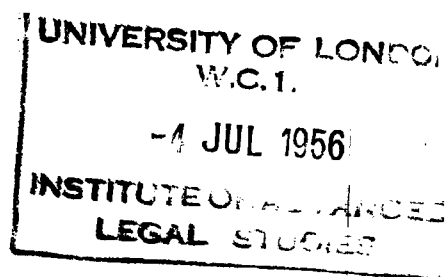


~~611-513~~  
20, 1955



In the Privy Council.

No. 6 of 1954.

43565

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

BETWEEN

CHIEF KWAME KWANIN for and on behalf of the  
Stool of Obuasi ... .. *Defendant-Appellant*

AND

CHIEF KOJO EWUAH for and on behalf of the Stool  
of Nyinawusu, substituted for CHIEF KOFI KURAN,  
deceased ... .. *Plaintiff-Respondent*

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# In the Privy Council.

No. 6 of 1954.

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

BETWEEN

CHIEF KWAME KWANIN for and on behalf of the  
Stool of Obuasi ... .. *Defendant-Appellant*

AND

CHIEF KOJO EWUAH for and on behalf of the Stool  
of Nyinawusu, substituted for CHIEF KOFI KURAN,  
deceased ... .. *Plaintiff-Respondent.*

## RECORD OF PROCEEDINGS

No. 1.

Summons.

No. 64/45.

In the  
Native  
Court of  
Denkera  
State.

IN THE NATIVE COURT OF DENKERAHENE,  
DENKERA STATE, CENTRAL PROVINCE, GOLD COAST.

Between

CHIEF KOFI KURAN for and on behalf of the Stool of  
Nyinawusu ... .. *Plaintiff of Nyinawusu*

and

CHIEF KWAME KWANIN for and on behalf of the Stool of  
Obuasi ... .. *Defendant of Obuasi*

10

To : CHIEF KWAME KWANIN OF OBUASI.

You are hereby commanded to attend this Court at Dunkwa on the  
16th day of October, 1945, at 8.30 a.m. to answer a suit by the Plaintiff  
of Nyinawusu against you.

No. 1.  
Summons  
No. 64/45.  
14th  
August  
1945.

In the  
Native  
Court of  
Denkera  
State.

No. 1.  
Summons  
No. 64/45.  
14th  
August  
1945—  
*continued.*

The Plaintiff claims :—

The Plaintiff's claim is for a declaration of title to all that lands known and called Apunpun otherwise known as Buakyikrome, Twapiasi, Gyaponkrome, Ekakyerenyansa, Eneko, Nkwantanum and stream called " Kunité " and for £100 (One hundred pounds) damages for trespass to all the said lands and stream and for Injunction to the said lands and stream.

Issued at Dunkwa, the 14th day of August, 1945.

	£	s.	d.	
Plaintiff's claim ... ..	100	0	0	10
Summons fee ... ..	2	0	0	
Adasuum ... ..	0	0	0	
Mileage and Service ... ..	0	14	6	
Total ... ..	£102	14	6	

EDU KOFI,  
*President.*

His  
X  
Mark

Witness to mark :

(Sgd.) G. KWAME SAH,  
*Native Court Registrar.*

TAKE NOTICE: If you do not attend the Tribunal may give Judgment in your absence. 20

In the  
Supreme  
Court.

No. 2.  
Order trans-  
ferring case  
to Land  
Court.  
20th June  
1947.

No. 2.

Order transferring Case to Land Court.

IN THE SUPREME COURT OF THE GOLD COAST,  
LANDS DIVISION, CAPE COAST.

Directions made under Section 54 (1) (c) of the Native Courts  
(Colony) Ordinance, 1944.

(L.S.)

(Sgd.) J. JACKSON,  
*Judge.*

In accordance with the provisions of Section 54 (1) (c) of the Native Courts (Colony) Ordinance, 1944, I do direct that the cause as shown in the Schedule hereunder shall be transferred to the Lands Division of the Supreme Court of the Gold Coast for hearing. 30

And that the Magistrate at Dunkwa do transfer the said cause to this Court.

And that the original Writ of Summons and any proceedings in the said cause now pending in the Native Court "A" of the Denkyira Confederacy shall be forwarded to this Court.

In the Supreme Court.

No. 2.  
Order transferring case to Land Court.  
20th June 1947—  
*continued.*

SCHEDULE.

CHIEF KOFI KURAN ... .. Plaintiff

and

CHIEF KWAME KWANIN of New Obuasi ... .. Defendant.

10 Dated at Cape Coast this 20th day of June, 1947.

(Sgd.) J. T. ODAMETEY,  
*Registrar.*

---

No. 3.

Court Notes ordering Pleadings.

No. 3.  
Court Notes ordering Pleadings.  
30th August 1947.

IN THE SUPREME COURT OF THE GOLD COAST, LANDS DIVISION, CAPE COAST, Saturday, the 30th day of August, 1947, before Mr. Justice JACKSON.

KOFI KURAN

*v.*

KWAME KWANIN.

20

WILLIAMS moves for pleadings (for Defendant).

SACKEYFIO :

Mr. Williams did approach me on this matter in latter part of July. On the 1st August Mr. Benjamin wrote to Mr. Williams that he would oppose application for pleadings.

COURT :

In my view it is desirable that pleadings and a plan are filed in this case.

30 Let Statement of Claim together with a copy of plan be filed and served on Defendant within 21 days and Statement of Defence be filed within 14 days of the said service.

(Sgd.) J. JACKSON,  
*Judge.*

In the  
Supreme  
Court.

No. 4.  
Statement of Claim.

No. 4.  
Statement  
of Claim.  
26th  
September  
1947.

IN THE SUPREME COURT OF THE GOLD COAST, CENTRAL JUDICIAL  
DIVISION, DIVISIONAL COURT, CAPE COAST.

IN THE MATTER OF :

CHIEF KOFI KURAN for and on behalf of the Stool of  
Nyinawusu ... .. *Plaintiff*

v.

CHIEF KWAME KWANIN for and on behalf of the Stool of  
New OBUASI ... .. *Defendant.* 10

PLEADINGS.

1.—The ancestors of the Plaintiff were the first to settle on Nyinawusu lands. Later the ancestors of the Defendant migrated from Ashanti and obtained permission from the ancestors of the Plaintiff to settle on Obuasi lands.

2.—During the time of Chief Kweku Serbeh a predecessor of the Plaintiff, a dispute arose between him and Chief Kweku Fori the predecessor of the Defendant about the ownership of the Obuasi lands, and Judgment was on the 4th day of May, 1947 given against Chief Kweku Serbeh on the ground that Chief Kweku Fori and his predecessors had settled on the 20 land for some 90 years or more without paying tribute to the Stool of Chief Kweku Serbeh.

3.—Later Emina or Minna and Ackon or Nkromah bought 50 mahogany trees from Chief Yaw Mensah the predecessor of the Plaintiff on land between Nyinawusu and Ahonfunu stream. The Defendant and his people armed with guns and cutlasses prevented for a time Emina or Minna and Ackon or Nkromah from cutting the trees so purchased.

4.—The Defendant later agreed for Emina or Minna and Ackon or Nkromah to cut the trees on condition that they paid him £50 to assist in the prosecution of his case against Chief Yaw Mensah and if he failed 30 he would refund the £50 to Emina or Minna and Ackon or Nkromah.

5.—Chief Yaw Mensah the predecessor of the Plaintiff brought his action against the Defendant as regards Nyinawusu lands and on the 6th day of December 1920 Judgment was given in his favour.

6.—The Defendant according to the agreement with Emina or Minna and Ackon or Nkromah refunded the sum of £50 to them. Defendant



therefore admitted that Nyinawusu lands belonged to Chief Yaw Mensah the predecessor of the Plaintiff.

In the Supreme Court.

7.—The boundaries of Nyinawusu lands start from the stream Afiefi thence to Abako tree, thence follows the footpath until it strikes the stream Ahonfunu, thence to the Motor Road leading to Johnson's camp, the motor road being once a foot path which was the boundary line ; thence to the junction of Subin and Eneko Stream, thence to Dumbombo Stream, thence Dumbombo Bippo thence to Apunpun, thence to Trepusu thence to Danyani stream which forms the boundary until it reaches the Offin River.

No. 4. Statement of Claim. 26th September 1947—*continued.*

10

8.—The Plaintiff therefore claims a declaration of title to all that lands known and called Apunpun otherwise known as Buakyi-krome, Twapiase, Gyaponkrome, Ekakyerenyansa, Eneko, Nkwantanum and the stream called " Kunité " the boundaries of which are described in paragraph 7 and for £100 (One hundred pounds) damages for trespass to all the said lands and streams and for Injunction restraining the Defendant, his Agent or workmen from trespassing to the said lands and streams.

Dated at Kumasi this 26th of September, 1947.

(Sgd.) ? ? BENJAMIN,  
*Solicitor for the Plaintiff.*

20

The Registrar, Divisional Court, Cape Coast.  
And to Chief Kwame Kwanin for and on behalf of the Stool of New Obuasi or his Solicitor F. Awoonor Williams, Sekondi.

No. 5.  
Statement of Defence.

No. 5. Statement of Defence. 30th October 1947.

IN THE SUPREME COURT OF THE GOLD COAST.  
CENTRAL JUDICIAL DIVISION.  
LANDS DIVISION, CAPE COAST.

30

CHIEF KOFI KURAN for and on behalf of the Stool of Nyinawusu Division, Denkyera State ... .. Plaintiff  
*v.*

CHIEF KWAMI KWANIN for and on behalf of the Stool of Denkyira Obuasi Division, Denkyera State ... .. Defendant.

STATEMENT OF DEFENCE

Delivered by F. Awoonor Williams of Counsel for Defendant on the 31st day of October, 1947, Pursuant to Order of the Court herein.

40

1.—The Defendant joins issue with the Plaintiff on his Statement of Claim dated the 26th September, 1947, filed and delivered herein on the 16th October, 1947.

2.—The Defendant joins issue with the Plaintiff on paragraphs 1 and 7 of the said Statement of Claim. The Defendant's ancestors first settled at Obuasi Nkwawina which land stretches from the Subin River on the North

In the  
Supreme  
Court.

No. 5.  
Statement  
of Defence.  
30th  
October  
1947—  
*continued.*

opposite Afiefi Stream to Kunkuntry Bippo on to the confluence of Denyamie and Aduwura Rivers on the Chiribra Stream as depicted in red or pink in J. Annu Essuman's Plan made herein and dated the 23rd September, 1946, the Plaintiff's ancestors removed from their settlement on land East of the Offin River and settled at Nyinawonsu after the settlement of the Defendant's ancestors at Obuasi Nkwanwina.

3.—The Defendant's ancestors were and are Denkyeras and the first settlers, occupants and owners of all the land claimed by the Plaintiff excepting Nyinawonsu (Nyinawusu) Village and land East of the Motor road leading to the said Nyinawonsu Village. The Defendant's ancestors settled on the land claimed by the Plaintiff over 500 years ago and have ever since been in possession without payment of tribute or acknowledgment of the Plaintiff's title to the said land. 10

4.—The suit referred to in paragraph 2 of the said Statement of Claim relates to land West of the Afiefi Stream from the North on to the old hammock road on the Ahunfuna Stream on the South shown on J. Annu Essuman's plan made herein and dated the 23rd September, 1946. The said Judgment was given by the Native Tribunal of Jukwa in Denkyera State on the 23rd day of January, 1917, between Chief Kweku Sebbe and Chief Kofi Fori the respective predecessors of the Plaintiff and the Defendant herein on the Stools of Nyinawonsu and Denkyera Obuasi. The said Jukwa Native Tribunal was the proper Tribunal vested with jurisdiction over the said land and the parties thereto. The Defendant avers that the said Judgment is a *res judicata* in so far as it dealt with part or portion of the land now claimed by the Plaintiff in this action and is an estoppel against the claim of the Plaintiff herein. 20

5.—The Defendant joins issue on paragraphs 3, 4, 5 and 6 of the Plaintiff's Statement of Claim. The suit *Chief Yaw Mensah v. Chief Kwami Kwanin* referred to was of a criminal matter or prosecution by the said Chief Yaw Mensah v. *Chief Kwamin Konin* for forcible entry with Asafo armed with guns, cutlasses, etc., and did not determine the ownership or possession of the land between Ahonfuna Stream and Nyinawonsu Village. 30

6.—The Defendant pleads :—

(a) Possession by himself, his servants, subjects, agents, lessees, and licensees of the land in dispute.

(b) Ownership.

7.—The boundaries of the Defendant's land with the Plaintiff are indicated in red or pink in J. Annu Essuman's plan dated the 23rd September 1946, and made herein.

8.—Saving and excepting where expressly admitted, the Defendant herein joins issue with the Plaintiff in his Statement of Claim as if each paragraph thereof were herein written and traversed seriatim. 40

Dated at Sekondi this 30th day of October, 1947.

(Sgd.) F. AWOONOR WILLIAMS,  
*Counsel for Defendant.*

To the Registrar, Land Court, Cape Coast, and to  
Plaintiff Chief Kofi Kuran, his Counsel or  
Solicitor, H. A. H. Benjamin, Kumasi,  
Ashanti.

No. 6.

Joseph Annu Esuman.

In the Supreme Court.

KOFI KURAN ... .. Plaintiff

Plaintiff's Evidence.

v.

KWAME KWANIN ... .. Defendant.

No. 6.

Assessor : NANA GYASEHENE of Ogua State.

Joseph Annu Esuman.

BENJAMIN for Plaintiff.

1st Witness. 2nd March 1950.

A. WILLIAMS for Defendant.

10 BENJAMIN opens and indicates area in dispute on plan to be proved. Reads pleadings and calls :—

Examination.

P.1. JOSEPH ANNU-ESUMAN, s.o.b. :

I am a licensed Surveyor living at Sekondi. On order of this Court I surveyed the area in dispute and made this plan (Tendered, no objection, marked Exhibit " 1.") The area claimed by Plaintiff is edged green, whereas area claimed by Defendant is edged pink so that the area in dispute is the area enclosed within the green and pink lines. On the area in dispute there are many villages. Those claimed by the Plaintiff are underlined green. The Defendant never claimed Budchikrom village nor Japokrom. The Defendant never claimed any villages underlined green. Defendant said these villages were founded by the Plaintiff's subject. They are all old populated villages roughly comprising 4-10 huts per village. There were cocoa farms on the area in dispute, all bearing cocoa. The villages underlined red were claimed by Defendant. On the South, north of Budchikrom there were disused native gold mining shafts. Both parties claimed these shafts. Both parties also claimed gold shafts marked on plan south of Kachire Yansa. The village of Nkwantanum was claimed by both parties. A deserted village named Kakyirenyansa was claimed by both parties but by the Defendant under a different name, namely Sanchirem. I went to a stream named Ennikawkaw according to the Plaintiff and Sanchrem by the Defendant. The Plaintiff claimed Ennikakaw as the boundary between his land and the Defendant's. Although the village Kofi Aful Krom is underlined red the Plaintiff also claimed it. The Plaintiff did not claim Mmeduem village nor Kwesi Mensah village nor Bonwiakrom. In the South the Plaintiff also claimed Ananekrom. Appakrom, Mpompo and Trepusu villages. I noticed timber was being cut on Johnson's timber area in respect of which permission to cut had been granted by Defendant.

40 Xx. : I have been a licensed Surveyor for over thirty years and have considerable experience of land disputes in court. The Plaintiff brought no Chief to confirm that he owned Ennikakaw river. The Plaintiff brought no Chief to confirm his ownership of Epimpin lands. At junction of Ajawura and Dan Yami river the Defendant said he had a common boundary with

Cross-examination.

In the  
Supreme  
Court.

Plaintiff's  
Evidence.

No. 6.  
Joseph  
Annu  
Esuman.  
1st Witness.  
2nd March  
1950.

Cross-exam-  
ination.  
—continued.  
(sis)

Re-examin-  
ation.

Kudi Appiah and the Plaintiff. The representatives of Kudi Appiah were present. A village of 10 huts would have a population of 40-50 persons. Defendant gave me a judgment of Jukwa Native Tribunal to indicate the land covered by that judgment. The judgment is dated 4th May 1917. That judgment covered the area Afiefi-Subinsu to the Abokoe Tree up to which point both parties had an agreed boundary thereafter from Abokoe Tree to the Kurenti lands which extend to the left bank of the Ahunfunu river. The description of the judgment was rather vague but I was able to satisfy myself that the area I have described is the area given in the Judgment. I worked from a copy of a certified copy of the Native Tribunal judgment. I look at this certified copy of the judgment and the description of the land is the same (Marked "1" for identification). 10

The Defendant's representatives who went with me were Kwame Tawiah, Tufuhene Adee and linguist Yaw Menu and others. The Defendant joined us but did not leave with us for the inspection. The Defendant himself said the motor road and the railway line had *had* granted by himself to Government. I have known the motor road for about twenty years and the railway line was constructed about 1939.

RE-XD. : I don't remember a Chief named Anyimadu being present. On the plan the area Kuranti lands is not claimed by Defendant ; Kuranti land is both East and West of the red-line up to the Ahunfunu River and up to the green line and therefore includes Mmeduem. In this action the Defendant does not claim Kuranti lands East of the red line nor therefore the pond. The descriptions given in the judgment show that the Kuranti land east of the red line was not awarded to the Defendant. The Kuranti pool was specifically awarded to the Plaintiff. The area in dispute in the present case is about 56 square miles. The Plaintiff was not present when I construed the judgment, nor any of the councillors of State. The Plaintiff stated the grant of the motor road and the railway line by the Defendant had resulted in litigation between Plaintiff and Defendant. 20 30

PER COURT AT THE REQUEST OF A-WILLIAMS :

The judgment states at page 48 that the Native Court made inspection or survey of the land in dispute.

No. 7.  
Plaintiff,  
Kofi Kuran.  
2nd March  
1950.

Examina-  
tion.

No. 7.  
Kofi Kuran, Plaintiff.

P.2. KOFI KURAN : s.a.r.b.

I am the Chief of Nyinawusu in the Denkyira State. I claim the lands specified in Writ of Summons as simplified in the Statement of Claim. The lands are attached to my Stool, the virgin forest of which was cleared by my ancestor who was an aborigine of Denkyira State more than 100 years 40

ago. This ancestor was Kwa Adampin and was the founder of the Stool. He was succeeded by Amponsa, and followed Buandoh, then Gyenin Akateh, then Amankwa, then Kwesi Dwima, then Kwesi Nuamah, then Kwamin Dankwa, then Kofi Sun, then Kweku Sebbeh, then Yaw Mensah, then myself. I can give the boundaries of the land in dispute in this case. Starting from Abokoe Tree my boundary on the West runs to Betinasi then to Nyabini, then to the hill near Kuranti Pond then to Mmedeum. A native footpath forms the boundary from Abokoe to Ennikakaw. From Medeum the boundary runs to Kofi Aful Krom then to the motor road junction. At this point the footpath becomes a motor road and boundary runs to Johnson's camp, then to Kakyirenyansa, then to Ennikakaw, then to Sumunsuma then to Dubombom Stream, then to Finyami stream then to Trepusu then to Dan Nyami stream then to Ofin River. My boundary on the East is the West bank of the Ofin river. Chief Anyimadu owns the land on my Southern boundary. The Defendant's ancestors migrated from Ashanti, at this time my ancestors were established at Nyinawasu. My ancestors gave Defendant's ancestors a place called Obuasi on which to settle. I know Fori a predecessor of the Defendant. Sebbeh is one of my predecessors. In 1917 a dispute occurred and judgment was given against my predecessor. The land in dispute was different land altogether from that now in dispute. After the 1917 litigation I and Defendant agreed to boundaries from a hill near Kuranti Pond to the stream Ennikakaw. In 1920 Yaw Mensah, my predecessor sued the Defendant in connection with timber. Yaw Mensah had sold timber to a man called Mimea for £50. This timber was sold on land situated between the river Ahunfunu and Nkwantanum. The Defendant drove Mimia's people off the land and this gave rise to the 1920 litigation. The Native Tribunal at Jukwa heard the case and judgment went in favour of my predecessor. The present action arises out of the 1929 case as despite the judgment the Defendant still claims the land as his property.

I now come to the history of the railway line. The Defendant granted the land for the railway about 10 years ago. I ascertained this from the railway construction party in consequence I instituted proceedings in Denkyire State but prior to the hearing the Defendant refused to attend on the grounds he disowned the sovereignty of the Paramount Chief of Denkyire State and the case is still unheard.

Throughout the whole area in dispute there are many cocoa farms including my own personal farm. Cocoa was first planted in 1900. My Stool granted licenses to tenants to make cocoa farms and the tenants paid rent to the Stool. The tenants paid cash, which I needed for this litigation. Some of the farmers are members of my stool and other strangers both pay rent to me. The Defendant has never questioned my right to these rents. About 50-60 years ago rubber was the main crop. I myself grew rubber and also my subjects on the land now in dispute. Sebbeh was then the Stoolholder and he granted permission taking one third of the proceeds of the rubber.

In the  
Supreme  
Court.

Plaintiff's  
Evidence.

No. 7.  
Plaintiff,  
Kofi Kuran.  
2nd March  
1950.

Examina-  
tion—  
*continued.*

(Intd.) H. M. W-A.  
2.3.50.

In the  
Supreme  
Court.

3.3.50.

Plaintiff's  
Evidence.

No. 7.  
Plaintiff,  
Kofi Kuran.  
3rd March  
1950.

Examina-  
tion—  
*continued.*

I know Yaw Mmreku, he is one of my tenants, he lives in Ahwiaso. He and his predecessors have been on the land for 80 years. He pays tribute every year. I know Akwesi Fynn, he is from Mansu Nkanta in Ashanti. He is a tenant on my land at Budchikrom, and he and his predecessors have so been for sixty years. He farms cocoa and pays a third of the proceeds as rent or tribute. I know Minna from Appolonia. He is still on the land. Defendant drove Minna off the land over which I had granted timber rights. He returned after paying the Defendant's demand for £20. The Defendant refunded this to Minna after the 1920 case. 10

I claim Budchikrom. Akwesi Fynn is the present headman of this village. The village Japokrom I also claim. It has been mine for sixty years and is also under Akwesi Fynn. Duadokrom is mine and was built about three years ago. I claim also Adiembra village. It was founded about three years ago. Kojo Owua village is also mine. It was established three years ago. I also claim the following villages Abodukrom established 40 years ago; Kwamin Donkor established 30 years ago; Kobina Nketsia village established 20 years ago; Beianukrom now deserted, originally established 40 years ago.

The Defendant claims Mpompo village, Appinkrom, Ananikrom, 20 Kofi Aful Krom, Mmedeum, Kwesi Mensah but they are mine, and have all been recently founded since the railway was built. My predecessor carried out gold mining by native methods and dug the shafts. I pointed out the shafts to P.I. Some of these shafts are in Kachireyansa land, and others at New Betinasi, and others at Nyinawonsu where I live.

Cross-exam-  
ination.

Xx. : I am a Divisional Chief directly under the Omanhene. The Defendant is a Chief in the same category. As a Divisional Chief I have Divisional Boundaries, which I gave to the Court yesterday. The Defendant also has Divisional Boundaries. Before the Defendant's predecessors came my Divisional boundaries were the same. The Defendant's 30 predecessors were given Obuasi. The 1st deserted Obuasi was the place where Defendant originally settled. Before Defendant came I had a divisional boundary with Aowin. The name of the Divisional Chief of Auwin is not remembered by me because of a war which led to their expulsion. When the Defendant settled a drink of a flask of rum was given by Defendant according to native custom. Since that time the Defendant has paid no tribute and he made no contribution to our Stool debt. The King of Denkyire at the time of the expulsion of the Aowin was Mponsaim. Mponsaim was the predecessor to Bosomtey and Ntim Jakari, Nyinawonsu was the original headquarters of my predecessors. The Kings of Denkyire 40 used to hold sway from Ashanti to the Coast. This was before the Ashanti came into power. I have not heard of the war between Intim Jakari and Osei Tutu the King of the Ashanti. I have not heard that the Denkyire then became subjects of the Ashanti. I heard that Kojo Tsiboe left the Denkyire area and came down to the Coast. Our original settlement was not on the East of the Ofin river. I have not heard of Nkyiase Afijai on the East of

- Ofin river as being the original headquarters of my predecessors. I have never heard the name before. I have never heard that after the Ashanti war the Denkyire left the left bank of the Ofin and settled on the right bank. Kojo Tsiboe left of his own accord to settle on the Coast. Although Defendant's predecessors came from Ashanti the Defendant is now regarded as a Denkyire. I do not agree that Defendant's predecessors were Denkyire. The litigation with the Defendant in 1917 was concerning land from the junction of the Afeefi and Subin rivers to the 2nd deserted Obuasi. It also included the village of Mmedeum. The Native Court sent an inspection party to inspect the land and took measurements. I attended the inspection. Because of that judgment I abandoned the boundary claimed by me at Kotro-Kuru which is near second deserted Obuasi. No Court has fixed any boundary between my division and the Defendant's. Before litigation started a cordial relationship existed between the Defendant's Stool and mine. Then either my people could go to the Defendant to cultivate on his land or *vice versa*. My brother Yaa Mpintum married the Defendant's sister. The old Ashanti-Denkyire Coast road is the boundary between myself and Defendant according to the Defendant. There was no one living at Japokrom when the surveyor went as the village is now deserted. Budchikrom is also now deserted. Daodokrom is occupied by one family only. It is a farming hamlet. Abodchikrom and Kojo Owua were also not occupied when P.1 came. There are several huts there. Kobina Nketsie and Kwame Donkor are farming hamlets.
- The Defendant's people do not farm over the whole area in dispute. I know Tuafu Amponsah a subject of Defendant. I have heard he lived at Epumpim (deserted) on the southern boundary. I have not heard that a slave of Tuafa Amponsah killed an elephant at Trepusu. I know nothing about one of its horns being used at Defendant's Stool. In the area in dispute all tribute has been paid to me and not to the Defendant. Part of the gold discovered at Ennikawkaw was not given to Defendant as tribute.
- I have not heard of a timber concession by Defendant to Mengel Company. Johnson the representative of Mengel is working there now purporting to do so under Defendant's licence and that is why I am taking action. I ascertained Johnson was working timber about two years ago. The motor road was built about twenty years ago to facilitate cutting timber. I now admit Johnson started cutting timber over twenty years ago. I complained to my Paramount Chief.
- I know Briscoe's timber concession on Johnson's Timber area. He obtained a licence from Defendant and I complained about 10 years ago, as soon as he got the licence. The Defendant refused to recognise the then Paramount Chief in 1940, and it was only in 1945 he recognised the new Paramount Chief. My proceedings in 1945 included the Briscoe licence. I never heard that Government paid compensation for the road to the Defendant. I say Government paid my elders compensation of £20 for the road. I now admit Government paid Defendant compensation for the motor road over twenty years ago but only in respect of that portion of the road outside my boundary as marked on the plan. I never heard that Defendant

In the  
Supreme  
Court.

Plaintiff's  
Evidence.

No. 7.  
Plaintiff,  
Kofi Kuran.  
3rd March  
1950.

Cross-exam-  
ination—  
*continued.*

(sic)

In the  
Supreme  
Court.

Plaintiff's  
Evidence.

No. 7.  
Plaintiff,  
Kofi Kuran.  
3rd March  
1950.

Cross-exam-  
ination—  
*continued.*

Re-examin-  
ation.

received £90 compensation for the railway line. I tried to take action against Defendant over the railway line but could not because at this time Defendant refused to recognise the Paramount Chief. I know Essien. He lives at Nkwantanum and he settled there, but I gave him permission to settle there but not Defendant. The 1920 action was civil suit not a criminal proceeding.

RE-EXAMINATION :

I complained to the Omanhene when Briscoe started to cut timber. This was two years after my complaint about Johnson. The villages of Budchikrom and Japokrom were deserted twenty years ago. My Stool gave the original Omanhene of Denkyire the right to settle at Ntrom on another part of my land not the subject matter of this case. 10

BY COURT PER A-WILLIAMS. NO OBJECTION BY BENJAMIN.

All the divisional chiefs, including myself, were subjects of the Denkyire Omanhene prior to the defeat of Kojo Tsiboe.

BY ASSESSOR :

I and my predecessors are aborigines of Denkyire and had settled long before the Defendant's predecessors.

Adjourned to 7.3.50.

(Intd.) H. M. W-A., 20  
J.  
3.3.50.

7.3.50.

Plaintiff,  
Kofi Kuran.  
7th March  
1950.

Examina-  
tion by  
Court.

P.2. KOFI KURAN : s.a.r.b.

BY COURT : The railway stretches about three miles over my land. It took about a year to construct. I complained to the constructor of the railway about compensation as soon as work on the line began. The procedure is for the District Commissioner to invite claims for compensation. I was away for about four months when work on railway began and in my absence my representative made no claim, but I made a claim immediately I returned to the Officer in charge of the construction. 30

No. 8.  
Yaw  
Mireku.  
3rd Witness.  
7th March  
1950.

Examina-  
tion.

No. 8.

Yaw Mireku.

P.3. YAW MIREKU : s.a.r.b. :

I am a farmer and the Odikro of Ahwiaso. I know a place called Nkwantanum. I founded it about twenty years ago with the permission of P.2. I cultivated there a cocoa farm. I am the only cocoa farmer there but others cultivate generally at the same place. I farm on the Ebusa system



whereby 1/3 of profits from farming is paid to P.2 as tribute. The Defendant has never disturbed me or made any claim for tribute.

In the Supreme Court.

10 XX: I am an aborigine of the Denkyire State. My family made me Odikro, not P.2. I was then introduced formally to P.2, and am his Odikro. Subjects of a Chief do not pay ebusa, only strangers. My predecessors were not aborigines of Nyanawosu division of Denkyire. Any Denkyire man can cultivate without paying Ebusa, but in the rubber boom P.2 demanded Ebusa. Ebusa was not paid in respect of cocoa. I agree that a subject does not pay Ebusa whatever crop he farms. I am not a subject of P.2's Stool. My Chief is called Atta living at Jukwa which is also in Denkyire State. I am a Gyase of the Omanhene or Denkyire, that is to say one of his bodyguard. I have heard of the Oath Fida Na of Denkyiremain. I do not know its origin.

Plaintiff's Evidence.

No. 8. Yaw Mireku. 3rd Witness. 7th March 1950—continued.

20 I do not agree that Essein founded Nkwantanum. It is only recently he went there. He has now left and put no one in his place. Ewusi was the successor of Essien and died recently. Essien had a rice plantation, but I don't know if he also cut timber. When Essien came it was I who introduced him to the Plaintiff. Essien paid no Ebusa or tribute to me and neither did Ewusi. I don't know if Essien paid Ebusa to Plaintiff. I do not know the boundary between Plaintiff and Defendant. Before 1917 litigation I knew of no trouble between Plaintiff and Defendant. I said in the 1945 action in Native Court now the subject of this trial that the Defendant's sister once interfered with my right of cultivation by felling down the trees and farming on my land. I am positive that Nkwantanum belongs to the Plaintiff.

Cross-examination.

RE-XD.: The Plaintiff gave Essien licence to farm.

Re-examination.

30 BY THE ASSESSOR: I have been on this land, Nkwantanum for twenty years. It was improper for the Defendant's sister to challenge my right so I reported to the Plaintiff. The Defendant throughout my twenty years occupation has never asked for tribute or made any other demand. It was about six years ago that the sister trespassed on my land, and Plaintiff said he would take proceedings against Defendant.

No. 9. Akwesi Fynn.

No. 9. Akwesi Fynn. 4th Witness. 1950.

P.4. AKWESI FYNN: s.a.r.b.

Am a farmer and came from Ashanti to Denkyire State and settled at Epunpun many years ago before the Yaa Asantewa War (2nd Ashanti Expedition—1900-1901) when I was a child. My predecessors acquired the land and founded several villages, namely Japokrom and Budchikrom in Epunpun land. We first carried on the tapping of wild rubber and paid

Examination.

In the Supreme Court.  
Plaintiff's Evidence.

Ebusa tribute to the Plaintiff's predecessor Sebbeh. When cocoa industry was introduced we engaged in it in the same area on the Ebusa system. Throughout our occupation the Defendant has never disturbed us. Budchikrom is named after Budchi, my great-uncle who is now dead. Japokrom was founded by my father Kwesi Japo.

No. 9.  
Akwesi Fynn.  
4th Witness.  
7th March 1950—  
*continued.*

XX : I do not know a chief called Tuafo Aponsah but his name was mentioned by the Defendant in the 1945 Native Tribunal litigation. I did say in the 1945 litigation that one Amponsah occupied another area also called Epumpum. I have not heard that a slave of Tuafo Aponsah killed any elephant on any part of Epumpun lands. I never heard of Trepusu. 10  
It may have been when I returned to Ashanti about 8 years after my arrival that it was founded. I last went to Japokrom 8 years ago. Both Japokrom and Budchikrom were abandoned in 1910 approximately. Budchikrom comprised originally a good many houses. I don't know the boundary between the Plaintiff and the Defendant.

Cross-examination.

Re-examination.

RE-XD. : Although Japokrom and Budchikrom are deserted my farms there are still being cultivated and I operate them from Nyinawonsu.

No. 10.  
Kojo Ewua.  
5th Witness.  
7th March 1950.

No. 10.  
Kojo Ewua.

P.5. KOJO EWUA : s.a.r.b.

20

Examination.

I am a farmer living at Nyinawonsu and I have a cocoa farm in Twiapiase lands. I succeeded my uncle who first made a farm there long before the 1914/18 War. He obtained permission to settle from Plaintiff's predecessor Sebbeh. I succeeded my uncle about 30 years ago. I founded Kojo Ewua village, the one near Kwame Donkor. I know Abochikrom, it was founded by Abochi. My uncle and myself do not farm on the Ebusa system but we help Plaintiff in finance when he is involved in litigation. The Defendant has never interrupted my possession.

Cross-examination.

XX. : I am a Denkyire man. I am a nephew of the Plaintiff I know the Fida Na Denkyiremain Oath but I do not know its origin. Up to 1917 the Plaintiff and Defendant were on friendly terms to the extent that Plaintiff's elder brother married Defendant's sister. At that time the subject of the Plaintiff did not settle on the Oboasi war. I was about 6 years old in 1900. I heard of Tuafo Aponsah, a chief who lived in Epumpum land but I don't know him. I have not heard that a slave of Aponsah killed an elephant on Epunpum land. I have not heard that when gold was found near Ennikaw-kaw stream it was shared between Defendant and the Omanhene of Denkyire I know of the 1917 litigation. In 1920 I remember certain Ntima people were granted permission by Yaw Mensah, Plaintiff's predecessor, to cut timber, and Defendant sent persons to drive them away. The Plaintiff gave 40

permission to Government to construct part of the motor road, but I do not know which part.

Johnson of Mengel has been cutting timber for twenty years. I do not know who gave him permission. I know Briscoe Ltd. have also been cutting timber there for about fifteen years. The Plaintiff complained about the matter. Trepusu village is a big village but I don't know the number of huts. This village is on land belonging to Plaintiff and the villagers pay tribute to the Plaintiff. I have heard that Chief Anyimadu of Kudi Appiah claimed to have boundary with the Plaintiff at the stream  
 10 Dan-Nyami stream at the Ajowina. The Kudi Appiah people won the case. I know Essien and his nephew Ewusi. The latter died a few months ago but he was not buried by Defendant.

In the Supreme Court.

Plaintiff's Evidence.

No. 10. Kojo Ewua. 5th Witness. 7th March 1950.

Cross-examination—*continued.*

RE-XD.: The Plaintiff gave Essien permission to farm on the land. By the time Ewusi came into possession the dispute had arisen. The Kudi Appiah dispute about land has nothing to do with the land in this case. The Epunpun on which Aponsah lived is not on the land now in dispute. It is on the South and is not claimed by Plaintiff.

Re-examination.

No. 11.

Kobina Nketia.

20 P.6. KOBINA NKETIA : s.a.r.b.

I am a farmer living at Nyianawonsu and cultivate foodstuffs farm. I cultivate on Kobina Nketsia village. I farm with permission of the Plaintiff on the Ebusa system. The Defendant has never interrupted my possession. I founded the village.

No. 11. Kobina Nketia. 6th Witness. 7th March 1950.

Examination.

Xx.: I am an Ashanti man and husband of the Plaintiff's niece. There is only my hut in Kobina Nketsia village. There has always been only one hut.

Cross-examination.

No. 12.

Alibi Dawuda.

30 P. 7. ALIBI DAWUDA : s.o.k.

I am a farmer living at Nyinawonsu and farm at Nyamibekyire which I founded about twenty years ago. The Defendant has never interrupted my occupation. Plaintiff gave me permission to settle there but I only contribute towards stool debts and am not on the Ebusa system.

No. 12. Alibi Dawuda. 7th Witness. 7th March 1950.

Examination.

In the  
Supreme  
Court.

Plaintiff's  
Evidence.

No. 12.  
Alibi  
Dawuda.  
7th Witness  
7th March  
1950—  
*continued.*

Cross-exam-  
ination.

**Xx. :** I am a native of Denkyire State and a subject of Plaintiff. Throughout my occupation there has been litigation between the Plaintiff and Defendant. The Defendant drove from the land the people to whom Yaw Mensah gave permission to cut timber.

Adjourned to 8.3.50.

(Sgd.) H. M. W.-AUBREY,  
*J.*

7.3.50.

No. 13.  
Kofi Antwi.  
8th Witness.  
8th March  
1950.

Examina-  
tion.

Cross-exam-  
ination.

**No. 13.**

**Kofi Antwi.**

10

**P. 8. KOFI ANTWI : s.a.r.b.**

I am a farmer living at Nyinawonsu. I know the Plaintiff and I farm at Adiembrea in Twiapiasi land. I founded the village about four years ago with the consent of the Plaintiff. I farm on the Ebusa system. The Defendant has never interrupted or disturbed my possession. I farm foodstuffs.

**Xx. :** I am an Ashanti and not a native of Nyinawonsu to which I came four years ago. I did not hear of litigation between Plaintiff and Defendant on my arrival in Denkyire State. I am married to Plaintiff's niece. The Defendant questioned me about the land and swore the Fida Na Denkyire-main Oath. I begged him to let me remain on the land until Plaintiff returned from Cape Coast.

20

No. 14.  
Kojo  
Tinyasie.  
9th Witness.  
8th March  
1950.

Examina-  
tion.

**No. 14.**

**Kojo Tinyasie.**

**P. 9. KOJO TINYASIE : s.o.b.**

Am a cocoa broker living at Framin. I know the Plaintiff who granted a portion of his land to my predecessors on Kuchiryeyansa land at a village of the same name. My predecessors carried on gold mining and dug a shaft there, paying tribute to the Plaintiff on the Ebusa system. This was a long time ago. I believe about sixty years ago. My predecessors also farmed there on the Ebusa system. My people have now left the place and the land has been reverted to the Plaintiff. My predecessors were never interfered with by the Defendant.

30

Xx. : I am a native of Denkyire State in the Framin District. When the 1914 war started I was 10-12 years old. My first ancestor was Kofi Akwesi Koor. I have never lived myself on Kachiryeyansa land. I have stated what my ancestors told me. It is about three days' walk from Framin to Kachiryeyansa. I have passed through Kachiryeyansa and people have pointed out where my ancestors lived. A predecessor called Koter pointed out the place to me. I know Chief Anani of Abonu Wassaw Amenfi but I have not heard of a timber concession granted by this Chief and the Defendant to Mengel Company. I have passed through the land during 1939-1945 war. I saw no timber being cut. There is a motor road from Dunkwa to Nyinawonsu. I saw it in the course of construction. I do not know who got compensation for the road. In 1917 I lived at Jukwa and heard of litigation between the predecessors of Plaintiff and Defendant. I did not attend the tribunal.

In the  
Supreme  
Court.

Plaintiff's  
Evidence.

No 14.  
Kojo  
Tinyasie.  
9th Witness.  
8th March  
1950—  
*continued.*  
Cross-exam-  
ination.

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No. 15.

**Kobina Mina.**

P. 10. KOBINA MINA : s.o.b.

I live at Biani and am a timber contractor. I have known the Plaintiff for a very long time. I also know Yaw Mensah. The Defendant I have also known for a long time. About 30 years ago I went to Nyinawonsu and bought trees for timber cutting from Yaw Mensah. I paid £50. I operated the area between Nyinawonsu and Apunpum stream for about 1 year. The Defendant sent his people and drove us from the area. I saw the Defendant who asked me to pay a similar sum of £50 which I did. The Defendant said there was litigation between him and the Plaintiff over the land and if he failed he would repay the £50. The Defendant lost the case and refunded my £50. I continued my timber operations.

No. 15.  
Kobina  
Mina.  
10th  
Witness.  
8th March  
1950.

Examina-  
tion.

Xx. : I am a Nzima from Nkrofum. I was not present when judgment was delivered. I deny the Defendant was charged because he sent an Asafu (company) with guns and cutlasses. The case was for a declaration of title.

Cross-exam-  
ination.

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No. 16.

**Kwesi Ayirekwa.**

P. 11. KWESI AYIREKWA : s.o.b.

I am linguist to the Omanhene of Denkyire State and live at Dunkwa. I know Plaintiff and Defendant. I have heard of Yaw Mensah. I know Kojo Tsibu a former Omanhene of Denkyire State. I know the land in dispute and I know Johnson who carried on timber work. Plaintiff took

No. 16.  
Kwesi  
Ayirekwa.  
11th  
Witness.  
8th March  
1950.

Examina-  
tion.

In the  
Supreme  
Court.

Plaintiff's  
Evidence.

No 16.  
Kwesi  
Ayirekwa.  
11th  
Witness.  
8th March  
1950—  
*continued.*

Cross-exam-  
ination.

an action against Defendant over timber operations. I was sent by Court with others to demarcate the boundary between Plaintiff and Defendant over twenty years ago. The Plaintiff and Defendant each deputed three persons to accompany us. At Kuranti-Pond both sides agreed the pond belonged to Plaintiff and we started from this point cutting a track but the following morning the Defendant's followers stopped us and we left and abandoned attempts to demarcate boundary.

**Xx.** : I have been linguist for 22 to 23 years. I am one of the linguists. The Fida Na Denkyiremain oath has been heard of by me but I do not know its origin. Before the 1900 Ashanti war the Denkyire State held sway from Ashanti to the Coast, so I have heard, I did not hear the Ashanti defeated the Denkyire at Faise. I have heard that the Plaintiff's predecessor granted land to the Omanhene of Denkyire in which to settle at Ntwam. I do not know if the Stool of Nyinawonsu was formerly at Nkyease-Afija. I was not a member of the native tribunal in the timber case. I told Native Court I could not give a description of the boundaries between Plaintiff and Defendant. 10

No. 17.  
Edu Kofi.  
12th  
Witness.  
8th March  
1950.

Examina-  
tion.

**No. 17.**

**Edu Kofi.**

**P. 12. EDU KOFI : s.a.r.b.**

20

I am ex-chief of Mirikyisu in Denkyire State. I know Plaintiff and Defendant. I know Nkwantabisa III who followed Kojo Isiabin the Omanhene of Denkyire State. During his time there was litigation between Plaintiff and Defendant and he appointed me to demarcate a boundary and we started operations near Kuranti in the presence of the Defendant's representative but he objected and stopped us.

No. 18.  
Kojo  
Anyimadu.  
13th  
Witness  
8th March  
1950.

Examina-  
tion.

Cross-exam-  
ination.

**No. 18.**

**Kojo Anyimadu.**

**P. 13. KOJO ANYIMADU : s.a.r.b.**

30

I am the Chief of Nkasawura and know the Plaintiff and the Defendant. My headquarters are at Abra. My land has a common boundary with Plaintiff. My boundary with the Plaintiff is the Ofin River junction with the Dan Nyani stream. The stream being the boundary.

**Xx.** : I also have a common boundary with Defendant. I brought an action against Kudi Appiah for land on both sides of the Dan-Nyami stream and lost the action as regards the land north of the stream. In the

same action I invited Defendant to fix boundaries with him and we fixed the Chiribra stream as our boundary. This happened about twenty years ago. This is not so. (About  $\frac{3}{4}$  hour spent in attempting to clarify the witness's evidence and the position becomes more and more obscure.)

I now say the land south of the Dan-Nyami belongs to Kudi-Appiah as far as Fianwura. I form boundary with the Defendant at Chiribra. I do not form boundary with Defendant along the whole of Chiribra, but only from point where the motor lorry crosses the Chiribra. I have no boundary with the Plaintiff.

10 RE-XD. : Anwianwia is on the southern side of the motor road starting from Abra.

BY COURT FOR WILLIAMS :

In the litigation between my predecessor and Kudi-Appiah a plan was produced.

In the Supreme Court.

Plaintiff's Evidence.

No. 18. Kojo Anyimadu. 13th Witness. 8th March 1950—  
*continued.*

Re-examination.

No. 19.

Counsel's argument objecting to the admission of Exhibit 2.

20 Benjamin tenders in evidence a record which purports to be a certified copy of the case of *Yaw Mensah* versus *Kwame Kwanin* tried in the Native Tribunal of Jukwa in 1920. This judgment was pleaded in the Statement of Claim. The judgment forms part of the record of appeal in this case in respect of which this retrial was ordered. The authenticity of the judgment was not questioned at the hearing of the appeal.

30 Williams objects. Excepting by consent the proceedings of a former case, including the judgment cannot be put in evidence. This Court set aside the whole proceedings and referred parties to appropriate Native Court, then Defendant applied for a transfer for the hearing of this case by Land Court and trial *de novo* ordered. The effect of *de novo* trial is to expunge whole previous record. Cites *Kobina Anya v. Cudjoe Attah*, 1874-1928 Privy Council cases at page 47. The judgment is of a criminal nature and not admissible. Also cites *Kweku Mensah v. Kwamina Akotsia and another*, G.C.L.R. 1926-29, page 126. Also cites *Hollington v. F. Hurthorn & Co. Ltd. and another* 1943 K.B.D., page 587.

Finally certainty cannot be tendered as an estoppel.

BENJAMIN IN REPLY :

Judgment is not pleaded as an estoppel.

Adjourned to 9.3.50.

(Sgd.) H. M. W-AUBREY.

8.3.50.

No. 19. Counsel's argument objecting to the admission of Exhibit 2. 8th March 1950.

In the  
Supreme  
Court.

Court's Ruling on Objection.

No. 20.  
Court's  
Ruling on  
Objection.  
9th March  
1950.

IN THE SUPREME COURT OF THE GOLD COAST, LANDS DIVISION, CAPE  
COAST, Thursday, the 9th day of March, 1950, before Mr. Justice  
Windsor-Aubrey.

CHIEF KOFI KURAN ... .. Plaintiff

v.

CHIEF KWAME KWANIN ... .. Defendant.

Counsel as before. Assessor present.

RULING :

10

It is first objected that the judgment is inadmissible as it is not properly certified. The judgment forms part of the record in this case, and has not hitherto been questioned. In my opinion, in the circumstances, of this case, it must be assumed as *prima facie* correct, having been sent officially to this Court by the Native Court.

The parties are natives, and the Court is enjoined to exercise substantial justice without undue regard to technicalities. It would be carrying technicalities to an absurd extreme to reject the judgment.

As to its relevancy I do not propose at this stage to determine whether it operates as *res judicata* in respect of part of land in dispute, though at the moment I much doubt if it does. It is clearly relevant on other grounds also, namely first to prove the consistency of conduct and credibility of the Plaintiff in claiming the land to which the judgment refers and to rebut any suggestion that the Plaintiff is making this claim as an after-thought. Secondly it is relevant to prove that the Native Court has held that the Defendant has acted wrongfully in relation to the land.

I have considered the case of *Hollington v. F. Hurthorn & Co., Ltd.*, and consider it is not in point. The judgment says in effect that a conviction for careless driving, a proceeding between a Crown and a subject, is not admissible in a civil action for negligence between a person and the convicted person, as evidence of negligence. I respectfully agree, but the judgment does not say that the proof of conviction would be inadmissible or otherwise relevant. I have given my reasons already for some of the grounds on which the judgment of the Native Court is relevant. The objection is over-ruled. (Judgment admitted and marked Exhibit "2.")

Benjamin now asks to put in Concession Enquiry No. 2264 Cape Coast contained in Gazette No. 41 of 1936. Counsel for Defendant agrees if the area mentioned is proved to be part of the area in dispute he cannot oppose its admission for what it is worth. Benjamin states he will call Mr. Selby, Surveyor, of Cape Coast, to project area on plan. Leave given to Benjamin to call Mr. Selby after defence opened.

Close of Plaintiff's case.

Defence opened :



No. 21.  
Jonathan W. Amuah.

In the  
Supreme  
Court.

D.1. JONATHAN WESTFORD AMUAH : s.o.b.

I live at Cape Coast and Registrar at Abuna. In 1937 I was a licence letter-writer and the Registrar brought me the 1917 proceedings between Sebbeh and Kofi Fori, predecessor of Defendant to type and I made a true copy. This is the certified copy I made.

Tendered, objected to by Plaintiff.

10 Benjamin objects to admission as the certified copy was not made by a Court official. State in any case only judgment admissible. Court admits record as *prima facie* evidence of decision made but instructs Court Clerk to wire Registrar of Native Court Dunkwa to transmit certified copy of proceedings and judgment.

Admitted, marked Exhibit "A."

Defend-  
ant's  
Evidence.

No. 21.  
Jonathan  
Westford  
Amuah,  
1st Witness.  
9th March  
1950.

Examina-  
tion.

No. 22.  
Kwame Kwanin—Defendant.

No. 22.  
Kwame  
Kwanin.  
Defendant.  
9th March  
1950,

D.2. KWAME KWANIN : s.a.r.b.

20 I am the Chief of Denkyire-Oboasi and the Defendant. I am an aborigine of Denkyire State and so were my ancestors. I am the Twafohene of Denkyire State. My first ancestor's name is Bua Kurpa, he was succeeded by Nowu Essare, then by Kono Appiah, then by Buaku Nlin, then Adjei Pangin, then by Adjei Tia, then by Adjei Korkor, then by Kojo Amankwa, then by Kojo Tinkorang, then by Kobina Assabire, then by Kojo Asam, then by Kweku Abuagie, then by Kofi Fori, and then myself. The first settlement of my ancestors was Nkanwina I. We then went to Nkawina II and then to Oboasi I, then Oboasi II, then the present settlement Oboasi III. We moved from Oboasi I when the Ashanti invaded our area. The Plaintiff's ancestors originally lived at Nkyease-Afija. I know the Fida Na Oath introduced after the Ashanti war when the Denkyire were 30 defeated. All Chiefs in Denkyire know the Oath. The boundary between myself and Plaintiff was pointed out by me to P.I. My boundary runs Afeifi-Subinsu-Aborkoe Tree-Kobresu-Adikrom-Kuranti-Akumfuna. All these places are on an old footpath used by Kojo Tsiabu and the rest of my boundary follows this footpath. From Ahumfuna-Kunkuntrey, a hill,—Kutreku Bippo-Dan-Nyami stream at its junction with Ajowura along bank of Chiribra. Coming southwards Kudi Appiah and Anyimadu are on my left. This boundary has never been altered. It is true that I stopped Ayirekwa cutting a boundary from Kuranti because he had no judgment or document setting out the boundaries. Up to 1917 I and Plaintiff lived

Examina-  
tion.

In the  
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Court.

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ant's  
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No. 22.  
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Kwanin,  
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9th  
March  
1950—

Examina-  
tion—  
*continued.*

peacefully and my sister married Plaintiff's elder brother and up to then I never objected to his followers coming on to my land. The land I claim south-west of the motor road, from Chiribra and Fimikawkaw belongs to myself and Chief Abonu. We have leased this land to Mengel Company, by an agreement dated 21st February, 1928. They paid £700. It was subsequently leased to Briscoe. This agreement was made with the consent of the Omanhene (Paramount Chief who was also a party). The £700 was divided equally between myself and Chief Abonu, and I gave one third of my share to the Omanhene. No one raised any objection. When I gave Briscoe a timber concession the Plaintiff raised objection and I complained 10 to the District Commissioner named Hansdul but my lease was confirmed by D.C. and I and Abonu received the rent. It was after this in 1945 the Plaintiff instituted proceedings in the Native Court. A motor road was constructed by Government from Dunkwa to Oboasi and compensation was paid to me amounting to £70. Plaintiff got no compensation. Plaintiff constructed the road from Oboasi to Nyinawonsu up to the point where it joins the Oboasi-Dunkwa road at the P.W.D. camp. I know nothing about the compensation. All the road from Nyinawonsu to P.W.D. camp is mine. I received compensation for the railway line passing over the land I claimed together with Abonu. In the 1945 litigation Abonu gave evidence on my behalf. On the Ennikawkaw river there is an alluvial gold-working and my predecessor shared the gold with the Omanhene. Plaintiff's predecessor never objected. I know the Epunpun lands. They were first owned by Tuafu Amponsah a sub-Chief of my predecessor who made a foodstuff farm. During his time an elephant was killed on the land by a slave and one of the tusks was retained by my predecessor and used as a ceremonial horn for blowing to be held in the land and I still have it. It is about three feet long. The elephant was only a small one. T. Amponsah lived on Twapiasi lands. The Plaintiff's brother who married my sister has a farm there now being a brother-in-law he pays no Ebusa but all strangers on the land do. My 30 subjects contribute to stool litigation but do not pay Ebusa. Krupa, a blacksmith, Akwesi Saigoe, Akwesi Adin are strangers on the land in dispute who pay tribute. Japokrom was founded by an Ashanti man called Japo. It is a hamlet. Budchikrom is also a hamlet it was founded by an Ashanti called Budchi. Both came from Nyinawonsu. The land belongs to me. I know Trepusa village which was founded by T. Amponsah's son. The people (sic) there are cocoa farmers but being subjects pay *us* Ebusa. Essiem founded Nkwantanum with my personal consent. He gave rum for permission. That is all he paid as he did not stay long. Ewusi, a relative of Essiem then came to settle there and grew rice, giving me rum. He is dead now. Plaintiff 40 never disturbed these persons. Affulkrom was *founded* by Afful a native of Oboasi. From 1920 I have been resisting Plaintiff's claim.

Cross-exam-  
ination.

XX : The whole of Offin river belongs to the Plaintiff. It is the ancient boundary between Ashanti and Denkyire. Kojo Tsibu when he fled after the Ashanti war went to Jukwa. At this time Plaintiff settled at Nyinawonsu which has never been my property. I was then already settled at Oboasi and until Plaintiff's predecessor came the land was unoccupied

although even then it formed part of Plaintiff's land. The footpath used by Kojo Tsibu existed long before he passed by on his flight south. I pointed out our original settlement Nkwasein to P.1. I agree that there is a footpath along the whole boundary claimed by Plaintiff, but it is not an old one. It must have been cut out about the time P.1 made his plan.

Adjourned to 10.3.50.

(Sgd.) H. M. W-AUBREY,  
9.3.50.

10.3.50  
10 Xx. : (contd.)

Annikrom, Appiahkrom and Mponpo villages which I claim are all near the railway line which was constructed during the last war. These villages were founded when the railway was constructed. Before the railway there were hunting camps and one hamlet named Mponpo the Mponpo near Finyami stream and not in the area claimed by the Plaintiff. Trepusu belongs to me and Kwabina Saada is the Odikro or headman. I did not know Saada paid £6 per annum land tax. I have not told him that he must not give evidence for the Plaintiff. I do not know that people at Trepusu pay tax to the Plaintiff. The marriage of my sister to Plaintiff's brother was about 40 years ago. No agreement was made between Plaintiff and my Stool or myself in respect of the land in dispute as a result of the marriage. I did not collect taxes on all the villages claimed by the Plaintiff because I did not know people had settled there. I gave evidence before the Native Court at Dunkwa in 1945 and said I have cocoa farm from Kunkuntri to Twiapiasi. I also said I do not claim tribute from Kunkuntri to Twiapiasi. It is correct Plaintiff had used this area long before this litigation. I said the cocoa farm at Epunpun do not yield better crops to induce me to collect tolls from them. I have also not collected tribute from people settled on Epunpun lands. The people occupying the area Kunkuntri Twiapiasi and Epunpun are all people from Nyinawonsu and Ashanti. They are not my people. The road Nyinawonsu—P.W.D. camp was constructed about twenty five years ago. It is still in use. The Plaintiff built this road as it helped communications between my Stool and the Plaintiff's. There was litigation in 1920 between Yaw Mensah and myself in respect of the land. In 1917 there was a dispute between my Stool and the Plaintiff. My Stool won but no boundary was laid down. (Note—at request of Williams who says Court is confusing the two judgments of 1917 and 1920.) The litigation in 1917 was partly in respect of land now in dispute and partly in respect of other land. The 1917 litigation included the two deserted Oboasi villages and land west of them. I granted timber rights to Johnson and the camp site was selected by me. I agree that the site I chose is right on the boundary claimed by Plaintiff. The D.C. made an inquiry *re* railway line in his office, not in Court. We came in response to notices issued by the D.C. The Plaintiff was not present at the enquiry. This land belongs to myself and Ebonu in common. Ebonu is the Chief of the Wassaw. Formerly Ebonu also lived at Nkawiana but a dispute

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10th  
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Cross-exam-  
ination—  
*continued.*

In the  
Supreme  
Court.

Defendant's  
Evidence

No. 22.

Kwame  
Kwanin,  
Defendant.  
10th  
March,  
1950.

Cross-exam-  
ination—  
*continued.*

Re-exam-  
ination.

Examina-  
tion by  
Assessor.

occurred and he moved south to Wassaw and we both hold all our land in tenants in common, consequently there is no boundary between the Wassaw and the Denkyire State. It is correct that the D.C. held an enquiry *re* the railway land. The D.C. did not hold an enquiry, the construction engineer held an enquiry. During the course of the construction the Plaintiff made no claim for compensation. In respect of motor road made by the Government no enquiry was held. The constructing engineer paid the compensation to me. The Plaintiff was not present when I negotiated compensation for motor road. The Plaintiff did not object to the Johnson timber concession. However in the case of Briscoe concession the Plaintiff complained to me. The two concessions are quite near each other. It was Essien not Dauda who founded Nkwantanum. A sub-chief may, according to native custom, grant part of his land to a Paramount Chief. 10

RE-XD. : Before judgment was given in the 1917 case the Court sent a party to inspect the land and measure. Correspondence passed between the D.C. and the Omanhene of Denkyire about the railway compensation.

BY ASSESSOR : I have been on the Stool for thirty years. I know the customary law of land tenure. I know all my boundaries. If a stranger works on one's land no objection is raised where a marriage relationship exists with the neighbouring Chief from which area the strangers came. The Plaintiff's Stool is quite distinct from mine. I would not allow Plaintiff to remove gold from my land. I only exercise my customary rights where timber or gold or other valuables are moved from the land. 20

The Bench in the 1945 litigation were all Denkyire men and aware of their customs.

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No. 23.

Kofi Nimako.

No. 23.  
Kofi  
Nimako.  
3rd Witness.  
10th March  
1950.

Examina-  
tion.

D. 3. KOFI NIMAKO : s.o.b. 30

I live at Dominase the Chief of which is Kudi Appiah. It is in Denkyire State. I am here representing Kudi Appiah to whom I am the linguist. I know Defendant. Kudi Appiah has a boundary with Defendant. On the north there is the Dan-Nyami stream which joins the Ajowure stream. The meeting point is our boundary. The Ajowure flows into the Chiribra stream. We occupy the eastern side of the Chiribra stream and the Defendant is on the West side. We litigated with Kojo Anyimadu about land on the south side of Dan-Nyami. Dudi Appiah won. Mr. Selby made the plan in that case. We also have a boundary with the Plaintiff at the junction of the Ajowure-Dan-Nyami stream. The Dan-Nyami flows to the south. 40

**No. 24.**  
**Kobina Mento.**

In the  
Supreme  
Court.

D. 4. KOBINA MENTO : s.o.b.

Defend-  
ant's  
Evidence.

I live on Defendant's land outside the area in dispute. I know the Ennikawkaw stream. We hunt there and if game is killed a leg is sent to Defendant. I don't know Kenkiyeyensa. We hunt south of the railway. There is a hunting camp at Bippo-Oasi it is near Ananikrom. It is about  $\frac{1}{4}$  mile south of Ananikrom. We tap rubber at the same place. I know Kudi Appiah. Defendant has a boundary with him at Chiribra stream. 10 Kudi Appiah is on the Eastern side of the Chiribra. Johnson had a timber concession and permission to cut was given by Defendant.

No. 24.  
Kobina  
Mento.  
4th Witness.  
10th March  
1950.

Examina-  
tion.

Xx. : I only heard that timber rights had been given by Defendant. I do not know the boundary between Plaintiff and Defendant. According to native custom one can hunt on the land of another Stool. We built the villages by Ennikawkaw.

Cross-exam-  
ination.

RE-XD. : Strangers who tap the rubber pay Ebusa to the Defendant.

Re-exam-  
ination.

**No. 25.**  
**Kweku Dantsi.**

No. 25.  
Kweku  
Dantsi.  
5th Witness.  
10th March  
1950.

20 D. 5. KWEKU DANTSI : s.a.r.b.

I am linguist to the Chief Abonu of Wassaw State. I know Defendant. There is no boundary between Defendant and Abonu. I know a timber concession was granted to Johnson for £700 which was paid to Defendant and Abonu. Subsequently a timber concession was granted to Briscoe. The lorry road Dunkwa-Oboasi was constructed with Defendant's permission. We fish in the Ennikawkaw stream. No one has interrupted us. I myself fish there. We only fish on that portion of the Ennikawkaw which is in Defendant's land.

Examina-  
tion

Xx. : I do not know the Defendant's boundary with the Plaintiff. 30 Abonu is a common tenant with Defendant. Abonu does not know the land in dispute. The common land to Defendant and Abonu is on both sides of the motor road. According to native custom any native can fish in any stream.

Cross-exam-  
ination.

Adjourned to 13.3.50.

(Sgd.) H. M. W.-AUBREY,  
10.3.50.

Plaintiff's  
Evidence. 13.3.50.

No. 26.  
Ekow  
Selby.  
14th  
Witness  
13th March  
1950.

P. 14. EKOW SELBY : s.o.b.

I am a Licensed Surveyor stationed at Cape Coast. I was first licensed in 1926 and have done frequent surveys for the Court. In 1938 I filed a plan in this Court in the case of *Kudi Appiah of Breman v. Chief Kofi Bissa of Nkasawura*. To make this survey I went to the streams of Dan Nyami, Chiribra and Ajowura which I see marked on Exhibit "1." 10  
I surveyed these streams with Kudi Appiah.

Examina-  
tion.

QUESTION : Did Kudi Appiah say that the Chiribra represented the boundary between himself and any other Chief ?

Benjamin objects on the ground (1) The Plaintiff not present and evidence is hearsay. (2) The Statement was made by Kudi Appiah in a suit to which Plaintiff was not a party. Cites *Koom v. Awortwi*, 1926-1929 Gold Coast Law Reports p. 409 at page 414. Witness is endeavouring to give oral evidence of a plan which is itself inadmissible under this decision.

WILLIAMS IN REPLY : Witness has been to *locus in quo*. He is giving evidence of his knowledge of the three streams. The Court was disinclined 20  
to accept Kudi Appiah's evidence. Cites 10th Edition Powell on Evidence, p. 106-107 on question of unity of origin or antiquity of land in dispute. (2) Also Vol. 7 E. & E. Digest p. 311, p. 316.

Objection upheld.

Cross-exam-  
ination.

Xx. : Concession Enquiry 2264 Cape Coast is in respect of land commencing at the confluence of the Dan-Nyami stream and the Ofin upstream the Ofin River to the confluence of the Ahumfuna stream with the Ofin river then upstream the Ahumfuna for a distance of half mile. Thence along a line in a South-easterly direction and parallel to the Ofin River to a point in the Dan-Nyami stream half a mile from the confluence of the 30  
Dan-Nyami and the Ofin River thence along the Dan-Nyami to the point of commencement. I have pointed out this area to the Court on Exhibit "1." I cannot locate the concession 2265 of Cape Coast on the Exhibit "1." (Gazette No. 41 of 1936 p. 513 concession 2264 tendered in evidence, marked Exhibit "3.")

By Court

BY COURT : I now look at Exhibit "A" page 48. It refers to a measurement of 486 yards. From Oboasi (1st deserted) a distance of 486 yards measured horizontally from West to East just reaches the green line Exhibit "1." From 2nd Oboasi line in the same direction of same length passes the boundary coloured green for a distance of three 40  
hundred yards. (Point marked by witness on Exhibit "1" with a red mark thus "Y" and distance inserted in red ink figures. A distance of three-quarter of a mile from 1st Oboasi to the Asribusu stream going direct to Kofi Kwin-Krom and thence along the footpath joins the Asribusu

stream at the green boundary lines. A distance of 737 yards from 1st Oboasi in the direction of the Kuranti Pond will again just touch the green boundary line.)

RE-XD. : I cannot state whether concession Enquiry No. 2264 was certified as valid by the Court. I know from experience that Chiefs frequently grant land which does not belong to them. I have never surveyed the area in the 1917 case. My measurements have been taken only from the judgment.

In the  
Supreme  
Court.

Plaintiff's  
Evidence.

No. 26.

Ekow  
Selby.  
14th  
Witness  
13th March  
1950—  
*continued.*

Re-exam-  
ination.

No. 27.

10

Kwame Kwanin, Defendant—recalled.

Defend-  
ant's  
Evidence.

No. 27.

D.2. KWAME KWANIN : s.a.r.b. : Recalled with leave of Court :

I produce the elephant tusk to which I have referred (Tendered, admitted, marked Exhibit " B.")

Kwame  
Kwanin,  
Defendant  
—recalled  
13th March  
1950.

No. 28.

Kwesi Saigoe.

No. 28.  
Kwesi  
Saigoe.  
7th Witness.  
13th March  
1950.

D.7. KWESI SAIGOE : s.o.b.

I am a native of Komenda in the Elmina district. About 25 years ago I went to Defendant's division of Oboasi. I went there as a sawyer and worked as such for 5 years. I cut timber in Johnson's timber area. The Defendant gave permission. The timber when cut is sold on the site. During the time I knew the Plaintiff. He never came to interrupt us. After five years I made a farm obtaining the Defendant's permission. My farm is from the direction of Johnson's camp towards Ananikrom. About five of us farmed separate farms. My farm was north of the railway line. Those who farmed near me were Kojo Kurpaa, Yaw Ayiboe, Kofi Poku, amongst others. Kofi Poku farmed rice and corn as also Yaw Ayiboe. I saw other farms belonging to Defendant—cocoa farms—in the same area. My farm and the Defendant's are still there. Plaintiff has never interfered with my farming. I know Essien. He lived at Nkwantanum ; he was farming there with Defendant's permission. He left and his nephew Ewusi farmed in his place but he died lately. Plaintiff never interrupted Essien or Ewusi. I

Examina-  
tion.

In the  
Supreme  
Court.

Defend-  
ant's  
Evidence.

No. 28.  
Kwesi  
Saigoe.  
7th Witness.  
13th March  
1950.  
Examina-  
tion—  
*continued.*  
Cross-exam-  
ination.  
Re-exam-  
ination.

farmed on the Ebusa system. I know Briscoe who also cut timber. I went to Oboasi division before the Dunkwa-Oboasi road was constructed. Plaintiff never obstructed Johnson or Briscoe. I saw the railway being constructed. The Plaintiff never came to prevent the construction. Affulkrom was inhabited when I first knew it.

XX. : I was not subpoenaed to give evidence in this case. I was asked last Saturday to give evidence. I do not know the names of any villages along the railway line. I know when Ananikrom was established. I did not point out any farm to the surveyor. I was not asked to go. The Defendant never told me the land was going to be surveyed. The area 10 where I cut timber is heavily forested.

RE-XD. : I can show the Court my farm and also the Defendant's farm.

Adjourned to 14.3.50.

(Sgd.) H. M. W-AUBREY.  
13.3.50.

No. 29.  
Kojo Poku.  
8th Witness.  
14th March  
1950.

Examina-  
tion.

No. 29.  
Kojo Poku.

D.8. KOJO POKU : s.a.r.b. :

I live at Oboasi and am Defendant's linguist, and have been for about 20 six years ago. I went with P.1 to the survey of the land in dispute and Defendant was there and pointed out the boundaries, which I know myself also. The area in dispute started from Afiefi-Subinsu-Abokoe Tree-Kuranti Pond-Ahumfuna-Kunkuntrey Bippo-Kuntreku-Bippo-Dan-Nyami and Ajo-wura junction-Chiribra. I am a cocoa farmer also having a farm between the Ahunfuna and Kwantanum near the village of Kofi Afful Krom. I harvest about 100 loads of cocoa a year. My grand-uncle founded Kofi Afful Krom but it is deserted. As a native of Denkyire-Oboasi I do not pay Ebusa. There are three strangers namely Yaw Donkor, Yaw Nimo and Kojo Buafu now Kofi Affulkrom and I collect Ebusa from them on behalf 30 of the Defendant. I have never seen the Plaintiff on this land. I know Kwesi Saigoe and he farms near Johnson's camp. I know Kojo Krupu an Ashanti man who is a blacksmith and he also has cocoa farms near Johnson's camp.

Cross-exam-  
ination.

XX. : I am not here under a subpoena. The Defendant sent me a letter. I have been waiting here for ten days. My farm is on the south-west of Kofi Afful-krom. It is situate between the motor road and Oboasi. It is between the P.W.D. camp and Oboasi near the road. I did not point out my farms to P.1. as he did not ask me to do so. I agree the Defendant pointed out to P.1 the farms which belonged to his subjects. The farms 40 of Kojo Bunfu and Yaw Nuin was not pointed out to P.1. The farms of Saigoe and Krupah were not pointed out to P.1.

No re-examination.



No. 30.  
Kojo Krupa.

In the  
Supreme  
Court.

D.9. KOJO KRUPA : s.o.b. :

Defend-  
ant's  
Evidence.

I live at Oboasi. The Defendant asked me to give evidence and I have been in Cape Coast eleven days and came with D.8. and others. I am an Ashanti man and have six apprentices. I farm also on the Defendant's land near Johnson's camp on the left side of the railway going towards Johnson's camp. My farm is near Ananikrom to the south. I farm rice, cocoa, and foodstuffs. I and my relatives and apprentices help me on the farm. The Plaintiff has never interrupted my possession. I pay ebusa to the Defendant.

No. 30.  
Kojo  
Krupa.  
9th Witness.  
14th March  
1950.  
Examina-  
tion.

XX. : The Defendant asked me to give evidence by letter. I was here when this case started and have been here throughout. I cannot remember the day this case started. I did not accompany the survey party. The Defendant did not ask me to go with him. I have four farms. I started the farms about six years ago.

Cross-exam-  
ination.

Williams says case closed apart from one witness Essien who has been summoned but not questioned. Asks the Court to recall Plaintiff as to the area he abandoned as a result of the 1917 judgment. Considers Court notes in cross-examination not clear position of Kotro-Kura. No objection by Benjamin.

No. 31.

Chief Kofi Kuran, Plaintiff—recalled.

Plaintiff's  
Evidence.

P.2. CHIEF KOFI KURAN : s.a.r.b. : Re-called by Court.

No. 31.  
Chief Kofi  
Kuran,  
Plaintiff—  
recalled.  
14th March  
1950.

BY COURT PER WILLIAMS :

Kotro-Kura is north of Mmedeum about mid-way between Mmedeum and Kuranti-Pond. The area in dispute in that case was land between Oboasi and Kuranti-Pond. I still however claim Mmedeum which is on my boundary. The whole of my boundary is marked by a well-established footpath, considerably used, visible to anyone, and made long before my time.

BY COURT FOR WILLIAMS :

I admit that Sebbeh my ancestor swore in the 1917 proceedings by Fida Na Denkyireman oath that he owned the lands described as from Afiefi to Old Oboasi.

BY ASSESSOR :

Prior to 1917 there has not, according to tradition any dispute whatsoever between my Stool and Defendant's.

Hearing adjourned as witness not available.

Adjourned to 16.3.50.

In the  
Supreme  
Court.

No. 32.

John Essien.

Defend-  
ant's  
Evidence.

16.3.50.

D.10. JOHN ESSIEN : s.o.b. :

No. 32.  
John  
Essien.  
10th  
Witness.  
16th March  
1950.

Examina-  
tion.

I am an Nzima living at Otum near Kade. I know Plaintiff and Defendant. In 1920 I was living at Dunkwa where I was a timber contractor. I interviewed the Plaintiff to obtain permission to farm on his land. He mentioned Nkwantanum but said there was a dispute about that area between himself and the Defendant. I therefore saw the Defendant who accepted me as a farmer and I settled there and made farms. I remained at Nkwantanum for three years, thereafter leaving my nephew in charge who is now dead. I saw other farms at Nkwantanum and one belonging to Mmerekku. I also saw a number of abandoned farms. One Ewusi succeeded my nephew. He is not my relative and he is also dead having died about six months ago. I heard of no complaint from him that he was being disturbed. Neither my nephew nor Ewusi paid any contribution for Stool debts to either Plaintiff or Defendant. I named Nkwantanum and was regarded as headman of the place. I know Johnson of Mengel Co., Ltd. He was cutting timber. As far as I know no one interfered with him. I know Gyasehene Yaw Gyasi. He had a farm in Nkwantanum also. 10 20

Cross-exam-  
ination.

XX. : Mmerekku's farm was in existence when I settled at Nkwantanum. I do not know who gave him permission to farm. I know he came from Nyinawonsu. I saw no others from Nyinawonsu. There were also two abandoned farms and I ascertained that their owners had come from Nyinawonsu. I was never an employee of Johnson. I know the road Nyinawonsu-Nkwantanum. It was constructed by the Plaintiff who was responsible for its maintenance. I would not have heard if any one attempted to stop Johnson's timber operations as I lived at Nkwantanum which is a long distance away.

Plaintiff's  
Evidence.

No. 33.

30

Joseph Annu Esuman. Recalled.

No. 33.  
Joseph  
Annu  
Esuman.  
P.1.  
Recalled.  
16th March  
1950.

By Court.

P. 1. JOSEPH ANNU ESUMAN : s.o.b. Re-called by Court.

My previous statement concerning the area averred by the judgment in 1917 was not based entirely on the measurements in the judgment. These measurements gave only an indication whereby the site about which there was a dispute was located. The second measurement of  $\frac{3}{4}$  mile should be taken, in my opinion, from the termination of the 1st measurement of 486 yards. This second measurement terminates at the Asribusu river

on the green boundary line. The third measurement also commences from the termination of the first in the direction of the Kuranti Road. This measurement merely gave the site of a cleared area intended for a Town which I myself saw. I have initialled the place in question. Both Plaintiff and Defendant were with me. I read the whole evidence and endeavoured to reconcile it with the judgment. In my opinion lines 8-16 of the judgment throw light on the area in dispute. I am still of the opinion that the dispute covered the whole area between green and pink lines from the Ahunfunu stream to the Afiefi stream.

In the  
Supreme  
Court.

Plaintiff's  
Evidence.

No. 33.

Joseph  
Annu  
Esuman.  
P.1.

Recalled.

16th March  
1950.

By Court—  
*continued.*

10 *Per* BENJAMIN : I did not take any measurements myself.

*Per* WILLIAMS : I have never seen two Chiefs litigate about a small area such as a site. The cleared area was only two acres. The area claimed by Kudi Appiah includes land south of the Dan-Nyami down to the Finyami and bounded on the west by the Chiribra. Kudi Appiah says Defendant's land was on the West of the Chiribra from the Ajowura junction.

(Defendant's case closed.)

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No. 34.

Address of Counsel for Defence.

No. 34.  
Address of  
Counsel for  
Defence.

16th March  
1950.

WILLIAMS FOR DEFENDANT :

20 Plaintiff bound by his Pleadings. Plaintiff should have called all Chiefs with adjoining boundaries. Has not attempted to prove his south-eastern boundary. Chief Abonu's representative supports Defendant's case. As regards south-western and south-eastern areas no evidence to support Plaintiff. Refers *Akonola Baruwu v. Ogunshulu* 4 W.A.C.A. 159. Declaration of Title Act 186 L.J. 1861-1862 p. 138-144.

Green boundary on plan is in conflict with Plaintiff's statement of claim (paragraph 7).

30 Case involves ancient history, therefore, permissible to refer to works on history. Halsbury Vol. XIII p. 563 para. 769. Plaintiff denied conquest by the Ashantis or Denkyires. This was clearly lies. Fanti Law Report and decided cases page 153. Claridge's history of Gold Coast Vol. I pages 194-198 and p. 228 also Depuis Residence in Ashanti pages 227-228. Plaintiff's denial of knowledge of oath Fida Na also is untrue. Linguist of Plaintiff also lying. Cites Judgment of J. C. 1874-1928 *Kweku Dua III v. Kwamin Tandoh* p. 110-111.

40 Plaintiff's claim to hamlets marked green proves nothing because at that time Plaintiff and Defendant very friendly—merely there with licence of Defendant. Cites *Kuma v. Kuma* 5 W.A.C.A. p. 428. Fact occupation of land given without tribute does not prove that person giving permission has surrendered his interest in the land.

Plaintiff has called no witnesses to support his claim to Johnson's timber area.

In the  
Supreme  
Court.

No. 34.  
Address of  
Counsel for  
Defence.  
16th March  
1950—  
*continued.*

Plaintiff has put in Judgment of 1920 and pleads it is an estoppel. It is not a suit relating to title if not criminal it is quasi-criminal and inadmissible. *Baatse and others vs. Timor Augmor Ter* 9 W.A.C.A. p. 148. As regards 1917 case Plaintiff contends land in dispute is only 2 acres but even if true it cut off Plaintiff from all land North of the site. As regards Judgment Court should consider whole proceedings.  
*Auga vs. Attah* P.C. Appeal No. 78 of 1915.  
Burden of Proof is on Plaintiff.

No. 35.  
Address of  
Counsel for  
Plaintiff.  
16th March  
1950.

No. 35.  
Address of Counsel for Plaintiff.

10

BENJAMIN FOR PLAINTIFF :

No necessity to call chiefs of neighbouring areas (1) because on eastern boundary Plaintiff owns both sides of the Offin himself. (2) As regards area between Chiribra and green line, this is not in dispute. (3) As regards remaining area Defendant owns all adjoining property.

As to Defendant's allegation that boundaries referred to in paragraph 7 do not conform with area claimed in plan submits there is no difference.

As regards Plaintiff's version of History. It is supported by Judgment of 1920. As regards actual facts : it is very strange Defendant's settlements had never crossed the green line. Defendant admitted 1917 dispute concerned an area west of green line. Defendant has admitted existence of an old road—this is an indication of a boundary. 20

As regards Johnson's timber area all villages said to be founded by Defendant were only founded when railway line constructed—five or six years ago.

As regards evidence on behalf of the Defendant as to farms in Kachiryey-yansa lands and Johnson's timber area, no farms were pointed out to surveyor by Defendant. When railway line constructed no proper enquiry.

As regards timber concessions, neither Johnson nor Briscoe called to give evidence. 30

Plaintiff himself constructed a road from Nyinawonsu to P.W.D. camp. Defendant does not deny.

If land belonged to Defendant although marriage relationship existed with Plaintiff, he (Defendant) would not allow strangers to farm cocoa without tribute.

1920 Judgment. Even if not operating as an estoppel it is evidence of persistent and consistent claim of ownership.

As regards 1917 Judgment Selby's evidence should be accepted and not Esuman's which is clearly conjecture. Furthermore, Defendant admitted that in 1917 case the land in dispute was West of green line. 40

(Sgd.) H. M. WINDSOR-AUBREY,  
J.  
16.3.50.

12.4.50.

IN THE SUPREME COURT OF THE GOLD COAST, LANDS DIVISION, CAPE COAST,

Wednesday, the 12th day of April, 1950, before Mr. Justice  
WINDSOR-AUBREY.

Transferred Suit 6/1947.

CHIEF KOFI KURAN ... .. Plaintiff

vs.

10 CHIEF KWAME KWANIN ... .. Defendant.

ASSESSOR'S OPINION :

The Plaintiff gave the tradition of his case and the history of the settlement on the land. From the evidence of the Plaintiff it is clear that his predecessors tapped the rubber, mined gold and carried out other agricultural pursuits and later cocoa farming. All these acts were not protested against by the predecessors of the Defendant. In my view the whole area claimed by the Plaintiff is his. In my opinion the 1917 case did not cover the land in dispute in this case. It merely covered a small area which the Plaintiff has not claimed in this action. The 1920 timber case was a civil case and not a criminal one. The Defendant had no right to grant the timber licences and the Plaintiff protested to the Omanhene as soon as he found out about the matter. I consider there was no proper inquiry about the railway concession and the Defendant wrongfully claimed the compensation. I don't believe the Defendant's land except the 1917 litigation and this reinforces my view that Defendant's claim is not genuine. The Defendant stated he did not claim Ebusa from Plaintiff's people who settled on his land because of marriage with Plaintiff's family but this is a most unconvincing explanation. According to custom tribute must be paid, however small, for the very purpose of proving ownership.

30

(Sgd.) H. M. W.-AUBREY,  
J.

12.4.50.



In the  
Supreme  
Court.

No. 37.  
Judgment.

No. 37.  
Judgment.  
18th July  
1950.

18.7.50.

IN THE SUPREME COURT OF THE GOLD COAST, LANDS DIVISION, CAPE COAST, Tuesday, the 18th day of July, 1950, before Mr. Justice H. M. Windsor-Aubrey, Puisne Judge.

Transferred Land Suit No. 6/47.

Transferred from the Native Court "A," Dunkwa-on-Offin.

CHIEF KOFI KURAN for and on behalf of Nyinawonsu Division,  
Denkyera State ... .. Plaintiff 10  
*versus*

CHIEF KWAMI KWENIN for and on behalf of the Stool of Den-  
kyera-Obuasi Division, Denkyera State ... .. Defendant.

JUDGMENT.

Apart from consideration of the construction and effect of certain judgments exhibited in this case the issues are largely questions of fact, and despite the time taken in Court due partially to the illiteracy of witnesses the issues are comparatively simple.

The Plaintiff claims a declaration of title to all that land known and called Apunpum otherwise known as Buakyi-krome, Twapiase, Gyapon-krome, Ekakyerenyansa, Enekoko, Nkwantanum and the stream called "Kunite" (the boundaries of which are described in paragraph 7) and for £100 (one hundred pounds) damages for trespass to all the said lands and streams and for injunction restraining the Defendant his agent or workmen from trespassing the said lands and streams.

The area in dispute comprises approximately 56 square miles.

Two pleas of *res judicata* are put forward by the Plaintiff and Defendant respectively. The Plaintiff pleads estoppel so far as part of the land in dispute is concerned by virtue of the judgment in the case of *Chief Yaw Mensah* (his predecessor) v. *Kwame Kwanin* (the Defendant) decided in 1920.

The Defendant pleads estoppel by virtue of the judgment in the case of *Chief Kweku Sebbe* v. *Chief Kofi Kori* decided in 1917 whereby the Defendant alleges that the part of the land in dispute commencing at the Abakoe Tree in the North and terminating as its southern boundary at the Ahimfunu river was awarded to his ancestors. The Parties in that suit were respectively the predecessors in title of the Plaintiff and Defendant. I have marked this area on Exhibit "A" thus "//////".

With regard to the judgment of 1920 I hold that this was a quasi criminal case and is, therefore, not relevant to prove that the Plaintiff is 40

owner of the land over which the Defendant is alleged to have trespassed. It is, however, relevant, as circumstantial evidence to prove that Plaintiff has at least since 1920 claimed that land, and it is indicative of consistency of conduct, and to establish that he has a strongly contested ownership by the Defendant. The area involved is approximately between the Ahumfuna River and Nkwantum. The 1917 judgment is a judgment *in rem* and binding on both parties to this suit. It is necessary to determine whether that judgment does in fact comprise the land I have marked "//////////".

In the  
Supreme  
Court.  
No. 37.  
Judgment.  
18th July  
1950—  
*continued.*

The Defendant relies on the evidence of the Surveyor J. A. Esuman (P.1) who states that although the descriptions in the judgment were vague he was satisfied that it included the whole area I have marked. To refute this evidence the Plaintiff relies on the testimony of another Surveyor, Selby, also called by the Plaintiff.

In answer to the Court this witness marked on Exhibit " A " the area described in the judgment of 1917. It is apparent, if this witness is believed, and neither party can give reasonable grounds for discounting his evidence, that the area was small, and almost entirely comprised land not claimed by the Plaintiff. Esuman was re-called, but his further evidence did not convince me. I believe Mr. Selby's evidence and accordingly hold that the judgment of 1917 does not include the land now claimed by the Plaintiff, except perhaps for a minute distance in one direction which does not merit serious consideration. I accordingly hold that no question of estoppel arises.

It is now necessary to consider the facts and in doing so it is relevant to consider the demeanour of the principal witnesses. At one time I formed the impression that the Plaintiff was deliberately evasive but his subsequent examination satisfied me that his *apparently* evasiveness was due to stupidity. The Plaintiff is an old man, illiterate, and sick man when he testified. He is of the simple type lacking in astuteness or cunning who is likely to be imposed upon by others. The Defendant is far more mentally alert and was in good health when he gave evidence. He is of the aggressive, acquisitive and pugnacious type, whose own admissions reveal that he will not tolerate interference by others.

(sic)

Underlined in green the villages claimed by the Plaintiff while those claimed the Defendant are underlined red. In some instances the Defendant also claimed villages to which the Plaintiff asserted ownership while the same conflict occurred concerning certain disused gold-mining shafts.

It is clear, however, that the Plaintiff has never admitted the Defendant's grant of the railway. Further the Plaintiff instituted proceedings in the Native Court but these proved abortive because the Defendant declined to attend on the grounds that he refused to recognise the sovereignty of the Paramount Chief of the Denkyire State. The Defendant has given no convincing reasons for disputing the sovereignty of the Paramount Chief.

Plaintiff has also led evidence that attempts were made to demarcate boundaries as a result of the 1917 litigation. No boundaries were cut because the Defendant obstructed them.

In the  
Supreme  
Court.

No. 37.  
Judgment.  
18th July  
1950—  
*continued.*

In addition to granting the railway concession, the Defendant has granted timber concessions. As regards the timber concessions the Plaintiff has also contested the Defendant's right to grant them.

In support of his case the Plaintiff has called a number of witnesses from various places on the land he claims to prove they paid tribute to him or otherwise recognised his title to the land, and to establish that Defendant has never interrupted or disturbed their possession. The Defendant has called none as regards the area North of the Dunkwa-Obuasi Road, and the assessor attaches great significance to this.

As regards the area south of the Dunkwa-Obuasi motor road the Plaintiff has not called a great volume of evidence but he has called a witness to prove that his title in the Kachireyansa lands was recognised by some occupants thereof. 10

The Defendant's case is that he is an Aborigine of Denkyire State. He says that he received compensation for the Dunkwa-Obuasi road, and as regards the two timber concessions granted by him he asserts that one was granted with the consent of the Paramount Chief.

It is significant, however, that Defendant admits that the road from Nyimawonsu to Public Works Camp was constructed by the Plaintiff.

The Defendant has been obliged to admit that he has never collected tribute or Ebusa from tenants on the land claimed by Plaintiff north of the Dunkwa-Obuasi Road. In support of his case the Defendant has called Kofi Hamako who testifies as to a joint boundary between Kudi Appiah and the Defendant where the Dan-Nyami river joins the Ajowere stream. 20

As the Plaintiff admits, by implication, this common boundary, I do not see the relevance of this evidence.

The next witness Kobina Minto testifies as to hunting a distance of about one-quarter of a mile from Annikrom, and in the event of a kill sending meat to Defendant thereby recognising him as owner of the land where he hunted. His description is, however, so vague that it is impossible to determine whether the land is on the Defendant's border of the land in dispute or over that border on the land claimed by the Plaintiff. The witness Kwesi Saigoe states that almost twenty years ago he and a number of other persons without interruption by the Plaintiff farmed on land North of the railway in the direction of Johnson's camp. He states they paid Ebusa to the Defendant. Other witnesses testify to farming land with the permission of the Defendant but in each case the description of the land is vague. In one instance the farm is somewhere in the neighbourhood of Kofi Afful Krom which is itself near the border of Defendant's land and in another instance the farm is in the neighbourhood of Annikrom also near the Defendant's border. The final defence witness testifies that he settled near Nkwantanum. He admits, however, that the Plaintiff told him when he settled there that there was a dispute about the ownership of that area. 30 40

(sic) So far as the land south of the Obuasi-Dunkwa motor road is concerned the Plaintiff has called few *witness* to prove occupation by him or by his subjects but it is to be remembered that this area is thick forest and virtually uninhabited.



It is true that the Defendant has granted two timber concessions over this area and has received compensation for the railway. I am also satisfied that Defendant has received compensation for the Dunkwa-Obuasi road. There is also some evidence on behalf of the Defendant though very unconvincing, that his subjects have occupied a very small ill-defined area south of the Dunkwa-Obuasi motor road.

In the  
Supreme  
Court.  
—  
No. 37.  
Judgment.  
18th July  
1950—  
*continued.*

10 Of the Plaintiff and Defendant I consider the former to be far the more reliable witness, and as regards the area North of the Dunkwa-Obuasi motor road the Plaintiff has called convincing evidence. As regards the area south of that road his case is not so strong and taken alone might be insufficient to establish the onus which is upon him. I am, however, satisfied, that from their inception, the Plaintiff has always protested at the acts of ownership asserted by the Defendant. I believe the Plaintiff's witnesses as to the original settlement of the land claimed by him and the Defendant and reviewing the whole evidence I am satisfied that the Plaintiff has been telling the truth and I find that he is entitled to a declaration of title to the whole area claimed by him.

20 The assessor is of the same opinion. He has given a carefully considered and reasoned decision and in a case of this nature where so much depends on the credibility of illiterate primitive Africans I attach much weight to the opinions of an assessor, especially where, as has happened here, the assessor followed the evidence with great care, attention and intelligence.

I grant the Plaintiff a declaration of title to the whole area claimed by him and give judgment for him accordingly with costs. I also award Plaintiff £25 damages for trespass.

Counsel's fee is assessed at One Hundred and twenty (120) Guineas. Other costs to be taxed.

(Sgd.) H. M. W. AUBREY,  
*Puisne Judge.*

30 COUNSEL :  
BENJAMIN for Plaintiff.  
WILLIAMS for Defendant.

No. 38.  
Grounds of Appeal.

In the West  
African  
Court of  
Appeal.

IN THE WEST AFRICAN COURT OF APPEAL.

	Between				
CHIEF KWAMI KWENIN	...	...	...	...	<i>Defendant-Appellant</i>
	and				
CHIEF KOFI KURAN	...	...	...	...	<i>Plaintiff-Respondent.</i>

—  
No. 38.  
Grounds of  
Appeal.  
4th  
November  
1950.

40 The Appellant, being dissatisfied with the judgment of the Land Court, Cape Coast, delivered on the 18th day of July, 1950, and having obtained final leave to appeal therefrom dated 4th November, 1950, hereby appeals to the West African Court of Appeal upon the grounds hereinafter set forth.

In the West  
African  
Court of  
Appeal.

No. 38.  
Grounds of  
Appeal.  
4th  
November  
1950—  
*continued.*

## GROUND'S OF APPEAL.

1.—BECAUSE the proceedings in the Court below were wholly irregular and bad in law in that :—

- (a) The Assessor gave no opinion *ex facie curiae* either at the close of the Addresses of Counsel on the 16th March, 1950, or before or after the Judgment of the Court on the 18th July, 1950.
- (b) The Assessor's recorded opinion appearing on the Record on the 12th April, 1950, was unknown to the Defendant-Appellant and or his Counsel until the receipt of Certified True Copy of the proceedings herein on or about the 24th September, 1950. 10
- (c) The duty of the Assessor was to give opinion on questions of Native Customary Law, and not on the facts or issues of fact before the Court.
- (d) The Assessor exceeded in law his province, and gave opinion on the issues or questions of fact before the Court below.
- (e) The Court below adopted the opinion of the Assessor on the issues or questions of fact before it and based its judgment thereon.

2.—BECAUSE on the pleadings and evidence and on the admissions made by the Plaintiff-Respondent respecting Exhibit " A " Proceedings and judgment in *Sebbe v. Kofi Fori* in 1917, the Court below was wrong in law and on the facts in holding that the said Judgment did not create an estoppel; the land in dispute in 1917 extended from Afiefi-Subin to Ahunfunu-Mbedumenu-Kotokrowa. 20

3.—BECAUSE the Court below was wrong in law in admitting in evidence Ex. 2 the proceedings and judgment in *Chief Yaw Mensah v. Chief Kwame Kwenin* and in considering and basing its judgment thereon.

4.—BECAUSE the Court below wrongfully rejected the question : " Did Kudi Appiah say that the Chirbua represented the boundary between " himself and any other Chief " : the same being relevant as an admission by a neighbouring Chief in possession as to which Chiefs had lands or boundaries in the neighbourhood or area in dispute. 30

5.—BECAUSE the Plaintiff-Respondent's evidence as to his boundaries or the boundaries of the area claimed by him was unsupported and uncorroborated by any evidence, and was vague, indefinite and contradictory and the Court below was therefore wrong in law in making a declaration with regard to the said boundaries in Plaintiff-Respondent's favour or in granting the injunction claimed by him.

6.—BECAUSE the Plaintiff-Respondent had not proved possession or exclusive possession of the area in dispute or title to the same to warrant the Court in law awarding him damages. 40

7.—BECAUSE the traditional History and evidence given by the Defendant-Appellant and his witnesses was in accord with Denkyera-

Ashanti dynasty and history and in conflict with that given by the Plaintiff-Respondent and should therefore have prevailed in the Defendant's favour.

In the West African Court of Appeal.

8.—BECAUSE the Defendant-Appellant's evidence of possession and acts of ownership over the area in dispute together with the evidence of neighbouring Chiefs regarding the boundaries of the area in dispute were conclusive in his favour and should have prevailed against the Plaintiff-Respondent.

No. 38. Grounds of Appeal. 4th November 1950—*continued.*

9.—BECAUSE the Plaintiff-Respondent's evidence of receipt of tributes from his subjects alleged to have been living on the land in dispute was  
10 contrary to the Native Custom and should have been rejected by the Court below.

10.—BECAUSE the judgment of the Court below was wholly and entirely against the weight of evidence.

11.—BECAUSE the Judge's observations and strictures on the conduct of the Defendant-Appellant in the proceedings in the Court below and in the Denkyera Native Court of State were not warranted by the evidence.

Dated at Sekondi this 4th day of November 1950.

(Sgd.) F. AWOONOR WILLIAMS,  
*Counsel for Defendant-Appellant.*

20 To the Registrar, W.A.C.A. Accra, and to Chief Kofi Kuran, Plaintiff-Respondent, Nyinawonsu-Denkyera State.

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No. 39.

Motion by Kojo Ewuah for substitution of his name in place of Kofi Kuran —Plaintiff.

No. 39. Motion by Kojo Ewuah for substitution of his name in place of Kofi Kuran. Plaintiff. 5th November 1952.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, ACCRA.

CHIEF KOFI KURAN for and on behalf of the Stool of Nyinawusu *Plaintiff-Respondent*

*v.*

30 CHIEF KWAME KWANIN for and on behalf of the Stool of Obuasi *Defendant-Appellant.*

MOTION UNDER RULE 42 OF THE WEST AFRICAN COURT OF APPEAL RULES.

MOTION ON NOTICE by Mr. C. F. Hayfron-Benjamin of Counsel for and on behalf of KOJO EWUAH Applicant herein for an Order of this

In the West African Court of Appeal. Honourable Court substituting the name of KOJO EWUAH for that of CHIEF KOFI KURAN (Deceased) as Plaintiff-Respondent herein and for such further or other Order as to this Honourable Court may seem meet to make in the premises.

No. 39. Court to be moved on Monday the 5th day of January, 1953, at the hour of 8.30 a.m. of the clock or so soon thereafter as Counsel on behalf of the Applicant or the Applicant in person can be heard.

Motion by Kojo Ewuah for substitution of his name in place of Kofi Kuran. Plaintiff. Dated at Cape Coast this 5th day of November, 1952.

(Sgd.) C. F. H. BENJAMIN,  
Solicitor for Applicant Kojo Ewuah. 10

5th November 1952—*continued.* To the Registrar, West African Court of Appeal, Victoriaborg, Accra, and to the above-named Defendant-Appellant, his Agent or Solicitor.

No. 40. Court Notes granting substitution. 19th January 1953.

No. 40.  
Court Notes granting substitution.

19th January, 1953.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION.

Coram : FOSTER SUTTON, P., COUSSEY, J.A. and KORSAH, J.

10/51.

CHIEF KOFI KURAN ... .. Plaintiff-Respondent 20

v.

CHIEF KWAME KWANIN ... .. Defendant-Appellant.

Mr. AWOONOR WILLIAMS for Appellant.

Mr. BENJAMIN for Respondent.

BENJAMIN :

Motion for substitution of Plaintiff/Respondent.  
Order in terms of motion—costs in cause.

No. 41.  
Court Notes of Argument by Counsel.

KOJO EWUAH  
*v.*  
CHIEF K. KWANIN

In the West  
African  
Court of  
Appeal.

No. 41.  
Court Notes  
of argument  
by Counsel.  
19th and  
20th  
January  
1953.

WILLIAMS :

Appeal from Judgment of Land Court page 34 of Record—Refers to pleadings pages 4 and 5 of Record.

10 Deals with facts--

Grounds of Appeal pages 37-39 of Record.

Deals with evidence of Plaintiff's surveyor page 7 of Record.

NOTE : We ask why—as his client was relying on the 1917 case as an estoppel—he did not point out the Kwarantin River to his surveyor since that was one of the matters in dispute in the 1917 case. In this connection we draw attention to the questions and answers (not printed) and to the fact that the Kwarantin River is not mentioned in the Defence although less important features are.

Paragraph 7—Statement of Claim—

20 Claims—Failed to prove his boundaries and was not therefore entitled to a declaration.

Adjourned to 20.1.53.

(Intd.) S. F. S.  
P.

19.1.53.

20.1.53.

10 of 1951.

Continued from above.

Counsel as before.

30 WILLIAMS : Deals with Judgment. Weight of evidence—Assessor only there to express opinion on questions of native law and custom. Here assessor expressed views on the facts which were relied upon by trial Judge. Submits that under both paragraphs (a) and (b) of Section 20B(1) of Cap. 4, Assessor is only entitled to express opinions on native law and custom.

In view of the fact that it does not appear that trial Judge obtained views of parties regarding the appointment of assessor—see amendment to paragraph (a) of Section 20B(1) of Cap. 4, Section 9 of Ordinance No. 2 of 1945, it is clear that he acted under paragraph (b) of Section 20B(1) of Cap. 4

In the West  
African  
Court of  
Appeal.

No. 41.  
Court Notes  
of argument  
by Counsel.  
19th and  
20th  
January  
1953—  
*continued.*

Note.—But see page 7 of record.

WILLIAMS says he and Benjamin agreed to appointment of assessor because question of native law and custom were involved—

Note.—But if that is so it would seem that assessor was appointed under paragraph (a) because consent is not necessary under paragraph (b).

Note also that trial took place before the amendment to paragraph (a) of Section 20B(1) of Cap. 4—introduced by Section 9 of Ordinance 39 of 1951.

Draws attention to assessor's opinion page 33 of record and Judge's comments at page 37 of record. 10

Cites—*In re Beryl* (1884) 9 P.D., 137, *Brett M. R.*,<sup>s</sup> p. 141 (1927) A.C., p. 105.

Submits that it is uncertain how much Judge was influenced by assessor's opinion—therefore unsafe to allow Judgment to stand.

Order 32 R.1 our rules—general proposition—never intended that a different standard should be adopted by Land Court. It is duty of Court to determine all questions of fact and law.

#### GROUND OF APPEAL 2.

Respondent's evidence—refers to page 11 of record.

Note see also—page 8— 20

“The Kwaranti pool was specifically awarded to the Plaintiff.”

Refers yet again to Selby's evidence—

See also page 23 of record—appellant's own evidence—line 38 and on.

#### WILLIAMS :

Paragraph 4 of Defence—

(1930) 1 K.B., 628.

Submits Court erred in admitting in evidence and basing its Judgment on Exhibit “2” page 51 of record.

(1943) K.B. 587 ; (1943) 2 A.E.R. 35. 30

#### GROUND OF APPEAL No. 4.

(1834) 1 AD & El. 114.

GROUND 6. Not a single Chief was called by him.

Refers to evidence page 18. Page 10. Says if you put his evidence aside no other evidence and his is against Plaintiff.

No sufficient evidence to justify declaration being granted 4 W.A.C.A., page 139.

GROUND 6—Submits both in possession therefore erred in awarding damages.

GROUND 7. Respondent admits Appellant has never paid him tribute. That admission would destroy respondent's allegation that Appellant had settled on his land. 40

Bossman's History of the Gold Coast—Claridge—History of the Gold Coast and Ashanti page 195 and 289. In the West African Court of Appeal.

If his traditional history is wrong then Judgment cannot stand.

GROUND 9. Subjects of Stool do not pay tribute to Stool only strangers do. P.C. Judgments 1874—June 1928 page 111. (1945) P.D., page 15, taking evidence.

No. 41.  
Court Notes  
of argument  
by Counsel.  
19th and  
20th  
January  
1953—  
*continued.*

WILLIAMS : As a whole Judge's comments on witnesses do not justify his conclusions.

At most trial Judge should have entered a non-suit.

10 The possession of Defendant entitled him to dismissal of Plaintiff's case.

BENJAMIN : We ask him to look at his Writ, page 1 of record—“Stream called ‘Kunite’” says Writ was filed by Plaintiff in Native Court cannot point it out.

WILLIAMS—“Kunite” is repeated in Statement of Claim. They cannot get a declaration with regard to that since the claim in respect of that stream is not supported by any evidence either documentary or oral.

C.A.V.  
(Intd.) S. F. S.,

20

P.  
20.1.53.

5th February, 1953.

10 of 1951.

Continued from above.

Counsel as before.

Judgment delivered-by Korsah, J.

Appeal dismissed with costs fixed at £29.5.0, but Judgment of Court below rectified in the manner indicated in the Judgment.

30

(Intd.) S. F. S.,  
P.  
5.2.53.



In the West African Court of Appeal.

No. 42. Judgment.

No. 42. Judgment. 5th February 1953.

WEST AFRICAN COURT OF APPEAL.

General sitting held at Accra, 5th February, 1953.

Coram : FOSTER SUTTON, P., COUSSEY, J.A., and KORSAH, J.

Civil Appeal No. 10/51.

KOJO EWUAH, substituted for Chief KOFI KURAN (for and on behalf of the Stool of Nyinawusu) ... .. Plaintiff- Respondent 10

v.

CHIEF KWAME KWANIN (for and on behalf of the Stool of New Obuasi) ... .. Defendant-Appellant.

JUDGMENT.

KORSAH, J. : Plaintiff-Respondent instituted action against Defendant-Appellant in the Native Court of Denkerahene, in the Denkera State. The suit was transferred to the Land Court of the Supreme Court, by an order of the said Land Court dated 20th June, 1947. The writ of 20 summons reads :

“ The Plaintiff’s claim is for a declaration of title to all that lands known and called Apunpun otherwise known as Buakyikrome, Twapiasi, Gyaponkrome, Ekakyerenyansa, Enekoko, Nkwantanum and stream called ‘ Kunitite ’ and for £100 damages for trespass to all the said lands and stream and for injunction to the said lands and stream.”

Plaintiff-Respondent pleaded estoppel in respect of a portion of the land in dispute, by virtue of a judgment in the case of Chief Yaw Mensah (Plaintiff’s predecessor) v. Kwame Kwanin (Defendant herein) decided in 30 1920. Defendant-Appellant on the other hand pleaded estoppel by virtue of a judgment in the case of Chief Kweku Serbeh (Plaintiff’s predecessor) v. Chief Kofi Fori (Defendant’s predecessor) decided in the year 1917.

With regard to the said plea of estoppel by the Plaintiff-Respondent, the learned trial Judge held, that the said judgment was delivered in a quasi-criminal matter, and therefore it is not relevant to prove that the Plaintiff-Respondent is owner of the land upon which the Defendant-Appellant was alleged therein to have trespassed ; but it is, however, relevant as circumstantial evidence to prove that Plaintiff has at least



since 1920 claimed that land, that it is also indicative of consistency of conduct and establishes the fact that he has strongly contested the claim of ownership by the Defendant.

In my opinion, there is nothing in the views expressed by the learned Judge which can be said to be contrary to principles of law with respect to inferences to be drawn from acts of parties prior to litigation. There appears to be no ground for the contention of Counsel for Appellant that the learned trial Judge, in considering the said judgment, has thereby based his judgment in this suit on it. In the trial of any suit, where there is evidence of acts  
 10 and conduct of the parties prior to the litigation, which explains in anyway the conduct of the parties in relation to the subject matter of the suit, the Court is indeed required by law to take such evidence into consideration in assessing the weight to be attached to the facts adduced by the parties in support of their respective claims.

With regard to the plea of estoppel by the Defendant-Appellant, the learned trial Judge held that the judgment of 1917 is binding on both parties; but it is not a judgment with respect to the land in dispute, "except for a minute distance in one direction which does not merit serious  
 20 "consideration." In this view, he is supported by ample evidence on record which he fully discussed in the judgment. A careful comparison of the plan, with references to sites contained in the evidence, leaves no doubt in my mind, that the subject matter of the suit to which the judgment of 1917 relates, is outside the area in dispute.

The contention of Counsel for Appellant that the assessor gave no opinion *ex facie curiae* either at the close of the addresses of Counsel or before or after the judgment, is not supported by the record. It would appear that after Counsel for the parties addressed the Court, the hearing was adjourned to 12th April, 1950, on which date the opinion of the assessor was recorded by the Judge. Counsel relying on Ordinance No. 2 of 1945  
 30 as amended by No. 39 of 1951 contended that the assessor was required by law to give opinion only on questions of native customary law and not on facts or issues of fact before the Court. Counsel further contended that no representations having been made by the parties as required by Ordinance No. 39 of 1951 which amended paragraph (a) of sub-section 1 of Section 20B of the principal Ordinance, the Judge must have acted by virtue of paragraph (b) of the said Ordinance which required the assessor, as Counsel alleged, to give opinion only on questions of native customary law. The judgment in this matter having been delivered on 18th July, 1950, it is obvious that the amendment by No. 39 of 1951 is not applicable; but  
 40 in any case it would appear that the said assessor was appointed after representations made by Counsel. The learned trial Judge says:—

"I am satisfied that the Plaintiff has been telling the truth  
 "and I find that he is entitled to a declaration of title to the whole  
 "area claimed. The assessor is of the same opinion."

This in my view means that he came to his conclusion independently of whatever views the assessor might have expressed, but that he was

In the West  
African  
Court of  
Appeal.

No. 42.  
Judgment.  
5th  
February  
1953.

—continued.

In the West African Court of Appeal.

No. 42. Judgment. 5th February 1953.

—continued.

fortified by the latter's views. There is nothing on record to show that the learned Judge took advice of the assessor on a point of law or the issue of estoppel. In addition to the traditional evidence, Plaintiff-Respondent adduced clear evidence of effective occupation by his subjects and licensees, and of the collection of tributes and rents from tenants who occupy farming or village sites within the area in dispute.

It will be observed that although Plaintiff's claim included a "stream called Kunite," it is not marked on the plan, and no evidence was led by either party to indicate where it is situated. It may or may not be within the area in dispute. However, as Plaintiff has established his title to the area in dispute, which is the area enclosed within the green and pink lines shown on the plan marked Exhibit "1," I would rectify the judgment of the Court below which granted Plaintiff a declaration of title to the area described in the writ of summons, and substitute therefor a declaration of title to the area enclosed within the green and pink lines shown on the plan, Exhibit "1," which has been signed by the President of this Court.

In my opinion this appeal should be dismissed.

(Sgd.) K. A. KORSAH.

FOSTER SUTTON, P. : I concur.

COUSSEY, J. A. : I concur.

20

No. 43. Court Notes granting Final Leave to Appeal to Privy Council, but adjourning Application for Stay. 30th June 1953.

No. 43.

Court Notes granting Final Leave to Appeal to Privy Council, but adjourning Application for Stay.

30th June, 1953.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION.

Coram : KORSAH, Acting Chief Justice, sitting as a Single Judge of Appeal.

Civil Motion.  
No. 17 of 1953.

CHIEF KOJO EWUAH	...	...	...	...	<i>Plaintiff-Respondent</i>	30
				<i>v.</i>		
CHIEF KWAME KWANIN	...	...	...	...	<i>Defendant-Appellant.</i>	

Mr. WILLIAMS for Defendant-Appellant-Applicant.

Mr. BOSSMAN holds BENJAMIN's brief for Plaintiff-Respondent.

WILLIAMS moves the matter of Stay is within the jurisdiction of the Court : but I must say that Appellant has paid costs of Divisional Court and West African Court of Appeal.

Plaintiff-Respondent resisted sureties offered and Defendant-Appellant was obliged to deposit £500. Judgment of Land Court stated that both Plaintiffs and Defendants people were in occupation of land. Having regard to that fact and to the fact that all costs have been paid, it is desirable that the parties should remain in *statu quo ante* until appeal disposed of.

10 The area in dispute is an extensive valuable property of 56 square miles ; it would be undue hardship having regard to the judgment of Court below, if the occupation of both parties and the extensive area in dispute—

Refers Salford & Wheeler's Privy Council Practice 1st Edition, page 793.

COURT : Refers Counsel to paragraph 4 (b) of Affidavit of Plaintiff which states that writ of Possession already executed.

COUNSEL : I was served with this Affidavit in reply this morning in Court, require time to verify allegation : also intend to challenge validity in view of Rule 8 Appeal rules ; asking for adjournment to enable me file necessary affidavit.

20 COURT : Final Leave to appeal granted. As regards Stay of execution in view of Counsel's application for adjournment, hearing is adjourned to 14th July.

Applicant to pay the costs of Respondent fixed at £3.3.0.

(Sgd.) K. A. KORSAH,

J

In the West African Court of Appeal.

No. 43. Court Notes granting Final Leave to Appeal to Privy Council but adjourning Application for Stay. 30th June 1953.—*continued.*

## DEFENDANT'S EXHIBIT.

Defendant's  
Exhibit.

" A "

Part Proceedings,  
and  
Judgment.

Chief  
Kweku  
Sebbe v.  
Chief Kofi  
Fori.  
4th May  
1917.

Exhibit " A "—Part Proceedings, and Judgment in Chief Kweku Sebbe v. Kofi Fori, 4th May, 1917.

In the Native Tribunal of Jukwa under the Omanhin Kojo Nkwantabissa II of Denkera, Gold Coast Colony, Central Province—4th May, 1917.

Chief Kweku Sebbe and Chief Kofi Fori.

Parties all present.

CHARGE: The Plaintiff swears the Oath of the Omanhin of Denkera's Friday on the Defendant that the lands and River Kwarantin were his property which the Defendant was unlawfully claiming. That the Defendant also swears the oath of the Omanhin of Denkera's Friday that the lands near the River Kwarantin *was* his and are not for the Plaintiff. 10

(sic)

Court resumed sitting pursuant to adjournment.

Chief Yaw Appiagya who was sent to inspect the land in dispute returned and states:—

My name is called Yaw Appiagya; I am the Chief linguist for the Omanhin Nkwantabissa; about a month that I was sent by the Court to go and inspect a land in dispute between Plaintiff and Defendant I went with one Attah and J. W. Sam. We first reached to a village call Yanawsu there we met one Amponsa from there we slept at Awhinsu the next morning 20 Monday we reached Obuasie and had a palaver with the Chief of Obuasie and on Tuesday we commenced measuring the land. We placed a peg at the outskirts of Obuasie town and began the measuring from the peg to the site in dispute and it gave us 486 yards, and from the site we measured to a stream called Asabusu and that gave us  $\frac{3}{4}$  of a mile and from the site to the River Kwarantin in dispute measured 737 yards. After that we asked Attah a man deputed by the Defendant to show us the depth of the River Kwarantin with Amponsah and Owuah messengers for the Plaintiff. After finished the measuring we returned to Obuasie and continued our journey to Awhiasu there we took a night lodging and after 3 days stay we resumed 30 journey and reached here in 10 days' time.

BY THE COURT:—

In the statement of both Plaintiff and Defendant they alleged that one has his depth at the lower end and one at the upper end did you observe it?

A. I was not very particular about that.

Q. But the site cleared was it within the old road or within the new road?

A. It was within the new road.

Q. Can you say that the site cleared is within Obuasie or Defendant's lands or the Plaintiff's land?

A. Is within Obuasie, i.e., Defendant's land according to my inspection. 40

Q. Did any of the Plaintiff's and Defendant's representatives point out to you the old road?

A. Yes; both parties pointed it out to me.

JUDGMENT delivered on the 4th May 1917 at 4.40 p.m.

In this action Plaintiff with oath seeks to establish his right and title on the River Kwarantin and all the adjoining lands thereof a portion of which Defendant has trespassed and cleared with intents to erect a village thereon ; Defendant has pleaded not guilty and has further raised issue of the title to the land with an oath in response to the Plaintiff ; for doubtless the action was brought to test the title. I and my Councillors consider it first. With few exceptions there is no disagreement between the parties ; all agree as to the name of the river and the land ; the parties having

10 boundaries with them the difference being (1) the Plaintiff witness Kessiadu whom Defendant alleged that he has had a boundary with him at the upper side of the Afiafi stream in his evidence he stated that he bounded with the Plaintiff by the Stream Afiafi and with the Omanhin Nkwantabissa by the junction of the Offin river at the lower end, but no boundary existed between Defendant and himself on the land, and (2) that the circumstances under which the Plaintiff is claiming possession of the said land in dispute is not clearly shown. Now, in view of the decision to which we have come in this case, after a careful consideration of the evidences adduced on both sides, it is unnecessary to express any opinion as to the oath sworn by the parties

20 exercising their respective rights over the said land or lands in question, and as it was unlawfully sworn and we disbelieve the evidence led by them we should entirely dismiss from our mind the question of the oath so taken, as being irrelevant and it bears no weight to the issue. And that the question which the Court has to decide in this case depends entirely upon the credit of the witnesses called on both sides to establish their respective parties position, and we are doubtful indeed whether it could be possible for two distinct persons to hold two (2) separate properties i.e. land and water and one to constitute a right to the land and the other to the water, and as we found it not necessary for us to maintain such statements and

30 failed to be able to believe this, I and my Councillors have taken it into our serious consideration the importance of this case. There a grave question involved, the most important are whether the site cleared by the Defendant for the purpose of erecting his village thereon, belonging to him or to the Plaintiff, and as we cannot throw light upon this obscure situation we inferred that an inspection of the said land in dispute should have been necessary to assist us to form an opinion of our decision consequently the Court, i.e. I and my Councillors deputed one Appia Agya the Chief linguist and a Councillor of this Tribunal with two letters and persons were deputed by the litigators themselves to represent them. After a month's

40 careful inspection or survey of the said land in dispute they returned and gave their reports through Chief Yaw Appia Agya thus :—That about a month now he was deputed by the Court with J. W. Sam and another with Plaintiff's and Defendant's messengers to and view the land in question. They started here on the 7th April, 1917. They reached a village called Yenawusu ; from Yenawusu, they reached Awiasu there they slept and the next morning Monday they got to Obuasie and on Tuesday morning they commenced the measuring of the land ; they placed a wooden peg at

Defendant's Exhibit.

“ A ”

Part Proceedings, and Judgment.

Chief Kweku Sebbe v. Chief Kofi Fori.

4th May 1917—

*continued.*

Defendant's  
Exhibit.  
" A "  
Part Proceedings,  
and  
Judgment.  
Chief  
Kweku  
Sebbe v.  
Chief Kofi  
Fori.  
4th May  
1917—  
continued.

the outskirts of the Obuasie town from the peg they began the measuring to the site in dispute ; it gave them 486 yards from the site they measured to a stream called Asabusu and that also gave them  $\frac{3}{4}$  of a mile, and also from the site to the Kwarantin (in Plaintiff's claim measured 737 yards) and after finishing the measuring business they returned in 13 days' time. Upon the reports of the messengers and the few questions propounded to them by the Court, it has enlightened us a great deal and has placed us in a position which has rendered a great assistance to us to arrive at our decision. We have found without shadow of doubt that the land is the undisputed property of Defendant and is against equity and justice for the Plaintiff to set in claim for a property which does not belong to him. Plaintiff has failed to prove his title to the land and the River Kwarantin ; he intends to eject and restrain Defendant from taking possession. At this stage the Court intimates that it does not consider it necessary to dwell too long on this matter, the sole question is whether Plaintiff can now assert a title to a land which has admittedly been in occupation of the Defendant for some 90 years or more and for which occupation Plaintiff has *claim* no tribute. We do not prepare to wade through all the evidences adduced by the Plaintiff but chiefly to rely upon the evidence of Plaintiff himself which was vacillating and uncertain. We think the claim of the Defendant should be upheld by this Court and we give Judgment for the Defendant with costs.

(sic)

(Sgd.) KOJO NKWANTABISSA II  
*Omanhin of Dekera.*

His  
X  
Mark

Councillors Present :

(Signed)		Their
"	CHIEF AKWASI SAWU	X
"	CHIEF YAW APPIA AGYA	X
"	CHIEF KOBINA ATTA	X
"	CHIEF KWEKU ADDZI	X
"	CHIEF TANDO KWEKU	X
"	CHIEF KOBINA GHABIN	X
"	CHIEF KOBINA ASHANTI	X

30

Marks

Writer to Marks :

(Sgd.) H. A. FYNN,  
*Registrar Native Tribunal.*

Certified True Copy of Proceedings.

(Sgd.) J. WELFORD AMUAH,  
Dunkwa,  
April 17, 1937.

40



Plaintiff's Exhibits. acted contrary to law, therefore Judgment to Plaintiff with costs and award of £10.

Exhibit  
" 2. "  
Judgment  
in Chief  
*Yaw*  
*Mensah v.*  
*Chief*  
*Kwan'i*  
*Konin.*  
6th  
December  
1920—  
*continued.*

		Their	
	KOJO NKWANTABISA II	X	
	CHIEF KOBINA FOSU	X	
	CHIEF KOFIE ABBAN	X	
	CHIEF KOBINA ATTA	X	
	CHIEF KOBINA GYABIN	X	
	CHIEF KWEKU ADDSI	X	
	CHIEF KWAMEI BUKON	X	10
		Marks	

Witness to marks : (Sgd.) J. R. E. HAMILTON, Jr.

Copies by me from the Record Book of Omanhene for Nyinawusuhene on the 20th November, 1936.

(Sgd.) SAM L. NAYKENE,  
Stool Clerk, Lic. No. 1069.  
Nyinawusu : Gratis.

Certified True Copy

(Sgd.) E. O. BAININ,  
Registrar Native Court " A ",  
Dunkwa.

20

Exhibit  
" 3. "  
Notice of  
Concession  
Enquiry  
No. 2264  
(Cape  
Coast).  
22nd June  
1936.

Exhibit " 3 "—Notice of Concession Enquiry No. 2264 (Cape Coast),  
22nd June, 1936.

*In re Ch. K. Kuran v. Ch. K. Kwanin* put in by Plaintiff.

(Sgd.) E. JEURY BLANKSON,  
13/8/50.

Gazette Notice No. 749.

IN THE SUPREME COURT OF THE GOLD COAST,  
CONCESSION DIVISION (CAPE COAST).

Concession Enquiry No. 2264 (Cape Coast).

30

NOTICE has been filed this day at Cape Coast of the Concession of Chief Kofi Kuran, Odikro; Kwesi Nsonwah; Kobina Nsonwah; Kobina Apontua and Kojo Awuiyah all of Nyinawonsu, Denkera State to Colin Campbell of Dunkwa dated the 23rd day of March, 1936, and registered on the 21st day of May, 1936, at the Gold Coast Lands Registry Office, Accra, as No. 298/1936.



The Concession is with respect to the starting point " A " is the junction of Ahunfuna and Ofin rivers situate at a latitude of 6 degrees 7' 5" approximately.

Plaintiff's Exhibits.

Exhibit " 3. "

*East Boundary Line.*

From the starting point " A " following the west bank of the Ofin river in a south-easterly direction to its junction with the Denyami stream a distance of approximately eight (8) miles to the point marked " B. "

Notice of Concession Enquiry No. 2264 (Cape Coast).

22nd June 1936—

*continued.*

*South Boundary Line.*

10 From the junction of the Ofin and Denyami streams for about a distance of half ( $\frac{1}{2}$ ) a mile in a direction south-westerly up the Denyami stream to the point marked " C. "

*West Boundary Line.*

From the point " C " for a distance of about eight (8) miles along a line parallel to the Ofin river and half ( $\frac{1}{2}$ ) a mile distance from it to the point marked " D " situated on the Ahunfuna stream at a distance of half ( $\frac{1}{2}$ ) a mile from its junction with the Ofin river.

*North Boundary Line.*

20 From the point " D " down the Ahunfuna stream to its junction with the Ofin to the starting pointing " A. " Area four (4) square miles more or less.

Nature of Concession.

Option to *acquire* alluvial, Gold Diamond, Precious stones and any other minerals or mineral substances on the Concession.

The Notice was filed by J. A. Daniel of Kumasi, Lawful Attorney (on behalf of Colin Campbell, Dunkwa—Claimant) and is numbered No. 2264 (Cape Coast).

Dated at Cape Coast this 22nd day of June, 1936.

(Sgd.) B. CROSBY DAVIS,  
*Acting Registrar, Divisional Court, C/Coast.*

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In the Privy Council.

No. 6 of 1954.

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

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BETWEEN

CHIEF KWAME KWANIN for and  
on behalf of the Stool of Obuasi  
*Defendant Appellant*

AND

CHIEF KOJO EWUAH for and on  
behalf of the Stool of Nyinawusu,  
substituted for CHIEF KOFI KURAN  
deceased ... *Plaintiff Respondent.*

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RECORD OF PROCEEDINGS

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ASHURST MORRIS CRISP & CO.,  
17 Throgmorton Avenue, E.C.2,  
*Solicitors for Appellant*

A L BRYDEN & WILLIAMS,  
53 Victoria Street, S.W.1,  
*Solicitors for Respondent.*