Privy Council Appeal No. 24 *of* 1953

Nana Owudu Aseku Brempong III and another - - *Appellants*

v.

Nana Darku Frempong II - - - - - - - - *Respondent*

FROM

WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 2ND JULY, 1956

Present at the Hearing:

LORD MORTON OF HENRYTON
LORD RADCLIFFE
LORD SOMERVELL OF HARROW
MR. L. M. D. DE SILVA

[*Delivered by* LORD RADCLIFFE]

This appeal concerns a boundary dispute between plaintiffs who were claiming a declaration of title in respect of an area of land in the Gold Coast Colony on behalf of their two Stools, Amanfupong and Aperade, and a defendant who represented the Achiase Stool. The land, according to the plaintiffs, was the joint property of their Stools: according to the defendant it belonged to his Stool and had been his stool land from time immemorial.

At the trial of the action, which took place in the Supreme Court of the Gold Coast, Lands Division, the plaintiffs, the present appellants, were granted a declaration of title in the terms asked for by their Statement of Claim. The order in question was made on the 11th August, 1951. It is to be noted that neither in the Statement of Claim nor in the Order of the Court is there a reference to any plan by means of which it would be possible to identify the boundaries of the area in respect of which the declaration of title was thus granted. The description used is no more than a verbal description of the land as "that piece or parcel of land commonly known and called Amanfupong and Aperade land situate in the Western Akim District and bounded on the North by lands belonging to the Stools of Eduasa and Ewisa respectively, on the South by lands belonging to the Stools of Wurakessi, Jambra and Asantem respectively, on the East by lands belonging to the plaintiffs' Stool and Surassi Stool respectively and on the West by Okenkensu Stream and Wurakessi Stool land." There is nothing in the evidence which makes it possible to say that these are adequate descriptions of boundaries and in fact an Order made in such form would do little to settle the title to any particular disputed area.

However that may be, the Order of the Supreme Court was reversed by a judgment of the West African Court of Appeal dated 11th January, 1952, and the appellants' action stands dismissed. Before this Board they argued either that the Order of the trial Judge should be restored or that the case should be sent back to the Lands Division of the Supreme Court for a new trial.

In their Lordships' opinion there is no ground for interfering with the Order of the Court of Appeal and the appeal ought therefore to be dismissed. They will refer to so much only of the evidence given at the

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trial as is necessary to explain why this must be so. There is no point of law which bears upon the issue between the parties and the whole question is whether, upon a proper assessment of the evidence, the appellants had or had not made out their title to the "area" claimed. The trial Judge thought that they had, but then he founded himself upon a method of assessment which is quite plainly unsatisfactory. The Court of Appeal thought that they had not, and their Lordships do not differ from the Court of Appeal.

Both sides called a number of witnesses at the hearing. The bulk of their evidence can be grouped under three separate heads—tradition, acts of occupation and recognition of boundaries.

As is not unusual in these cases, there was a conflict between the traditions of the contending Stools as to how and in what right they came upon the lands which they now occupy. The appellants' story was that they were original settlers and the respondent's predecessors were migrants from Ashanti who had got whatever land they did own at Achiase through a grant from a former Chief of the Aperade Stool. The respondent on the other hand maintained that his Stool too descended from original settlers, entitled to the Achiase lands of their own right: the appellants, they said, had suffered conquest and dispossession at the time of the Denkyira wars some hundreds of years ago, at which time the Achiase men, having taken the winning side, had been installed by the Denkyiras as overlords of the surrounding land. The Assessor who sat with the Judge at the trial accepted the respondent's tradition in preference to that of the appellants'. The Judge did not express any disagreement with him on this point. Their Lordships see no ground for taking a different view: but in their opinion there is too vague a relation between these ancestral stories and the proof of ownership of the area which is the subject of Claim to make it of any great importance which story was accepted and which rejected in this case.

The effect of the rest of the evidence can be sufficiently stated in this way. The appellants called representatives of several Stools whose lands were said to border on the disputed area and they deposed that they had boundaries with the appellants and not with the respondent. But except for the testimony given for the Eduasa Stool no definition was afforded as to where these boundaries ran and this branch of the evidence therefore did not provide the useful proof that it might otherwise have done. The respondent too called representatives of two neighbouring Stools on the subject of contiguous boundaries, but it would nevertheless be very difficult to make out, at any rate from the printed record, where their own Stool lands were said to be and where it was that they believed that their boundaries coincided with those of the respondent.

There was evidence on both sides as to acts of occupation. But, apart from one or two disputed places, the evidence on this part of the case could hardly be regarded as even conflicting. Rather it seemed to show that at different points in the area persons had started cultivation or founded settlements who in some cases looked to the appellants, in other cases to the respondent, as Stool owners of the bits of land which they occupied. Conceivably it was not impossible, but undoubtedly it would have been very difficult, for a trial Judge to extract from such evidence any pattern of asserted rights that would justify attributing a whole defined area to the Stool lands of one party or the other.

In any event the case called for a fairly close analysis of the considerable bulk of evidence and that weighing of the respective elements which the Judge who conducts the trial is specially qualified to perform. Unfortunately that is not the treatment which it received. The Assessor, as has been said, not only accepted the respondent's tradition as to his Stool's origin but seems also to have regarded the appellants as having lost all title to their lands at the time of the Denkyira conquest: and, on this basis, he regarded the appellants as having "no claim whatsoever" against the respondent. This is a very summary assessment of the effect of the evidence as a whole: and the learned Judge, while not disagreeing with the Assessor's view as to the traditional history, was probably right in

saying that he was not prepared to decide the case on the strength of any traditional history. But he himself chose instead a determining test that is even more vulnerable. His decision seems to have been based on nothing more convincing than the fact that the appellants had twice before been litigants in respect of the disputed area, or some area related to it, while the respondent's Stool had not moved to assert their title in the Courts. In effect his *ratio decidendi* is contained in the one sentence of his judgment:—" By reason of the two cases filed by the plaintiffs in respect of this land, and having regard to the fact that the defendants have never sought a declaration of title, I am satisfied that of the two parties it is the plaintiffs only who can be said to have acted timeously in asserting their rights, this being so the plaintiffs are entitled to the declaration sought and I so order."

To decide the case on this ground is to turn one item of evidence, relevant though not necessarily significant, into the whole determining issue of the case.

When the appeal was taken to the West African Court of Appeal the Court rightly rejected the reasoning of the trial Judge and held that judgment ought to have been given according to the established principle in such cases, that a plaintiff must succeed on the strength of the evidence that supports his own title not on any weakness in the evidence that might prove title in his defendant. Applying that test they found that the appellants had " signally failed " to discharge the onus which was upon them and accordingly reversed the judgment that had granted declaration of title.

It can be said that this again presents itself as a somewhat summary dismissal of a volume of evidence that certainly went some way towards supporting the appellants' claim: and it perhaps overstates the weaknesses in their evidence, if allowance is made for the fact that in cases of this kind standards of proof have to be adapted, it would seem, to the unavoidable vagueness of much of the subject matter. But, even so, their Lordships, who had the advantage of an exhaustive analysis of the evidence from counsel representing the respective parties, do not come to any different conclusion from that reached by the Court of Appeal.

Their Lordships will humbly advise Her Majesty that the appeal should be dismissed. The appellants must pay the respondent's costs.

(39761) Wt. 8069—3 120 7/56 D.L.

In the Privy Council

NANA OWUDU ASEKU BREMPONG III
AND ANOTHER

v.

NANA DARKU FREMPONG II

DELIVERED BY LORD RADCLIFFE

Printed by HER MAJESTY'S STATIONERY OFFICE PRESS,
DRURY LANE, W.C.2.

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