and lacked confirmation by the neighbours or any other persons interested " he failed to realise that these neighbours, who owed their position to the Korle priest, would naturally be averse to take a stand against the Korle priest in the claim upon which he was non-suited in 1928.

(3) *Use and occupation.*

30 The Trial Judge says he had already dealt with this subject to some extent.

He found that farming had been established by Kadabi and other slaves ; and that mangoes had been picked by Tetteh Kobla and others and accounted for to the relatives of the plaintiff.

He then gave the family tree of the plaintiff in these terms :—



p. 108, l. 18.

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p. 108, l. 27.

He then went on to say that, according to the evidence, Okai Tiseh founded his own family with property of his own ; that his brother, Adu Tego, was not elected to succeed him as head because of eccentricity ; that his niece Christiana Bruce was his successor ; that she looked after the land, and exercised rights of ownership by supervision of the slaves and dependants who worked it and brought produce to her from it ; that on her death, Florence succeeded and did the same ; that, on her death in 1923, the plaintiff was chosen head of the family and succeeded to the family property ; that Emma (his younger sister), however, took steps on his behalf to preserve the family rights ; and that Mr. Thomas Hutton-Mills (nephew of the plaintiff) in 1938 helped in the exercise of family ownership by putting a watchman on the land with instructions to clear part of it. 10

The Trial Judge then compared the evidence of Tetteh Kobla as given in the 1928 and the present case.

p. 109, l. 29.

He then said " I give these extracts at some length to show the inconsistencies " (when the witness was 76 and 90 years of age respectively). " I have considered this evidence very carefully and my conclusion is that it is insufficient to discharge the onus that is on the plaintiff.

The evidence of the other witnesses to the effect that Okai Tiseh's dependants lived and farmed on the land edged pink cannot avail in face of the discrepancies in Tetteh Kobla's evidence. I consider that the plaintiff's case of use and occupation fails ". 20

p. 122, l. 25.

(The last sentence was quoted by the West African Court of Appeal.)

The Trial Judge failed to realise that in the extracts quoted from the 1928 case, the witness was dealing mainly with Ga custom relating to occupation and the rights accruing or failing to accrue therefrom. A fair comment on this part of the evidence is that Kabadi had farmed on the right or east of the road, while he himself had his farm on the left or west. The evidence which the Trial Judge ignored was that others farmed on the right or east and that the fruits were given to the grantee and his heirs. In the 1942 case the witness makes this clear by showing that the slaves of Okai Tiseh farmed on both sides. 30

(4) *The plaintiff's right to sue.*

p. 109, l. 43.

The Trial Judge said that the plaintiff and others of the family gave evidence in support of the plea that Okai Tiseh formed a separate family with property, while Tetteh Kobla gave evidence to the contrary ; that as Tetteh Kobla is apparently the eldest of the family his evidence is entitled to a good deal with weight ; that as it seems that Okai Tiseh was the son of a woman of no family any property which he had would go to his father's family (Tego Churu) of which the present head is Asere Tego ; that it is true that Asere Tego was not called by the defendants to assert any title ; and that it cannot be said that the plaintiff had made out this part of the case so as to discharge the onus of proof. 40

It is submitted that from the family tree made by the Trial Judge himself, as already set out, the plaintiff is a descendant of Okai Tiseh, that the plaintiff was duly elected head of the family in 1923 ; that the 1st defendant never disputed the right of the plaintiff to sue as head of

the family ; that only the 2nd defendant did so by saying that Asere Tego was the head of the family of Tego Churu ; that there is no evidence that the family tree as set out on the record by the Trial Judge is wrong ; that there is no evidence to show that Asere Tego is a descendant of Tego Churu ; and that Asere Tego was never called by the defendants to assert any claim (as was rightly stated by the Trial Judge).

The evidence of Asafoatse Annan Tagoe (described in the family tree as Anan Tego), and a nephew of Okai Tiseh, was of the greatest importance as regards every aspect of the case, and was ignored in favour of Tetteh Kobla, a servant or slave, wrongly described, under this heading, as " apparently the eldest of the family." p. 30.

8. There was an appeal to the West African Court of Appeal which, after stating the Writ of Summons and the case as argued by Counsel for the respective parties, then quoted from the judgment of the Trial Judge the passages already mentioned, and then dismissed the appeal on the 7th March, 1944. p. 120.

In doing so, however, the Appeal Court said that the Trial Judge had gone wrong when he said " The Plaintiff is non-suited and the action dismissed with costs, as regards his claim to the portion on the right of the road." In the opinion of the Appeal Court, the Trial Judge should not have used the words dismissing the action as this was inconsistent. The Appeal Court, therefore, ordered the judgment of the Trial Judge to be amended by deleting therefrom the words " and the action dismissed." 20

It was strongly argued that the Trial Judge should not have awarded costs to the defendants who had failed to establish a title to the land in question.

The Appeal Court upheld the Trial Judge on the question of costs and dismissed the appeal, with costs.

9. It is submitted that salient points which emerge from the above are :— 30

(A) The 1st Defendant (Atukpai Family) had no claim to any of the land (the Trial Judge going so far as to say that the claim seemed entirely bogus) and that consequently the claim of the 2nd Defendant Allotey through the Atukpai family also failed. (These are concurrent findings.)

(B) That there exists the Joint Family of Okai Tiseh (Okai Tiseh We) of which the Plaintiff is head.

(c) That Okai Tiseh for himself and his successors had permission (from the Korle We in the 1860's or late 1850's) to occupy the land, that this was done by the slaves (or " domestics ") of the Family and that the Family have ever since received the fruits of the soil and exercised rights of ownership, which they upheld both in litigation and by other acts, though, according to the trial Court, there had been a gap during which no steps by the family could be traced showing their interest in the land to the right of the road, 40

this gap extending from the time when their slave or domestic Kadabi (who died about 1880) left his farm there until 1926, when they successfully defended it in litigation.

That such gap (which is not admitted by the Plaintiff-Appellant to have existed) did not amount to an abandonment of the rights of the Family which is proved by the assertion of the paramount title of the Korle Webii family in 1927 being unsuccessful.

It is further submitted that, in the premises, both the Courts below have approached the consideration of the case erroneously, in that they have treated what was, in substance and in the relief claimed, an action of trespass by a person (the Okai Tiseh family) in possession (and having title) against defendants who had no title (and as to the first defendant was not even upon the land or any part of it), as if it were an action of ejectment by a person (the Okai Tiseh Family) out of possession against defendants who were in possession and whose title to possession had not been negated. 10

It is submitted that the error is the same as the Courts below fell into in the Gold Coast case of *Kobina Ninson v. Adjua Aduwah* (Privy Council Appeal No. 40 of 1929, reported 2 W.A.C.A. 14) and that if the Courts below had not fallen into this error they must have found for the Plaintiff. 20

It is further submitted that as neither of the defendants had any title it was irrelevant for them or for the Court to canvass the precise quality and nature of the Plaintiff's title, which appears originally to have been at least of the well known customary nature entitling the Family "to live and eat upon the land" and to exclude all others from the enjoyment thereof.

It is further submitted that having regard not only to the absolute want of title in the Defendants but also to the character of such customary grants at the time when the grant was made and the nature of the terrain, it was not incumbent upon the Plaintiff to prove exact boundaries of the land granted, for such boundaries did not concern the Defendants. If it became necessary to ascertain such boundaries as against adjoining owners that would be the subject of independent proceedings in an appropriate Native Court if such existed or under the Boundaries Ascertainment Ordinance in the Supreme Court. 30

It is further submitted that the second defendant was not entitled to set up the alleged *jus tertii* of the alleged Family of which Asere Teiko was alleged to be head and that the Courts below should have ignored this allegation both on the ground that this Defendant was not claiming under such *jus tertii* and on the ground of the finding by the Trial Judge as to the Okai Tiseh Family's possession and exercise of rights of ownership over the land, there being no evidence that the Tego Churu Family had ever made any claim. 40

p. 125.

10. An order granting final leave to appeal to His Majesty in Council was made on the 31st January, 1945. The appeal having been dismissed under Rule 34 for non-prosecution, a petition was lodged for its restoration. By an Order in Council, dated the 26th November, 1948, the appeal was restored upon the facts and conditions therein stated.

p. 126.

11. The plaintiff-appellant humbly submits that the said judgment of the West African Court of Appeal, dated the 7th March, 1944, which affirmed the judgment of the Supreme Court of the Gold Coast, dated the 1st December, 1942, as amended with the deletion of the words, "and the action dismissed," is erroneous and should be reversed for the following, among other,

REASONS

- 10 (1) BECAUSE Nii Addu, a former priest of the Korle Webii, orally granted the land in the 1860's or late 1850's when the land was of little value as forest land to Okai Tiseh, progenitor of the family of which the appellant is the present head.
- (2) BECAUSE written deeds were practically unknown in these days.
- (3) BECAUSE it was held that the priest of this hunting family had power to make grants and did make them from time to time.
- (4) BECAUSE Okai Tiseh, as "Oshipi" or head captain of the Ga fighting men, was a natural recipient of a grant.
- 20 (5) BECAUSE a domestic of Okai Tiseh married a relative of the Korle priest and this would be an inducement, a favourable circumstance, and possibly a consideration for the grant.
- (6) BECAUSE servants of the original grantee and his successors have continuously occupied and farmed the land on behalf of the family who have received the fruits therefrom.
- 30 (7) BECAUSE the said occupiers and farmers have been supervised on behalf of the family by Kadabi who died in 1880, by Adabu, and lastly, by Tetteh Kobla, who was appointed in 1896.
- (8) BECAUSE the appellant's family were in undisturbed occupation and exercised acts of dominion until 1926 when the then Korle priest sued the present appellant, claiming title to the land, but was non-suited by a judgment of 1928.
- (9) BECAUSE the first respondent's predecessor then stood by and made no claim to the land at the time, and in fact, supported the Korle priest in his claim.
- 40 (10) BECAUSE the first respondent who claims through the Korle Webii, and the second respondent, whose title is based on a conveyance from the first respondent, are bound by the said judgment of 1928.

- (11) BECAUSE the Trial Judge held that both of the respondents have no title to the land.
- (12) BECAUSE the Trial Judge was right in holding that the land to the left or west of the road belonged to the appellant.
- (13) BECAUSE the Trial Judge was wrong in non-suiting the appellant as regards the land to the right or east of the road, thereby creating a sort of "no man's land."
- (14) BECAUSE the Trial Judge failed to realise that according to Gold Coast Law no land can be without an owner. 10
- (15) BECAUSE some of the best evidence was that of members of the family.
- (16) BECAUSE the Trial Judge ignored the evidence of Asafoatse Anan Tego, nephew of Okai Tiseh, and while he examined the evidence of Tetteh Kobla in the 1928 case, he did not examine the evidence of Ajua Fiu, sister-in-law of Okai Tiseh, in the said case.
- (17) BECAUSE the Trial Judge failed to realise the nature of the evidence in the 1928 case, when Tetteh Kobla was dealing mainly with Ga custom relating to occupation and the rights accruing or failing to accrue therefrom. 20
- (18) BECAUSE the Trial Judge failed to appreciate the evidence about boundaries generally.
- (19) BECAUSE when the Trial Judge found that the appellant's family had been exercising the rights of ownership he should have applied the Gold Coast law as laid down in the Bokitsi concession and other cases which upheld the same principle.
- (20) BECAUSE the law laid down in these cases is to the effect that where land has been occupied for a long period in circumstances which would cause occupiers to believe themselves the owners and to improve the land, the Court will not apply strict native law and will not restore the land to the original owner who slept on his rights. 30
- (21) BECAUSE the Trial Judge failed to realise the evidence about "shifting occupation."
- (22) BECAUSE the Trial Judge failed to appreciate evidence which went to show that farming had taken place on the right or east of the road, and in the area claimed. 40
- (23) BECAUSE the family tree as given by the Trial Judge is correct, but he was wrong in describing Tetteh Kobla "as apparently the eldest member of the family" when he was a servant supervising the land for the family.

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- (24) BECAUSE the appellant was made head of the family in 1923 and was the proper person entitled to sue under Gold Coast law.
- (25) BECAUSE the first respondent never challenged his right to sue.
- (26) BECAUSE the second respondent put forward the name of a man called Asere Tego as head but never produced him as a witness, as the Trial Judge rightly found.
- (27) BECAUSE there is nothing in the family tree, or anywhere else, to show that this man belongs to the family of Okai Tiseh, the founder.
- (28) BECAUSE the judgment of the Supreme Court of the Gold Coast is wrong.
- (29) BECAUSE the judgment of the West African Court of Appeal is wrong.

T. B. W. RAMSAY.

In the Privy Council.

ON APPEAL

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

BETWEEN

Dr. F. V. NANKA-BRUCE of Accra, as Head
and Representative of the Family of Okai
Tiseh, late of Accra (Plaintiff) *Appellant*

AND

TETTEY GBEKE, as Representative of all
other Members of the Atukpai Family of
Accra, and **A. A. ALLOTEY** of Accra
(Defendants) *Respondents*

Case for the Appellant

A. L. BRYDEN & CO.,
Craig's Court House,
Craig's Court,
Whitehall,
London, S.W.1,
Solicitors for the Appellant.