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21, 1950

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In the Privy Council.

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No. 56 of 1948.

INSTITUTE OF ADVANCED LEGAL STUDIES  
W.C.I.

28 MAR 1951

INSTITUTE OF ADVANCED LEGAL STUDIES

ON APPEAL FROM THE WEST AFRICAN  
COURT OF APPEAL

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 others the  
Members of the ATUKPAI FAMILY of Accra, and  
A. A. ALLOTEY of Accra ... .. (Defendants) RESPONDENTS.

CASE FOR THE RESPONDENT

TETTEY GBEKE.

RECORD

1.—This is an Appeal from a Judgment of the West African Court of Appeal dated the 7th March, 1944, dismissing an Appeal by the Appellant from a Judgment of His Honour Mr. Justice Lane in the Supreme Court of the Gold Coast dated the 1st December, 1942. p. 120 p. 101

2.—This Appeal raises the question of the title of the Appellant to certain land near Accra, Gold Coast Colony, which has for many years been in the possession of the Atukpai Stool (represented by this Respondent) or (as to part of the land) the second Respondent who claims through the Atukpai Stool. There are concurrent Judgments of the Supreme Court of the Gold Coast and of the West African Court of Appeal determining that the Appellant had not discharged the onus resting upon him of proving that the title in the said land was vested in the family whom he claimed to represent. p. 101 p. 120

3.—On the 24th March, 1942, the Appellant instituted proceedings by Civil Summons in the Tribunal of the Paramount Chief of the Ga State, Eastern Province Gold Coast Colony against the Respondents claiming:— p. 1

- (1) A declaration that all that land situate between Avenor and Akalade Villages, Accra, bounded on the North by lands of Tattak Agau and Okai Gbeke respectively, on the South by

RECORD

land of Awulu and others, on the East by land of Nortege and Ahaladi and on the West by Odor or Odor Stream was the property of the Family of Okai Tiseh, of which the Appellant was the Head.

- (2) An injunction restraining the Defendants their servants and agents from trespassing on or erecting buildings on the said land or interfering with the Appellant's title thereto.

p. 6 4.—By Order dated the 15th April, 1942, made on the motion of the Appellant the said cause was transferred to the Supreme Court of the Gold Coast for hearing and determination. 10

p. 14 5.—The Appellant applied for an interlocutory injunction but this was not granted.

p. 15 6.—There were no pleadings and the action came on for hearing before His Honour Mr. Justice Lane on the 22nd October, 1942. The issues were defined in opening statements made by Counsel for the Appellant and the Respondents. A large amount of oral evidence was tendered on behalf of each of the parties and the hearing occupied seventeen days. Mr. Justice Lane viewed the disputed land on the 26th November, 1942.

7.—A survey and plan of the land claimed by the Appellant were made by Order of the Court. This plan was put in evidence at the trial and marked Exhibit I. 20

p. 1 8.—The Appellant's claim as set out in the Summons embraced land on both sides of a road leading from Accra to Nsawan and the land claimed by him is edged grey on the said plan. The Respondents did not at the hearing resist the claim to the land lying between this road and the Odor Stream. The actual land in dispute is edged pink on the said plan. The land edged purple on the said plan was at the material times in the possession of the second Respondent: the remainder of the land edged pink remained in the possession of the Atukpai Stool (represented by this Respondent). 30

9.—It was contended on behalf of the Appellant:—

- (1) That he was the Head of the family of Okai Tiseh.
- (2) That the land in dispute had been granted to Okai Tiseh about the years 1850 or 1860.
- (3) That since that date members of the family of Okai Tiseh had used and occupied the land.

10.—It was contended on behalf of the Respondents:—

- (1) That the land in dispute was the property of the Atukpai

Stool or (in the case of the land edged purple) of the second Respondent who claimed title through the Atukpai Stool. RECORD  
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- (2) That the Appellant was not the Head of the family of Okai Tiseh and not entitled to sue on their behalf.
- (3) That in any event the onus was upon the Appellant to prove his title to the land and that as he failed to discharge that onus he was not entitled to succeed by reason of the alleged weakness of the Respondents title.

11.—His Honour Mr. Justice Lane delivered a reserved Judgment on the 1st December, 1942. He held that the Appellant had failed to discharge the onus resting upon him of proving either that he was entitled to sue as Head of the Family of Okai Tiseh or that the land in dispute was the property of that Family. p. 101

12.—On the 29th March, 1943, the Appellant gave Notice of Appeal to the West African Court of Appeal. p. 111

13.—The Appeal was heard by the West African Court of Appeal (Their Honours Sir Donald Kingdon C.J. Nigeria (President), Sir George Graham Paul C.J. Sierra Leone and Alfred Noel Doorly, Ag. C.J. Gold Coast) on the 24th, 25th and 28th February, 1944. Judgment which was then reserved was delivered on the 7th March, 1945, unanimously dismissing the appeal. p. 113  
p. 120

14.—The arguments advanced in the West African Court of Appeal were substantially the same as those put forward in the Court below. In their Judgment the learned Judges of the West African Court of Appeal were in substantial agreement with the opinion of Mr. Justice Lane. p. 113

15.—It is submitted that the Privy Council will not go behind the concurrent Judgments of the Supreme Court and the Court of Appeal upon a question of fact depending almost entirely upon the view which the Court formed upon evidence of traditional history and user over a period of many years. It is further submitted that there was ample evidence to support the findings of Mr. Justice Lane and the Court of Appeal. 30

16.—The West African Court of Appeal granted to the Appellant on the 31st January, 1945, final leave to appeal to His Majesty in Council. The provisions for regulating appeals from the West African Court of Appeal to His Majesty in Council are contained in the West African (Appeals to Privy Council) Orders in Council 1930 to 1935 Consolidated. Paragraph 3 of this Order is as follows :—

“ 3. Subject to the provisions of this Order, an appeal shall  
“ lie :—

- “ (A) As of right, from any final judgment of the Court, where the  
“ matter in dispute on the Appeal amounts to or is of the  
“ value of £500 sterling or upwards, or where the Appeal  
“ involves directly or indirectly some claim or question to  
“ or respecting property or some civil right amounting to or  
“ of the said value or upwards ; and
- “ (B) At the discretion of the Court, from any other judgment of  
“ the Court, whether final or interlocutory, if, in the opinion 10  
“ of the Court, the question involved in the appeal is one  
“ which, by reason of its great general or public importance  
“ or otherwise, ought to be submitted to His Majesty in  
“ Council for decision.”

The West African Court of Appeal, in giving leave to appeal, proceeded or appear to have proceeded under sub-paragraph (A) of the said paragraph inasmuch as there is no question of great general or public importance fit to be submitted to His Majesty in Council.

17.—This Respondent humbly submits that this Appeal should be  
dismissed with costs for the following, among other 20

### REASONS

- (1) BECAUSE the Appellant failed to discharge the onus upon him of proving that he was entitled to sue as Head of the Family of Okai Tiseh.
- (2) BECAUSE the Appellant failed to discharge the onus upon him of proving that the land in dispute was the property of the family of Okai Tiseh.
- (3) BECAUSE the land in dispute was at all material times in the possession of the Atukpai Stool or persons claiming through that Stool. 30
- (4) BECAUSE the Judgment of the Supreme Court of the Gold Coast and of the West African Court of Appeal were concurrent Judgments on the facts and ought not to be disturbed.
- (5) BECAUSE the Judgment of the Supreme Court was right.
- (6) BECAUSE the Judgment of the West African Court of Appeal was right.

P. COLIN DUNCAN.

**In the Privy Council.**

No. 56 of 1948.

ON APPEAL FROM THE WEST AFRICAN COURT  
OF APPEAL.

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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 others the Members of the ATUKPAI  
FAMILY of Accra, and A. A. ALLOTEY  
of Accra ... (*Defendants*) RESPONDENTS.

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CASE FOR THE RESPONDENT  
TETTEY GBEKE.

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