Privy Council Appeal No. 56 *of* 1948

Frederick Victor Nanka-Bruce - - - - - - - *Appellant*

v.

Tettey Gbeke and another - - - - - - - - *Respondents*

FROM

THE WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 11TH JULY, 1950

Present at the Hearing:

LORD PORTER
LORD OAKSEY
LORD RADCLIFFE
SIR JOHN BEAUMONT
SIR LIONEL LEACH

[*Delivered by* SIR LIONEL LEACH]

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 the Supreme Court of the Gold Coast, dated the 1st December, 1942. The suit out of which the appeal arises was instituted on the 24th March, 1942, in the Tribunal of the Paramount Chief of the Ga State. The reliefs sought were (I) a declaration that certain land situate some three miles from Accra on the Accra—Nsawam Road belonged to the family of one Okai Tiseh, of which the plaintiff claimed to be the head and (II) an injunction restraining the defendants (the respondents in the appeal), their servants and agents from trespassing on the land. The suit was transferred to the Supreme Court of the Gold Coast, Eastern Province, for hearing and determination.

There were no pleadings, but from statements made at the trial the plaintiff's case may be summarized as follows:—Some time in the 1850's or 1860's Nii Addu, the then Korle priest, who was the head of the Korle Webii or Korle family, acting within his powers, made an oral grant of the land to Okai Tiseh, the son of one Tego Churu. Okai Tiseh died in the 1860's, having founded a separate family, which is now represented by the plaintiff, who is the grandson of Aranye Dede, a brother of Okai Tiseh. The grantee was in possession of the land and exercised rights of ownership up to the time of his death. Thereafter possession and enjoyment remained with the members of his family without any attempt at interference until 1926. In that year Tetteh Kwei Molai, who was then acting as the Korle priest, brought an action against the plaintiff for the recovery of the land. The action failed, Tetteh Kwei Molai being non-suited. There was no further interference with the rights of the Okai Tiseh family until 1938 when someone removed from the land a watchman employed by them. Later the erection of a modern building was commenced on the land claimed by the second defendant and this precipitated the present action.

The land claimed by the plaintiff lies partly on one side of the Accra—Nsawam Road and partly on the other side. The defendants made no resistance to the claim made in respect of the land to west of the road, but denied that the plaintiff had any right to the part on the east. The first defendant, who is the representative of the Atukpai family of Accra, maintained that the disputed land is part of a larger area belonging to the Atukpai Stool and that consequently any grant made by the Korle priest to Okai Tiseh was invalid. Some of the disputed land had been granted by the Atukpai Stool to one Adams, through whom the second defendant claimed. The second defendant denied that the plaintiff was the head of the Okai Tiseh family and denied that Okai Tiseh or his successors had ever been in occupation of the land. He based his own title on that of the Atukpai Stool.

The action was tried by Mr. Justice Lane, who held that at the time of the alleged grant to Okai Tiseh the land was covered with forest and that the Korle Webii were in charge of it under the Gbese Stool. In practice the Korle priest as the head of that family made dispositions of land, but there was no evidence of a grant to Okai Tiseh, and the plaintiff had failed to prove use and occupation of the land by the family of which he claimed to be the head. The plaintiff had also failed to prove that Okai Tiseh had formed a separate family. The learned Judge accepted the evidence of Tetteh Kobla, the headman of Avenor, a village in the neighbourhood. Tetteh Kobla, who was said to be 90 years of age and is a relative of Okai Tiseh, stated that Okai Tiseh's properties had devolved on Asere Teiko, the present head of the family of Tego Churu, the father of Okai Tiseh. This accords with the evidence of Nii Ayi Ansa, an expert in native law called by the plaintiff, who said that any property acquired by the offspring of a man and his female slave became the property of the man's family and when the child of the union died all his property became his father's family property. Okai Tiseh's mother was a slave.

The result was that the learned Judge non-suited the plaintiff and dismissed the action with costs as regards his claim to the land on the east of the Accra—Nsawam Road.

The West African Court of Appeal agreed with the findings of the Supreme Court and dismissed the appeal, but amended the judgment of the Court below by deleting therefrom the words " and the action dismissed ". No objection has been taken to this amendment.

The learned trial Judge was far from being impressed by the titles set up by the defendants, but he rightly observed that the plaintiff must succeed on the strength of his own title and not on the weakness of that of the defendants. The position in such cases as this was aptly stated by the West African Court of Appeal in *J. M. Kodilinye* v. *Mbanefo Odu* (2 W.A.C.A. 336), where the plaintiff sued for a declaration of title to a piece of land in the Onitsha Province. In the course of his judgment in that case Webber, C.J., said:—" The onus lies on the plaintiff to satisfy the Court that he is entitled on the evidence brought by him to a declaration of title. The plaintiff in this case must rely on the strength of his own case and not on the weakness of the defendant's case. If this onus is not discharged, the weakness of the defendant's case will not help him and the proper judgment is for the defendant. Such a judgment decrees no title to the defendant, he not having sought the declaration. So if the whole evidence in the case be conflicting and somewhat confused, and there is little to choose between the rival traditional stories the plaintiff fails in the decree he seeks, and judgment must be entered for the defendant."

On behalf of the appellant it has been argued that the learned trial Judge misdirected himself, that on a proper appreciation of the evidence there should have been judgment for the plaintiff, and that consequently the Appellate Court erred in concurring in the findings of the Court below. Their Lordships have been taken through the record and can find no indication whatever of misdirection; on the other hand they

find that there is evidence which gives direct support to the learned Judge's conclusions. His findings are findings of fact and as they were accepted by the Appellate Court their Lordships must follow their usual practice and decline to review the evidence for a third time unless there are some special circumstances which would justify a departure from that practice. It is manifest that there are no special circumstances here and therefore the concurrent findings of the African Courts must be accepted as being conclusive.

It was suggested by Mr. Ramsay that the Supreme Court had wrongly allowed the second defendant to set up a *jus tertii* in that it had admitted the evidence of Tetteh Kobla with regard to Okai Tiseh's property devolving on Asere Teiko. This evidence was given in the cross-examination of Tetteh Kobla on behalf of the second defendant, but the questions were not put with the object of setting up a title in a third person. They were put with the object of disproving the plaintiff's allegation that he was the head of a separate family founded by Okai Tiseh and that Okai Tiseh's property had devolved on him. In this the second defendant succeeded, but it is certainly no basis for a suggestion that the Court had allowed the second defendant to set up a *jus tertii*.

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

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In the Privy Council

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DELIVERED BY SIR LIONEL LEACH

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