Privy Council Appeal No. 7 of 1953

Henry Charles Christian (otherwise known as Kofi Ampah) - - - - - - - *Appellant*

v.

Samuel Tawiah Intsiful - - - - - - - *Respondent*

FROM

THE WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 14TH DECEMBER, 1953

Present at the Hearing:
LORD PORTER
LORD OAKSEY
MR. L. M. D. DE SILVA

[*Delivered by* LORD PORTER]

This case is one which in certain aspects has raised matters of difficulty for their Lordships' consideration. In making this statement their Lordships do not mean that, having regard to the evidence adduced in the Courts in Africa, it presents difficulty as to the decision which they must reach. The difficulty rather occurs because certain matters which might have been elucidated in those courts were not dealt with, and consequently their Lordships are obliged to come to a conclusion upon the case as presented and to give their advice accordingly.

The case has been fully, accurately and impartially presented to their Lordships by Mr. Ramsay who has said everything that could be said on behalf of the appellant, but their Lordships are not persuaded that it is a case in which they ought to advise Her Majesty to allow the appeal.

The facts are brief, and may be stated in a few sentences. The testator was at the time of his death in 1950, an old man of ninety-three. The question at issue is as to whether a will which purports to have been, and indeed was, executed in 1944 represented the true and last will and testament of the testator, and in particular whether he understood the contents of the will as then executed.

It might be convenient at this moment to state that in consonance with the ordinary practice in this country, a provision is made in Order 49, Rule 29 of the Courts Ordinance of the Gold Coast, Chapter 4 which runs in this way: "Where the testator was blind or illiterate, the court shall not grant probate of the will, or administration with the will annexed, unless the court is first satisfied, by proof or by what appears on the face of the will, that the will was read over to the deceased before its execution, or that he had at that time knowledge of its contents".

The actual question which their Lordships have to determine does not lie in the first part of the rule. The will in fact was, according to the evidence of a Mr. Arthur, who had been a solicitor's clerk but was not then acting on behalf of a solicitor, typed out by him. Some dispute took place as to what actually occurred when the will was made. The final evidence of

Mr. Arthur is that it was made sometime after he had left a previous employer, which could not be earlier than 1943 and might be 1944, and that what occurred was this. He was called to the side of the testator handed a document and asked to type it. He did so, and then gave it back to the testator and the document was afterwards signed by the testator and witnessed by two witnesses, and then on the instructions of the testator placed in an envelope and put into the custody of the court in order to ensure that it was as regular as possible.

A good deal of discussion took place as to whether that was an accurate account of what had occurred. Apparently, by some mistake, the solicitor acting for the executor in the case who was propounding the will, had obtained what was not an accurate description of what had occurred at that interview. The inaccurate account was that the testator had dictated his wishes to the solicitor's clerk who took them down, and made a copy. The solicitor's clerk was called a second time in the course of the case, said that the proof taken by the solicitor was inaccurate, and as their Lordships understand his evidence adhered to the story which was first put forward. It is on that evidence that their Lordships have to decide the case.

It is admitted on all sides that the will was not read over to the testator by the solicitor's clerk, nor is there any evidence that it was read over to him by anyone else, and therefore their Lordships are thrown back upon the question whether by proof or by what appears on the will the testator had at the date of its signing knowledge of its contents. It is upon that matter that the dispute between the parties now turns. The first court thought that he was blind within the meaning of the relevant order, and that as the document had not been read over to him there was not sufficient evidence to show that he knew of its contents. The court of appeal, on the other hand, took the view that there was sufficient evidence to show that he knew its contents, and unless the appellant can dispose of that finding their Lordships would not be entitled to alter the decision of the Court of Appeal of the Gold Coast.

The first problem is this: Was there evidence that the testator in fact was blind? That is by no means clear; on the contrary, the onus being upon the appellant to show that he was blind, in their Lordships' view that onus has not been discharged. The solicitor's clerk, Mr. Arthur, did not suspect him of blindness, nor is such a view necessarily inherent in the evidence given by the two gentlemen who witnessed the will. They certainly thought that the testator understood what he was doing, and, if the evidence which they gave is looked at, the first witness Mr. Hammond says on page 6: " The deceased was not totally blind but his eye-sight had been bad for some time before he died—how long I cannot say." That deals with the question of the eye-sight of the testator at the time he died, but does not deal directly with his eye-sight in 1944 when the will was executed. The second witness, another Mr. Arthur, said: " I cannot say if the deceased was totally blind; he was groping with things on his table ". From that, and from other evidence, it is plain that the testator's eye-sight was impaired, but that he was unable to read or unable to see what was on the document is not proved.

Their Lordships on the whole are inclined to agree with Mr. Ramsay that if it could be shown plainly that the deceased was incapable of reading, that would be sufficient proof of blindness because the word " blind " occurs in collocation with the word " illiterate ". Apparently both matters are meant to be put on the same basis, namely, was the man incapable of reading the document which he had signed. In their Lordships' view that has not been sufficiently established.

Even supposing he were blind, there still remains the question whether he understood the document which was put before him. So far as the witnesses were concerned they obviously thought that he was capable of understanding what he had done. But the matter does not rest there.

Their Lordships have had presented to them the will which is marked "P.1." and have read it through in order to see what result was to be deduced from that reading. In reaching a conclusion as to the decision at which they should arrive, their Lordships find that in Order 49 one matter for their consideration is whether by what appears on the face of the will the testator "had at that time", that is at the time of making it, "knowledge of its contents". The will is an elaborate one, leaving to a large number of parties, relations and friends of the deceased, various sums of money and it is not a document which one who was not intimately acquainted with the testator's life could possibly have devised.

Their Lordships are entitled, in their view, to take cognisance of this fact. It was never suggested to Mr. Arthur, the solicitor's clerk, that he had that or any such knowledge of the testator's relationships and friendships, and their Lordships are entitled to take that matter into consideration, as well as the question of his eye-sight, in making up their minds as to what advice they should humbly tender to Her Majesty.

It is quite true that there has been some difficulty owing to the production of two documents, both of which are signed and purport, as Mr. Ramsay quite rightly says, to be witnessed by the same gentlemen. If their Lordships had to speculate upon the matter they would be inclined to say that one was meant to be a copy of the other, one to be the will and the other to be a copy for the testator to keep, but there is no reason why they should have to speculate in this matter. Except for the omission of a certain gift, which might well occur in a case where there is a long list of persons to whom gifts were given, for all practical purposes the two documents are similar. That the one which has been numbered P.1. is the true will, appears from the fact that it was by the express wish of the testator deposited with the court, and therefore was meant to be the formal document which should bind the estate.

None of the cases cited throws light upon the decision to which their Lordships have come. Their Lordships think that the judge of first instance in Africa probably took too much cognisance of the fact that the man was somewhat blind, and did not pay enough consideration to all the other circumstances which appear to their Lordships to show that in fact the deceased man understood what he was doing and intended to do it.

In those circumstances, their Lordships will humbly advise Her Majesty that the appeal should be dismissed. The appellant must pay the costs of the appeal.

(20218) Wt. 8267—24 100 2/54 D.L

In the Privy Council

HENRY CHARLES CHRISTIAN
(otherwise known as Kofi Ampah)

v.

SAMUEL TAWIAH INTSIFUL

DELIVERED BY LORD PORTER

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