

IN THE PRIVY COUNCIL

1960
ON APPEAL

No. 15 of 1957

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

B E T W E E N:

NANA YAO NKANSAH II, Gyasehene and acting
Ohene of Bukuruwa (substituted for Nana
Osei Twum II, Ohene of Bukuruwa) Plaintiff-Appellant

- and -

NANA ASANTE YIADOM III, Ohene of Nkwatia
Defendant-Respondent

RECORD OF PROCEEDINGS

KNAPP-FISHERS and BLAKE & REDDEN,
31, Great Peter Street,
Westminster, S.W.1.

Solicitors for the Appellant.

A.L. BRYDEN & WILLIAMS,
53, Victoria Street,
Westminster, S.W.1.

Solicitors for the Respondent.

IN THE PRIVY COUNCILNo. 15 of 1957ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL UNIVERSITY OF LONDON
 (GOLD COAST SESSION) W.C.I.

B E T W E E N:

NANA YAO NKANSAH II, Gyasehene
 and acting Ohene of Bukuruwa
 (substituted for Nana Osei Twum
 II, Ohene of Bukuruwa)

Plaintiff-Appellant

50367

- and -

NANA ASANTE YIADOM III,
 Ohene of Nkwatia

Defendant-RespondentRECORD OF PROCEEDINGSINDEX OF REFERENCE

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BUT NOT DUPLICATED.

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Description of Document	Date
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Affidavit of Nana Yaw Nkansah II in support of Motion	5th August, 1955.

LIST OF EXHIBITS TRANSMITTED TO THE PRIVY COUNCIL
BUT NOT DUPLICATED.

Exhibit Mark	Description of Document	Date
	<u>Tendered by Defendant:</u>	
"A"	Court Notes and Judgment in re Odikro Kofi Bekoe & Another v. Gyan-fosu & Another	16th September, 1931
"B"	Letter - Omanhene of Kwahu to Ag. Ohene of Nkwatia	6th June, 1942
"D"	Proceedings in re Omanhene Kofi Buaten v. Ohene Kwesi Amoako, Kwadjo Ajekum substituted	30th May, 1927
"E"	Parts of this Exhibit not considered relevant.	
	<u>Tendered by Plaintiff:</u>	
"1"	Plan of area of land in dispute	Small scale plan is produced in lieu of these plans and maps and is agreed by Appellant and Respondent.
"2"	Plan of area of land in dispute superimposed on a map	
"13"	Old Map.	
"15"	Map (Sheet No. 139)	
"16"	Field Sheet No.134	

IN THE PRIVY COUNCIL

No.15 of 1957

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

B E T W E E N:

NANA YAO NKANSAH II, Gyaschene and
acting Ohene of Bukuruwa (substituted
for Nana Osei Twum II, Ohene of
Bukuruwa) Plaintiff-Appellant

- and -

NANA ASANTE YIADOM III,
Ohene of Nkwatia Defendant-Respondent

10

RECORD OF PROCEEDINGS

No. 1.

WRIT OF SUMMONS - Suit No. 57/50

IN THE NATIVE COURT OF OKWAWU GRADE "A" ABETIFI

Between: NANA OSEI TWUM II,
Ohene of Bukuruwa Plaintiff

- and -

20

NANA ASANTE YIADOM III,
Ohene of Nkwatia Defendant

To: Nana Asante Yiadom III, Ohene of Nkwatia.

You are hereby commanded to attend this Native
Court at 8.30 a.m. o'clock on the 28th day of July
1950, to answer a suit by Nana Osei Twum II,
(Plaintiff) against you.

30

The Plaintiff claims: The Plaintiff is the
owner of all that piece or parcel of land situate,
in the Kwahu State and bounded on the North by
River Obosom, on the South by the River Afram, on
the East by River Volta, on the West by Abetifi,
Nkwatia, Pitiku and Begoro Stool lands.

The Defendants subjects, his servants and

In the Native
Court of Okwawu
Grade "A"
Abetifi.

No. 1.

Writ of Summons.
14th June, 1950.

No. 2.

COUNTERCLAIM BY THE DEFENDANT

FILED 26.6.50.
R.2781 (£2.9.6.)
F.O.A. for Repr.

In the Native
Court of Okwawu
Grade "A"
Abetifi.

No. 2.

IN THE NATIVE COURT OF OKWAWU (GRADE "A") ABETIFI

Suit No.57/50

Counterclaim by
the Defendant.
22nd June, 1950.

Nana Osei Twum II
(Ohene of Bukuruwa)

Plaintiff

10

versus

Nana Asante Yiadom III
(Ohene of Nkwatia)

Defendant

COUNTERCLAIM

PLEASE TAKE NOTICE that at the hearing of trial of the above-named Suit the Defendant will ask leave to AND DOTH HEREBY CLAIM by way of Counterclaim as follows :-

20

Nana Asante Yiadom III Ohene of Nkwatia for and on behalf of the Nkwatia Stool doth hereby claim against Nana Osei Twum II Ohene of Bukuruwa as representing the Stool of Bukuruwa :-

30

- (a) Declaration of Title as Owner to All That piece or parcel of Land situate in the Kwahu State and bounded on the North by Pitiku and Nkami Stool Lands, South by Asaki-Bukuruwa and Akwamu Stool Lands, East by River Volta, West by Lands belonging to Stools of Nkwatia Kwahu-Tafo and the River Afram.
- (b) £100 Damages against the said Nana Osei Twum II for trespass committed by him in sending his subjects and people to enter upon and occupy portions of the said parcel of Land the subject-matter of the Suit without permission of the Ohene of Nkwatia.
- (c) Recovery of Possession of the said portions of Land wrongly occupied by the Subjects of the Ohene of Bukuruwa.

In the Native Court of Okwawu Grade "A" Abetifi.

(d) Perpetual Injunction against the said Ohene sic. of Bukuruwa, his Agents, Workmen, Subjects and People from further committing any other form of trespass on the said Land.

No. 2.

Counterclaim by the Defendant.
22nd June, 1950
- continued.

DATED at Nkwatia this 22nd day of June, 1950.

(Sgd.) Nana Asante Yiadom III
Nkwatiahene.

To: The Registrar,
Court "A",
Abetifi.

10

No. 3.

Civil Summons -
Suit No. 7/51.
10th April,
1951.

No. 3.

CIVIL SUMMONS - Suit No. 7/51

IN THE NATIVE COURT OF OKWAWU (ABENE) GRADE "A"
ABETIFI.

Between: Kwabena Duro of Asakraka Plaintiff

- and -

1. Kwapong Mosi of Obomeng and
2. Ohene Kwadjo of Kyemfere Defendants

To: Defendants of Obomeng and Kyemfere

You are hereby commanded to attend this Native Court at 8.30 a.m. o'clock on the 1st day of May, 1951, to answer a suit by Kwabena Duro of Asakraka (Plaintiff) against you.

20

The Plaintiff claims from the Defendants jointly and severally -

(a) ownership, possession and occupation of all that piece or parcel of land with cocoa and foodstuffs farm thereon, valued at about £500 (Five hundred pounds) situate, lying and being at Kyemfere in the Kwahu State and known as Kyemfere having boundaries on its four sides with the properties of (1) Yaw Anor, (2) Afua Koa, (3) Kwaku Aboagye and (4) forest land, respectively, which said piece or parcel of land with the cocoa and foodstuffs farm thereon has been acquired

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by right of cultivation according to the native land tenure of Kwahu from the Nkwatia Stool;

In the Native Court of Okwawu Grade "A" Abetifi.

(b) £100 damages for trespass committed by the Defendants and/or their agents, servants, and labourers on the aforesaid piece or parcel of land or in the said farm thereon; and

No. 3.

Civil Summons - Suit No. 7/51.

10

(c) An injunction restraining the Defendants, their agents, servants, labourers or any other person or persons claiming under the Defendants from ever entering the said land or farm.

10th April, 1951
- continued.

Dated at Abetifi the 10th day of April, 1951.

Claim	..	Land	
Fees	..		£ 2. 0. 0
Service and mileage			<u>6. 0</u>
			<u>£ 2. 6. 0</u>

20

Kofi Nkansah his
x
mark

President of Native Court

Witness for mark:
(Sgd.) Yaw Opusuo
for Registrar.

Take Notice that if you do not attend the Native Court may give judgment in your absence.

CERTIFICATE OF SERVICE

30 sic. Upon the 10th day of April, 1951, this Summonses were served by me on Kwamong Mosi and Ohene Kwadjo Defendants at Obemeng.

(Sgd.) S. Gyima Dankwah,
Bailiff.

Date 10/4/51.

In the Supreme Court of the Gold Coast Eastern Judicial Division, Land Division, Accra.

No. 4.

FORMAL ORDER OF TRANSFER (Suit No.57/50)

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN JUDICIAL DIVISION
LAND DIVISION, ACCRA

No.. 4.

(L.S.)

Transferred Suit No.45/50

Formal Order of Transfer (Suit No. 57/50)

NANA OSEI TWUM II,
Ohene of Bukuruwa

Plaintiff

v.

NANA ASANTE YIADOM III,
Ohene of Nkwatia

Defendant

2nd December, 1950.

10

(Sgd.) J.Henley Coussey,
Judge.

WHEREAS by Order dated 18th November, 1950, the Magistrate's Court Mpraeso, under the provisions of Section 54(1)(c) of the Native Courts (Colony) Ordinance, 1944, has reported to the Land Judge, the pendency of the above-named case before the Native Court "A", Kwahu State, Abetifi.

IT IS HEREBY ORDERED that the said cause be entirely transferred from the said Native Court "A", Kwahu State, Abetifi, to the Land Division of the Supreme Court of the Gold Coast at Accra to be heard and determined:

20

AND IT IS HEREBY ORDERED (1) that the process and proceedings in the said cause and attested copies of all entries in the books of the said Native Court "A", Kwahu State, Abetifi, relative thereto be transmitted to the Land Division of the Supreme Court of the Gold Coast at Accra and (2) that the said cause be placed on the General List for Thursday the 11th day of January, 1951, at 8.30 a.m.

30

GIVEN under my hand and the seal of the said Court at Victoriaborg, Accra, the 2nd day of December, 1950.

(Sgd.) Dugbartey Narnor,
Registrar,
Land Court.

No. 5.

FORMAL ORDER OF TRANSFER (Suit No.7/51)

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN JUDICIAL DIVISION
LAND DIVISION, ACCRA.

In the Supreme
Court of the
Gold Coast
Eastern Judicial
Division, Land
Division, Accra.

Transferred Suit No.14/1951

No. 5.

(L.S.)

(Sgd.) J.Jackson
Judge.

Kwabena Oduro

Plaintiff

Formal Order of
Transfer (Suit
No. 7/51)

v.

16th June, 1951.

Kwapong Mosi
Ohene Kwadjo

Defendants

10

WHEREAS by Order dated 2nd June, 1951, the Magistrate's Court, Mpraeso, under the provisions of Section 54(1)(c) of the Native Courts (Colony) Ordinance, 1944, has reported to the Land Judge the pendency of the above-named case before the Native Court "A", Abetifi:

20

IT IS HEREBY ORDERED that the said cause be transferred from the Native Court "A", Abetifi to the Land Division of the Supreme Court of the Gold Coast at Accra, to be heard and determined:

30

AND IT IS HEREBY ORDERED (1) that the Original Writ of Summons and process and proceedings in the said cause and attested copies of all entries in the books of the Native Court "A", Abetifi, relative thereto be transmitted to the Land Division of the Supreme Court of the Gold Coast at Accra and (2) that the said cause be placed on the General List for Thursday the 12th day of July, 1951, at 8.30 a.m.

GIVEN under my hand and the seal of the said Court at Victoriaborg, Accra, this 16th day of June, 1951.

(Sgd.) Dugbartey Narmor,
Registrar,
Land Court.

In the Supreme Court of the Gold Coast Eastern Judicial Division, Land Division, Accra.

No. 6.

Court Order for Directions as to Pleadings and Plan (Suit No. 57/50).
4th January, 1951.

No. 6.

COURT ORDER FOR DIRECTIONS AS TO PLEADINGS & PLAN

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN JUDICIAL DIVISION (LAND DIVISION) held at Victoriaborg, Accra, on Thursday the 4th day of January, 1951, before Jackson, J.

Transferred Suit No.45/50

Nana Osei Twum II, Ohene of Bukuruwa	<u>Plaintiff</u>	10
v.		
Nana Asante Yiadom III, Ohene of Nkwatia	<u>Defendant</u>	

Akyeampong holding Akufo Addo's brief for Plaintiff.

Lyle holding Bossman's brief for Defendant.

Suit transferred from Native Court of Kwahu State, Abetifi.

LYLE: Ask for Pleadings. 20

COURT:-

Let Statement of Claim be filed within 21 days (I am informed plan is already in existence) and Statement of Claim and copy of the plan be served upon the Defendant. Statement of Defence to be filed within 14 days of the date of the service of the Statement of Claim and copy of plan. Let service be made upon Counsel engaged (by wish of Counsel before me).

(Sgd.) J. Jackson, 30
J.

COURT ORDER GRANTING EXTENSION OF TIME TO FILE PLEADINGS AND PLAN

In the Supreme Court of the Gold Coast Eastern Judicial Division, Land Division, Accra.

2.2.51.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN JUDICIAL DIVISION (LAND DIVISION) held at Victoriaborg, Accra, on Friday the 2nd day of February, 1951 before Jackson, J.

No. 7.

Court Notes granting extension of time to file Pleadings and Plan. (Suit No. 7/51).

2nd February, 1951

Nana Osei Twum II

v.

Nana Asante Yiadom III

(In Chambers)

AKUFO ADDO moves ex parte for extension in which to file Statement of Claim and plan.

COURT:- Extension of one month from 25th January granted.

(Sgd.) J. Jackson, J.

No. 8.

No. 8.

COURT NOTES AS TO DELIVERY OF PLEADINGS AND AS TO PLAN

Court Notes as to delivery of Pleadings and as to Plan.

10th May, 1951.

14th June 1951.

10.5.51.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN JUDICIAL DIVISION (LAND DIVISION) held at Victoriaborg, Accra, on Thursday, the 10th day of May, 1951, before Lingley, Ag. J.

45/50.

Nana Osei Twum II

v.

Nana Asante Yiadom III

LYLE:-

Bossman agreed to pay our costs 5 guineas and has now served us with defence and counterclaim.

COURT:-

7 days to reply to counterclaim.

(Intd.) L.G.L.

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20

30

In the Supreme Court of the Gold Coast Eastern Judicial Division, Land Division, Accra.

14.6.51.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN JUDICIAL DIVISION (LAND DIVISION) held at Victoriaborg, Accra, on Thursday, the 14th day of June, 1951, before Jackson, J.

No. 8.

Nana Osei Twum II

v.

Nana Asante Yiadom III

Court Notes as to delivery of Pleadings and as to Plan.

10th May, 1951
14th June 1951
- continued.

Bossman for Defendant.
Bruce Lyle holding Akufo Addo's brief for Plaintiff.

10

BOSSMAN:-

We wish to indicate on the plan certain features which we will evidence at the trial and to indicate our boundaries.

COURT:-

Let those matters be indicated on the plan and when completed let a copy be served upon the Plaintiff.

After filing of these details Plaintiff to move Court for date of trial.

20

(Sgd.) J. Jackson.

No. 9.

No. 9.

Statement of Claim. (Suit No. 57/50).

21st February, 1951.

STATEMENT OF CLAIM (Suit 57/50)

FILED 22.2.51.
at 1.10 p.m.
(Intd.) A.K.D.
f. R.L.C.ACCRA.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN JUDICIAL DIVISION
LAND COURT - ACCRA. A.D. 1951

30

Nana Osei Twum III
Ohene of Bukuruwa

Plaintiff

versus

Nana Asante Yiadom III
Ohene of Nkwatia

Defendant

STATEMENT OF CLAIM FILED ON BEHALF OF THE PLAINTIFF HEREIN BY AKUFO ADDO Esquire

1. The Plaintiff sues on behalf of the Stool of Bukuruwa in the Kwahu State of which he is the occupant.

40

2. The land edged in Red on the Plan Filed by the Order of the Court is the property of the Stool of Bukuruwa aforesaid. The said land was acquired by conquest in a War between Nana Baadu I, Ohene of Bukuruwa and Nana Ataara Finam about 200 years ago, and the said land has since then become the ancestral property of the Stool of Bukuruwa to which it is attached and has since been in the possession and occupation of the Plaintiff and his predecessors in title.

3. The Defendant is the Ohene of Nkwatia in the Kwahu State and lays claim to ownership of a portion of the said land edged in Orange on the Plan.

4. The Defendant, and by his authority, his subjects, servants and agents have wrongfully made farms on the said portion claimed by the Defendant and are in wrongful possession thereof.

5. The Plaintiff says that the Defendant is estopped from setting up a claim to the ownership of the said portion of land and from denying the Plaintiff's title of ownership thereto upon the following grounds :-

(a) In a suit relating to the land edged in Red on the Plan entitled "Nana Yao Nkansa (suing on behalf of the Bukuruwa Stool) - Plaintiff and Nana Akuamoah Akyeampong (Omanhene of Kwahu) - Co-Plaintiff VERSUS Wudani Kwasi and others - Defendants; Chief Dwamena Ayiripe II of Nkwatia-Kwahu - Co-Defendant" heard and determined by the Land Court, Accra on the 2nd day of May 1947, the Defendant's predecessor in title applied to be joined and was joined as Co-Defendant alleging then, as now, that the Nkwatia Stool was the owner of the same portion of land as forms the subject-matter of this suit. The Defendant's predecessor-in title however did not proceed with his claim and did not take further part in the proceedings which ended in judgment being given in favour of the Plaintiff's Stool for a declaration of ownership of the land edged in Red on the Plan.

(b) In an Arbitration held in accordance with Native Custom by the Omanhene of Kwahu in or about the year 1942 for the settlement of a boundary dispute between the Ohene of Bukuruwa and the Ohene of Nkwatia the latter was adjudged not to be the owner of the portion of land that

In the Supreme Court of the Gold Coast Eastern Judicial Division, Land Division, Accra.

No. 9.

Statement of Claim (Suit No. 57/50).

21st February, 1951.

- continued.

In the Supreme Court of the Gold Coast Eastern Judicial Division, Land Division, Accra.

No. 9.

Statement of Claim (Suit No. 57/50).

21st February, 1951.

- continued.

Amended by Order of Court dated 23/6/52.

now forms the subject-matter of this suit and to have no interest whatsoever therein. The Defendant's predecessor in title then laid claim to the ownership of the said portion of land edged in Orange on the Plan.

WHEREFORE the Plaintiff claims as per his Writ of Summons.

DATED AT KWAKWADUAM CHAMBERS, ACCRA, THIS 21st day of February, 1951.

(Sgd.) Akufo Addo,
Plaintiff's Solicitor.

10

To: THE REGISTRAR,
LAND COURT, ACCRA.

and

TO: K.ADUMUA BOSSMAN Esquire,
SOLICITOR FOR THE DEFENDANT,
ACCRA.

CERTIFICATE OF SERVICE

Upon the 23rd day of February, 1951, at 1.30 p.m. a copy of this Statement of Claim and one Plan attached to the Statement of Claims of Plaintiff was served by me on K. Adumua Bossman, Counsel for Defendant personally at Accra.

20

(Sgd.) ? ?
Bailiff,
24/2/51.

No. 10.

STATEMENT OF DEFENCE (Suit No. 57/50)

FILED 8.5.51
at 11.35 a.m.
(Intd.) A.K.D.
F. R.L.C. ACCRA.

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN JUDICIAL DIVISION
LAND COURT - ACCRA

Transferred Suit No.145/50

In the Supreme
Court of the
Gold Coast
Eastern Judicial
Division, Land
Division, Accra.

No.10.

Statement of
Defence (Suit
No. 57/50)

20th March,
1951.

10 Nana Osei Twum II,
Ohene of Bukuruwa Plaintiff

versus

Nana Asante Yiadom III,
Ohene of Nkwatia Defendant

STATEMENT OF DEFENCE FILED ON
BEHALF OF THE DEFENDANT HEREIN

1. The Defendant admits the allegations in paragraph 1 of the Statement of Claim.

20 2. The Defendant denies the allegations in paragraph 2 of the Statement of Claim and says that the Plaintiff is not the owner of the whole of the land edged in Red on the Plan filed in the Suit by the Order of the Court, but that he the said Defendant is the owner of that portion edged in orange or "Flesh colour" on the plan exhibited and marked as No.2 and the Defendant denies that the Plaintiff ever acquired that portion at any time by conquest or otherwise, or that portion has been attached to the Bukuruwa Stool as the Plaintiff's ancestral property or otherwise and the said Defendant emphatically denies that, that portion has been in 30 the possession of the Plaintiff's predecessors or in the said Plaintiff's possession, or in the possession of any of his subjects or people.

3. In further denial of the allegations in paragraph 2 of the Statement of Claim, the Defendant says that he acquired the portion edged in orange or "Flesh Colour" by taking part as an ally of the sic. Onamhene of Kumawu and Agogohene in a War which they waged successfully against a Guan Chief called 40 Attaara Finam who with his subjects formerly occupied the Land in the area, and that, that portion

In the Supreme Court of the Gold Coast Eastern Judicial Division, Land Division, Accra.

No.10.

Statement of Defence (Suit No. 57/50)

20th March, 1951.

- continued.

forming boundary on the South by Land acquired in the same War by the Pitiko Stool has been attached to the Defendant's Stool and occupied by the said Defendant's subjects from the time of that War about 280 years ago up to date hereof.

4. The Defendant admits the allegation in paragraph 4 of the Statement of Claim as to the making of farms and occupation of them by the Defendant's subjects acting on his authority on the said portion edged orange or "Flesh Colour" - but denies that such making and occupation of farms by his subjects is wrongful.

10

5. The Defendant emphatically denies that he is estopped as alleged in paragraph 5 of the Statement of Claim.

6. Save as hereinbefore expressly admitted, the Defendant denies all the allegations of fact contained in all paragraphs of the Plaintiff's Statement of Claim as if the same were set out and denied seriatim.

20

7. The Defendant Counterclaims for a Declaration of the title of his Stool, the Nkwatia Stool, to all that area edged in orange or "Flesh Colour" on the Plan filed in the Suit.

DATED AT AZINYO CHAMBERS, ACCRA, this 20th day of March, 1951.

(Sgd.) K. Adumua-Bossman,
Solicitor for Defendant.

To; THE REGISTRAR,
LAND COURT, ACCRA

30

and

To: THE ABOVE NAMED PLAINTIFF NANA OSEI TWUM II,
ETC. OR HIS SOLICITOR MR. AKUFO ADDO, ACCRA.

CERTIFICATE OF SERVICE

Upon the 9th day of May, 1951, one copy of this Statement of Defence was served by me on Akufo Addo the Plaintiff's Solicitor herein personally at Accra.

(Sgd.) ? ?
Bailiff,
11/5/51.

40

No. 11.

COURT ORDERS ORDERING SUITS TO BE CONSOLIDATED

12.7.51.

IN THE SUPREME COURT OF THE GOLD COAST,
EASTERN JUDICIAL DIVISION (LAND DIVISION)
held at Victoriaborg, Accra, on Thursday,
the 12th day of July, 1951, before Jackson,
Ag. C.J.

Kwabena Oduro

v.

1. Kwapong Mosi
2. Ohene Kwadjo

Akufo Addo for Defendants.
Plaintiff absent.

AKUFO ADDO:

The land in this case is a part of a large area which is the subject of another suit pending and in which a plan has been ordered. Defendants in this suit claim through Plaintiff in the other suit.

DIRECTIONS:

Let the area of land in respect of which this Plaintiff seeks the declaration be delineated on the plan now being prepared in respect of suit No. 45/50 Osei Twum v. Nana Asante Yiadom and let the area in respect of which damage is claimed be marked thereon and let the two suits be consolidated for trial.

Plan to be filed in Court within one month.

(Sgd.) J. Jackson,
J.

In the Supreme Court of the Gold Coast Eastern Judicial Division, Land Division, Accra.

No.11.

Court Notes ordering suits to be consolidated.
12th July 1951.

10

20

30

In the Supreme Court of the Gold Coast Eastern Judicial Division, Land Division, Accra.

No. 12.

FORMAL ORDER CONSOLIDATING SUITS.
IN THE SUPREME COURT OF THE GOLD COAST
EASTERN JUDICIAL DIVISION
LAND DIVISION ACCRA

No.12.

Transferred Suit No.L14/1951

Formal Order consolidating Suits.

Kwabena Oduro

Plaintiff

v.

12th July 1951.

Kwapong Mosi
Ohene Kwadjo

Defendants

10

(Sgd.) J.Jackson,
Judge.

WHEREAS the land in this case is a part of a large area which is the subject of suit Nana Osei Twum II versus Nana Asante Yiadom III (Transferred Suit No.45/1950) pending in this Court and in which a plan has been ordered: AND WHEREAS the Defendants in this Suit claim through the Plaintiff in the other suit aforesaid.

I DO DIRECT that the area of land in respect of which the Plaintiff herein seeks a declaration be delineated on the plan now being prepared in respect of suit No. 45/1950 Nana Osei Twum II versus Nana Asante Yiadom III; AND I DO FURTHER DIRECT that the area in respect of which damage is claimed be also marked thereon:

20

IT IS ALSO ORDERED that the two suits, namely, Transferred Suit No. 45/1950 Nana Osei Twum II versus Nana Asante Yiadom III and Transferred Suit No. 14/1951 Kwabena Oduro versus Kwapong Mosi and Ohene Kwadjo be consolidated for trial and that the plan be filed in Court within one month from date.

30

GIVEN under my hand and the seal of the said Court at Victoriaborg, Accra, the 12th day of July, 1951.

(Sgd.) John Haizel
Ag. Registrar, Land Court.

No. 13.

COURT ORDERS GRANTING EXTENSION OF TIME
TO FILE PLAN.

15.7.51.

IN THE SUPREME COURT OF THE GOLD COAST,
EASTERN JUDICIAL DIVISION (LAND DIVISION)
held at Victoriaborg, Accra, on Friday
the 13th day of July, 1951, before Jackson,
Ag. C.J.

10

Nana Osei Twum II

v.

Nana Asante Yiadom III

Akufo Addo for Plaintiff for order appointing date
on which Defendant shall carry out term of order
made on 15.6.51.

AKUFO ADDO:

Ask for a date. Mr. Bossman agrees to one
month.

COURT:

20

Let plan be filed by 14th August 1951.

(Sgd.) J. Jackson,
J.

30.8.51.

IN THE SUPREME COURT OF THE GOLD COAST,
EASTERN JUDICIAL DIVISION (LAND DIVISION)
held at Victoriaborg, Accra, on Thursday
the 30th day of August, 1951, before
Jackson, J.

Nana Osei Twum II

v.

Nana Asante Yiadom III

and

Kwabena Oduro

v.

1. Kwabong Mosi

2. Ohene Kwadjo

30

Bossman for Nana Asante Yiadom III
Plaintiff not present.

Motion to extend time in which to file plan.

In the Supreme
Court of the
Gold Coast
Eastern Judicial
Division, Land
Division, Accra.

No.13.

Court Orders
granting
extension of
time to file
Plan.

13th July 1951.

30th August,
1951.

6th September,
1951.

In the Supreme Court of the Gold Coast Eastern Judicial Division, Land Division, Accra.

No.13.

Court Orders granting extension of time to file Plan. - continued. 13th July 1951. 30th August, 1951. 6th September, 1951.

BOSSMAN:

Ask for further 2 months.

COURT:

Extension granted to 14.10.51.

(Sgd.) J. Jackson, J.

6.9.51.

IN THE SUPREME COURT OF THE GOLD COAST; EASTERN JUDICIAL DIVISION (LAND DIVISION) held at Victoriaborg, Accra, on Thursday the 6th day of September, 1951, before Jackson, J.

10

Kwabena Oduro

v.

Kwapong Mosi & Another

- and -

Nana Osei Twum II

v.

Nana Asante Yiadom III

Bossman for Kwabena Oduro.

20

Extension of time granted to 14.10.51 to file plan.

(Sgd.) J. Jackson, J.

No.14.

No. 14.

MOTION FOR INTERIM INJUNCTION PENDING HEARING OF ACTION

Motion for interim injunction pending hearing of action.

27.10.51.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN JUDICIAL (LAND DIVISION) held at Victoriaborg, Accra, on Saturday the 27th day of October, 1951, before Jackson, J.

30

Nana Osei Twum II

v.

Nana Asante Yiadom III

Akufo Addo for Plaintiff-applicant.

Bossman for Defendant.

Motion for interim injunction pending hearing of the action.

AKUFO ADDO:

Moves in terms of motion and affidavit. In 1944 land now in dispute was a portion of a large area which was subject of a suit in this Court between Plaintiff's stool and the Stool of the Omanhene of the State against some chiefs of Togoland area. While the suit was pending Defendant's Stool was joined as a Defendant i.e. by predecessor in title of present Defendant - upon his own application and in an Affidavit in support of that application they averred the land to be property of Defendant's Stool. He was joined. Plaintiff recovered judgment and obtained a declaration of title in favour of Plaintiff's Stool. The other Defendant but not predecessor of present Defendant appealed and appeal was dismissed. Matter is now before Privy Council - meanwhile present Defendant has virtually invaded the land.

In the Supreme Court of the Gold Coast Eastern Judicial (Land Division) Accra.

No.14.

Motion for interim injunction pending hearing of action.

27th October, 1951

- continued.

After the judgment of the West African Court of Appeal the old Stool occupant was destooled and the present Defendant put in his place. Defendant was enstooled about 1949 and now his subjects are invading the land on the Afram plains. The forest is extremely rich in cocoa farms and for development of cocoa. Defendant's Stool has been granting lands not only to his subjects but to strangers and whole land in course of deforestation. Pleadings have been ordered and plan had been filed. Defendant filed his defence some time after application to this Court on the 14th June to demarcate on Plaintiff's plan his boundaries. We suspected this was merely playing for time - so I applied on behalf of Plaintiff for Court to fix a time limit for filing of plan. Court ordered plan to be filed by 14th August.

14th August came and went. No plan forthcoming. Defendant applied again for an extension of time on 30th August. Order that plan be filed by 14th October. Still no sign of any plan and farming goes on.

There are 3-4 cases subsidiary to this one pending in this Court. My submission is that what they are now demarcating on the plan are those newly established farms.

COURT:

There is a preliminary issue before me namely

In the Supreme Court of the Gold Coast Eastern Judicial (Land Division) Accra.

that the Defendant is estopped from denying the Plaintiff's title and if this is satisfactorily determined in favour of the Plaintiff it will dispose of the matter. If the Plaintiff is unsuccessful then I will hear Mr. Bossman in reply to the arguments I have already heard. The matter is clearly one of urgency and I will fix an early date for the hearing of that preliminary issue.

No.14.

Motion for interim injunction pending hearing of action:

27th October, 1951

- continued.

Counsel agree that date shall be the 12th November.

Let it be as on the 12.11.51.

(Sgd.) J. Jackson, J.

12.11.51.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN JUDICIAL DIVISION (LAND DIVISION) held at Victoriaborg, Accra, on Monday, the 12th day of November, 1951, before Jackson, J.

Nana Osei Twum II

v.

Nana Asante Yiadom III

Motion for interim injunction.

Akufo Addo for Plaintiff-applicant.
Bossman for Defendant.

AKUFO ADDO:-

12th November, 1951.

This action was placed on the list to enable Court to decide first the issue as to "res judicata" before deciding question of injunction.

COURT:-

I will determine that issue now.

AKUFO ADDO:-

Plea by way of estoppel raised in para. 5 of Statement of Claim.

COURT:

It would appear to be an action grounded upon a judgment recovered.

10

20

30

AKUFO ADDO:-

On 2/5/47 the predecessor in title of present Plaintiff for Bukuruwa Stool obtained against a member of Defendant among whom was predecessor in title of present Defendant, defending on behalf of the Nkwatia Stool, judgment of ownership of the land now in issue. The original plan tendered has been transmitted to the Privy Council. Three copies were made. The one I now is a copy (admitted for identification only and marked No. "1").

sic.
10

I tender the judgment at pages 109-116 i.e. the judgment of the Land Court and that of the West African Court of Appeal dated 1.3.48 (admitted "2" and "3").

20

The Nkwatia Stool were joined in that action on the 11th February, 1944 (at page 31 of the record). The Plaintiff opposed the application for joinder and appealed to West African Court of Appeal and which appeal was dismissed on 22.11.44 (page 33 of Record). When case came on on 6th August, 1946, before McCarthy, J., Court notes read at p.55 "Sawyers for Plaintiffs Chief Dwamena Ayiripeh II of Nkwatia (absent)".

Note continues - "Sawyers says understands last-named Defendant does not intend to defend".

30

Counsel for Nkwatia was absent. On that day a hearing date was fixed and on 12th September the trial commenced (p.62). Bossman then according to notes appeared for Defendants. Hearing started on that day.

Refer to Affidavit sworn to by some elders of Nkwatia Stool in support of their application for joinder. It appears at p. 27 of the record (Exhibit No. "2").

Plaintiff's predecessor replied by Affidavit set out at p.30 of record.

At p.31 - proceedings proceeded on the application and heard arguments.

40

P.31 - Order of Court was "After reading that applicant be joined etc., etc.," Bannerman asked that applicant should point out land.

In the Supreme Court of the Gold Coast Eastern Judicial (Land Division) Accra.

No.14.

Motion for interim injunction pending hearing of action.

12th November, 1951.

- continued.

In the Supreme Court of the Gold Coast Eastern Judicial (Land Division) Accra.

COURT:

Were those papers referred to served upon the person so joined? I refer to Order 3, R.5.

AKUFO ADDO:

Ask that this matter be adjourned to later in the morning.

No.14.

BOSSMAN:

I have no objection.

Motion for interim injunction pending hearing of action.

COURT:

Let case be adjourned until Thursday.

10

12th November, 1951.

(Sgd.) J. Jackson,
J.

- continued.

15.11.51.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN JUDICIAL DIVISION (LAND DIVISION) held at Victoriaborg, Accra, on Thursday the 15th day of November, 1951, before Jackson, J.

Nana Osei Twum II

v.

Nana Asante Yiadom III

20

From folio 488.

AKUFO ADDO:

I can find no record of any service of the papers as directed by the Court. I cannot press for this particular plea, but ask that an interim injunction be made pending the hearing of the case. I have suggested to my learned friend that an injunction should be made to restrain both parties and that no more changes should be permitted.

30

15th November, 1951.

BOSSMAN:

On matter of res judicata ask that the plea on estoppel be held has failed - ask that question of injunction might stand over until Monday. Survey completed and trial can take place early.

COURT:

I will give my reason on Monday why the plea on estoppel must fail - will then consider the question of the injunction and date of trial until Monday the 19th November, 1951.

(Sgd.) J. Jackson,
J.

No. 15.

ORDER OF COURT GRANTING INJUNCTION

19.11.51.

IN THE SUPREME COURT OF THE GOLD COAST,
EASTERN JUDICIAL DIVISION (LAND DIVISION)
held at Victoriaborg, Accra, on Monday the
19th day of November, 1951, before Jackson,
J.

Nana Osei Twum II

v.

Nana Asante Yiadom III

10

BOSSMAN:

Ask that an inspector be appointed to inspect existing farms.

AKUFO ADDO:

Provided no one extends their farms - that is all that is required.

BOSSMAN:

20

It is agreed that an injunction be ordered to restrain the further clearing of forest for the making of farms.

COURT:

I do grant an injunction to restrain the parties, their agents and servants from clearing any further forest for the making of farms, subject to permission for entry into the land by persons to be nominated by the parties, who shall be the licensed surveyor already employed by the parties to inspect and to record the existing farms.

30

Trial on the 11th February, 1952.

(Sgd.) J. Jackson,
J.

In the Supreme
Court of the
Gold Coast
Eastern Judicial
Division (Land
Division)
Accra.

No.15.

Order of Court
granting
injunction.

19th November,
1951.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

No. 16.

FORMAL ORDER GRANTING INJUNCTION

IN THE SUPREME COURT OF THE GOLD COAST,
EASTERN JUDICIAL DIVISION,
LAND DIVISION, ACCRA.

(L.S.)

Transferred Suit No.45/50

No.16.

(Sgd.) J.Jackson,
Judge.

Formal order granting Injunction.

Nana Osei Twum II
Ohene of Bukuruwa

Plaintiff

10

v.

Nana Asante Yiadom III
Ohene of Nkwatia

Defendant

- and -

Transferred Suit No.L.14/1951

Kwabena Oduro

Plaintiff

v.

Kwapong Mosi, Ohene Kwadjo

Defendants

- Consolidated -

ORDER FOR INTERIM INJUNCTION AND FOR EXTENDING PERIOD WITHIN WHICH TO FILE PLAN

20

UPON HEARING MR.KOFI ADUMUA BOSSEMAN of Counsel for the Defendant Nana Asante Yiadom III AND UPON READING the Affidavit of Opanin Kwasi Safo of Nkwatia-Kwahu, Osafohene to the said Defendant sworn and filed on the 11th day of November, 1951, for and on behalf of the said Defendant in support of an application on notice for an Order for Extension of time within which to file plan of the area in dispute:

IT IS HEREBY ORDERED that both parties herein, their agents and servants be and are hereby restrained from clearing any further forest for the making of farms on the land in dispute, subject to permission for the entering into the land by persons to be nominated by the parties, and who shall be the licensed surveyors already employed by the parties to inspect and to record the existing farms, pending the hearing and determination of the above-named consolidated suits.

30

GIVEN under my hand and the seal of the said Court at Victoriaborg, Accra, this 19th day of November, 1951.

40

(Sgd.) John Haizel,
REGISTRAR,
LAND COURT.

No. 17.

EVIDENCE FOR THE PLAINTIFF

EVIDENCE OF FIRST WITNESS FOR THE PLAINTIFF,
YAO NKANSAH II

IN THE SUPREME COURT OF THE GOLD COAST,
EASTERN JUDICIAL DIVISION (LAND DIVISION)
held at Victoriaborg, Accra, on Tuesday
the 3rd day of June, 1952, before Jackson,
J.

In the Supreme
Court of the
Gold Coast
Eastern Judicial
Division (Land
Division),
Accra.

Evidence for
the Plaintiff.

No.17.

Evidence of 1st
Witness for the
Plaintiff -
Yao Nkansah II.
3rd June, 1952.

Examination-
in-chief.

10

Nana Osei Twum II

v.

Nana Asante Yiadom III

- and -

Kwabena Oduro

v.

Kwapong Mosi and Ohene Kwadjo

(CONSOLIDATED)

Assessor - K. B. Ateko.

20

Akufo Addo for Osei Twum, Kwapong Mosi and Ohene
Kwadjo.

Bossman for Nana Asante Yiadom III and Kwabena
Oduro.

Pleadings in suit No.14/1951: Defendants plead:
"Land on which they farm was granted to them by
Ohene of Bukuruwa (Plaintiff) about 5 years ago -
and are in possession by reason of that grant".

YAO NKANSAH II (m) s. s. in English.

1st WITNESS FOR PLAINTIFF

30

Gyasehene of Bukuruwa. The next man to the
Ohene of Bukuruwa. There is land on the Afram
Plains attached to the Bukuruwa Stool. The Para-
mount Chief of Kwahu is the overlord.

That land is bounded on the north by the River
Obosom, on the south by River Afram, on the east by
the Volta River and on the west by Stool lands be-
longing to Abetifi, Pitiku, Nkwatia (Defendant's
Stool) Kwahu Tafo and Begoro. Those Stools are
Kwahu Stools except Begoro which is Akyim Abuakwa.

40

Q. Some time ago there was a case in this Court
between Bukuruwa Stool and Wudani Kwasi of

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.17.

Evidence of 1st Witness for the Plaintiff -

Yao Nkansah II.

3rd June, 1952.

Examination-in-chief - continued.

Exhibit "4"
Exhibit "5"
Exhibits "1" & "2"

Exhibit "6".

Exhibit "7".

Atipradaa and David Akuamoaa (Yao Akoyi) and Chief Dzaba I, Ohene of Owusuta? A. Yes.

Q. It started in the Native Tribunal of Omanhene of Kwahu (Kwawu) and was later transferred to this Court? A. Yes.

(Copy of the writ admitted and marked No. "3").

Q. While the case was pending in this Court, did the Ohene of Nkwatia join as a Defendant?

A. Yes.

(Copy of application for joinder and Affidavit attached at pages 26, 27 and 28 of Record admitted and marked No. "4").

10

His application to be joined was granted.

(Affidavit of the Plaintiff in that action opposing application admitted and marked No."5").

(Plans filed - one by Plaintiff - and the other by Defendant marked "1" and "2" respectively).

EXAMINED -

(Tender Court notes and decision at page 31 - admitted and marked No. "6").

20

Q. Did the Ohene of Nkwatia take any further part in the proceedings?

A. He came to Court at the beginning - but later he stopped coming and he did not give any evidence.

Q. Was he represented by Counsel during the trial?

A. Yes - Mr. Bossman.

Omanhene of Kwahu was also joined as a Plaintiff.

(Tender application and Court notes, pages 35, 36 and 37 of Record). Admitted and marked No. "7".

30

Q. As Gyasehene of Bukuruwa you know the traditional history of the land? A. Yes.

Q. How did the Bukuruwa Stool acquire the land?

A. The first Ohene of Bukuruwa was called Osei Twum

sic. I. He came from Denkyira with his people and was the first person to settle on Kwahu lands and he settled at Bukuruwa. He was an Ohene in Lower Denkyira in Ashanti. He came with his sub-chiefs and people - Osei Tutu was then the King of Ashanti and after Osei Twum had left Denkyira - it was that Osei Tutu conquered Denkyira and Osei Twum was looking for new lands to settle on.

10 Q. At that time was there any Ohene in Kwahu at all?

A. Not and according to what we are told.

Q. Do you know who came to Kwahu next?

A. One Bediako Akenten who came from Offinsu in Ashanti and he settled at Aduamo. He is now the Benkumhene of Kwahu. (Left Wing Chief).

Q. How far is Bukuruwa from the nearest point on the land now in dispute?

A. About 50 miles west of this land. Bukuruwa is still in existence.

20 Q. How did the land in dispute become attached to your Stool?

A. A long time ago there was a Chief on this land called Attara Finam.

Q. To what tribe did he belong?

A. He was a Guan. He had his capital town at Djanbofo (on land in dispute). That place is still there and is a hunting camp. It is not shown on the plan filed in Court. Osei Twum I was then at Bukuruwa. After he died he was succeeded by Baadu I who declared war on Attara Finam because he kidnapped subjects of Baadu I who were passing through his land to the Northern Territories. There was trade between Bukuruwas and those in the Northern Territories - kolas and slaves.

30

There was war - it was intermittent war and eventually Attara Finam and his people were driven across the Volta. Baadu built a town on the land called Asabi. The original name was Osabiye meaning "some wars are good". (Marked on plan on right bank of Volta River and opposite to Botoku town).

40

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.17.

Evidence of 1st Witness for the Plaintiff -

Yao Wkansah II.

3rd June, 1952.

Examination-in-chief

- continued.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Baadu then left Bukuruwa and settled at Asabi - leaving a few of his people at Bukuruwa. Many towns were founded. One is named Nkami, Ahupe, Ejebeni, Mpeasem.

Q. Where did Nkami people come from originally?

Evidence for the Plaintiff.

A. From Offinsu.

Same place as Benkumhene came from and he, the Defendant, is a sub-chief of the Benkumhene. Benkumhene came first and then came the Nkwatia people. The first chief of Nkwatia was called Opopbri Yiadom. He settled at the present place where Nkwatia is today. Nkwatia is about 3 miles from Mpraeso. From the land in dispute to Nkwatia is about 60 miles.

10

No.17.

Evidence of 1st Witness for the Plaintiff -

Yao Nkansah II.
3rd June, 1952.

Adjourned to 4.6.52.

(Sgd.) J. Jackson,
J.

Examination-in-chief
- continued.

IN THE SUPREME COURT OF THE GOLD COAST,
EASTERN JUDICIAL DIVISION (LAND DIVISION)
held at Victoriaborg, Accra, on Wednesday
the 4th day of June, 1952, before Jackson, J.

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Nana Osei Twum II

v.

Nana Asante Yiadom III

4th June, 1952.

From folio 311.

AKUFO ADDO:

Exhibit "8".
Exhibit "9".
Exhibit "10".

Ask that Statement of Claim made by Omanhene of Kwahu at page 3 be put in evidence (admitted and marked No."8"). JUDGMENT at page 109 admitted and marked "9". Judgment of West African Court of Appeal admitted and marked "10".

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YAO NKANSA II (m) resumes evidence :-
1st WITNESS FOR PLAINTIFF

EXAMINED BY AKUFO ADDO:

Bukuruwa itself is a very small place. After the war Asabi was founded. Present occupant of Bukuruwa Stool now lives at Bukuruwa.

Q. For how long did he live at Asabi?

A. I cannot say the exact date.

Q. What sub-chiefs of Bukuruwa live at Asabi now?

A. The Krontihene, Nana Otukwa and myself (Gyasehene). There is a sub-chief living at Nkami.

Q. What is his name? A. Nana Ekyena.

Q. When survey was made did people go along the whole boundary with surveyor? A. Yes.

In reply to Court:-

I did not go.

EXAMINED

10 Q. What is the boundary between the Bukuruwa Stool and Nkwatia Stool?

A. It starts from the River Esukese straight down south to Kwasiampe - it then goes southward to a river called Mframanyo and another river called Dem where Dem joins Mframaman.

Q. Do you know how that boundary originated?

20 A. Yes - there was an Nkwatia Chief called Atuobia Yiadom. He married a sister of Baadu I of which marriage there were 3 children, 2 males and a female. The female, Tawia Djanwa was married to a nephew of Atuobia Yiadom, named Amaforotey. They had a daughter called Anyaniwa. This Anyaniwa married a man in Atuobie's house named Kofi Kokoroko. A son was born to them called Atta. Atta married a woman from the Stool Family of Nkwatia. They had a son named Asantia who became the Ohene of Bukuruwa, and he became Asante Yiadom I of Nkwatia. As is the habit my nephews' children style me "father" and so Asante Yiadom referred to the occupant of the Bukuruwa Stool as his "father". Since then he has always been referred to as their father. The Nkwatia people got that land from Nana Baadu I.

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In reply to Court:

Q. With whom had Nana Baadu a boundary on the western side of the land he gave to Nkwatia?

A. I don't know.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.17.

Evidence of 1st Witness for the Plaintiff -

Yao Nkansah II.
4th June, 1952.

Examination-in-chief
- continued.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

EXAMINED

I know the area Nkwatia is claiming.

Evidence for the Plaintiff.

Q. On the eastern side of that land are several cottages occupied by Owusuta people?

A. Yes - near Betiasi and Burupai.

No.17.

Q. And these were the people you brought the former action against and now in the Privy Council?

A. Yes.

Evidence of 1st Witness for the Plaintiff -

Q. What brought about that action?

Yao Nkansah II.
4th June, 1952.

A. The Ewes living on the other side of the Volta - who are Wusutas applied for permission to hunt and later they started to make farms and in 1940 action was taken against them to stop them making farms. We agreed for them to hunt but not to farm. The Nkwatia people crossed their boundary in 1927. They went to CHEMFE, PAPASI, MPOTI, BUYIRI, MEM.

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Examination-in-chief
- continued.

Before 1927 there were no farms then at all - the land was only used for hunting.

Q. What happened as the result of that transfer?

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A. Kwabena Baadu II the Benkumhene swore on oath on the Ohene of Nkwatia and the case went before the Tribunal of the Omanhene of Kwahu. Tribunal suggested that a boundary should be cut, but that was never done.

Q. Was a boundary ever demarcated since that occasion?
A. Yes, in 1942.

Q. What were those circumstances?

A. It followed the suggestion of the State Council in 1929 but because of the destoolment of the then Omanhene it was not done. In 1942 when Ohene of Bukuruwa was taking action against the Ewes (Wusutas) - he wanted to take action as well against the Nkwatias because they had remained on this land since 1927.

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The Omanhene of Kwahu and the State Council advised the Ohene of Bukuruwa not to do - but to cut the boundary as formerly suggested.

Before the State Council the President Akuamoah Akyeampong indicated on a map where the boundary

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should be demarcated and that is the boundary which I described. The Ohene of Nkwatia and Benkumhene were both present. In order to be sure that both parties agreed a sum of £6 was collected each from the Ohenes of Nkwatia and Bukuruwa as a seal to the decision taken. That was "aseda". A further sum of £30 was collected from each to pay his expenses for the persons who would cut the boundary and these sums were paid.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.17.

Evidence of 1st Witness for the Plaintiff -

Yao Nkansah II
4th June, 1952.

Examination-in-chief
- continued.

10 Q. Who were the people deputed by the State Council to demarcate the boundary?

A. Omanhene of Kwahu deputed Akwamuhene of Abene named Nana Kofi Nkoyi alias Kofi Ankuma also Okyeame Kwasi Bedia - his linguist. Benkumhene was asked to appoint someone and he appointed Okyeame Nyaku.

20 The Nifahene appointed (Right Wing Chief) an Okyeame, Kwabena Amua, Adontehene (vanguard) appointed one Kweku Meri (now dead) and Kyidomhene (rear-guard chief). Kwadjo Poin was appointed.

They later returned and made their report to the State Council - that was still in 1942. In the meanwhile our action against the Wusutas had been instituted. The Ohene of Nkwatia was joined as a Defendant but took no further part in the proceedings.

In reply to Court:

30 Q. Was his application for joinder made before or after the cutting of the boundary?

A. It was made after that and was made about 1944.

EXAMINED

Dwamena Ayiorepe was then the Ohene of Nkwatia and he ceased to be Ohene when he abdicated - I cannot say when he abdicated.

Q. Why did Bukuruwa bring the action against the Nkwatia Stool?

40 A. Because the Ohene was granting lands to other people and allowing his subjects to make new farms.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.17.

Evidence of 1st Witness for the Plaintiff -

Yao Nkansah II
4th June, 1952.

Examination-in-chief
- continued

In reply to Court:

They are cocoa farms.

EXAMINED

Q. When did they start making cocoa farms there?

A. About 10 years ago - others quite recently. Before 1927 there were only hunting camps and Nkwatia people hunted there. Some had permission from Bukuruwa.

In reply to Court:

Elephants were hunted there. Big timber trees are there. 10

EXAMINED

Some of Bukuruwa's subjects are on the land.

In reply to Court:

Q. Will you then name the villages they occupy?

A. ODonkwakrom, Amankwakrom, Adiembra, Santaboma, Sumsei, Okemfe.

EXAMINED

Q. These Wusuta people. Are they still on the land? A. Yes. 20

Q. Nkwatia people say they acquired the land edged in orange (reads paragraph 3 of Statement of Defence (filed 8.5.51)). Is that true?

A. They took no part whatever in the war against Attara Finam. I've never heard such a history. Nkwatia at that time had not yet reached Kwahu.

Q. Is there any town or village at all in area claimed by Nkwatia where any sub-chiefs of theirs live?

A. No - none of them live there. 30

In reply to Court:

In the former case the Wusutas said they were the first settlers.

CROSS-EXAMINED BY BOSSMAN:

Q. First of all about the plan filed. It is a re-production of the one made for the past case?

A. I should think so.

Q. What I meant was there was no fresh survey of the perimeter.

A. He marked new things on the old plan.

Q. Which new things were made?

10 A. He marked what we suggested over the Nkwatia claim.

Q. It is true that at the first survey the Nkwatias were not present?

A. I cannot say because I did not accompany them. I left it to Mankrado Otukwa.

Q. Take this copy of the plan - you saw the first plan when it was used? A. Yes.

Q. And it contained villages marked as Nkwatia villages?

20 A. I did not observe that. Some villages were marked as Nkwatia villages.

Q. I suggest to you that these were pointed out by your people to the surveyor?

A. I have never been to the place. I don't know what happened there.

Q. When you were litigating the past case did you not solicit people from Nkwatia to come and give evidence? A. I never did that.

30 Q. Did you not write a letter to the Omanhene of Kwahu asking him to get in touch with the Chief of Nkwatia to get him to send witnesses with documents and papers in relation to Faso village (north of Betiasi)?

A. I cannot remember writing that letter.

Q. Did not Gyima Johnson as a result come and bring undermentioned documents?

A. He gave evidence. He was State Secretary to Kwahu State.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.17.

Evidence of 1st Witness for the Plaintiff -

Yao Nkansah II
4th June, 1952.

Cross-Examination.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.17.

Evidence of 1st Witness for the Plaintiff -

Yao Nkansah II
4th June, 1952.

Cross-Examination
- continued.

Q. Upon what points did you require his evidence if not in respect of Faso?

A. (Silence).

Q. I hand you the notes of his evidence to refresh your memory.

A. Yes he came to give evidence about Faso.

Q. And was that evidence to the effect that the Chief of Faso was under the Ohene of Nkwatia?

A. Yes - yes. Yes that was a part of our case.

Q. Do you claim that the Faso Chief is under you? 10

A. Yes - we always make the Chief there. I don't know who is the Chief there now.

Q. You evidenced that the Nkwatiahene applied to be made a party and that later Omanhene of Kwahu came in. After the Omanhene joined was there not a meeting of the whole Kwahu State at which it was decided that whatever differences there were between you and Nkwatia - you should sink those differences for the time being and unite against the common foes the Ewes? 20

A. There was nothing like that. The Ohene of Nkwatia was advised not to join the Ewes, he refused and joined them.

Q. Do you agree that it was after Ohene of Nkwatia had been made a party that Omanhene of Kwahu was joined? A. Yes.

Q. And do you swear that after that joinder there was no meeting as I described?

A. If there was I was not there.

Q. You and the Omanhene of Kwahu were both represented in Court by the late Mr. Sawyerr? 30

A. Yes.

Q. Did you know that the Ohene of Nkwatia contributed towards the litigation?

A. I cannot say.

Q. Was he not asked to contribute?

A. I know nothing about that.

Q. Do you remember that when you went into the box and started giving evidence in the past case Mr. Sawyerr said "Chief" (reading at page 64 of the Record).

Bossman and Akufo Addo agree that whole record of proceedings be put in evidence.

A. Yes. Mr. Sawyerr said so.

10 Q. So from the beginning of the trial you knew that the Ohene of Nkwatia had retired because the Omanhene of Kwahu was identifying himself with his interests?

A. I did not know the reason.

Q. And not until the close of your case did Johnson give that evidence about Faso?

A. I think it was near the end.

20 Q. You mentioned an action in 1927 in the Native Tribunal when it was suggested a boundary be made?
A. Yes.

Q. And you know that the proceedings were recorded?

A. Yes.

Q. In 1927 the occupant of the Bukuruwa Stool was styled the Odikro of Bukuruwa and not the Ohene?

A. He was then styled Odikro.

In reply to Court:

Q. When was he raised to the status of Hene?

A. I don't remember.

CROSS-EXAMINED

30 Q. I suggest it was about 1930?

A. I should think so.

Q. You said that you were the first Chief of any

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.17.

Evidence of 1st Witness for the Plaintiff -

Yao Nkansah II

4th June, 1952.

Cross-Examination.
- continued.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.17.

Evidence of 1st Witness for the Plaintiff -

Yao Nkansah II
4th June, 1952.

Cross-Examination
- continued.

importance in Kwahu - how did it come about that you became the subject of the Omanhene of Kwahu?

- A. When Ohene of Bukuruwa moved to Asabi he stayed there for a long time and did not come back to Bukuruwa again - his Stool and subjects were removed from Asabi to Asanti by an Asanti Ohene named Kweku Adgyeman I - they were captured and taken to Asanti. Afterwards and before the Yaa Asantewa War (1900) the Stools were returned from Asanti to Bukuruwa. The Omanhene of Nkwatia became paramount when the Ohene was captured and taken to Asanti. 10
- Q. This Attara Finam War - in what period of time was that - was it before the Akwamu War (1733)?
- A. It was long before that.
- Q. Is it not a fact that when the Akwamus got to the Volta - they fought over the land?
- A. Yes - but they did not occupy the land.
- Q. You spoke of Nkami? 20
- A. Yes. It is subservient to us now.
- Q. Is it a fact that the people living there were the first people to found it?
- A. Yes - by permission of the Ohene at Asabi.
- Q. Is it not a fact that the Nkami people are a part of the Akwamu people who migrated from Nyanawase? A. That is so.
- Q. Is it not a fact that the Nkami people and the Asabi are of the same stock? A. No.
- Q. From what stock are the people of Asabi? 30
- A. They are Kwahus.
- Q. Yes but before they became Kwahu?
- A. They migrated from Nyanawase and migrated to Asabi.
- Q. I suggest to you that Asabi town was founded by

the remnants of the Akwamu's?

A. That is not so.

Q. It is true that you are partly from Akwamu?

A. No.

Q. Kwahus are mostly Asanti Tribes who settled in the region?

A. Yes. They adopted our name of Kwahu.

In reply to Court:

Q. What does Kwahu (Kwawu) mean?

10 A. "The death of a slave".

CROSS-EXAMINED:

Q. Have you heard that before the Asanti migration there were 17 small towns called NKWAI FU BUN SON (meaning 17 towns in a big forest)?

AKUFO ADDO:

That would also mean 17 separate forests?

A. No. The Omanhene of Kwahu lives at Abene.

Q. You say that two wars appear to have affected this area - Attara Finam and Akwuo and then a third war?

20

A. There was no third war. Baadu was not captured - he was sent for by the Asantehene and unfortunately he was beheaded on the way.

In reply to Court:

I think that the head was taken to Kumasi.

CROSS-EXAMINED

Kwahu State was in existence before the Akwamu War. Kwahus did not take part in the Akwamu War.

30 Q. Confining yourself to the area you mentioned as the one in dispute your nearest principal town is Asabi? A. Yes.

Q. You mentioned Chemfe. I submit that is an Nkwatia settlement?

A. It is our village. We have a headman there called Opanyin Kwekumanyo.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.17.

Evidence of 1st Witness for the Plaintiff -

Yao Nkansah II
4th June, 1952.

Cross-Examination
- continued.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.17.

Evidence of 1st Witness for the Plaintiff -

Yao Nkansah II
4th June, 1952.

Cross-Examination
- continued.

Q. Was it not after the institution of the case started that you sent him there?

A. We sent him there before this case. He has been there 2 years from now. (Writ issued on 14/6/1950).

Q. You know Nframa Town?

A. Yes (south-east corner).

Q. That is an Nkwatia settlement?

A. No. I know Burupai. It is occupied by Wusutas (Ewes). I have not been to Betiasi of late. I last went there in 1945. Then Wusutas were occupying the place.

10

In reply to Court:

Q. Have you any reason for suggesting that they have now left the place?

A. I understand they are still there.

CROSS-EXAMINED:

Faso is occupied by the Wusutas.

Q. These villages I have named, is it not a fact that they are under the Nkwatia Chief?

20

A. They are not. The State Council say so - but the people do not agree.

Q. In the course of your last case Johnson produced six letters from the Chief of Faso addressed to Chief of Nkwatia in relation to this land?

A. Yes.

(Pages 173-178 of West African Court of Appeal Record admitted and marked "E")

The Chief of Faso is now dead.

Q. You remember two men called Gyan Fosu and Antonyima? A. Yes I know them.

30

Q. You know that your Chief sued these people in respect of a portion of the land in dispute?

A. Yes - yes it was at KPAIA (marked on plan No. "2" on north-east) (referred to as KPALE on Exhibit No."1").

Exhibit "E".

Q. The Chief also sued in respect of Nyinampong?

A. Yes.

Q. And the Native Court gave judgment against them and it went on appeal to the Provincial Commissioner? A. Yes.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

BOSSMAN: Tender copy of proceedings in Provincial Commissioner's Court - admitted and marked "A".

Evidence for the Plaintiff.

Q. You mentioned Mpoti as an Nkwatia Village being one of the causes of your action in 1927?

No.17.

10 A. Yes.

Evidence of 1st Witness for the Plaintiff -

Q. I suggest that that is a very very old village?

A. Yes - it is an old village.

Yao Nkansah II.
4th June, 1952.

Q. It is reported to be the oldest Nkwatia settlement on this land?

Cross-Examination
- continued.

A. No - it is not (after several evasions)
The Nkwatias are there now.

In reply to Court:

Bukuruwa people were there before.

Q. How long had they been there?

20 A. From time immemorial.

Q. Why did they leave?

A. Because the land was not rich.

Q. When did they move? A. About 10 years ago.

CROSS-EXAMINED

Q. Nkwatias are in Papase? A. Yes.

Q. Near Papase is the fetish called Obeakrumeh?

A. Yes.

Q. That is the great Nkwatia fetish?

30 A. I don't know anything about fetish. I know Faso Chirifoakrom. Nkwatias are there.

Q. I suggest that these villages had been in existence for at least 30 years before the action taken in 1927?

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

—————
Evidence for the Plaintiff.

—————
No.17.

Evidence of 1st Witness for the Plaintiff -

Yao Nkansah II.
4th June, 1952.

Cross-Examination
- continued.

A. It was not so.
Yes we gave Nkwatias some of the land by reason of our relationship - but not the area claimed by the Defendant.

Q. Did you ever mention that fact at the last trial?

A. I did not - because the Ohene of Nkwatia did not appear at the trial.

Q. You do admit that in the area in dispute there are very many farms made by Nkwatias and other land given to others by Nkwatia? 10

A. Yes quite recently and that brought about the action.

Q. You mentioned that a delegation of the Omanhene made a boundary in 1942? A. Yes.

Q. I take it they had to suggest a boundary as none had previously been fixed?

A. There was one - but it was not demarcated. There had been no formal demarcation. Because we could not agree the Chiefs intervened.

Q. I suggest to you that in the Tribunal Kofi Boaten was your representative in 1929? A. Yes. 20

The motion to stop the demarcation of the boundary was made after the boundary had been demarcated.

Q. Are you making a part of your case that you and the defendant are bound by the decision of the people deputed by the Chiefs of the State Council and that the boundary is the one you allege to the west? A. Yes.

Q. I suggest that there was no such agreement and that it was order made by the State Council? 30

A. Yes, it was an order and both parties agreed.

Q. Why was it necessary to so "order" if there had been "consent"? A. We agreed.

Q. I suggest that the Order was made because the parties would not agree? A. That is not so.

Q. Do you remember Omanhene sending you two letters to tell you that the demarcation order had been cancelled? A. We received no such letters.

Q. Do you swear that you have not been informed by the Omanhene of Kwahu that that demarcation order was of no effect?

A. We have not been informed.

Q. Do you swear Mr. Sawyerr, your lawyer, did not tell you of such a letter?

10 A. I've never heard anything about it.

COURT:

What steps have been taken to produce this letter?

BOSSMAN:

I am waiting for Ohene to go in the box.

CROSS-EXAMINED:

I know of no such letter.

Q. What was the first year when cocoa was planted anywhere in the land claimed by you?

20 A. About 1930 - when the Ewes planted. Some of the Kwahus started earlier than that.

Q. I suggest that cocoa has been planted within this area in dispute as far back as 1915 or even earlier? A. It isn't so.

Q. When Baadu was removed from Asabi, who was placed there in his place?

A. Kwami Akwa remained there - but the Stools were taken to Kumasi.

30 Q. Do you know of a disturbance that took place about 1903 between the Kwahus on this land and the Ewes - which resulted in an enquiry before Mr. Crabbe Travelling Commissioner?

A. I have heard of it.

Q. You mentioned a plan that you said the Omanhene had at the State Council - have you got that map? A. No.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.17.

Evidence of 1st Witness for the Plaintiff -

Yao Nkansah II.

4th June, 1952.

Cross-Examination - continued.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.17.

Evidence of 1st Witness for the Plaintiff -

Yao Nkansah II.
4th June, 1952.

Cross-Examination
- continued.

(BOSSMAN: I refer to page 158 and the fact that a representative of the Nkwatia Stool took part in the enquiry before the Travelling Commissioner).

CROSS-EXAMINED:

Q. Do you deny that prior to 1903 a large number of Nkwatias were living on this land?

A. They were not.

Q. I put it to you that you have always recognised our boundary as the one we have demarcated on plan No.2? A. It is not so.

10

Adjourned to 6.6.52.

(Sgd.) J. Jackson,
J.

IN THE SUPREME COURT OF THE GOLD COAST,
EASTERN JUDICIAL DIVISION (LAND DIVISION)
held at Victoriaborg, Accra, on Friday the
6th day of June, 1952, before Jackson, J.

Nana Osei Twum II

v.

Nana Asante Yiadom III

- and -

Kwaku Oduro

v.

- 1. Kwapong
- 2. Ohene Kwadjo.

20

(CONSOLIDATED)

From folio 324.

6th June, 1952.

YAO NKANSA II (m) 1st WITNESS FOR PLAINTIFF
resumes evidence :-

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Re-Examination.

RE-EXAMINED BY AKUFO ADDO:

Q. You were asked why Nkwatiahene drew out of the last case. You do know that Omanhene of Kwahu filed a Statement of Claim when he was joined as a co-plaintiff (page 39). Do you know if Nkwatiahene filed any Statement of Defence?

A. He did not.

Q. You were asked about Faso and I think you said the Odikro of Nkami made the headman of Faso?

A. Yes.

Q. The name of Kwadjo Dede was mentioned as a Head of Faso. He is now dead? A. Yes.

Q. To what tribe did he belong?

A. He was a Wusuta man.

Q. Who made him Head of Faso?

A. The Odikro of Nkami.

10 Q. When was this? A. Long before 1922.

In reply to Court:

I am now 49 years old.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division) Accra.

Evidence for the Plaintiff.

No.17.

Evidence of 1st Witness for the Plaintiff - Yao Nkansah II. 6th June, 1952. Re-Examination - continued.

No. 18.

EVIDENCE OF 2nd WITNESS FOR THE PLAINTIFF YAO NTEM
6.6.52.

YAO NTEM (m)
2nd WITNESS FOR PLAINTIFF

20 Benkumhene of Kwahu (age between 75-80 years). I know a little about the Nkwatia Stool. Nkwatia-hene is my nephew and a sub-chief. Both traditionally and by blood he is my nephew. He is the senior sub-chief in my Division. He comes next after me in the Benkum Division. I can tell the traditional history of my own Stool - but I cannot tell that of another Stool.

Q. From where did your ancestors come when they came to Kwahu?

A. From Kumasi in Asanti.

30 Q. Who was the first ancestor of yours who came to Kwahu? A. Kwame Nyina Afari.

Q. And where did he first settle in Kwahu?

A. On a hill called Kyinkyinaso.

No.18.

Evidence of 2nd Witness for the Plaintiff -

Yao Ntem.

6th June, 1952.

Examination-in-chief.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.18.

Evidence of 2nd Witness for the Plaintiff -

Yao Ntem.

6th June, 1952.

Examination-in-chief - continued.

Q. When he came did he come alone?

A. He came with other people.

Q. Who were those other people?

A. Omanhene Akuamoah, Nkwatiahene and the Pepeacehene - these are all that I know.

Q. When they came was the land inhabited by anyone?

A. We met a man called Baadu.

Q. What was Baadu?

A. My ancestors said he was a Chief.

Q. Where did he live? A. At Bukuruwa.

10

Q. Have you ever heard of the history of the Attara Finam War? A. No.

Q. You know the lands in the Afram Plains?

A. I will tell what I know if you ask me.

Q. Do you exercise any right of an overlord over any of those lands there?

A. The part under the Nkwatiahene is under me.

Q. What part is under Nkwatiahene?

A. Ampoti is under him.

Cross-Examination.

CROSS-EXAMINED BY BOSSMAN:

20

Q. Near what place is Ampoti?

A. It is on grassland - but I have never been there.

Q. Was it an old old town before you were born?

A. It was a village where the Nkwatiahene was farming before I was born.

Q. Have you heard of CHAMFE?

A. I've heard of it.

Q. That is an Nkwatia village?

A. Yes - Nkwatiahene farms there.

30

Q. Is it not well known in Kwahu that the Plaintiff

has a portion and the Defendant has a portion of land by the Volta?

A. It is true that they each have portions of land near the Volta River.

I've heard of a fetish called OBIAROAMA.

Q. It is an Nkwatia fetish?

A. Yes - in the land of Nkwatia near PAPASI.

Q. Did you hear also that Papasi was an old village established long before you were born?

10 A. Yes - it is another old town before even my mother and I were born.

Q. You've heard of FASO and CHIRIFOKROM?

A. Yes - they both belong to the Nkwatiahene. I've never been to these villages - but I understood that hunters lived there a very long time ago.

Q. Do you say you've never been on the land at all since your infancy? A. I have not.

Through the Court (by leave)

20 Q. Were you one of the Chiefs who tried to settle a boundary dispute between the Bukuruwa and Nkwatiahenes sometime ago? A. I was.

Q. Who asked the Bukuruwa and Nkwatiahenes to come before you (the Chiefs)?

A. There was a dispute. The two Mankrados of Bukuruwa and Nkwatia came to the State Council and asked the State Council to settle the matter for them. When they came it was agreed that each should count all the villages in which they each farmed. Both towns named all their villages. Omanhene then produced a map and asked the Clerk of the State Council to demarcate the boundary. When the Clerk was demarcating it on the map I said that I did not understand English and asked them to speak in the vernacular. The Omanhene refused and deputed people to go and demarcate the boundary as it had been demarcated on the map by the Clerk. I deputed one linguist of mine.

30

40 Q. Before this was done - apart from naming the villages was any other evidence heard?

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.18.

Evidence of 2nd Witness for the Plaintiff -

Yao Ntem.

6th June, 1952.

Cross-Examination - continued.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.18.

Evidence of 2nd Witness for the Plaintiff -

Yao Ntem.

6th June, 1952.

Cross-Examination
- continued.

A. No - none were heard.

Q. Was this the decision of the Omanhene alone or of the whole State Council?

A. Where the line was drawn was the decision of the whole Council and the parties agreed to it.

Q. Did this line drawn lead to the village of Papasi on the Bukuruwa side or on the Nkwatia side?

A. When I deputed a linguist I did not go myself - so I could not say where the line went.

My linguist's name is Kwamin Nyarko and he is in Court now. 10

Q. Did the Omanhene speak English?

A. He spoke in Twi. The Clerk was reading in English. I think that Clerk is in town. I don't know where the map is.

Q. How long ago was this?

A. About 10 years ago.

Q. Did your linguist report to you when he came back?

A. Yes, he came to the State Council. 20

Q. Did he say if both parties were satisfied with what had been done?

A. Both parties were satisfied with the demarcation and they gave us "drink". Bukuruwa paid £30 and Nkwatia paid £30. Court charged £6 from each, and one case of rum each.

Q. Was it your intention that Papase should be placed in Bukuruwa land or in Nkwatia land?

A. I did not know.

Q. Do you remember a meeting of the State Council about 25 years ago, not 10 years, about this same matter? 30

A. The one I am speaking of was the one at which I was present.

Q. Were you a member of the State Council 25 years ago? A. No.

- Q. How long have you been a Chief?
- A. I was enstooled during the Yaa Asantewa WAR (1900).
- Q. Have you since then always occupied the Stool?
- A. Yes - from then until now.
- Q. Do you remember a time when the parties were before the State Council and said they would go and make their own boundary?
- A. I don't remember that.
- 10 Q. I suggest that the Omanhene told them that they had not done what they said they would and that he and the State Council would see that it was cut?
- A. The Omanhene called us to the State Council and told us that the Mankrados had said that they would like the boundary demarcated.
- 20 Q. To your knowledge did any representative of Bukuruwa go with the deputed people?
- A. They did not and neither did Nkwatia. The people who were litigating did not go for the demarcation.
- Q. Do you know that before the people were sent on the land the Krontihene of Nkwatia wrote to the Omanhene objecting to the people going on the land to make the demarcation?
- A. I do not know.
- Q. Was the "drink" paid before or after the demarcation?
- 30 A. The £30 and £6 were paid before they went to the land and the case of rum as well.
- Q. What was your decision - did you decide that the villages named by each party were to be given to the party naming them?
- A. The Chiefs had wanted to accompany the people who were going to cut the boundary, but on second thought we thought there might be trouble so we decided to let people deputed go and cut the boundary and then come and report. They were told to demarcate according to the line drawn on the plan. The Bukuruwa people had mentioned their villages and Nkwatia theirs but the Omanhene had a map.
- 40 Q. Do I understand then it was the decision of the Omanhene?
- A. He is the Chief.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.18.

Evidence of 2nd Witness for the Plaintiff - Yao Ntem.

6th June, 1952.

Cross-Examination - continued.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

No. 19.

EVIDENCE OF THIRD WITNESS FOR THE PLAINTIFF - GYIMAH PETER JOHNSON

GYIMAH PETER JOHNSON (n) 3rd WITNESS FOR PLAINTIFF s.s. in English:

Evidence for the Plaintiff

No.19.

Evidence of 3rd Witness for the Plaintiff -

Gyimah Peter Johnson. 6th June, 1952. Examination-in-chief.

Secretary of Kwahu State Council. Remember land dispute between Stools of Bukuruwa and Nkwatia. It came before the State Council. This book first came into my possession in 1929 when I became Secretary. These proceedings are recorded in my own writing and are at pages 238 to 241. (Admitted and marked No."11"). 10

Q. You remember about 10 years ago there was a meeting of the Omanhene and his Councillors about the same dispute?

A. Yes that was in 1942.

Q. Was any record made? A. No.

Q. Why?

A. Because there was no action before the Council.

Q. How did the matter come before the Council? 20

A. The Omanhene said he was going to effect a settlement between the parties. Nkwatia objected and said they had no Chief. The Krontihene objected, he appeared on behalf of the Nkwatia Stool. The Omanhene summoned all the Chiefs and had all the old records read.

Q. Did the Krontihene speak? A. Yes he spoke.

Q. Can you remember what he said?

A. He said they had destooled the Chief and asked the Omanhene to make a fair settlement until a new Chief had been enstooled. The Omanhene insisted that the matter had stood for a long time and that therefore he wanted to finish it. 30

Exhibit "12".

(Tendered and admitted by consent proceedings dated 5.4.27 - marked "12").

I am a Kwahu man and a native of Nkwatia.

CROSS-EXAMINED BY BOSSMAN:

- Q. You said that in 1942 the Omanhene insisted on going on, what happened then?
- A. He brought out a map and said that the boundary should be cut through certain places and the Omanhene made some pencil marks on the map. After the marking the map was returned to my office - I could only get it if I searched the office. The Omanhene can read and write and understands English but not very well. I cannot recollect in what direction the pencil line went.

10

RE-EXAMINED:

It was one of the printed Field Maps.

No. 20.

EVIDENCE OF FOURTH WITNESS FOR THE PLAINTIFF - OKYEAME KWAMINA.

OKYEAME KWAMINA (m) s.s. in Twi.
4th WITNESS FOR PLAINTIFF.

20

I live at Kwahu-Aduamo. Am linguist to the Benkumhene.

Q. Do you know the land on the Affram Plains? Have you ever been there?

A. I have been there. I went there about 10 years ago. We were deputed by the State Council of Kwahu to demarcate some land.

Q. Who are "we"?

30

A. People deputed from the various towns in the Kwahu State. Their names were Akrokyi, Osafohene Kweku Mari, Okyeame Bediaku, Tufuhene Kwadjo Bieni of Bibasi, Okyeame Amua of Nifa and myself.

Q. What happened before you were deputed?

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.19.

Evidence of 3rd Witness for the Plaintiff - Gyimah Peter Johnson.

6th June, 1952.
Cross-Examination.

No.20.

Evidence of 4th Witness for the Plaintiff.

Okyeame Kwamina.
6th June, 1952.

Examination-in-chief.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.20.

Evidence of 4th Witness for the Plaintiff.

Okyeame Kwamina.
6th June, 1952.

Examination-in-chief.
- continued.

A. I was called by the Benkumhene to accompany him to Abetifi, when we got there we met the whole State Council assembled. What they told us was that we should go and demarcate the land between Bukuruwa and Nkwatia.

Q. How were you going to find out what was the boundary?

A. A clerk named Tawiah brought a map and instructed us to start the demarcation from a place called Esukeesi and from there to Nwasimpe - to junction of Dem and Mframanyo. We cut a trace to there. 10

Q. Before you went to the land were you present at the meeting?

A. I was present on the day we were appointed to cut the line.

Q. Were you at the meeting when the Council sat and appointed you? Before you were told to demarcate the boundary had you attended any meeting about that dispute before you were told to make the boundary? 20

A. No.

Q. Were all the people you have named present?

A. Yes.

Q. And all the Chiefs? A. Yes.

Q. Was anyone there representing the Stool of Bukuruwa?

A. Yes - their Chief was present.

Q. And was there anyone representing the Stool of Nkwatia?

A. Yes - the Krontihene and others. 30

Q. Was anything done before you left?

A. Both parties were asked to pay £30 cash and £6 each for "rum".

Q. What were these payments for?

A. For us to travel with.

- Q. I mean the £30?
- A. That was given to the people deputed to go and the £6 was given to the assembled Chiefs.
- Q. Were you given any instructions at the meeting before you left?
- A. The Omanhene told us to start cutting at Esukese and then to Kwasimpe and then on as I have described which we cut and marked with "Ntome" trees. We returned after that and reported what we had done to the Oman and the Omanhene of Kwahu.
- 10 Q. Were the representatives of Nkwatia and Bukuruwa there? A. Yes.
- Q. Did anybody say anything?
- A. Nobody said anything and I've not heard anything about it since then.
- CROSS-EXAMINED BY BOSSMAN:
- Q. How many years have you been a linguist?
- A. About 15 years.
- 20 Q. Have you demarcated any land other than on this occasion? A. No.
- Q. You know how boundaries are fixed by custom?
- A. Yes.
- Q. Does custom say that the parties to the dispute accompany you?
- A. By custom they should both be present.
- Q. On this occasion neither came with you. Is that correct?
- 30 A. That is correct - because they thought there would be a disturbance. The Omanhene and all the Chiefs thought that.
- Q. Did the parties ask that they might accompany you?
- A. They did not - but Omanhene asked them to stay.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.20.

Evidence of 4th Witness for the Plaintiff.

Okyeame Kwamina.

6th June, 1952.

Examination-in-chief.

- continued.

Cross-Examination.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.20.

Evidence of 4th Witness for the Plaintiff.

Okyeame Kwamina.
6th June, 1952.

Cross-Examination.
- continued.

In reply to Court:

Q. Why should there be any disturbance if both parties had agreed to your cutting this boundary?

A. I do not know what was in the Omanhene's mind.

Cross-Examined:

I was not present when the case was tried.

Q. Did you know the land before you went that day?

A. I did not. We did not go to any village at all.

In reply to Court:

Q. Were you told to keep certain villages on one side of the line and other villages on the other? 10

A. No.

Cross-Examined:

We stayed in the village called Bibeso. I don't know which Chief owns that village.

Q. And do you say you do not know that that trace was opposed by both parties?

A. I've never heard so.

In reply to Court:

Q. In reporting back how did you describe how you cut the trace? 20

A. We named the places.

Q. How many days were you on this job?

A. About 2 weeks.

No. re-examination.

No.21.

Evidence of 5th Witness for the Plaintiff -

Okyeame Kwamina Amoah.

6th June, 1952.

Examination-in-chief.

No. 21.

EVIDENCE OF FIFTH WITNESS FOR THE PLAINTIFF - OKYEAME KWAMINA AMOAH

OKYEAME KWAMINA AMOAH (m) s.s. in Twi:
5th WITNESS FOR PLAINTIFF

Live at Obomen. Linguist to the Obomenhene. Obomenhene is the Nifahene. Remember land dispute between Stools of Bukuruwa and Nkwatia. I was deputed by the Nifahene and Obomenhene to go and look at the land and divide it into two. I went with many others.

30

Q. Before you set out what happened?

A. The Omanhene charged each party a case of rum £6 and each paid £30.

Q. What were these payments for?

A. The £30 was given to the people demarcating the land and the £6 was given to the Chiefs.

In reply to Court:

Q. What does the giving of rum (£6) mean?

10 A. Because the Chiefs had been enabled to come to a settlement.

EXAMINED:

The Omanhene gave us a clerk to accompany us to demarcate a land.

Q. Who showed you where to cut?

A. The Clerk. When we finished we returned to our towns and reported to our Chiefs.

CROSS-EXAMINED BY BOSSMAN:

Q. You mean each one reported to his own Chief?

A. Yes.

20 Q. It was not a case of all the Chiefs assembling and you all reporting at the same time?

A. No.

Q. You know that that demarcation has never been accepted?

A. I don't know - I am only a messenger. I had never been on that land before.

Q. Were you present when the £6's were paid and did you just hear of it?

30 A. Yes I saw. I did not see when the £30 was being paid.

Q. When you got to the State Council what was the first thing said when you arrived?

A. They said the Ohenes were disputing over land and the Omanhene said he would not allow either

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.21.

Evidence of 5th Witness for the Plaintiff -

Okyeame Kwamina Amoah.

6th June, 1952.

Examination-in-chief.

- continued.

Cross-Examination.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.21.

Evidence of 5th Witness for the Plaintiff -

Okyeame Kwamina Amoah.

6th June, 1952.

Cross- Examination. - continued.

the representatives of the Bukuruwa or Nkwatia Stool to go on the land while it was being demarcated. I do not know what reason he had for saying that.

In reply to Court:

Q. Did the Krontihene of Nkwatia try to speak to you at all?

A. I do not know him personally and so I could not say if he was present.

Q. The only person who spoke the whole time was the Omanhene? 10

A. No he spoke and other Chiefs spoke.

Q. Did the Omanhene not send and call you from the field? A. No.

RE EXAMINATION - No questions.

Adjourned to 9.6.52.

(Sgd.) J.Jackson,
J.

No.22

Evidence of 6th Witness for the Plaintiff.

Yao Dadee.

9th June, 1952.

No. 22.

EVIDENCE OF SIXTH WITNESS FOR THE PLAINTIFF - 20
YAO DADEE

IN THE SUPREME COURT OF THE GOLD COAST,
EASTERN JUDICIAL DIVISION (LAND DIVISION)
held at Victoriaborg, Accra, on Monday, the
9th day of June, 1952, before Jackson, J.

Nana Osei Twum II

v.

Nana Asante Yiadom III

K.B.Ateko - Assessor.
From folio 335.

YAO DADEE (m) s.s. in Twi:
6th WITNESS FOR PLAINTIFF.

Live at Adukrom. Am a native of Obomen (south of Odonkrowkrom - northern area of land shown on plan Exhibit "1"). Have been at Adukrom since my uncle died about 20 years ago - my uncle lived there. Am the caretaker and Head of the farmers living there.

In reply to Court:

Q. Who appointed you to be caretaker?

A. Nana Baadu of Bukuruwa.

EXAMINED:

My uncle Ankuma lived there and he was a hunter. He was only a hunter. He presented the right shoulder, one tusk, the tail and one ear of any elephant that he killed and any other big animal - he gave a shoulder to the Chief.

10 I know BETHEL (near Adukrom). It is a small village. I gave that village to Yao Kuai about 22 years ago. I gave him land to farm and he built this village on it. When he came to see me I took him first to Nana Baadu where all papers in connection with the land were prepared. Kuai named the place Bethel as he was a christian. Yao Kuai is not a Kwahu man, he came from Avemo-Jeme and is an Ewe man. Yao Kuai was one of the men against whom the Ohene of Bukuruwa brought an action because he did not keep the agreement which they had made - by failing to pay to the Ohene his share of the cocoa harvest.

20

Q. Are there any people farming in the area who farm with your farmers?

A. Yes, Yao Kuai, Kwesi Adu. Kwesi Adu farms in Adukrom. Kwami Sono also farms at Adukrom.

Q. Any other person?

A. Yao Kra of Asanti. Kofi Darku of Asokore farms there. Kwesi Kuma of Asokore-Koforidua also farms at Adukrom.

30

In reply to Court:

Q. How far from Adukrom?

A. About $\frac{1}{2}$ mile north of the village.

Q. Anyone else?

A. Kwame Wiafi and Kodjo Donkor. Also Kwesi Krofo. Kwesi Krobo also farms north of Adukrom - about $\frac{1}{2}$ mile north of Adukrom. Kweku Banya also farms - he farms to the south of Adukrom. Amoako farms to the east of Adukrom. Kwami Debara farms to the east of Adukrom. Kwabena Nanor of Krobo farms to north of Adukrom.

40

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

—————
Evidence for the Plaintiff.

—————
No.22.

Evidence of 6th Witness for the Plaintiff.

Yao Dadee.

9th June, 1952.
Examination-in-Chief.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.22.

Evidence of 6th Witness for the Plaintiff.

Yao Dadee.
9th June, 1952.

Examination-in-Chief.

- continued.

Cross-Examination.

In reply to Court:

These farmers plant cocoa. Some of them started 20 years ago - others 15 and others 10 years ago.

EXAMINED:

Q. You know a village called WENDEMBA (WINAMBA on plan)?

A. Yes, it is my cottage. I put it up for hunting purposes shortly after I first went to Adukrom. I named it Winamba meaning "eat some meat and sleep", meaning whenever I go there for hunting and take food and run short of food I live on the meat I've killed alone.

10

I know the village of AGOTIME. It is occupied by ATIMAKFO. He comes from Agotime in Togoland.

Q. How did he get the land there?

A. One Antomin brought him and we went to drive him away. This was about 11-12 years ago. We drove him away. A week later he returned and begged Kwesi Fosu to intervene on his behalf. So we went with him to the Chief of Bukuruwa where we made our original arrangement that when he realised the produce of the cocoa he would give the Ohene of Bukuruwa one third. I know the village Kayera.

20

Q. Do you know who farms there? A. No.

Q. You know everyone who lives there?

A. I do not. I do not know any village called OSETUTU (OSEI TUTU).

CROSS-EXAMINED BY BOSSMAN:

30

Q. You have lived all your life in Kwahu?

A. Yes.

Q. And you are fully aware of a long standing dispute between the Bukuruwa and Nkwatia Ohenes about the land?

A. When I first went there - there was no dispute - it was quite recently.

In reply to Court:

About 4 or 5 years ago a dispute arose.

CROSS-EXAMINED:

- Q. You are quite sure you went there 22 years ago?
A. Yes.
- Q. And you had not heard that before that the 2 Chiefs had appeared before the Native Court to try fix their boundary?
A. I heard of it but did not go.
- 10 Q. Did you not know that the Ohene of Nkwatia was claiming about half of the land that Bukuruwa was claiming?
A. I heard so - but I do not know where the boundary lies.
- Q. How long had you been there before Antonmin brought this Atinakpo?
A. About 10-11 years after I had been there. I do not know Antonmin. I've only heard of his name.
- Q. He settled a lot of other Ewe people around Agotime and not only Atimakpo?
A. I've never seen anyone other than Atimakpo.
- 20 Q. You don't know Mathias Kweku? A. I do not.
Q. Do you know Aglako? A. I don't.
- Q. Antonmin himself lives at Apala (Kpala) on land in dispute?
A. I do not know Kpala. I heard that Antonmin lived beyond the Volta River. What I heard was the Nkwatiahene sued Antonmin in respect of land near Nkami. I only heard that. I've not been there myself. I don't know a man called Djan Posu.
- 30 Q. You know the village of Nyinampong?
A. I do not.
- Q. Do you know a village called Atume Menso?
A. Yes.
- Q. It is in ruins now?
A. It is not a village - it is a place where women take red clay.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.22.

Evidence of 6th Witness for the Plaintiff.

Yao Dadee.

9th June, 1952.

Cross-Examination.
- continued.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.22.

Evidence of 6th Witness for the Plaintiff.

Yao Dadee.

9th June, 1952.

Cross-Examination.
- continued.

Q. Did you know one called Okyeame Abrokwa of Nkwatia?

A. Yes - he is dead - so I heard.

Q. Did you know him on the land near your village?

A. Yes he was near my village.

Q. Do you deny that it was through him that your uncle came on the land?

A. I deny that.

In reply to Court:

Q. How did Abrokwa come to live on the land? 10

A. He went there to farm and met me there. He came there with 2 children Kweku Kye and Kofi Ahia. He did not object to me being there. We did not object to him coming there. Takmenya was our Headman. He told me Abrokwa had got permission from the Ohene.

Cross-Examined:

Q. You were not there and that is what the Headman told you?

A. Yes the Headman told me so. They farm cocoa. 20

Q. That is how many years ago?

A. About 18-20 years ago.

In reply to Court:

These farms are near Atuma Menso and to its west.

Cross-Examined:

Q. When did Abrokwa die?

A. I could not say - because I was not present.

Q. I suggest that he has been dead for about 18 years?

A. He came 18-20 years ago. 30

In reply to Court:

Q. How long had he farmed before he died?

A. 5-6 years and then he grew old and left the farms and he died 4-5 years later.

Cross-examined:

Q. I suggest he farmed there long before you and your uncle got there? A. No.

Q. And you and your uncle got the land through him?

A. No.

Q. You said just now that you were "all brothers"?

A. I am not related to him.

Q. Not only he but several other Nkwatia farmers are farming mixed up with people from many other places - including Ewes? A. Yes.

10

Q. You know the river called Lufin?

A. No - I've never been there.

Q. You know the fetish called Obopiri near Kayera?

A. No.

Q. Do you know a village called BODU?

A. Yes - it is an old village.

Q. Who lived there?

A. I heard only of its name.

Q. Was it Kwadjo Edu?

20

A. Yes - I heard that name.

Q. Did you know he was a Kwahu man?

A. I did not.

In reply to Court:

Q. Is there any caretaker of the land around Bodu?

A. I heard that Kwadjo Edu was.

Q. Is there one now?

A. Yes, Kwasi Amua of Abene.

Cross-examined:

Q. You know Kwami Djamina?

30

A. Yes. He is not the caretaker. He lives at Chemfe.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.22.

Evidence of 6th Witness for the Plaintiff.

Yao Dadee.

9th June, 1952.

Cross-Examination.
- continued.

In the Supreme
Court of the
Gold Coast
Eastern Judicial
Division (Land
Division),
Accra.

Evidence for
the Plaintiff.

No.22.

Evidence of 6th
Witness for the
Plaintiff.

Yao Dadee.

9th June, 1952.

Cross-
Examination.
- continued.

In reply to Court:

Q. Who owns the land at Chemfe?

A. Bukuruwahene.

Q. Which people live there, Bukuruwa of Nkwatia?

A. Both of these people live there.

Cross-Examined:

Q. Were you on the land when the survey was made
for the Ewe case?

A. Yes. Yes - I saw the surveyor. He came to my 10
village and that is where I saw him. If he
went to the other villages I do not know.
I did not follow him.

Q. Do you know Kofi Akpo? A. No.

Q. Was not Yao Koi on the land and then you met
him and threatened to evict before you took him
to the Ohene of Bukuruwa?

A. No - he came and found me there and came to see
me.

Q. Did you give evidence on behalf of Bukuruwahene 20
in the former case? A. No.

Q. According to you cocoa has been grown on the
land for the past 20 years? A. Yes.

Q. Not longer than that?

A. Other people had planted cocoa before me but
not at Adukrom. I first planted cocoa there
first - that was 22 years ago.

Q. Before you went the village of Kayera was there?

A. Yes - but it was an abandoned village.

In reply to Court:

Q. Why was it abandoned? A. I don't know.

Cross-Examined:

The village is fully known.

Q. Chemfe was there before you went on the land?

A. When I went it was an abandoned village but

people came there later. There were 2-3 broken down buildings. Many people are there now - cocoa farming. Agotime was not in existence before I got there.

In reply to Court:

I started harvesting 3 years after I first planted it.

Q. How many times have you harvested it?

A. About 18 times.

10 Cross-Examined:

Q. When an Nkwatia hunter kills an animal does he not take a portion to the Nkwatiahene?

A. I've never seen that before.

RE-EXAMINED:

Q. When you went to Kayera you said it was abandoned - how many houses were there?

A. 3-4 - they were broken down - (describes height of about 1 foot).

No. 23.

20 EVIDENCE OF SEVENTH WITNESS FOR THE PLAINTIFF - KWESI AMOA.

KWESI AMOA (m) s.s. in Twi:
7th WITNESS FOR PLAINTIFF:

I am now Kyidomhene of Abene. Formerly I was linguist to the Omanhene of Kwahu.

Q. Do you remember the boundary dispute between Bukuruwa and Nkwatia that came before the Omanhene and his elders some time ago? A. Yes.

Q. When was that?

30 A. A long time ago - it had come before him on many occasions.

Q. I am referring to the last time?

A. That was about 10 years ago.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.22.

Evidence of 6th Witness for the Plaintiff.

Yao Dadee.

9th June, 1952.

Cross-Examination.
- continued.

Re-Examination.

No.23.

Evidence of 7th Witness for the Plaintiff.

Kwesi Amoa.

9th June, 1952.

Examination-in-Chief.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.23.

Evidence of 7th Witness for the Plaintiff.

Kwesi Amoa.

9th June, 1952.

Examination-in-Chief.

- continued.

Q. How did it come before the Omanhene 10 years ago?

A. There had been a dispute about the land and Ohenes of Bukuruwa and Nkwatia brought the matter before the Omanhene.

In reply to Court:

The Omanhene called the Chiefs that they might settle the matter. Ohene of Bukuruwa complained that Ohene of Nkwatia was claiming his land, and that he wanted him to settle the matter. He came because he had sworn an oath.

10

EXAMINED:

Q. Who were the elders and councillors who met with the Omanhene?

A. The whole Oman of Kwahu met. After the oath had been sworn we called the two Ohenes for the case to be decided.

Q. Were Bukuruwahene and Nkwatiahene present?

A. Yes. Nana Kofi Sefa was then the Nkwatiahene.

In reply to Court:

20

Q. Was the matter dealt with on the same day that the Nkwatiahene attended for the first time?

A. It was decided on the same day.

Cross-Examined:

Q. How was it decided?

A. The Omanhene asked the Bukuruwahene to show his boundary with Nkwatiahene. A black board was brought - two black boards were brought one for the Bukuruwahene and the other for the Nkwatiahene. Bukuruwahene deputed his Gyasehene to write on the black board his boundary.

30

In reply to Court:

Q. Were you able to follow what was written on the black board? A. I followed it.

Q. Describe to me what it conveyed to you?

A. He marked a stream Esukese.

Cross-Examined:

Q. What did Nkwatiahene do after this?

A. He did the same and asked Omanhene to do it. He marked the boundary.

In reply to Court:

Q. Which boundary did he show?

A. He marked Esukese on the board as being the boundary land.

10 Q. In what respect did Bukuruwa and Nkwatia differ as to their boundary?

A. There was no difference - they agreed. The Court decided there was no difference and so said that the boundary must be cut from that point onward.

Cross-Examined:

Q. From that point did they both follow the same direction from the Esukese? - did they both follow the same line?

20 A. When they started from Esukese - the boundary that Bukuruwa showed, showed that Nkwatia people had gone into the land.

Q. Along what line did Nkwatia indicate that they had gone into Bukuruwa land?

A. As I did not know the villages I could not say.

In reply to Court:

Q. Were the names of any villages mentioned?

A. Yes many of them were mentioned. Nkwatia mentioned some in which hunters lived.

Q. Can you remember any of the villages mentioned?

A. I cannot.

30 Q. In which land was it decided these villages were to fall - in Bukuruwa land or Nkwatia land?

A. They were to go to Bukuruwa.

Cross-Examined:

Q. What was the final decision?

A. Omanhene decided that people should be deputed

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.23.

Evidence of 7th Witness for the Plaintiff.

Kwesi Amoa.

9th June, 1952.

Examination-in-Chief.

- continued.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.23.

Evidence of 7th Witness for the Plaintiff.

Kwesi Amoa.

9th June, 1952.

Examination-in-Chief.

- continued.

for the various Chiefs and that they should go and demarcate the boundary.

Q. How were they to identify this boundary?

A. The Omanhene and the elders demonstrated it on a certain map which was on the wall, and then the Omanhene told the people that they all agreed.

Q. Who do you mean by "all"?

A. The whole Council and the Bukuruwahene and Nkwatiahene agreed. One case of rum was demanded from each side. They each brought £6 to represent the case of rum. Each party also brought £30 to be given to those who were going to demarcate the boundary. 10

Q. What town of Kwahu do you come from?

A. Abene.

Q. You do farm on the land?

A. Yes - I farm on the land.

Q. Where do you farm?

A. At Bobu (north-west side of plan). Have farmed there since about 10 years ago. 20

Q. Who granted the land to you?

A. The Bukuruwahene.

In reply to Court:

Q. Did you make any agreement in writing?

A. No - my name was just written down.

Cross-Examined:

Q. On what terms were you granted the land?

A. As native of Kwahu I was entitled to farm - I did not take it on the Abusa system but I paid 10/- each year to the Bukuruwahene. 30

In reply to Court:

Q. Do you farm north, south, east or west of Bobu?

A. To the west - about as far as this from the village (indicates about 300 yards).

CROSS-EXAMINED:

Bobu does not exist as a village - it is only ruins now - I live in Wiafe.

Q. How far is your farm from Wiafe?

A. It is about 40 minutes' walk. Have cocoa on my farms.

Q. How many people live in Wiafe?

A. About 15. Wiafe is the headman there. Each one farms for himself. Wiafe comes from Obomeng in Kwahu.

10

Adjourned to 10.6.52.

(Sgd.) J. Jackson,
J.

10.6.52.

IN THE SUPREME COURT OF THE GOLD COAST,
EASTERN JUDICIAL DIVISION (LAND DIVISION)
held at Victoriaborg, Accra, on the 10th day
of June, 1952, before Jackson, J.

Nana Osei Twum II

v.

Nana Asante Yiadom III

20

BOSSMAN:

Ask leave to amend paragraph 2 of Statement of Defence by deleting the reference to the boundary as indicated in plan filed i.c. No."1" and substituting words to the effect that the boundary claimed is the one marked pink in the plan exhibited and marked as No."2".

Statement of Defence amended accordingly.

30

KWESI ANOA (m)

7th WITNESS FOR PLAINTIFF resumes evidence:

Nkwatiahene was present with his elders at the meeting with Omanhene. Kofi Sefa ceased to be Nkwatiahene after we had returned from demarcation of boundary.

CROSS-EXAMINED BY BOSSMAN:

Q. You were the Chief linguist to the Omanhene before you were promoted to Kyidomhene? A. Yes.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.23.

Evidence of 7th Witness for the Plaintiff.

Kwesi Anoa.

9th June, 1952.

Examination-in-Chief.

- continued.

10th June, 1952.

Cross-Examination.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.23.

Evidence of 7th Witness for the Plaintiff.

Kwesi Amoa.
10th June 1952.

Cross-Examination.
- continued.

Q. And as Chief linguist you know the traditional history of Kwahu?

A. I know some, not all.

Q. You know that Mampong Adjei from Asanti founded the modern Kwahu State as it is today?

A. Yes. Could not say in what period that was.

Q. Nkwatiahene was one of the original sub-chiefs who came with Mampong Adjei? A. Yes.

Q. Were you told that when Mampong Adjei left he first settled at Fwidiem by permission of Frimpong Mansu? A. Yes. 10

Q. And it was after that they reached Kwahu proper?

A. Yes.

Q. And the time they settled here was after the Asanti/Denkyira war?

A. They settled at Kwahu before that war.

Q. You've heard of Attara Finam? A. Yes.

Q. That he was the original owner of the lands around Afram by the River? A. Yes.

Q. Is this land, in dispute, a part of Attara Finam's land? A. Yes - I've heard so. 20

In reply to Court:

Q. Did he occupy a part of it or the whole of it?

A. I was told that he occupied the whole land. He was not a Twi man - he spoke a different language to us.

CROSS-EXAMINED:

Q. You know of the Kumawus of Asanti? A. Yes.

Q. And Nkwatiahene is his Stool son?

A. That I don't know. 30

Q. Have you ever heard it was Kumawu and certain allies who drove Attara Finam from his lands?

A. Yes they fought and drove him away.

Q. He was driven beyond the Volta?

A. Yes - I've heard that.

Q. In fact about 1925 you, the Kwahus, had a case with Akwamuhene as in respect of a portion of Attara Finam's lands?

A. Yes - I remember.

Q. It was by the Afram River?

A. Yes between the Afram and Onyin Rivers (describes land to the north of the land now in issue).

Q. You were one deputed to go to the Chief Commissioner's Court to represent the Kwawuhene?

10 A. Yes.

Q. In that case you told your whole tradition?

A. Yes.

In reply to Court:

Q. Did you speak the truth?

A. Yes - as I had been told.

Cross-Examined:

Q. Your tradition was rejected by the Court?

A. Yes - the Court did not believe it.

20 Q. It is true that up to the Slave War (1874) you were part and parcel of the Ashantis?

A. Yes.

Q. In the Slave War you became allies with the British, the Akyem Abuakwas and Gas, and that is how you severed your connection with Ashanti?

A. Yes.

Q. You gave evidence about the alleged settlement of the boundary by the State Council?

A. Yes.

30 Q. You said the last time it came before the State Council and was settled was 10 years ago?

A. Yes - about that time.

Q. Do you say that on that occasion neither the Bukuruwa nor Nkwatia representative swore on oath?

A. Bukuruwahene swore the oath before the Omanhene.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.23.

Evidence of 7th Witness for the Plaintiff.

Kwesi Amoa.

10th June 1952.

Cross-Examination.

- continued.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.23.

Evidence of 7th Witness for the Plaintiff.

Kwesi Amoa.

10th June 1952.

Cross-Examination
- continued.

Q. Do you say it was on that last occasion when that oath was sworn?

A. Yes. It was sworn at Nkwatia. I was not present when it was sworn.

Q. I suggest that what happened was that in 1927 the matter came first before the Kwahu Tribunal?

A. Yes.

Q. Was it not at that time it was suggested some oaths had been sworn? A. Yes.

Q. And do you say that 10 years ago another oath was sworn?

A. No - it was the old oath that was sworn. It was 10 sworn before Kofi Boaten of Kwahu.

Q. Were you a linguist then? A. Yes.

Q. Did you take part in the proceedings in the Native Tribunal?

A. Yes. Tribunal said they would demarcate the boundary between the two Chiefs.

Q. You remember that Bukuruwa appealed against that Order to the Chief Commissioner?

A. I don't know.

Q. Who followed Kofi Boaten as Omanhene? 20

A. Kofi Akuamoah.

Q. About two years after the first case?

A. I think so.

Q. The Omanhene sought then (1929) to settle the dispute and invited the parties to come to the State Council? A. Yes.

Q. You took part in that also? A. Yes.

Q. You remember each side gave to the State Council the villages that belonged to each of them?

A. I don't remember that - but remember that the Odehye (member of Royal Clan) said they would go and fix their own boundary because they are one. The Court said they could do it - but must report what they had done to them. 30

important

Q. After that was there any oath sworn?

A. No - the old oath was still there.

Q. Did the Native Tribunal ever demarcate the boundary as ordered by them in 1927?

A. They did not. After they left the State Council they did not report any settlement and that is why the Chief of Bukuruwa brought the matter up again before the Omanhene of Kwahu. He, himself, came before the Omanhene, in my presence, said that they had not gone into the boundary matter that if the Omanhene was not able to settle the matter he would take it to Accra.

Omanhene said "if that is so - I will gather all the State Council and will not allow it to go to Accra".

Q. The Omanhene was trying to settle the matter whether the parties were willing or not?

A. No - he did not say so - all he said was that he would gather the State Council together and settle the matter. After this he called all the State Elders and sent for the Nkwatiahene.

Q. I suggest it was not the Nkwatiahene but the Krontihene, Kwesi Bua, who came to the State Council?

A. The first time the Nkwatiahene and Krontihene came, after that we demarcated the boundary and came back and Krontihene came and said that he did not agree with the boundary demarcated. At that time the Nkwatiahene had left the Stool.

Q. I suggest you are mistaken and that the Nkwatiahene had been destooled before the State Council met for the first time?

A. I am speaking of what I know.

Q. Did you know that on the day following the meeting the Krontihene wrote to the Omanhene and said that the whole matter should be suspended until a new Nkwatishene?

A. I don't know that he wrote any letter.

Q. I suggest that the £6 was demanded by the State Council before they started the enquiry into the matter?

A. It was after the case.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.23.

Evidence of 7th Witness for the Plaintiff.

Kwesi Amoa.

10th June 1952.

Cross-Examination
- continued.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.23.

Evidence of 7th Witness for the Plaintiff.

Kwesi Aboa.

10th June 1952.

Cross-Examination
- continued.

In reply to Court:

Q. Was anything paid for them to start the case?

A. No.

Cross-Examined:

Q. Did you and Mr. Anon swear an affidavit in the District Commissioner's Court at Mpraeso in relation to a motion herein to stop the demarcation of the boundary? A. Yes.

Q. When State Council met what happened?

A. Bukuruwahene made a statement that the lands attached to his Stool had been taken away by the Nkwatiahene to add to his own. Kofi Sefa, the Nkwatiahene said "no the land is mine". 10

In reply to Court:

I know a part of the land they were speaking of, as far as Odonkokrom and up to Chemfe.

Q. Who was claiming Chemfe?

A. Both of them were claiming.

Q. By the decision who was to have Chemfe?

A. Bukuruwahene. 20

Q. Was the Nkwatiahene to be given any land by the banks of the Volta River?

A. The name Volta was not mentioned.

Q. Did you not know that the land in dispute went as far as the Volta River?

A. Yes - I knew it was the land by the Volta and Afram.

Q. By their decision was Nkwatiahene to have any land abutting on Volta River?

A. No. The State Council met at Abetifi (near Nkawkaw). 30

Cross-Examined:

Yes the Chiefs in the State Council retire.

Q. Was that done in the case?

A. No - the Omanhene said each Chief should give his opinion. The Elders gave their opinion that the boundary should begin at the Esukese. I had never been to the Esukese. The Wing Chiefs gave their opinions.

In reply to Court:

Q. Did anyone write down what was said?

A. No.

Cross-Examined:

10 This was taken as an arbitration.
Yes I formally sat on the Tribunal.

Q. When you demarcate a boundary do you not send the parties with them? A. Yes.

Q. Was any reason given by the State why all the villages named by Nkwatia were given to Bukuruwa?

20 A. They said that the villages that were there before were only hunters' villages who lived there before and were in Bukuruwahene's land and that if they were given to Nkwatiahene that would be taking away the Bukuruwahene's land.

Q. At that time (1942) was the village of Faso in existence?

A. I don't know - I've never been there.

In reply to Court:

Q. Who owns the land between the town of Bukuruwa and the land in dispute?

30 A. After leaving Tafo going to the land in dispute and from Tafo you cross the Afram it all belongs to the Nkwatiahene and it ends at Esukese.

Q. Who owns the land between Tafo and Bukuruwa?

A. There is a boundary between them. Tafo land is also under Nkwatiahene.

Q. After the war with Attara Finam who was left to take charge of the land by the Volta?

A. One Asabihene the Mankrado of Bukuruwahene was put by the banks of the Volta and by repute Asabi is the place where he was put.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.23.

Evidence of 7th Witness for the Plaintiff.

Kwesi Amoa.

10th June 1952.

Cross-Examination.
- continued.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.23.

Evidence of 7th Witness for the Plaintiff.

Kwesi Amoa.

10th June 1952.

Cross-Examination.

- continued.

Cross-Examined:

Q. Have you heard that Asabis were same as Nkamis?

A. The Nkamis met the Asabis at Asabi. The Nkamis I heard were Akwamus.

Q. Have you also heard that the Asabis were Akwamus?

A. No - they were Kwahus. I've heard that when Akwamus migrated from Nyanawase (near Nsawam) to their present place the Knamis went to them. I gave evidence in the last case against the Ewes and I represented the Omanhene of Kwahu. 10

Q. At that time you had not gone on this land?

A. Yes - I went on the land when the action was taken. Before that case started I had a farm on that land. I had farmed there then for 2 years. I did not show the surveyor the plan - I was not there when the surveyor went.

Q. It was after the case was won that you applied and got a farm?

A. I had a farm there before the case started - it is at Bobu. 20

In reply to Court:

Q. Are there not now many Nkwatia farms near there now?

A. I've only heard that. I've not been there.

CROSS-EXAMINED BY BOSSMAN:

I don't know Ampoti - I've only heard the name.

Q. The State Council often meet to record the village under the Chiefs to give to the District Commissioner?

A. I don't know. 30

Q. Are you an Odehye of the Bukuruwa Stool?

A. No.

Q. Are you of same clan?

A. No - I am an Oyoko and he is Agona.

Q. Is it a fact that when Omanhene joined the case there was a meeting with the Nkwatiahene to ask him to withdraw from the case?

A. Yes - the Omanhene said so.

In reply to Court:

Q. Was any agreement made between them as to the withdrawal? A. No.

Q. Why then did the Nkwatiahene withdraw?

A. The Omanhene said that the Ewes were trying to claim the land for the Ewes and that he must fight the case with him. I do not know why the Nkwatiahene withdrew from the case. He is in Accra.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.23.

10 Cross-Examined:

Q. Is it true that after his withdrawal the Nkwatiahene continued to subscribe for the conduct of the case?

A. He did not pay any contributions that I saw. Kofi Sefa is still alive.

Q. How many of the Wing Chiefs are alive who took part in the settlement in 1942?

20 A. The Omanhene, and the Benkumhene are the only ones. The Mpraesohene is also alive - I don't remember if he was present. I can only remember the big Chiefs who came.

Q. At that meeting there was supposed to have been a plan on which the Omanhene marked the boundary?

A. Yes - it was a Gold Coast map.

Evidence of 7th Witness for the Plaintiff.

Kwesi Amoa.

10th June 1952.

Cross-Examination.
- continued.

RE-EXAMINED:

Q. When last did you visit your farm at Bobu?

A. About a year ago.

Q. Were there then any Nkwatia people farming around your area? A. No.

30 Q. Have you ever been at a State Council meeting when they enumerated the villages that came under the various Chiefs to make up the Chiefs List?

A. Not in the State Council - Wing Chief brings his list to the State Secretary. If two Chiefs put down the same village in their lists - the State Council puts it before Omanhene to settle it.

Q. Have you any recollection of any such thing in recent times?

40 A. I don't remember. Mr. Johnson has been State Secretary for a long time - about 20 years.

Re-Examination.

In the Supreme
Court of the
Gold Coast
Eastern Judicial
Division (Land
Division),
Accra.

No. 24.

EVIDENCE OF EIGHTH WITNESS FOR THE PLAINTIFF
KWAMI OKAI

KWAMI OKAI (m) s.s. in Twi:
8th WITNESS FOR PLAINTIFF:

Evidence for
the Plaintiff.

No.23.

Evidence of 8th
Witness for the
Plaintiff.

Kwami Okai.

10th June 1952.
Examination-in-
chief.

Live at Bukuruwa and am a native of Bukuruwa. I live on the land in dispute at Donkokrom (Odonkokrom). I have made a village there. Nana Baadu gave me the land. I am in charge of that place for him. I made the village 20 years ago - there was formerly a raised hunter's camp there.

10

Q. Before you went there had you been on the land at all before then?

A. Yes - when I was a young man, I used to go round with the hunters and collect the share of animals killed for the Bukuruwahene.

In reply to Court:

Q. Can you name any hunters' camps you visited for that purpose?

A. Yes - at Kayera, Brebu, Chemfe and many others.

20

Q. Who were the hunters who lived in those camps?

A. One came from Abetifi, one from Kwahu-Tafo, Asanti, some Nkwatias also used to go there and ask permission of the old hunters to hunt there.

EXAMINED:

Q. Any others?

A. Some from Pepiasi, from Odumasi and from the Northern Territories.

Q. About how old are you?

30

A. I had grown up when the Yaa Asantewa War started (1900) (aged about 65 years).

Q. When did you first go on the land as a young man?

A. About 20 years before I made the village at Donkokrom. I know the boundaries of Bukuruwa Stool land. The junction of Afram and Volta

Rivers - this is a boundary with the Akwamus there. The Abosum River is the boundary with the Akrosso Chief. It then goes to Wenamda and from there to Pitiku - from there you come to the boundary with the Tafohene, and at a place called Odumusua there is a boundary with Nkwatia.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

In reply to Court:

Evidence for the Plaintiff.

10 Q. Have you ever walked along that boundary?

A. Yes.

No.24.

Q. When did you first do that?

A. 20 years ago.

Evidence of 8th Witness for the Plaintiff.

Q. Why did you walk along that boundary?

A. To visit my brother in Asabi. My brother told me that was the boundary.

Kwami Okai.

10th June 1952.

Examination-in-chief.

- continued.

Examined -

20 Kayera was in existence before I made my village. Odonkor and Kwesi Adai were living there. I know Agotime. An Ewe man called Atimakpo lives there. I know Bobu - Kweku Dankyi lived there before - he is dead and now I have given the place to Kwesi Amoa. I gave it to him about 10 years ago.

In reply to Court:

Q. Why did not Kweku Dankyi's successor occupy the place upon Kweku's death?

A. He was only hunting there - so his successor did not go there.

Examined:

30 Dankyi came from Abetifi. Kwesi Amoa comes from Abene - he is the Kyidomhene (last witness).

Q. When you first went to Chemfe what was it like?

A. There was only a single hut in which the hunters rested. The first hunter I met there was Opoku. He came from Asanti - but I don't know from which town.

Q. Did any other hunters use that place?

A. Kofi Asare. He came from Jacommani.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.24.

Evidence of 8th Witness for the Plaintiff.

Kwami Okai.

10th June 1952.

Examination-in-chief.

- continued.

Q. When did people start farming at Donkokrom?

A. When I started 20 years ago and then other people followed me.

In reply to Court:

I started planting cocoa then.

Examined:

Q. Have you known any Nkwatia people who lived on any part of this land?

A. When I went there first there were none - the first ones came about 4 years.

10

In reply to Court:

Q. So I understand from you that up to 4 years ago you had no cause for any complaint regarding the conduct of Nkwatia?

A. That is so.

Examined:

Q. When did Nkwatia people first make a farm at Donkokrom?

A. One Kwasi Kwentin got permission from Bukuruwahene about 10 years ago.

20

In reply to Court:

Q. How do you know he got permission?

A. I was present.

Q. Was there any reason for your presence on that occasion?

A. He has a brother and he came to his brother saying he wanted some land to farm on and that his brother wanted land. The Ohene sent for me and Kwesi Kwentin said he wanted land, and the Ohene said "yes I will give you some and that Kofi Yehia should go and give him some land". Kofi Yehia lived at Esukese. I was in charge of all the headmen.

30

Examined:

Q. Where was Kwesi Kwentin given land?

A. At Esukese. No Nkwatia man had a farm at Donkokrom. Yes Chemfe is a River. The hunters' hut was by that river.

In reply to Court:

Q. How long does it take you to walk from Odonkokrom to Chemfe?

A. About 2 hours.

Examined:

Q. How many cottages on the land go by the name of Chemfe?

A. Only one. I know Bethel.

Q. How far is Bethel from Chemfe?

10 A. Over an hour.

Q. Do you know village of Osei Tutu?

A. No - I don't.

Q. Since you've farmed has the Nkwatiahene ever questioned your right to be on this land?

A. No.

CROSS-EXAMINED BY BOSSEMAN:

Q. You only farm near Odonkokrom? A. Yes.

20 Q. Do you still say that you do not know that there has been litigation for a long time about the land?

A. I know.

Q. Dispute has been existing for over 25 years?

A. Yes.

Q. And including the land on which you farm?

A. He claimed the land beyond where I was farming.

Q. You know the River Ada? A. No.

Q. What brought the dispute was that hunters in a portion of the land were claiming to hunt for the Nkwatiahene? A. Yes.

30 Q. Then people from both sides started making villages in order to cultivate cocoa?

A. Yes. Both sides started sending people there.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.24.

Evidence of 8th Witness for the Plaintiff.

Kwami Okai.

10th June 1952.

Examination-in-chief.

- continued.

Cross-Examination.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No. 24.

Evidence of 8th Witness for the Plaintiff.

Kwami Okai.

10th June 1952.

Cross-Examination.
- continued.

Q. You were there in 1929 when the parties said they would fix their own boundaries?

A. I was not there.

Q. Did you know Ankobiahene Boaten?

A. Yes. He is still alive. I know Kwabena Fori from Nkwatia.

Q. When Kofi Boaten was made Ankobiahene who was Mankrado at Bukuruwa?

A. I was.

Q. Do you not remember a meeting that was held at Abene between the Elders of both parties? 10

A. I went.

Q. Do you remember that at that meeting you touched pen and made your mark?

A. Yes. Mr. Gyima interpreted what was written to me.

Q. Do you not remember that on that occasion the parties said they would settle the boundary themselves?

A. Yes - that was so. 20

Q. Had you gone to an earlier meeting, 2 years earlier than that one?

A. Yes, I remember. An oath was sworn and because of that it was recorded in writing.

Q. Do you remember that at that time there were several villages apart from hunting camps on the land?

A. I had not gone to farm there.

Q. Do you know the village of Faso?

A. I don't. I've only heard of it. 30

Q. Do you know Burupai?

A. I've only heard the name. I've not been to Betiasi. I don't know Kpala. I've only heard the name. I don't know Nyinampong. I've only heard its name. I don't know Ampoti. I've only heard its name. I know Papasi. I know the fetish near Papasi.

Q. It is an Nkwatia fetish?

A. It is a fetish lying in the bush - we don't know whom it belongs to. I don't know Faso Chirifokrome.

Q. Do you know Buyiri?

A. No - I've only heard of it.

In reply to Court:

Q. Heard of it as what?

10 A. I heard that it was a village - I've heard that since the dispute started.

Cross-Examined:

I've only heard the name Framan.

Adjourned to 11.6.52.

(Sgd.) J.Jackson,
J.

11.6.52.

20 IN THE SUPREME COURT OF THE GOLD COAST,
EASTERN JUDICIAL DIVISION (LAND DIVISION)
held at Victoriaborg, Accra, on Wednesday
the 11th day of June, 1952, before Jackson,
J.

Nana Osei Twum II
v.

Nana Asante Yiadom III

From folio 362.

KWAMI OKAI resumes evidence.

8th WITNESS FOR PLAINTIFF

CROSS-EXAMINED BY BOSSMAN (Contd.)

30 Q. Do you suggest you have walked along the whole boundary or just heard?

A. I walked along the boundary.

Q. Why did you do that?

A. My brother showed me.

Q. How long did it take you to walk from one end of it to the other?

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.24.

Evidence of 8th Witness for the Plaintiff.

Kwami Okai.

10th June 1952.

Cross-Examination.
- continued.

11th June, 1952.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.24.

Evidence of 8th Witness for the Plaintiff.

Kwami Okai.

11th June 1952.

Cross-Examination. - continued.

A. It took us one day by canoe. I know Kwadjo Edo.

Q. On the land in dispute?

A. He was a hunter - he was on the land at Babu.

Q. He was an Nkwatia man?

A. I don't know. Agotime was not in existence before Etim Alopo got there.

Q. Suggest that land south of Odonkokrom has for past 50 years been occupied by Nkwatia people?

A. No - not a single one. Where I was there was no Nkwatia man.

10

No re-examination.

No.24A.

Evidence of 3rd Witness for the Plaintiff.

Gyimah Peter Johnson - recalled.

11th June 1952.

Cross-Examination.

Exhibit "13".

No.24A.

EVIDENCE OF THIRD WITNESS FOR PLAINTIFF RECALLED
GYIMAH PETER JOHNSON

GYIMAH PETER JOHNSON
3rd WITNESS FOR PLAINTIFF

I had a subpoena to produce a map on which Omanhene marked a boundary. This is the map which was used on the occasion when the Omanhene sent the delegates to demarcate the boundary (admitted and marked "13"). I was present on that day. This map was sent to the Native Court (A) in 1944 and I got it from there when I received the subpoena.

20

CROSS-EXAMINED BY BOSSMAN:

Q. On that day can you remember if Nkwatiahene was there himself or represented?

A. He was not there. He was represented by his Krontihene. I know the signature on the letter to the Omanhene of Kwahu (admitted and marked "B" for identification). I knew the late Nifahene Kwami Nyarku. He is dead. He frequently corresponded and this is his signature (admitted for identification and marked "C").

30

Q. After the Omanhene had used the map did he send it out by anyone?

A. I cannot remember - but that day he sent it to my office. I cannot say if it left my office after that.

No re-examination.

No. 25.

EVIDENCE OF NINTH WITNESS FOR THE PLAINTIFF -
KWADJO AMUA

KWADJO AMUA (m) s.s. in Twi:
9th WITNESS FOR PLAINTIFF

In the Supreme
 Court of the
 Gold Coast
 Eastern Judicial
 Division (Land
 Division),
 Accra.

Evidence for
 the Plaintiff.

No.25.

Evidence of 9th
 Witness for the
 Plaintiff -

Kwadjo Amua.

11th June 1952.

Examination-in-
 chief.

10 Live at Abetifi. Linguist to Adontehene of Kwahu. Have been a linguist for about 20 years. Remember a dispute between Bukuruwahene and Nkwatiahene. The Bukuruwahene told Omanhene that Nkwatiahene had penetrated into his land. Some time before that I understood that an oath had been sworn that Nkwatiahene had sent his hunters to hunt on Bukuruwa land, that the hunters had brought the meat to the Nkwatiahene. The Omanhene invited the Oman to assemble and the Bukuruwahene was asked the grounds for swearing the oath and he then made a statement describing the boundaries between himself and the Nkwatiahene. The Nkwatiahene was there in person. His name was Kofi Sefa.

20 The Nkwatiahene also described his boundaries - but in describing them it appeared that he had gone across the boundary described by the Bukuruwahene. The Omanhene said that the oath sworn should be regarded as having been set aside. The Omanhene got a map hanging on the wall. Bukuruwahene mentioned Esukese, Kwasiampe, Nframanyo and Ddean junction. Nana Nkwatia mentioned some villages - but I forget which.

In reply to Court:

30 Chemfe and Papasi were mentioned. Mpoti and Taso were mentioned. It is a long time ago and I cannot remember the other villages mentioned.

Q. Were any of the hunters called to give evidence before the Oman?

A. No.

Q. Apart from the 2 Ohenes who else spoke?

A. They had not met to hear the case and give judgment but to settle the boundary. No one else spoke.

In the Supreme
Court of the
Gold Coast
Eastern Judicial
Division (Land
Division),
Accra.

Evidence for
the Plaintiff.

No.25.

Evidence of 9th
Witness for the
Plaintiff -

Kwadjo Amua.

11th June 1952.

Examination-in-
chief.

Cross-
Examination.

EXAMINED:

Q. And then what happened?

A. Bukuruwahene said Nkwatiahene had sent his people to hunt and bring the animals to him and he said that if he (Omanhene) would send people to settle the boundary that would be alright and the Nkwatiahene agreed.

Q. What happened after that?

A. They were asked to bring rum - a case each. £6 was paid. £30 was paid by each party for those going to mark the boundary. People were deputed to mark the boundary.

10

CROSS-EXAMINED BY BOSSMAN:

Q. You know the difference between settling a suit and settling a complaint?

A. Yes, I know.

Q. Do you know the difference between a sort of settlement you have mentioned and a case when the people are prepared to abide by the decision of a person whom they have selected to settle their dispute?

20

A. When the case comes before the Elders they will ask for witness and then the fee will be decided for each to pay and paid before they will hear the witnesses.

Yes that is what happens when people have agreed to abide by the decision.

Q. Was that done at that meeting?

A. No. There is a difference between hearing of a case and a settlement. When 2 people have got a case which has arisen either from the swearing of an oath or something else that is one which necessitates the presence of the witnesses and the payment of the fees.

30

In the case of a settlement when we have heard both parties and it appears to us that one was cheating the other we divide the thing argued about into two and give a half to each. I know Krontihene Kwesi Bua.

Q. Do you swear on your oath that it was not he who appeared for Nkwatia that day?

A. It was not he.

Yes - Nana Sefa stood then and paid the money.

In reply to Court:

Q. How did the delegates know where to put the boundary?

A. Two persons Opanyin Nyina and Diawuo would show them.

10 Q. How were these people to know where the boundary was?

A. The Elders accepted what Bukuruwa had said because the river that was mentioned was to be the boundary as the villages mentioned by the Nkwatiahene appeared to have penetrated that boundary.

CROSS-EXAMINED:

Q. Who were the Elders who decided that?

20 A. Adontenhene, Kyidomhene, Benkumhene, Nifahene and the Omanhene. Of these Omanhene and Benkumhene are the only 2 alive now.

Q. Do you say these 2 people Nyina and Diawuo were deputed to go and show the boundary?

A. Yes.

Q. Did they leave to go and see the boundary the same day?

A. No - about 3-4 days later.

Q. Were you present when they set out to go?

A. No.

Q. Diawuo is one of the Elders of the Bukuruwa?

30 A. No - he comes from Abetifi, lives at Dedeso. Nyina is not an important man and he comes from Abetifi. He lives near the land in dispute.

Q. Was any person appointed to represent the Nkwatiahene at this demarcation? A. No.

Q. Did you know the land before that day?

A. No - I've never seen the land.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.25.

Evidence of 9th Witness for the Plaintiff -

Kwadjo Amua.

11th June 1952.

Cross-Examination.
- continued.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.25.

Evidence of 9th Witness for the Plaintiff - Kwadjo Amua.

11th June 1952.
Cross-Examination.
- continued.

Re-Examination.

Q. Is it correct that the Omanhene marked the boundary with a pencil on a map?

A. No.

Q. Was any Clerk present when case was investigated?

A. Yes, Mr. Gyima Johnson.

Q. Did you see him write anything at all?

A. No - because it was a case. There was another clerk there whose name I have forgotten. Gyima was the State Council Clerk.

Q. Did you see him mark anything on a map?

A. No. I did not see the other Clerk mark anything.

Q. Had you been present at an earlier meeting on that same matter about 25 years ago?

A. No.

RE-EXAMINED:

Q. This man who lived at Dedeso - where is he now?

A. He is dead. Nyina is also dead.

Q. Was anyone sent to represent the Bukuruwahene?

A. No.

Q. When you hear a case you say that money is taken from both sides before you hear a case?

A. Yes, that is called "Dwantaadu".

Q. In the case of a settlement do you take anything at all?

A. No - not until we have settled it and then give us money.

Q. What do you call that?

A. That has no name.

Q. In such a case is any party compelled to give it?

A. No.

In reply to Court:

Q. Since you have been a linguist have you ever known of anyone refusing to pay?

A. No - if one refused it would mean he was not agreeable to the decision.

Adjourned at 11 a.m. to 11.15 a.m.

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No. 26.

EVIDENCE OF TENTH WITNESS FOR THE PLAINTIFF -
KOFI KYEI

KOFI KYEI (m) s.s. in Twi:
10th WITNESS FOR PLAINTIFF

The Akwamuhene of Abene.

Q. Do you remember some time ago a dispute between Bukuruwahene and Nkwatiahene? A. Yes.

10 Q. How did the matter come before the Omanhene and the Chiefs?

A. Bukuruwahene intended to sue Nkwatiahene. The Omanhene said "no - it is not good taking a matter from Kwahu and settling it elsewhere - I will try and settle it". I was present when all the Chiefs met and he said that. Omanhene put it before the Oman (names principal Chiefs). Bukuruwahene and Nkwatiahene were there.

Q. How did they receive the Omanhene's suggestion?

A. They both said "what you decide - we will agree".

20 Q. What happened after that?

A. Then that same day they were each told to pay £6.

Q. What was that for?

A. That is "Aseda" for thanking the Omanhene for agreeing to settle the case.

Q. After that?

A. I was deputed to go with people to fix the boundary.

Q. What boundary were you to fix?

30 A. The one between the parties.

Q. How did you know where to put the boundary?

A. The Omanhene sent for a map and hung it on the wall and a Clerk was shown the boundary by the Omanhene. I could not read. The Clerk was called Tawiah.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.26.

Evidence of 10th Witness for the Plaintiff -

Kofi Kyei.

11th June 1952.

Examination-in-chief.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division); Accra.

Evidence for the Plaintiff.

No.26.

Evidence of 10th Witness for the Plaintiff -

Kofi Kyei.

11th June 1952.

Examination-in-chief.

- continued.

Cross-Examination.

Q. Before the Omanhene did this was anything said?

A. He called Nkansa and Amankwa to come and see the map. Nkansa was from Bukuruwa and Amankwa was from Nkwatia.

In reply to Court:

They could both read. Amankwa and Nkansa (1st witness) are both alive.

See Nkansa's evidence.

EXAMINED:

We went after collecting the £30. We were away for 2 weeks. 10

Q. While there did you receive any letter from the Omanhene?

A. No. We received no letter after our return.

Q. Who then was the Nkwatiahene?

A. Kofi Sefa.

CROSS-EXAMINED BY BOSSMAN:

Q. Did Omanhene tell you at any time that he had sent a letter after you had gone to stop you demarcating the boundary? A. No. 20

Q. I put it to you that a Native Authority policeman handed the letter to you personally?

A. I met a policeman and he said that the Omanhene said I had taken with me other men than those deputed and I told him I had finished the work.

In reply to Court:

Q. Where were you when you received the message?

A. Konadukrome - from Dedeso to the place is not far - I was staying at Dedeso.

Cross-Examined:

There was no letter. 30

Q. When you returned did you see and talk to the Omanhene?

A. Yes.

Yes it is same Omanhene on the Stool today.

Q. And you swear he had never told you he had sent such a letter?

A. No. The District Commissioner did not come to Abene about this matter while I was there. I am not a member of the State Council. I was and am a Safohene.

Q. You say that Omanhene asked £6 from each before he settled the matter? A. Yes.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.26.

In reply to Court:

10 Q. Did Nkansa go with you to demarcate the boundary?

A. No - he did not.

Q. When you got to the place who directed you as to where you should put the boundary?

A. Kofi Nyina. He cannot read.

Evidence of 10th Witness for the Plaintiff -

Kofi Kyei.

11th June 1952.

Cross-Examined:

Benkumhene cannot read or write.

Cross-Examination.
- continued.

Q. Were all the Wing Chiefs who formed the State Council illiterate?

A. They did not know book.

20 Q. Had you attended any earlier meeting in connection with this same dispute?

A. That was all that I knew.

Q. When you went to the bush did you take the map with you?

A. No. If I saw it again I would not know it. The Nkwatiahene came himself.

RE-EXAMINED:

The Omanhene can read and write Twi. I have been Akwamuhene since about 10 years.

Re-Examination.

30 In reply to Court:

Q. Can you remember when the Nkwatiahene left the Stool?

A. I cannot. I don't know if he was destooled.

Q. If he had been destooled would you in your position have knowledge of that fact?

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.26.

Evidence of 10th Witness for the Plaintiff -

Kofi Kyei.

11th June 1952

Re-Examination.
- continued.

A. Yes. I would have - but I would not know whether he was destooled or abdicated.

Q. So - so far as you are aware Kofi Sefa is today the Nkwatiahene? A. No.

Q. Then when did you hear that he had been removed?

A. A long time now. I think it would be about 6 years ago.

Q. When you came back from demarcating the boundary did you report to anyone?

A. Yes, to the Chiefs that sent us.

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No.27.

Evidence of 11th Witness for the Plaintiff.

Otukwa.

11th June 1952.

Examination-in-chief.

No. 27.

EVIDENCE OF ELEVENTH WITNESS FOR THE PLAINTIFF
OTUKWA.

OTUKWA (m) s.s. in Twi:
11th WITNESS FOR PLAINTIFF

Live at Asabi. Am the Asabihene and the Mankrado of Bukuruwa. Have been Mankrado for 20 years.

Q. Where did Bukuruwahene originally come from?

A. Denkyira.

Q. Where did he settle?

20

A. He first settled at Baadu Anweam. Going from Nkwatia to Abetifi it is on the right hand side of the road. No one lives there today. It was a sandy place and not good so he moved to the present site called Bukuruwa.

Q. Who were there when he first arrived?

A. There were some hunters living in a camp there - their descendants still live at Bepong today.

These hunters were found at place now called Bepong (about 2 miles north-east of Mpraeso). Baadu removed from Anweam and went to Bukuruwa. He had come with many people and was an Ohene in Denkyira before he came.

Q. Who were the next people to come after Baadu?

A. Aduamuahene, now the Benkumhene, came from Asanti.

In reply to Court:

10 Q. Was that before or after the Denkyira/Asanti War?

A. It was before that war.

EXAMINED:

The first Aduamuahene's name I forget. After him then came the Nkwatia people, then Abene and then Abetifi and Pepeasi. They came from Offinso in Asanti.

Q. Do you know of any relationship between Aduamuahene and any of those who came later?

20 A. The Stool of Aduamua and that of Nkwatia both came from the same family. Nkwatiahene is the senior sub-chief to the Aduamuahene and who is today the Benkumhene.

Q. The Bukuruwa Stool claims to own the land called the Affram Plains? A. Yes.

Q. Do you know the extent of the land there which they claim to be theirs?

30 A. Yes I know. When the Bukuruwas brought an action against the Ewes I went with the surveyor - I was deputed by the Bukuruwahene to go and show the boundaries to the surveyor.

Q. Can you say how the Bukuruwahene came by this land?

A. When Bukuruwa came with his Stool a big Chief lived on the other side of the Affram called Attara Finam (Firaw).

Q. To what tribe did Attara Finam belong?

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.27.

Evidence of 11th Witness for the Plaintiff.

Otukwa.

11th June 1952.

Examination-in-chief.

- continued.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.27.

Evidence of 11th Witness for the Plaintiff.

Otukwa.

11th June 1952.

Examination-in-chief.

- continued.

A. He spoke a different language - a kind of pidgin Twi. Firaw is the Twi name for the Volta River. Bukuruwahene often sent his children and subjects to the Northern Territories to sell kolos.

Q. What route is it said they took in those days?

A. There was a road from Abene going to Offinso - from there they went. From Bukuruwa they went to Pepeasi and from there to Kwanteng (going in a direction practically due north from Bukuruwa - land in dispute about 50 miles N.E. from Bukuruwa). Attara Finam had many people then and when Bukuruwahene's people were travelling along this route he killed them. This caused war between Bukuruwahene and Attara Finam.

10

Q. At that time had the Adamuahene and the others come from Asanti?

A. No - they had not. The Bukuruwas defeated Attara Finam and drove them across the Volta River and the land was then occupied by the Bukuruwas. The land between the Affram and Volta was occupied. Bukuruwa founded the village of Asabi (meaning some wars are good). That was the first place - then he sent Okuntu Diawuo to establish Nkami.

20

Adjourned to 12.6.52.

(Sgd.) J. Jackson,
J.

12.6.52.

12th June 1952.

IN THE SUPREME COURT OF THE GOLD COAST,
EASTERN JUDICIAL DIVISION (LAND DIVISION)
held at Victoriaborg, Accra, on Thursday,
the 12th day of June, 1952, before Jackson,
J.

30

Nana Osei Twum II

v.

Nana Asante Yiadom III

From folio 372.

OTUKWA (m) resumes evidence:
11th WITNESS FOR PLAINTIFF

Benkumhene himself lived at Asabi for a long time. Safohene looked after the old town at

40

Bukuruwa. The Ohene eventually went back to Bukuruwa. The Nkwatia, Abene and Pepeasi arrived after that. When he went back from Asabi my ancestor remained there i.e. the Otukpa Stool I occupy now.

Q. Apart from those two places did Bukuruwa people find any other villages or cottages on this land? A. Yes.

Q. Which are they?

10 A. AMPOTI, CHEMPRE, PAPASI, BUYIRI and KWASIMBE. Also Faso on the bank of the Volta, ATIPRADA. The remaining settlements were only hunters' camps. I remember the time the oath was sworn on the Nkwatiahene (1927).

Q. At that time what was Ampoti like?

A. The Bukuruwa people had moved the Nkwatia people were there. The Nkwatia people were questioned about their hunters and asked why they did not bring the shoulders of the animals they killed. They replied that they were the hunters for the Nkwatiahene and that brought about the swearing of the oath at Abene.

20

Q. At that time how many houses were there at Ampoti?

A. About 3 - occupied by hunters.

Q. What about Chemfe?

A. There was no Nkwatia man living there. Only Kofi Essar lived there and he was an Agona man - he is dead - he was a hunter.

30 Q. And Papasi?

A. The man who lived there was called Koranteng and he came from Pepiasi. He is dead. He died a long time ago. He died about 40 or 50 years ago. After his death no one lived until the Nkwatia people came about 25 or 27 years ago.

Q. At time oath was sworn what kind of village was it?

A. It was a hunter's camp with two huts.

Q. What about Buyiri?

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.27.

Evidence of 11th Witness for the Plaintiff.

Otukwa.

12th June 1952.

Examination-in-chief.

- continued.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.27.

Evidence of 11th Witness for the Plaintiff.

Otukwa.

12th June 1952.

Examination-in-chief.

- continued.

A. Dei Kumi was the first man to live there - he was a hunter - it was all grown land. At time oath was sworn there were about three huts there and Nkwatia people were living there - they refused to give us the shoulders of the animals. After the oath was sworn the Nkwatia people left the Ewe people claimed the land to be theirs and that started a case which came to the Court.

Q. And Kwasi?

A. Ofosuhene occupied the place - he had a slave called Kwasi and after he made the village he named it after the slave. The village is no longer there. It was last occupied about 40 years ago. All that can be seen now are orange trees. It is in the bush - anyone who passes by can pick them. 10

Q. What about Faso?

A. One Dente first lived there - he came from Abetifi - at time oath was sworn Kwadjo Dei was living there - he came from Owusuta (Ewe). He died about 2 years ago. Since his death I don't know who succeeded him. Kwadjo Dei lived there with his people, all Ewe people. 20

Q. Who made Kwadjo Dei headman there?

A. The Nkamihene.

Q. At the time the oath was sworn who were living in the small villages on the bank of the Volta?

A. Ewe people. They occupied Atikplale and all along the river.

Q. How did they get there?

A. Ntim my predecessor allowed them to settle there when they ran from the German administration in Togoland. A descendant of the first Ewe lived at Atikplale. Tawia claimed the land to be his own - so we sued him (1940/47) case. The Ewes claimed the land from the Volta to Kwasi where they claimed to have a boundary with Nkwatia at that point. The man Yao Koi - one of the men sued - lived at Bethel - there was a document - I was not present when it was made. (not admissible). At the time the oath was sworn Yao Dadee was living there (6th witness). I know Badu. At present it is in ruins. But 30 40

Folio 340.

a hunter named Poku lived there and he was living there when the oath was sworn. Poku was a man from Akim.

Q. Did any Nkwatia man accompany you while the plan for first case was made?

A. Yes. From Asabi on to Obusumasi no Nkwatias near.

In reply to Court:

10 Q. Why did the Nkwatia man accompany you at that survey - at a time when Nkwatiahene had not yet been joined as a party?

A. So that we might not encroach on the Nkwatiahene's boundary.

EXAMINED:

Q. Whom did Nkwatiahene send?

A. Konadu - he is dead. He came from (extreme west of plan).

Q. And what part of the boundary did he accompany you?

20 A. From Esukese. He did not go to Chemfe.

Q. I see in the plan the villages on the west marked with an "N". What sort of villages are they?

A. They are huts.

30 Remember when dispute came before the Omanhene and his councillors. The reason it came before him was because an oath had been sworn before about these villages marked on the plan N.N. I was present. It happened at Abetifi about 10 years ago. Matter had been going on for a long time and the boundary had not been demarcated and Bukuruwahene told Omanhene he wanted to sue Nkwatiahene. Omanhene invited whole Oman and said he did not like people to take the case out of Kwahu and that he wanted the Oman to settle the matter. Kofi Sefa then Nkwatiahene and his elders were present. When Omanhene said this the Nkwatiahene agreed to it and so did Bukuruwahene. Bukuruwahene mentioned names of his villages and boundaries and

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In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.27.

Evidence of 11th Witness for the Plaintiff.

Otukwa.

12th June 1952.

Examination-in-chief.

- continued.

Admission by Bukuruwa.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.27.

Evidence of 11th Witness for the Plaintiff.

Otukwa.

12th June 1952.

Examination-in-chief.

- continued.

Nkwatiahene did the same. Omanhene had a black board brought for the boundaries to be sketched on it. When plan was brought it was found that Bukuruwahene's version was the true one.

Q. Was Kayera in existence at time oath was sworn?
A. Yes - a small village occupied by Ewes was there. Adukrom was also in existence then. Yao Dadee was there then - he was a Kwahu from Obomen. I know Asarekrom.

Q. How long has it been in existence? 10
A. I don't know. I know Santaboma (beyond limit of land in dispute). I know another Asarekrom (marked on plan Exhibit "2").

Q. How long has it been in existence?
A. 20 years. I know a hill called OBOAKROMA - I don't know it as a fetish (Plan "2").

Q. Who lived at Faa Asomuso when oath was sworn?
A. Nkwatia people. There were about 3 small huts of hunters. I know Awunakrom.

Q. Who were living there? 20
A. Nkwatia people.

CROSS-EXAMINED BY BOSSMAN:

Cross-Examination.
See folio 371.

Q. You agree that the Attara Finam War was fought before the Denkyira/Asanti War?

A. I don't know that.

Q. You also said that Baadu had come to Kwahu before that war?
A. Yes.

Q. That was not what you said when you gave evidence on 17.9.46. Did you not say at page 70 "According to our tradition etc. etc. one section refused to serve Ashanti, and migrated to Bukuruwa"? 30

A. Yes - I said so.

Q. And I suggest that when you first came to Kwahu the Attara Finam War had taken place before you arrived?

A. It was Baadu who fought the war.

Q. Attara Finam was reputed to be a very powerful chief?
A. Yes.

Q. And he was reputed to have owned much land, going north into Asanti?
A. Yes.

Q. You remember in 1924 all Kwahus claimed against the Agogohene and Kumawuhene a portion of Attara Finam's land north of Obosum River and in Ashanti?

A. I have heard that.

10 Q. My suggestion to you is that the true tradition is that Attara Finam was fought by combination of Kumawu, Agogo, Kwaman and Nsuta?

A. It was Baadu who fought that war.

Q. With Kumawu, Agogo, Kwaman and Nsuta?

A. Kamawu, assisted Baadu. Agogo and Kumawu are one. Nsuta assisted - I don't know about Kwaman.

In reply to Court:

20 Q. Why did you not tell me that Baadu only fought that war?

A. Because we were talking about Kwahu.

Cross-Examined:

Yes Nkwatias came from Ashanti.

Q. And do you know that Nkwatia is a Stool son of the Kumawuhene?

A. I don't know that.
Yes - they were one of those who came to settle at Kwahu.

Q. When they came did they fight you?
A. No.

30 Q. Do you say they did not fight and suppress the aboriginal Kwahus there?

A. No. They met Baadu and did not fight. They were not enemies.

Q. Right up to 1929 Baadu occupied the position of an Odikro in Kwahu?

A. Yes - then the power had got to Abene.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.27.

Evidence of 11th Witness for the Plaintiff.

Otukwa.

12th June 1952.

Cross-Examination.
- continued.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.27.

Evidence of 11th Witness for the Plaintiff.

Otukwa.

12th June 1952.

Cross-Examination.
- continued.

In reply to Court:

Q. How had the power got to Abene?

A. Because when he went to Asabi he left the charge of his country to the Chief Mampong Adjei of Abene - the leader of the Asantis who had settled at Kwahu. Abene was the Gyasi. He became the Omanhene.

Q. Was that in your life time?

A. No - I was not born.

Cross-Examined:

Q. What relationship is Nkwatia to Mampong Adjei?

A. I don't know.

Q. Is it not a fact that the Asabis and the Nkamis are the same people? A. No.

Q. Have you heard that Nkamis were Akwamus who got there during the Akwamu War? A. No.

Q. The Akwamus fought over the land in dispute?

A. No.

Q. Do you deny that Nkamis and Asabis came together with the Akwamus to the area in dispute?

A. No the Nkamis met the Asabis.

Q. When you gave evidence at the last trial did you not admit that they were the same people?

A. They are one but did not come together.

Q. I put it to you that Asabi was founded by the Akwamus?

A. It was Baadu who founded Asabi. The Nkamis met the Asabis. The Nkamis came from Nyanawasi (near Nsawam).

Q. With the Akwamus?

A. No. The Akwamus were troubling them and they removed.

Q. Then what tribe were they?

A. I don't know.

10

20

30

Q. Did not the Nkamis remain independent of Kwahu until about 1900?

A. It is not so.

Q. You deny that on the land in dispute the Asantis together with the Kwahus fought the people living on the land during the Slave War (1874)?

A. I don't remember.

Q. Quite close to the land are the Krepis (Ewes)?

A. Yes - on the other side of the Volta.

10 Q. Was there no fight with them on the land in dispute?

A. There was no fight - it was on the other side of the Volta, not this side.

Q. I take it that what you have said of the founding of the villages on the land is based on what you have heard e.g. you said that Ampoti was founded by two men from Bukuruwa and that is what you were told?

A. Yes.

20 Q. Nkwatias founded the villages? Did you tell the Surveyor that Nkwatias founded them?

A. (After quibbling replies) "I told him".

In reply to Court:

Q. Was what you told the surveyor the truth?

A. It was.

Q. Were those villages in existence when you were born?

A. No - they were not.

Cross-Examined:

30 I am 52 years old.

In reply to Court:

Q. In what year was Chemfe founded?

A. I don't know when it was founded.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.27.

Evidence of 11th Witness for the Plaintiff.

Otukwa.

12th June 1952.

Cross-Examination.
- continued.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.27.

Evidence of 11th Witness for the Plaintiff.

Otukwa.

12th June 1952.

Cross-Examination.
- continued.

Cross-Examined:

Q. Did you know the land at all before you went with the surveyor?

A. I knew a part.

Q. Had you ever visited Chemfe before the time you went there with the surveyor?

A. (Quibbles - does reply and then after repeated consistence) "I had not been there until I went with the surveyor".

Q. Had you been at Faso before you went with the surveyor? 10

A. Yes. I went there in 1939.

Q. For what purpose?

A. I passed through there on my way from Odonkokrom to Asabi. I have passed there twice. I slept there with a young man. I did not get any knowledge of the place from him. I got it from my uncle. My uncle lived at Asabi and occupied the Asabi Stool.

Q. Was it from him you learned that tradition you told us? A. Some. 20

Q. You don't deny that Faso is a village acknowledging Nkwatia as their overlord?

A. Now they do - it was a village which belonged to the Ewes - it was founded by a man of Abetifi named Dente.

Q. Did your uncle tell you that?

A. Yes, and Nkamihene also told me.

Q. Last time when you gave evidence you did not mention Dente and you mentioned Yao Beng as the person who founded it? 30

A. I said that Dente founded it - I mentioned it.

Q. Was it not in existence before you were born?

A. I was born before it was founded.

Q. In what year was it founded?

A. I don't know - it was in existence in 1903 - when there was the Crabbe Enquiry. My uncle told me. He could not read and write.

Q. Do you say that Faso was not founded with the permission of Nkwatias?

A. It was not. Kwadjo Dei founded it. Yes the same Kwadjo who wrote letter to the Nkwatiahene which Gyima Johnson produced in the last trial.

Q. And you specially wrote the Omanhene for these letters to be produced? A. Yes.

In reply to Court:

Q. To show what?

10 A. To show that Kwadjo Dei was claiming land this side of the Volta (letters at pages 173-177 of Record).

Cross-Examined:

Q. Did you not produce those to prove that Kwadjo Dei was the tenant of the Nkwatiahene?

A. Yes.

Q. Was Chirifukrom in existence before you were born or after?

A. It was not.

20 Q. When was the first time you saw this village?

A. In 1936.

Q. Then how can you say whether it was or was not in existence before you were born?

A. The oath had been sworn already.

Q. You spoke about the so-called arbitration 10 years ago - had you ever been present at any earlier meeting about this boundary dispute?

A. I had not.

30 Q. You sought and obtained the assistance of the Nkwatiahene to fight the Ewes? A. No.

Q. Did you know they paid a portion of the money to finance the litigation?

A. They did not assist us financially.

Q. Did not the Omanhene take over the question of expenditure for the time he joined?

A. No, we paid.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.27.

Evidence of 11th Witness for the Plaintiff.

Otukwa.

12th June 1952.

Cross-Examination.
- continued.

In the Supreme
Court of the
Gold Coast
Eastern Judicial
Division (Land
Division),
Accra.

Evidence for
the Plaintiff.

No.27.

Evidence of 11th
Witness for the
Plaintiff.

Otukwa.

12th June 1952.

Cross-
Examination.
- continued.

Q. Do you say the Omanhene paid no money to the lawyers for that last case?

A. Yes he paid some money.

In reply to Court:

He paid £300 and he got a loan for us and we re-paid it to him.

Cross-Examined:

Q. You do not know that the Omanhene obtained money from the Nkwatiahene to pay these expenses?

A. I don't know. 10

Q. You say in 1942 it was not the Krontihene who appeared and that the Nkwatiahene appeared himself?

A. Yes. The meeting took place about May 1942.

Q. You know Kpala? A. Yes.

Q. A man called Antonyima lives there?

A. Yes. Yes he has lived there a long time.

Q. Was he there before you were born?

A. I don't know.

In reply to Court: 20

Q. When was the first occasion you ever saw the village Kpala?

A. In 1932 when I came on the Stool and I passed through on my way to Kayera. We stopped there but did not sleep - I've not been there again. Yes - what I know of Kpala is what I have been told.

Cross-Examined:

Q. Do you remember Antonyima was sued in 1931, by Bukuruwahene for occupying the land? 30

A. Yes. I learned about it after the case. Antonyima is still on the land.

Q. He has refused to acknowledge you as his overlord?

A. Yes - he does not agree.

Q. Don't you know he has always acknowledged Nkwatia as his landlord?

A. Yes I know that and because of that we complained to the Omanhene.

Q. You know Nyinampong? A. I don't.

Q. You know that Gyan Fosu has lived there for a long time?

A. Yes - before the Ewes came there. He and the Ewes came there together. I don't remember the year. The war started in 1914 - the Germans were in Togoland about 1910 and they must have come there about that time.

Q. The Ewes were there before the Crabbe Enquiry?

A. Yes. For that was in 1903. Gyan Fosu is still there. Bukuruwahene sued him.

Adjourned to 13.6.52.

(Sgd.) J. Jackson,
J.

13.6.52.

IN THE SUPREME COURT OF THE GOLD COAST,
EASTERN JUDICIAL DIVISION (LAND DIVISION)
held at Victoriaborg, Accra, on Friday the
13th day of June, 1952, before Jackson, J.

Nana Osei Twum II

v.

Nana Asante Yiadom III

From folio 383.

OTUKWA resumes evidence
11th WITNESS FOR PLAINTIFF.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.27.

Evidence of 11th Witness for the Plaintiff.

Otukwa.

12th June 1952.

Cross-Examination.
- continued.

20

30

13th June 1952.

Q. You said you had no personal knowledge of the 1927 case? A. Yes.

Q. Where were you at the time?

A. I was then a school teacher in Akwapim. When I was enstooled I went to some of the villages. After leaving school I was a teacher for 9 years and then in 1932 I was enstooled. During holidays I would visit Asabi.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.27.

Evidence of 11th Witness for the Plaintiff.

Otukwa.

13th June 1952.

Re-Examination.

RE-EXAMINED:

Q. These Ewe people - when did they first make a claim that the land was their property?

A. In 1903.

Q. You said Osei Dju was appointed Headman by the Nkami Chief? A. Yes.

Q. It was suggested that letters written to the Nkwatiahene were tendered to show that the writers were Nkwatiahene's servants and you said then you had an explanation - what is that explanation?

A. Faso Headman was serving the Nkwatiahene - in collecting a part of the meat there was a dispute - so the Nkwatiahene sued Kwadjo Dei and after the case Kwadjo Dei wrote the letters to the Nkwatiahene - so that he might serve him (Nkwatiahene) and after that Kwadjo Dei and the Ewe people tried to claim the land from the Volta up to Kwasimpe.

10

In reply to Court:

20

Q. What did Bukuruwa seek to prove by tendering these letters?

A. To show that the Ewes served a Kwahu Chief and not Nkami.

Q. Were the contents of these letters the truth?

A. They were not true.

Q. What was not true in them?

A. That they served the Nkwatiahene.

Q. Did the writers of these letters give evidence?

A. He did not and because he did not the Judge rejected the letter.

30

Q. Did you attempt to call the writers?

A. Yes - but we could not find them.

No. 28.

EVIDENCE OF TWELFTH WITNESS FOR THE PLAINTIFF -
AKUAMOA AKYEAMPONG

AKUAMOA AKYEAMPONG (m) s.s. in Twi:
12th WITNESS FOR PLAINTIFF.

10 Omanhene of Kwahu. I have been on Paramount
 Stool of Kwahu for 19 years and 6 months. I know
 of the land in dispute between Bukuruwahene and
 Nkwatiahene. Some time ago I and my Divisional
 Chiefs and Elders sat at Abene about this dispute.
 20 It was not at Abetifi. It was about 11 years ago.
It was I, myself, who invited the Kwahu Oman, the
Bukuruwahene and the Krontihene of Nkwatia. At
 that the Nkwatiahene had some dispute with his
 people so the Krontihene came. I put it before
 the Oman that I did not want litigation about lands
 and I wanted the Chiefs to assist me in settling
 the dispute and that each should show the villages.
 An unsuccessful attempt had been made to settle
 this case before.

The Krontihene agreed that so far as I settled
the matter to their satisfaction that would be al-
right. The Bukuruwahene agreed. I told them I
 did not want either of them to narrate the trad-
 itional history about the land but only to name
 the villages.

30 There was a map on which the villages were shown.
 I looked at that map and deputed people to cut a
 boundary between them. The Divisional Chiefs
 (Ahenfo) deputed people.

Q. What boundary were they to cut?

A. Between the Bukuruwahene and Nkwatiahene.

Q. Did you and the Chiefs decide where that bound-
 ary was to be?

A. I said that the boundary to be cut was to be
 such that everyone's village was to be within
 his own boundary.

Q. Those people who were to cut the boundary had
 nothing to guide them?

40 A. No. I told them to look at the villages and

In the Supreme
 Court of the
 Gold Coast
 Eastern Judicial
 Division (Land
 Division),
 Accra.

Evidence for
 the Plaintiff.

No.28.

Evidence of 12th
 Witness for the
 Plaintiff -

Akuamoa
 Akyeampong.

13th June 1952.

Examination-in-
 chief.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.28.

Evidence of 12th Witness for the Plaintiff -

Akuamo
Akyeampong.

13th June 1952.

Examination-in-chief.

- continued.

everyone was to have their own village. I said that as I had not been on the land myself and therefore I could not show them.

Q. Did you indicate anything on that map to show what was to be the boundary?

A. I did not do anything on the map.

Q. Was the boundary cut?

A. When I deputed the people to go on the day fixed for going the Krontihene had not brought the £30 - it was a few days later that his people brought the money. I did not allow the Krontihene to go and fix the boundary and that when it was done we (the Ahenfo) would go and inspect and after we had seen it and if we found it to be alright, we would plant Ntome trees. They had not finished cutting the boundary when I had information that the Nkwatias would not allow the boundary to be cut so I sent a messenger to bring the people back.

10

Q. At the moment there is a little trouble in which you are involved as to your position on the Stool?

A. Yes.

20

Q. The Nkwatia people served upon you a copy of an affidavit they had sworn that they wanted the District Commissioner to stop the boundary being cut?

A. Yes.

Q. And did you authorise two linguists Okyeame Kwesi Amoa and Safohene Onwona to swear to an affidavit?

A. At that time I was sick - it was the Adontehene who gave them the authority - I was not in Kwahu at the time.

30

Yes - the District Commissioner communicated with me about this matter. I was away with the doctor in Akwapim. When I came back I heard about this affidavit.

Q. And what did you do about it?

A. I wrote to the District Commissioner that it was not right that I should go and support one Ohene against another and that I had washed my hands of the whole matter.

40

- Q. Did that mean the parties were to pursue their own course?
- A. No. About six months after the Bukuruwahene said he was going to sue and I told him not to do it - it was a waste of money and that the Stool Treasury was now functioning and that if there was a dispute it would be their debt and I asked them to allow me to settle the matter again, but he did not agree. At the time I tried to make the settlement the Nkwatiahene had not actually been destooled - but there was trouble.
- 10 Q. Were any other payments other than the £30 made at that meeting?
- A. Yes I remember some "rum" was provided - some money - I've forgotten the amount.
- Q. What was it paid for?
- A. Because they had agreed that the matter be settled between them.
- 20 Q. You remember the case between Bukuruwa Stool and the Ewes?
- A. At that time I was a young man - I only heard about it.
- Q. I refer to the case now in the Privy Council?
- A. Yes - I was a party. I was joined as a co-plaintiff. I applied to be joined. Kwesi Aboa swore an Affidavit - he represented me. Mr. Sawyerr was my lawyer.

CROSS-EXAMINED BY BOSSMAN:

- 30 Q. In connection with the last case did you pay some of the expenses? A. Yes.
- Q. Did Nkwatia contribute any money towards the expenses of that litigation?
- A. At that time we used the money from the Stool Treasury.
- Q. This is a letter written by you? (Exhibit "B")
- A. Yes. (admitted and marked "B").
- Q. The Acting Nkwatiahene was then Kwesi Bua?
- A. Yes.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.28.

Evidence of 12th Witness for the Plaintiff -

Akuamo
Akyeampong.

13th June 1952.

Examination-in-chief.
- continued.

Cross-Examination.

Exhibit "B".

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.28.

Evidence of 12th Witness for the Plaintiff -

Akuamoa Akyeampong.

13th June 1952.

Cross-Examination. - continued.

Q. You referred to earlier proceedings - do you refer to these proceedings (Exhibit No."11")?

A. Yes.

Q. Is it not a fact you know that Nkwatia and Bukuruwa each have a part of the land - each having their own villages on it?

A. I know that. They mentioned the villages on it.

No re-examination.

No.29.

Evidence of 13th Witness for the Plaintiff -

Martin Tawiah.

13th June 1952.

Examination-in-chief.

No. 29.

EVIDENCE OF THIRTEENTH WITNESS FOR THE PLAINTIFF - 10
MARTIN TAWIAH

13.6.52.

MARTIN TAWIAH (m) s.s. in Twi:
13th WITNESS FOR PLAINTIFF.

Native of Kwahu living Accra. Some time ago I was employed by Kwahu Stool Council.

Q. Do you remember a dispute between Bukuruwa and Nkwatia coming before the Omanhene and his Chiefs?

A. I remember. I was at the meeting. I was employed as a Clerk in the Omanhene's Office. I listened to the case. 20

Q. Did you do anything then or after?

A. I listened to what they were doing. I was the Clerk sent with those to cut the boundary.

Q. What were your instructions?

- A. I was to show them where to cut the boundary.
- Q. How did you know where to show them to cut?
- A. The Omanhene brought a map to show us. It was given to Mr. Gyima Johnson the State Secretary to keep.
- Q. Was anything done to that map?
- A. The Omanhene marked the map with a pencil - a lead pencil. It was drawn in lightly.
- 10 Q. How were you to know when you had reached the right place to start cutting the boundary?
- A. One Diawuo and Kofi Nyina went with us.
- Q. How would you be of any use then?
- A. When the Omanhene showed me I wrote it all on a piece of paper and took that with me.
- Q. How long were you there?
- A. Nearly two weeks.
- Q. When you came back where did you go to?
- A. The whole Oman met and we were called to make a report of what we had done.
- 20 CROSS-EXAMINED BY BOSSMAN:
- Q. On which side are you in the present Stool dispute?
- A. I am not concerned. I am a native of Mpraeso.
- Q. Who brought the map in?
- A. The State Secretary.
- Q. Were you not asked to write down what happened?
- A. No.
- Q. Was anyone?
- 30 A. No. The people deputed to go were deputed the same day.
- Q. And you say the map was not taken by you to the field?
- A. Yes.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.29.

Evidence of 13th Witness for the Plaintiff -

Martin Tawiah.

13th June 1952.

Examination-in-chief.

- continued.

Cross-Examination.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division); Accra.

Evidence for the Plaintiff.

No.29.

Evidence of 13th Witness for the Plaintiff -

Martin Tawiah.

13th June 1952.

Cross-Examination. - continued.

In reply to Court:

The meeting was held at Abetifi and not Abene. From Abene to Abetifi is 4-5 miles.

Q. Where did the State Council meet then?

A. At Abetifi. It never sat then at Abene.

Q. Was this map kept in the office at Abetifi?

A. I don't know.

Q. Was there a map like this at Abene?

A. No.

Q. Where was the office of the Omanhene - at Abene or Abetifi? 10

A. At Abene. I was the Clerk at Abene.

CROSS-EXAMINED:

Q. When in the field did Omanhene send you message?

A. Yes. After we had finished the work. I did not see any letter. I did not hear what Nkwatia-hene was told as he was ahead of us.

No re-examination.

No.30.

Evidence of 14th Witness for the Plaintiff.

Kwamla Armah Kwantreng.

13th June 1952.

Examination-in-chief.

Exhibit "1".

No. 30.

EVIDENCE OF FOURTEENTH WITNESS FOR THE PLAINTIFF - KWAMLA ARMAH KWANTRENG 20

KWAMLA ARMAH KWANTRENG (m) s.s. in English:
14th WITNESS FOR PLAINTIFF

Licensed Surveyor living Accra. I made a survey of land in dispute between Kofi Baadu and Tawia and others. I started the survey some time in 1943 and I completed it towards the end of that year i.e. the field work. This is the plan I made (No."1") - but in the one before me now are thin lines in orange colour - which were not made by me. I started it from the confluence of the Affram River with the Volta - then northwards along the western bank of the River Volta to the confluence of the River Obosum with that river. Along the bank of the Obosum westward to confluence of a river Dede, and then along a cut line 30

down to the village of NFRAMANYO. Thence along the stream called KYEDI up to its confluence with the River Afram. Thence downstream along the Afram to its confluence with the Volta.

Q. Who showed you the boundary?

A. The Bukuruwas showed me a portion and the Ewes showed me a portion.

Q. Who were the Bukuruwa men who guided?

10 A. There were quite a number of them who were led by the Chief of Asabi (points to 11th witness). The area edged in red was claimed both by the Bukuruwahene and the Ewes.

Q. Were you at any time accompanied by any people from Nkwatia?

20 A. Whilst employed on the western boundary one morning I saw strange faces among my followers. I enquired who they were and the Chief of Asabi told me that they were Nkwatias. I did not talk to them and I did not see them again. I cannot say how far they accompanied me. I went inside the land to pick out villages.

Q. On the eastern side did you go to Asabi?

A. Yes.

Q. On the west were villages underlined and marked N?

A. They were pointed out to me by the Chief of Asabi. The letter "N" meant either occupied or had been occupied.

In reply to Court:

30 Q. Who gave you the information in respect of the villages you put the letter "N" against?

A. The Chief of Asabi.

EXAMINED:

Q. What sort of villages were they?

A. One or two were villages of 2 or 3 compounds and the rest were mostly hunting camps made of thatch and the walls of the bark of trees. Some were occupied.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.30.

Evidence of 14th Witness for the Plaintiff.

Kwamla Armah
Kwantreng.

13th June 1952.

Examination-in-chief.

- continued.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.30.

Evidence of 14th Witness for the Plaintiff.

Kwamla Armah
Kwantreng.

13th June 1952.

Examination-in-chief.

- continued.

Cross-Examination.

Q. In what condition were these buildings - did they appear very old?

A. It is very difficult to say in the case of swish buildings.

Q. Were the Ewe people with you at the time?

A. Yes - a big gang of them.

In reply to Court:

Q. Did the Chief of Asabi ever say how old these villages were?

A. No, he did not and I did not enquire. 10

Q. When the Chief gave you any information regarding villages did you write it down in your Field Book?

A. All I wrote down was "N" and that meant Nkwatia.

CROSS-EXAMINED BY BOSSMAN:

Q. You are a surveyor of considerable experience?

A. Yes for nearly 50 years.

Q. And you understand that the conventional signs which you put on the map is the key to the understanding of the plan? 20

A. Yes.

Q. Do you suggest you write haphazardly?

A. In some cases yes.

Q. Do you say that you did not mean "founded" but that you meant "occupied"?

A. I was told they were occupied by Nkwatias. I cannot remember.

No re-examination.

No. 31.

EVIDENCE OF FIFTEENTH WITNESS FOR THE PLAINTIFF -
RICHARD EMMANUEL ONWONA.

RICHARD EMMANUEL ONWONA (m) s.s. in Twi:
15th WITNESS FOR PLAINTIFF.

Live at Abetifi. Safohene to Omanhene.

Q. Do you remember swearing to an Affidavit jointly with Okyeame Kwesi Amuah?

A. Yes. I can read and write.

10 Q. Can you remember the circumstances in which you came to swear it?

A. The Kwahu Oman caused a boundary to be demarcated between Nkwatia and Bukuruwa. The Nkwatias did not agree to the boundary and they swore an Affidavit against the Omanhene of Kwahu.

Q. Who told you what to say in the Affidavit?

A. The Adontehene.

Q. Where was the Omanhene then?

20 A. He was at Larteh. When I came to Accra I called at Larteh first before swearing the Affidavit and there I told him what the Adontehene had told me to swear. The Omanhene told me that he was sick and under treatment and that he agreed with what the Oman had said. So I swore to the Affidavit. This is a copy of that Affidavit (admitted and marked No. "14").

CROSS-EXAMINED BY BOSSMAN:

30 Q. Do I understand that you yourself had no knowledge of the actual facts and that it was the Adontehene who told you what facts to swear to in the Affidavit?

A. What the Adontehene told me I swore.

Q. You had no personal knowledge of the facts?

A. I knew some of the matters but not all. Yes Omanhene was ill at Larteh.

Q. Who prepared and typed the Affidavit?

A. My lawyer (Mr. Akufo Addo).

Q. After it had been drafted and typed did you take it back to the Omanhene? A. No.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No. 31.

Evidence of 15th Witness for the Plaintiff.

Richard Emmanuel Onwona.
13th June 1952.
Examination-in-chief.

Exhibit "14".

Cross-Examination.

In the Supreme
Court of the
Gold Coast
Eastern Judicial
Division (Land
Division),
Accra.

No. 32.

EVIDENCE OF SIXTEENTH WITNESS FOR THE PLAINTIFF -
YAO KRA.

YAO KRA (m) s.s. in Twi:
16th WITNESS FOR PLAINTIFF.

Evidence for
the Plaintiff.

Live at Adukrom. I am a native of Ejisu in Asanti. I came to Adukrom to farm. I came 19 years ago.

No.32.

Evidence of 16th
Witness for the
Plaintiff -

Q. Who granted you the land?

A. The Bukuruwahene, Kofi Baadu. I made a farm there. A cocoa farm. I and my younger brother get between us about 300 loads each year.

10

Yao Kra.

Q. Do you know any Nkwatia people farming there?

A. I know some of them living on the other side of the land.

13th June 1952.

Examination-in-
chief.

Q. How far from Adukrom is your farm?

A. There are several small villages called Adukrom.

In reply to Court:

Q. Are those Nkwatia people farming within the area called Adukrom? A. No.

20

Q. How far away from that area are the Nkwatia people farming?

A. More than an hour's walk from there at a place called Chemfe.

Examined:

Q. How long have you known them to farm there?

A. Some of them were there when I first came.

Q. You know village called Bethel? Is that one of the villages called Adukrom?

30

A. Yes. I know a man called Bankwa.

Q. Do you know Donkor?

A. Yes the Donkor who founded the village is dead but his successor is Kofi Akuoko - his village is a part of Adukrom and the next one to mine.

CROSS-EXAMINED BY BOSSMAN:

When I first came I saw a lot of people working there and only recently I learned that they were Nkwatia people.

Q. Did you know an Ewe man called Etem Ekpo?

A. Yes. He does not live within the Adukrom area. Where he lives is called Agotim. I have heard the name Abrokwa.

In reply to Court:

10 The Dukuruwahene is my father - my blood father.

Q. Did anyone cut or measure out any land for you?

A. No.

Q. How do you know how far you can extend your farm?

A. I can farm as much as I like.

Re-Examined:

Q. You said you were an Asanti man?

20 A. Although Baadu is a native of Kwahu at one time he lived in Asanti and was in Asanti when I was born there. My mother was from Asanti.

Q. When did you first come to your father's country?

A. When he became Bukuruwahene. That was about 22 years ago.

AKUFO ADDO:

Ask that I may be permitted to interpose later documentary evidence to be tendered by the Chief Clerk in the office of the former District Commissioner at Mpraeso.

BOSSMAN:

30 I have no objection.

COURT:

That may be done.

CASE CLOSED FOR THE PLAINTIFF.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Plaintiff.

No.32.

Evidence of 16th Witness for the Plaintiff -

Yao Kra.

13th June 1952.

Cross-Examination.

Re-Examination.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

No. 33.

EVIDENCE FOR THE DEFENDANT

EVIDENCE OF FIRST WITNESS FOR THE DEFENDANT - JOHN GARNETT ASARE

Evidence for the Defendant.

JOHN GARNETT ASARE (m) s.s. in English:
1st WITNESS FOR DEFENDANT

No.33.

Evidence of 1st Witness for the Defendant -

Live Kumasi and Licensed Surveyor. Licensed in 1950. On instructions of Nkwatiahene I made this tracing which I superimposed over the topographical Sheet (refers to Exhibit No."2"). Representative of Nkwatia led me. My principal informants were Odehye Kofi Dei and Krontihene Odei Tutu Ababio.

10

John Garnett Asare.

Note. (area about 315 sq. miles).

13th June 1952. Examination-in-chief.

Started in July and finished the end of December. The northern part is light forest and the southern part is grassland - tall grass, and the grassy part is swamp in the rainy season. There is light forest in the western part.

I surveyed and put in position some villages I saw which did not appear upon the Topographical Map.

20

The first topographical sheet of the area was started in 1929 and finished in 1930.

CROSS-EXAMINED BY AKUFO ADDO:

Cross-Examination.

No Bukuruwa man accompanied me. What I put in the plan was what the Nkwatia people told me.

Re-Examined:

Re-Examination.

Q. Did you notify the Bukuruwahene you were going to survey it?

A. Yes.

30

Adjourned to 16.6.52.

(Sgd.) J. Jackson,
J.

No. 34.

EVIDENCE OF THE DEFENDANT - NANA ASANTE YIADOM III
16.6.52.

IN THE SUPREME COURT OF THE GOLD COAST,
EASTERN JUDICIAL DIVISION (LAND DIVISION)
held at Victoriaborg, Accra, on Monday the
16th day of June, 1952, before Jackson, J.

Nana Osei Twum II

v.

Nana Asante Yiadom III

10

From folio 396.

ASANTE YIADOM III (m) s.s. in Twi:

DEFENDANT

Ohene of Nkwatia. My Stool originated in Off-
insu in Asanti. My ancestor was Kwesi Akuoku.

Q. Did he have any relationship with the Omanhene
of Kumawu?

A. He was the son of Fikar of the Omanhene of Kumawu
- his mother was named Kwakyews Affram from Of-
finsu. Sister to Ohene of Offinsu named Wiafe
Akenten.

20

This was before the Denkyira War. My ancestor,
Akuoku, lived with his father the Omanhene of
Kumawu (Asanti). Nana Wiafe Akenten died at
Offinsu - Kwesi Akuoku went to Offinsu to claim
the Stool. The Oman then gave the Stool to
the other candidate Amponsa Avimi and he became
Ohene. Part of the elders supported my ances-
tor Kwesi Akuoku and he got one of the Stools
and took it to his father's palace at Kumawu.
Kumawu was then called Apimsu and those elders
followed him. When he went to his father all
the land north of Affram River belonged to Att-
ara Finam - a Guan. There was a fight between
Kumawu, Agogo, Nsuta, Akwamu, Bassa and Nkwatia
and on the other side Attara Finam. Kumawuhene
and his allies won and Attara Finam was driven
across the Volta. They took the whole of his
land up to the Volta.

30

40 Q. Did they actually stay on any portion of that
land?

In the Supreme
Court of the
Gold Coast
Eastern Judicial
Division (Land
Division),
Accra.

Evidence for
the Defendant.

No.34

Evidence of the
Defendant -

Nana Asante
Yiadom III.

16th June 1952.

Examination-in-
chief.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

A. No - they went back.

Q. Was that before the Denkyira War?

A. Yes - three years before it. My ancestor was on the Ashanti side in the Denkyira War. They held guns and fought.

Evidence for the Defendant.

In reply to Court:

No.34.

Evidence of the Defendant -

Q. At what place in Denkyira did they fight?

A. As far as Adansi and came to within 4 miles from Kumasi. Osei Tutu of Kumasi drove the Denkyiras back.

10

Nana Asante Yiadom III.

16th June 1952.

Examination-in-chief.

- continued.

sic.

My ancestor returned to Kumawu and then he died. Nana Amoafadei succeeded him. Nana Ampansa died at Offinsu. Amoafadei told the Kumawuhene that he was going to claim the Stool of Offinsu and Kumawuhene said he would not allow him to go. So he said that if he could not then he might give him a portion of Attara Finam's land. Amoafadei left Kumawu, and came to a place called Twiden. There he met Mampong Adjei now the Ohene at Abene together with Kwami Numi now Benkumhene at Aduamca-Kwahu, Kessi Baffuor (Kyidomhene). These are the people he met at Twiden (in Asanti Akim - north of River Prah). Mampong Adjei became our leader and we came to Kwahu. There we met Bukuruwa who had run away from Denkyira during the Denkyira war and he was a Kwahu before he got there. He then came to us, surrendered and swore an oath of allegiance. If he had not we would have killed him. He was given the rank of an Odikro. He was raised to the rank of Ohene in 1933. The Omanhene raised him to that rank.

20

30

I've never heard that Bukuruwa took part in the war against Attara Finam.

When we got to Kwahu we settled in a forest place at Nkwatia. In an hour's walk from Nkwatia you come into the land now in dispute.

From Nkwatia in about an hour you enter my land and which then goes right to the Volta.

In reply to Court:

40

Q. From the point where you enter your land to the Volta how far is it?

A. About 3 days' walk or 70 to 80 miles.

Examined:

Q. Who was your leader when you got to Kwahu?

A. Amoafadei who led us to Kwahu.

Q. Did your people make any use of the land in dispute?

A. They were hunters and they made foodstuffs farms. The first village was Ampoti (Mpoti). Saware founded it. Kofi Dwamena is there now and is a descendant of Saware - being his great grandson. Another place founded was Papasi. It was used as a hunting camp. Kwame Kyerboa first occupied a hut there. Kwasi Mireku is there now. He looks after the fetish called Oboakrona - east of Papasi. These were the first two villages and after the Baffuor War other villages were made (i.e. Slave War 1868-1874). That was a fight between Akwamus, Ashantis and Kwahus against the Ewes. Bukuruwa and Nkwatia and the other tribes were in that war.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.34.

Evidence of the Defendant -

Nana Asante Yiadom III.

16th June 1952.

Examination-in-chief.

- continued.

Q. You've heard of Asabi? A. Yes.

Q. Did Asabis take part in that war? A. Yes.

Q. Under which Omanhene were the Asabis then?

A. Under the Akwamus.

Q. What happened to Asabi after that war?

A. Menta was then on the Bukuruwa Stool and was reported by Nkansa of Asabi to the Asanti leaders (Asafo Adjei etc.) that on the battlefield Menta had shown cowardice. So Adubofuor the Asanti leader caused him to be beheaded in Asabi: then Adubofuor said that Nkansa should take the Bukuruwa Stool as well as his men and his subjects and go to the Asantehene. They started and reached a place called Onyinbo on the side of the River Prah. When we got there Asafo Adjei of Juaben told Adubofuor that as Nkansa had reported upon Menta that he was a coward - in the same way he would report us (for cowardice) to the Asantehene - so said "let's kill him" and then Nkansa had his head cut off. So Adubofuor took both the Bukuruwa and Asabi Stools to Asanti.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No. 34.

Evidence of the Defendant -

Nana Asante Yiadom III.

16th June 1952.

Examination-in-chief.

- continued.

Bukuruwa then almost ceased to exist and the Stools were in Asanti for a long time. The Stools were in Asanti for a long time. The Stools were brought back not long before the Yaa Asantews War (1900/1901). Nana Kofi Denkyi the Adontehene of Kwahu then a servant in the Asantehene's house at Kumasi got these Stools from the Asantehene through Asafo Adjei of Juaben. Omanhene of Kwahu at the time was Akuamua Okokor. Kofi Denkyi gave the Stools to the Omanhene of Kwahu. 10

After that they sought the relatives of the old Stool holders. One was Kweku Tano of Aduamua and he was enstooled on the Menta Stool given to him also the Nkansa Stool. Kweku Tano then re-established the present Bukuruwa and I saw Kweku Tano myself before he died. Kweku Tano died in 1915. Kweku Tano also sought out Nkansa's relatives to give them back the Asabi Stool. Nkansa's relative was Ntakra and the Stool was given to him. Ntakra then settled at Asabi and he and Bukuruwa joined as one on account of the past history of the Stools and served the Bukuruwahene. 20

I've heard of the Nkami people. They came from Akwamu and from Nyanawasi (near Nsawam). From there they went to Akwamu and then the Nkamis removed from Akwamu and settled where Nkami is now and this was after the Adu Baffuor War (some time between 1870 and 1900). 30

After settling at Nkami they served no one. Now they are a part of Kwahu.

Q. About what time did the Nkamis become associated with Bukuruwa?

A. During the time of Commissioner Crabbe (1901) Omanhene of Kwahu told the Nkamis to serve him through Bukuruwa.

Q. How long have you been on the Stool?

A. About 5 years.

Q. You succeeded Dwamena Ayirepeh?

A. Yes. He was joined in the Ewe case.

Q. At that time what were you?

A. A petty trader and a farmer living in Accra. I was in Accra for 2 years. Apart from that I've been in Kwahu the whole time. I was selected to look after the whole Nkwatia lands and if a hunter killed an animal he gave me a part of the animal. I did this from about 1938 until about 1945. Many animals were killed in 1938 - more than 200 - big and small - but no elephant - some elephants are still there.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.34.

Evidence of the Defendant -

Nana Asante Yiadom III.

16th June 1952.

Examination-in-chief.

- continued.

10 In reply to Court:

In the dry season the land is very dry and in the wet season it is swamp - it is grass and stunted trees.

Q. Apart from hunting what value has the land?

A. There is forest interspersed with this land (greenish Savannah).

Q. Did you know of the dispute going on about the land?

20 A. Yes. I was present in 1942 when the matter came before the Omanhene. At first we met at Abene. We met there 4 or 5 times but the last meeting was at Abetifi.

Q. When the first meeting took place who was the Ohene on your Stool?

A. The Ohene was about to be destooled and the Krontihene was acting Ohene. He represented Nkwatia at the State Council.

Q. I heard the Omanhene's evidence. Was that substantially what took place?

sic.

30 A. That is exactly what took place.

Q. Correspondence passed between the Omanhene and your Stool at that time?

A. Yes.

Q. Did you go with Mr. Asare, the Surveyor, when he made the survey (No.2)?

A. Yes.

Q. You know the village of KPALA?

A. Yes.

Q. Who is in charge there?

A. Antonyima.

Q. A little further south at Nyinampong who is there?

A. Gyan Fosu.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.34.

Evidence of the Defendant -

Nana Asante Yiadom III.

16th June 1952.

Examination-in-chief.

- continued.

Cross-Examination.

Q. You know Faso by the Volta?

A. Yes. Kwadjo Dei was there. He is dead. Kyami Asanti is now looking after the place for the time being.

Q. And Burupai?

A. Obuabassa is looking after it.

Q. In the middle of the land is old Chemfe?

A. Yes Odami is now in charge.

Q. Who is now at Awunakrom?

A. Okyeame Ansom.

Q. Chirifukrom?

A. Obuyi is in charge.

Q. And Papasi?

A. Kwesi Mireku is there now.

CROSS-EXAMINED BY AKUFO ADDO:

Q. You mentioned names of various people who fought against Attara Finam (reads the names given by the defendant). Did you know the history when you instructed your Counsel to file your defence or you learned the full history later?

A. I know it all.

Q. Then why did you only mention Kumawu and Agogo to your Counsel?

A. Because it was through them that the war came.

Q. At that time was there any Nkwatia in existence at all?

A. At that time we were at Kumawu. We were then at Kumawu and our name was not then Nkwatia. We were then Offinsu people.

Q. You went to war as Offinsu people so that anything you got in the war would belong to Offinsu?

A. No it would belong to the Kumawuhene - my father.

Q. Do you mean that Kumawu was within the Offinsu State?

A. At that time even the name of Kumawu was not known and it was called Akpinsu.

10

20

30

Q. Was Akpinsu a part of the Offinsu State?

A. They were all Ashanti. It was not in the Offinsu State, but we became connected with Kumawu by marriage.

Q. Your ancestor Amoafadei was an Offinsu man?

A. Yes.

In reply to Court:

Q. And your mother?

A. The same.

CROSS-EXAMINED:

10 Q. After the war all the people went back to their various places in Ashanti? A. Yes.

Q. How long after this war did your ancestor leave Kumawu and come to Twiden?

A. About 3 years after.

Q. How long did your ancestor stay at Twiden?

A. Not quite a year.

Q. Why that period of time?

A. On our way we and Mampong Adjei then travelled to Kwahu.

20 In reply to Court:

Q. Who called it Kwahu and why was it so called?

A. Reaching the Affram part it was grassland - but the southern part was forest land. It was called "Kwamufo" - meaning "people of the forest" - these inhabitants spoke Twi - the same as ours - some of them are still there. They occupied the forest land south of the Affram. We fought with them. We fought the Bepong people. Bepong people were Kwahus.

30 Cross-Examined:

Q. Who were the people called "Kwamufo"?

A. Bepong, Kosahene, Kwasi Yirawiye.

Q. How did the name Kwahu (Kwawoo) come?

A. I only know the name Kwamufo.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.34.

Evidence of the Defendant -

Nana Asante Yiadom III.

16th June 1952.

Cross-Examination.
- continued.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No. 34.

Evidence of the Defendant -

Nana Asante Yiadom III.

16th June 1952.

Cross-Examination.
- continued.

Q. When you first came was not the name Kwahu already in existence? A. Yes.

Q. What were the people you named doing in Twiden?

A. We were all looking for somewhere to stay.

In reply to Court:

In the olden days if a community flourished the Asantis would make war on it.

Cross-Examined:

These people we met at Twiden came from Mampong. They told us they were going to Kwahu. 10

Q. When your people went back to Ashanti who looked after the land for you?

A. The Agogohene. He lived where he is now.

Q. When you came did you go to the Agogohene to get a piece of that land? A. No.

Q. Did the people who took part in the war share Attara Finam's land between them?

A. They did not - after the war they went away.

In reply to Court:

Q. If Bukuruwa took no part in the war how does he come to own land north and south of the land you claim now? 20

A. Because the Nkamis were serving the Bukuruwas and they serving the Bukuruwas - yes the Nkamis own that land.

Q. How did the Nkamis come to own the land?

A. The Nkamis and Akwamus were the same people. The Nkamis were originally part of the Akwamus but they migrated to the land.

Q. Before or after the Attara Finam War? 30

A. After the Attara Finam and Baffuor Wars.

Q. And no one troubled the Nkamis on land you had conquered?

A. Kumawu and Akwamu people were all the same. They came from the same stock at Nyanawase.

Cross-Examined:

Q. How did Abetifi and Pitiko get the land to the west?

A. They got it from the Kumawuhene?

Q. How did the Kumawuhene get it?

A. He took it from Attara Finam.

Q. You say that Pitiko was a relative of Kumawuhene?

A. Yes.

10 Q. Did he get it in the same way that you got yours?

A. That I don't know.

Q. What about Abetifi?

A. Kumawuhene gave it to him, but later the Kumawuhene said it was not so and there was a dispute about it.

Q. Was Adontehene also a relative of Kumawu?

A. He was the father-in-law of the Abetifihene.

Q. So all Kwahu people now who have any share in Attara Finam's land were relatives of Kumawuhene - all except the Bukuruwahene?

20 A. Yes.

Q. Which of all these Chiefs has the largest area of land?

A. My own is the largest.

Q. And if you lost the piece you are now claiming what would be your position?

A. We would have no land at all.
Yes, Bukuruwahene was only an Odikro.

Q. And so was the Nkwatia man?

A. No - he was an Ohene.

30 In reply to Court:

Q. Do you say that the Baffuor war was fought near the land now in dispute?

A. No - I could not say whether it was north or south of this land.
Nkwatias took part in that war.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.34.

Evidence of the Defendant -

Nana Asante Yiadom III.

16th June 1952.

Cross-Examination.
- continued.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.34.

Evidence of the Defendant - Nana Asante Yiadom III.

16th June 1952.

Cross-Examination.
- continued.

Cross-Examined:

Q. By the time the war was fought Asabi and Nkami were already in existence?

A. Nkamis were not there - but the Asabis were.

Q. Had the Asabis any land at all in the old Attara Finam's kingdom?

A. They had none.

Q. Then how did they come to settle on the land?

A. The land belongs to the Akwamuhene.

Q. How far then does the Akwamu land extend up to River Volta? 10

A. I have never passed that road before.

In reply to Court:

Q. Have the Akwamus a boundary with you on the Volta?

A. In the olden days we had at a hill called Apakupre.

Q. With whom have you a boundary today at that place?

A. The Asabi Stool, and who serve under the Bukur-uwas. 20

Cross-Examined:

Q. Do you say that where Asabis lived did not belong to Attara Finam?

A. It did not. It belonged to the Akwamus.

Q. How did they get it?

A. The Akwamus were on the other side of the Volta - I don't know.

Q. So when you said that Attara Finam's land extended from the Afram right up the Volta to Obosum you were not speaking the truth? 30

A. It was true.

Adjourned to 17.6.52.

(Sgd.) J.Jackson,
J.

17.6.52.

IN THE SUPREME COURT OF THE GOLD COAST,
EASTERN JUDICIAL DIVISION (LAND DIVISION)
Held at Victoriaborg, Accra, on Tuesday, the
17th day of June, 1952, before Jackson, J.

Nana Osei Twum II

v.

Nana Asante Yiadom III

In the Supreme
Court of the
Gold Coast
Eastern Judicial
Division (Land
Division),
Accra.

Evidence for
the Defendant.

No.34.

From folio 407.

10 ASANTE YIADOM III (m) resumes evidence
CROSS-EXAMINED BY AKUFO ADDO:

Evidence of the
Defendant -

Q. When your first ancestor first came to the land
did he meet the Asabis there?

Nana Asante
Yiadom III.

A. They were not.

17th June 1952.

Q¹ Were the Nkamis there? A. No.

Cross-
Examination.

Q. What factor determined your choice of the strip
of land between land to the south you describe
as Asabi-Bukuruwa land and the land to the north
which you describe as Nkami-Bukuruwa land?

20 A. I have already said that all the land originally
belonged to Attara Finam, because Nkamis decid-
ed to serve under Bukuruwa and that is how the
Bukuruwas got there and the same applies to the
Asabis.

Q. Why did you not take the land right from the
Affram River and why jump into the middle?

A. The Affram River lies in the middle of my land.

Q. You said Kumawu, Akwamu and Nkami were the same
people? A. Yes.

30 Q. Kumawuhene belongs to the Aduana Clan?

A. Yes.

Q. Akwamuhene belongs to Abrade Clan?

A. No - he is Aduana Clan.

Q. And Nkami people? A. Aduana as well.

Q. Which share of Attara Finam's kingdom did Agogo
get?

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.34.

Evidence of the Defendant -

Nana Asante Yiadom III.

17th June 1952.

Cross-Examination.
- continued.

Interpretation

A. Between the Obosum and Sene Rivers (i.e. well north of land shown on plans "1" and "2").

Q. Do you deny the history that Bukuruwahene was at one time the master of Kwahu?

A. We did not serve him.

Q. At time of Attara Finam War was he master of Kwahu? A. No.

Q. You don't agree that at the time of that war Bukuruwa was the capital of Kwahu? A. No.

Q. What other Chiefs of Kwahu have land on Attara Finam's old land? A. None. 10

Q. You are a sub-chief of the Benkumhene?

A. Yes.

Q. Has he any Stool land?

A. He has his own - somewhere. He has a boundary with Asanti Akims.

Q. Was that a part of the old Attara Finam land?

A. No.

Q. Is there any land in Kwahu attached to the Paramount Stool? A. Yes. 20

Q. Where is the land?

A. From Abene to the mouth (?) of Affram.

Q. Is that Attara Finam land? A. No.

Q. Did anyone demarcate the land for your ancestor or did he take what he liked?

A. No one came with him and he took what he liked.

Q. When your linguists in the last case swore an affidavit that your land stretched from the River Fra on the north and Affram River on the south with Bukuruwa Stool on the west - was that correct? 30

A. That was correct.

In the olden days all the land up to the Obosum River belonged to Nkwatia.

Q. How did it cease to be Nkwatia Stool land?
A. The hunters did not bring a part of the animals to the Nkwatiahene but took it elsewhere.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Q. Why do you not claim now as far as the Obosum River?
A. Because the people had been doing this for a long time and we had taken no steps against them.

Evidence for the Defendant.

10 Q. Did your Stool ever take any steps at all to assert its rights - on which occasion were you a Plaintiff?

No.34.

A. I've never taken action against him (Bukuruwa).

Evidence of the Defendant -

Q. It was quite clear to you or it was to everyone, that the Ewes were claiming what you now say is your land?

Nana Asante Yiadom III.

A. Whenever they take anything from the land they give me a part.

17th June 1952.

Q. Do you mean to suggest you did not know the Ewes were claiming the land as their own?

Cross- Examination.
- continued.

20 A. I did not know that.

Q. Why did Nkwatiahene come and join as a defendant, why did he not join as a co-plaintiff with the Bukuruwahene?

A. The Omanhene said that if I joined the defendants it would be taken that I was on the side of the Ewes.

Q. Did you come to any arrangement with the Bukuruwahene in this respect? A. No.

30 Q. Was this arrangement before or after the Omanhene had been joined as plaintiff?

A. It was before.

Q. How long before was this?

A. I cannot say.

Q. You do know that when Omanhene was joined his Statement of Claim was served on your predecessor?
A. I don't know that.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.34.

Evidence of the Defendant -

Nana Asante Yiadom III.

17th June 1952.

Cross-Examination.
- continued.

Q. In the Omanhene's Statement of Claim he said that Nkwatia was not entitled to any part of that land?

A. If he had claimed the land we would have sued him. Yes Dwamena Ayirepe is in Accra now.

Q. Did you not engineer Kofi Sefa's destoolment because of the case?

A. No - if it was so he would not have told me the history.

Q. You have been on the Stool twice? 10

A. Yes - I was destooled once.

Q. Do you know any of the farmers whose farms are shown on the plan? A. Yes.

Q. You've been to the farms yourself?

A. No. Okyeame Abrokwa gave Yao Dadee the land on which he farms.

Q. But Abrokwa was farming then with the permission of the Bukuruwahene?

A. No - by permission of Nkwatiahene. I know Yao Koi who built Bethel. 20

Q. Ampoti is purely a hunter's camp?

A. It is not so - it is a village. There are about 6 houses there - walls made of wood - with one exception which is swish.

Q. Chemfe until quite recently was just one hunter's hut? A. Yes.

In reply to Court:

I never heard that the land was a Game Reserve.

Cross-Examined:

Q. Bukuruwahene's sub-chiefs live permanently at Asabi and Nkami? 30

A. I know that they are living there - but I did not hear the Bukuruwahene put them there. They were living there for the Kumawuhene.

Q. Have you any place on the land where people live permanently?

A. Kojo Dei at Faso.

Q. Kojo Dei was an Ewe man?

A. Yes. Kofi Gyamara a Tufuhene living at Ampoti.

Q. Has he a Stool? A. Yes.

Q. Does he keep it at Ampoti? A. He does not.

Q. When your Counsel was cross-examining certain witnesses you heard it suggested by him that certain villages listed in Chief List under Benkumhene were in fact under you?

10 A. I remember.

Q. And you heard it suggested that before the List was made it was considered by the State Council?

A. Yes.

RE-EXAMINED:

Q. Has Ampoti been as you describe it since its foundation? A. No.

In reply to Court:

Q. When did you first go to Ampoti?

A. When I was a young man.

20 Re-Examined:

There were about 80 people there.

In reply to Court:

Q. Do you remember when the first Government Survey was made?

A. I don't (i.e. 1928).

Re-Examined:

Q. During last case there was, you say, no dispute with some of the Ewes? A. Yes.

Q. Which of them did you have no dispute with?

30 A. Burupai, Faso, Nyinampong, Kpala, etc., etc.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.34.

Evidence of the Defendant -

Nana Asante Yiadom III.

17th June 1952.

Cross-Examination.

- continued.

Re-Examination.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

No. 35.

EVIDENCE OF SECOND WITNESS FOR THE DEFENDANT - FORSON BANDOCH MENSAH

17.6.52.

FORSON BANDOCH MENSAH (n) s.s. in Twi:
2nd WITNESS FOR DEFENDANT.

Evidence for the Defendant.

Live at Kumawu in Asanti. Am linguist to Kumawuhene. Have been linguist for 10 years.

No.35.

Evidence of 2nd Witness for the Defendant - Forson Bandoch Mensah.

17th June 1952. Examination-in-chief.

Q. Is Stool connected in any way with Offinsuhene?

A. He was brother-in-law to Kumawuhene. Kumawuhene married his sister, Kwatchua Affram. They had two children Kwesi Okunku, the elder, and Amaforu the younger. They lived at Kumawu not far from Mampong in Asanti. When they grew up their uncle Wiafe Akenten died and Kwesi Okunku went to Offinsu to claim the Stool. He did not succeed, so he stole one of the black Stools and the people who supported him took it with them to Kumawu. 10

I've heard of the Attara Finam War. It was the Kumawuhene who fought with Attara Finam. 20

Kumawuhene, Agogo and Kwaman joined in that fight. Nsuta also took part in the war.

I've heard of the Asanti/Denkyira war. The war with Attara Finam was before that war. The Attara Finam War lasted 3 years and then followed the Denkyira War three years later.

In reply to Court:

Q. How long did the Denkyira war last?

A. About 6 months. 30

EXAMINED:

Q. What brought the Denkyira war?

A. Asantis before served under the Denkyiras - a big brass pan was sent to the Kumasihene and he was told to fill it with gold and that every big Chief should send his Queen Mother to serve his wife in Denkyira. They refused and that set about the war.

In reply to Court:

Q. What caused the Attara Finam War? 40

10 A. At that time Agogo was called Sakinsu and Kumawu was called Apinsu. It was in the same place as it is today. In the dry season Kumawuhene used to fish in Affram River. Agogo is between Affram River and Kumawu - Agogo also used to fish there. The Attara Finam people seized the Kumawu and Agogo people and tried to compel them to divide the fish they had caught. They refused to do so, so they started fighting - some of the Agogo and Kumawu people were killed - that started the war.

I don't know where Attara Finam came from - other than that he was not a Twi man.

Examined:

Kumawu and the others won the war and Attara Finam was driven across the Volta River - Attara Finam was the first Chief to introduce an umbrella and we took it from him. We took all his lands.

In reply to Court:

20 Q. Had Attara Finam been your neighbour before that War?
A. Yes.

Q. What was the boundary between you?

A. The Affram River from Onyin up to Agogo.

Examined:

There is a place between Onyin and the Affram River which belonged to Attara Finam.

Q. You had a case about a portion of the land not long ago?

30 A. There was a dispute between the Omanhene of Kwahu and the Kumawuhene.

BOSSMAN - I tender proceedings.

AKUFO ADDO: Bukuruwa not party.

BOSSMAN:

Case instituted by Omanhene of Kwahu. Bukuruwa is a part of Kwahu. I tender the writ and judgment.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.35.

Evidence of 2nd Witness for the Defendant -

Forson Bandoh Mensah.

17th June 1952.

Examination-in-chief.

- continued.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

COURT:

Marked for identification only as "D" - I will rule upon the admissibility of these proceedings later.

Examined:

Evidence for the Defendant.

Where Agogo is at the moment was part of Attara Finam's land. After the war everyone went to their homes - people at Sakinsu removed to Agogo.

No.35.

Evidence of 2nd Witness for the Defendant -

After this war the sons of the Kumawuhene went with their father to the Denkyira war and when they came back the Offinsuhene died. Kwesi Okunku - the eldest son had also died in Kumawu. His younger brother Amaforu Tu said he was going to contest the Offinsu Stool. Kumawuhene advised him not to - so his son said then you must give me an opportunity to leave to Attara Finam's which they had conquered. Kumawuhene agreed and blessed him.

10

Forson Bandoh Mensah.

17th June 1952.
- continued.

He left with his supporters and he went. That is the last that our tradition tells us about him.

CROSS-EXAMINED BY AKUFO ADDO:

Cross-Examination.

Yes I am called Forson at Kumawu. I am one of the Traditional Members of the Kumawu Local Council.

20

Q. Are you not one of those referred to as "bush lawyers?"
A. No.

Q. People come to you for advice about litigation?

A. No - but I am not a fool - I have plenty of brains.

Q. Did you check up your traditional history with that of the Nkwatiahene before you came to Court?
A. No.

30

Q. You mean to say you have not discussed it with the Nkwatiahene?
A. No.

Q. Did Kumawuhene tell you what evidence to give or did he leave it entirely to you?

A. On receipt of the subpoena the Omanhene invited the Oman and deputed me and told me of the history and I know some of it myself.

Q. At the moment you are preparing a case for the Kumawuhene to claim land from the Kwahu people? Isn't that so? A. No.

Q. There is no such case even in contemplation?

A. No - the Kumawuhene sent Mponuahene (caretaker of lands) to Abene to inform the Omanhene that he wanted to go and inspect his land (i.e. Kumawu's). The Omanhene of Kwahu would not allow him to do so.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

10 In reply to Court:

Q. Where was the land he wanted to inspect?

A. All the land to the Volta down to the Affram Road.

Q. And does the Omanhene of Kumawu know that this case is in the Court?

A. He knew when the subpoena came.

Q. Does he know that Bukuruwahene and Nkwatiahene were disputing about it?

A. Not until the subpoena came.

No.35.

Evidence of 2nd Witness for the Defendant -

Forson Bandoh Mensah.

17th June 1952.

Cross-Examination.
- continued.

20 Cross-Examined:

Q. How many times since Attara Finam war has Kumawuhene sent to inspect these lands - was this the first time?

A. He used to send sometimes annually - sometimes after 2 years.

Q. Did the Omanhene of Kwahu allow him to inspect the land?

A. Yes, until the present Omanhene.

30 Q. The present Omanhene has been on the Stool for 19 years?

A. Yes. This is the first time we've sent to this Omanhene. The Kumawuhene told me about this. Kumawuhene said "for a long time we have not inspected the land and you had better go and see the Omanhene first because these are the days of whiteman".

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.35.

Evidence of 2nd Witness for the Defendant -

Forson Bandoh Mensah.

17th June 1952.

Cross-Examination.
- continued.

In reply to Court:

Q. And although the Omanhene of Kwahu has refused to let the Kumawuhene inspect his lands - the Kumawuhene is not contemplating any action in Court?

A. I have not heard of any.

Q. Did you hear of trouble on the land when Ewe people claimed it as their own?

A. I never heard it.

Q. Did your "caretaker" not inform you?

10

A. No. The Abetifihene - our caretaker - has taken the land for himself.

Q. How long ago did the Abetifihene do this?

A. 22 years ago.

Q. And you've never taken any steps against him and who you say was your caretaker - and appropriated to himself your lands?

A. We have not.

Q. Are you preparing to?

A. No - he has not spoken to me about it.

20

Yes I said that if there was any land case I would handle it for the Omanhene. The Omanhene came on the Stool 2 years ago and he is 30 years old. The late Omanhene was destooled for "chopping their money". Yes, I was his linguist.

Q. Before the subpoena was served did you see the Nkwatiahene in Kumawu or any messenger?

A. No.

Q. You say Attara Finam's lands covered all land where Agogo is now?

30

A. Yes.

Q. And Kumawu?

A. No.

Q. Where then did the land of Attara Finam stop?

A. From River Affram onto River Onyin through the main street of Agogo and onto Affram junction with the Volta.

Adjourned to 18.6.52.

(Sgd.) J.Jackson,
J.

18.6.52.

IN THE SUPREME COURT OF THE GOLD COAST,
EASTERN JUDICIAL DIVISION (LAND DIVISION)
held at Victoriaborg, Accra, on Wednesday
the 18th day of June, 1952, before Jackson,
J.

Nana Osei Twum II

v.

Nana Asante Yiadom III

In the Supreme
Court of the
Gold Coast
Eastern Judicial
Division (Land
Division),
Accra.

Evidence for
the Defendant.

No.35.

Evidence of 2nd
Witness for the
Defendant -

Forson Bandoh
Mensah.

18th June 1952.

Cross-
Examination.
- continued.

10 FORSON BANDOH MENSAH resumes evidence:
2nd WITNESS FOR DEFENDANT
CROSS-EXAMINATION (Contd.)

Q. Some time in February-March this year you and
Mponuahene had a discussion with the Kwahu
State Council, about lands at Offinsu?

A. I remember.

Q. That was the time when you told the Kwahu State
Council that you were coming to re-claim the
land for Kumawu?

20 A. I did not say that.

Q. What then did you say?

A. The Mponuahene told the Council that he had
been instructed by the Kumawuhene to ask per-
mission of Omanhene, Kwahu, to inspect the land.

Q. And State Council turned you both out of the
State Council?

A. No, they did not.

Q. Did they not tell you that if you had anything
to say go to the Nkwatiahene and not to them?

30 A. No.

Q. But you stayed on at Nkwatia for about 6 weeks
before returning to Kumawu?

A. No.

Q. Are you saying that at no time for past 12
months you haven't stayed some time at Nkwatia
with the Nkwatiahene? A. No.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.35.

Evidence of 2nd Witness for the Defendant -

Forson Bando Mensah.

18th June 1952.

Cross-Examination.
- continued.

Q. Were you responsible for certain publication in the "Daily Graphic" in respect to Kumawu's claim to lands at Affram?

A. No. I have seen that in the paper. I don't know who sent it to the paper.

Q. Did you disagree with the article? Did you agree?

A. Yes - I agreed with it.

Q. What steps have you taken to establish that claim?

A. I cannot read his mind.

Q. The article says that documents have been found establishing Kumawu title to 6 towns in Kwahu and that merry making lasted for a week in Kumawu. Is that correct?

A. When I returned from Wa the Omanhene told me he had seen some documents - but he did not show them to me. Whether they made merry or not - I was away. I was glad when I heard about the documents.

Q. Before you gave evidence you visited the land?

A. No.

Q. After war with Attara Finam how was the captured land divided and what were the boundaries between the divisions?

A. It has not been divided up to today.

Q. After the war when Kumawuhene left did he leave anyone to look after the land?

A. Only hunters.

Q. Did he leave anyone to take care of the land?

A. No. It is not true that when Kumawuhene returned he appointed the Agoghene as caretaker of the land.

Q. When did Abetifihene become the caretaker of these lands?

A. I cannot say the number of years.

10

20

30

In reply to Court:

Q. Did he render any accounts of his stewardship?

A. Sometimes he brought £100 to the Kumawuhene.
I was not there.

Cross-Examined:

Q. Have you heard any traditional history about the Bukuruwa people? A. No.

RE-EXAMINED:

No questions.

10

(unsatisfactory demeanour)

No. 36.

EVIDENCE OF THIRD WITNESS FOR THE DEFENDANT -
KWADJO SAKYI

KWADJO SAKYI (m) s.s. in Twi:
3rd WITNESS FOR DEFENDANT

20

Live at Jakiti in Akwamu. Elder of the Omanhene of Akwamu. Akwamus were previously at Nyanawase near Nsawam. We had war with Akwapims and Accras and moved from there to the Volta where we are now. Our capital is now at Akwamu. The people calling themselves Asabis are not Kwahus. Originally they were Akwamus. Whilst we were at Nyanawase - the Nkamis and Asabis founded a quarter then called SHIAWU. We were all driven out from the town of Nyanawase - every Safohene and his subjects had to find a place to settle. Whilst we were at Nyana-wase - the Nkamis and Asabis were the Gyases and were also the Omanhene's hunters. Across the Afram River there was big game and Adompanyin led them there and they settled at first on the hill called KPATALE and afterwards they moved to Asabi where they are now.

30

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.35.

Evidence of 2nd Witness for the Defendant -

Forson Bandoh Mensah.

18th June 1952.

Cross-Examination.
- continued.

No.36.

Evidence of 3rd Witness for the Defendant -

Kwadjo Sakyi.

18th June 1952.

Examination-in-chief.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.36.

Evidence of 3rd Witness for the Defendant -

Kwadjo Sakyi.

18th June 1952.

Examination-in-chief.

- continued.

Akwamuhene sent his children to sell cloth and they were told to pay toll. The Asabihene had appointed someone to demand toll of anyone using the market at Asabi. They refused to pay and they were beaten. They reported the matter to the Omanhene of Akwamu and he sent people to Asabi and there was a fight and they beheaded the Chief of Asabi. His skull is now in Akwamu - when we celebrate Odwira - before Imanhene begins the festival a pot is prepared and taken to the outskirts of the town and then the Chief Executioner calls "Adom" three times. Adom was the name of the Asabi Chief beheaded and when the skull answers - the pot is broken and then they return home.

10

Then a man was deputed to live at Asabi for the Akwamuhene. I know how the Nkamis came to where they are today. Before they lived together with Asabis - but they left them and crossed the Fa River and settled on a hill called Basamabu and then settled where they are now. Their leader was Okuntun.

20

I've heard of the Adu Baffuor War. Akwamuhene begged them to assist him against the Krepis, including Anums and Abosuo. The Krepis include the present Pekis.

Q. Besides Asantis who else assisted you?

A. The Kwahus came. Asabis took part in the war. Their Chief's name then was Akansa.

The leaders' names from Asanti were Adu Baffuor, Asafu-Adjaye. The Nkamis also took part in the war. They ferried Asafu-Adjaye and his people across the Volta (1868-72). (War was fought east of the River Volta). After the war Nkansa of Asabi made a complaint to the Akwamuhene against Minta - that during the war Minta had retreated - Minta was the Chief of Bukuruwa. The Akwamuhene reported the matter to Baffuor and Asafu-Adjaye and as a result the matter was investigated at Asabi and Minta was found guilty and he was killed and his kingdom was given to Nkansa. His Stool and people were given to Nkansa.

30

40

In reply to Court:

Q. Did he have any land then attached to his Stool at Asabi?

A. Minta had no land at Asabi.

Q. To whom did the land at Asabi then belong?

A. To Nkansa. To Akwamu.

Examined:

Nkansa was taken to Ashanti - to Kumasi - to show Nana Kakadi, then the Asantehene, to be congratulated on his bravery.

Q. Did he reach there?

10 A. While on the way Baffuor and Asafu-Adjaye killed Nkansa and took his people and his Stool to Kumasi.

We heard that the Omanhene of Kwahu made a case about it and brought the Stools back.

In reply to Court:

Q. Is there an explanation of how a Kwahu Omanhene recover Stools for Kwahu which were Akwamu Stools or at any rate one of which was?

20 A. The 2 Stools were taken - one belonging to Minta of Bukuruwa and the other belonging to Nkansa (i.e. the Akwamu Stool). Kofi Denkyi, the Adontehene of Abetifi was ill and he consulted a fetish which advised that unless Minta's Stool was brought back he would die. And Minta's Stool and Nkansa's Stool were brought to Kwahu, to Abetifi and Abetifihene gave the Stool to Kweku Tann of Bukuruwa and Nkansa's Stool - matter was reported to Akwamuhene. And Akoi re-established Asabi village. Akoi was a member of the Akwamu royal family belonging to the
30 Agona Clan.

Examined:

Akoi's descendant today is OTIKWA who is sitting on Asabi Stool today (refers to Otukwa (11th witness for plaintiff)).

Q. Who occupies the Stool at Nkama today?

A. OKUNTU.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No. 36.

Evidence of 3rd Witness for the Defendant -

Kwadjo Sakyi.

18th June 1952.

Examination-in-chief.

- continued.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.36.

Evidence of 3rd Witness for the Defendant -

Kwadjo Sakyi.

18th June 1952.

Cross-Examination.

CROSS-EXAMINED BY AKUFO ADDO:

Q. What is your official position in Akwamu?

A. An Elder of the Abradis.

Q. Are you Head of the Abradi Family?

A. The Clan is now divided into two - the section at Jakiti is named AMOAKAADE. I am the Head of that section living on the other side of the Volta.

Q. It is a very very small section of that Clan?

A. Yes.

10

Q. The main body of the Clan are in Akropong?

A. These are from ADUMASA.

Q. They constitute the main portion of the ABRADI family?

A. Those at Jakiti are the major part.

Q. How long ago was the story of the fight at Asabi market?

A. I could not say.

Q. That story of the skull means that Adom was a very important chief.

A. It does not.

20

Q. In the long history of Akwamu there must have been a large number of heads in their archives?

A. They do that whenever anything happens.

In reply to Court:

Q. Can you say how many of such sacred skulls there are in Akwamu?

A. About 10.

Cross-Examined:

Each of the big drums has one skull attached to it. There are 2 big drums.

30

Q. And you have no drum with a set of skulls around it?
A. No.

Q. Whose land was it before the Asabis went there?

A. Nobody was on that land.

Q. You mean the land right from Affram to Obosum?

A. Yes. Yes it is Akwamu land.

Q. And you don't object to Nkwatia now claiming the land as their own?

A. No - I don't object.

10 Q. You said Nkamis were originally a part of Asabis?
A. Yes.

In reply to Court:

Q. Between Affram and Obosum Rivers how much of the land to the west did you occupy?

A. Up to the source of the Affram.

CROSS-EXAMINED:

Q. You know that Nkamis are not really Akwamu at all?

A. The Akwamus brought them from Nyankumase.

20 Adjourned to 19.6.52.

(Sgd.) J. Jackson,
J.

19.6.52.

IN THE SUPREME COURT OF THE GOLD COAST,
EASTERN JUDICIAL DIVISION (LAND DIVISION)
held at Victoriaborg, Accra, on Thursday
the 19th day of June, 1952, before Jackson,
Ag. Chief Justice.

30 Nana Osei Twum II
v.
Nana Asante Yiadom III

From folio 423.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.36.

Evidence of 3rd Witness for the Defendant -

Kwadjo Sakyi.

18th June 1952.

Cross-Examination - continued.

19th June 1952.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.36.

Evidence of 3rd Witness for the Defendant -

Kwadjo Sakyi.
19th June 1952.

Cross-Examination.
- continued.

KWADJO SAKYI resumes evidence:-
3rd WITNESS FOR THE DEFENDANT

CROSS-EXAMINED:

Q. Do you know any history of the land prior to its occupation by the Asabis?

A. No.

In reply to Court:

At the time of the Attara Finam War the Akwamus were still at Nyanawase. It was an important war.

10

CROSS-EXAMINED:

Q. Akwamuhene belongs to Abradi Clan?

A. Yes.

Q. To what Clan does Kumawuhene belong?

A. Aduana.

Q. When Stool was taken from Minta and given to Nkansa it became an Akwamu Stool?

A. Yes.

Q. Why when it was brought back from Asanti was it not given to the Akwamus?

20

A. A message came to Akwamu - but we did not go to get the Stool.

Q. Nkansa would be the big man with the Stool and not the Bukuruwahene?

A. Yes.

Q. Do you know then why now Nkansa is the Gyasihene to the Bukuruwahene?

A. I don't know.

Q. When did Nkansa cease to be a sub-chief of Akwamu and become the Gyasihene of Bukuruwa?

30

A. I don't know.

RE-EXAMINED:

When Adontehere went to Kumasi to beg for the Stool he had to pay some money before he got it. He had to beg the Asantehene.

Q. Is there any relationship between the Abradi and Aduana Clans?

A. They are one - Abradi is the younger branch and whenever a libation is to be poured you mention Aduana first and then Abradi.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.36.

Evidence of 3rd Witness for the Defendant -

Kwadjo Sakyi.

19th June 1952.

Re-Examination.

10

No. 37.

EVIDENCE OF FOURTH WITNESS FOR THE DEFENDANT -
KWABENA BUABASA

KWABENA BUABASA (m) s.s. in Twi:
4th WITNESS FOR DEFENDANT.

Farmer. Live at Brupai near Faso. My father was Twi and my mother is Ewe - she is alive. I am 53 years old. Born at Brupai. I am Headman and Safohene.

20

The first of my ancestors to live there was Yao Obubasa. He was my grandfather - he begat my father. He came to Brupai from Akrosso (north of the land in dispute). I never knew my grandfather. My father died 7 years ago. Lived with him throughout my life. My father told me that his father came from Akrosso and when he came he met Ohene Beng a linguist from Nkwatia and asked his permission to live on the land and that he got permission and he lived there.

30

My grandfather was a canoe builder. My father also built canoes and was a farmer. I also build canoes.

No.37.

Evidence of 4th Witness for the Defendant -

Kwabena Buabasa.

19th June 1952.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Q. About how many houses are there at Brupai now?

A. About 11 - all swish houses. The people of Faso and ourselves are one.

In reply to Court:

Q. Can you explain why?

A. My mother came from Faso and my father had relatives there.

Evidence for the Defendant.

No. 37.

Evidence of 4th Witness for the Defendant -

Examined:

Faso was founded by Kodo, an Ewe man, before I was born. There are yam farms at Faso.

10

Kwabena Buabasa. 19th June 1952.

Q. At one time there was a Preventive Station there?

Examination-in-chief. - continued.

A. Yes - formerly. That was in my lifetime. It was there before I was born. It is no longer there. There used to be a Native Tribunal at Faso. It is no longer there. My father was a member of the Tribunal and he sat with the Fasohene under the Nkwatiahene. It ceased to function about 11 years ago. The Court House was taken from Faso to Nkwatia.

20

It was my father who used to instal the Odikro at Faso. There used to be only 3 houses at Brupai now there are 11 - they are all relatives of us and they farm. There is no cocoa there - it is grassland. There is hunting. We have farms on either side of the Fa River and they are also to the River Volta.

The Twi people have a fetish which the Ewe people call Toga. An Ewe man lives at Nframa - Akpishi is there now.

30

Betiasi is a Twi village. It was there before I was born. No one lives there now. It is completely in ruins.

The Battor people who live with me fish there and pay tolls to me and I give them to the Nkwatiahene and he gives me a part of them. When hunters kill any animals I would take one leg and sell it - because the distance was far - to Nkwatia and I would then send him the money.

40

Sometimes the Nkwatiahene sends a message to me and if I have collected any money I give it to him. Tiamua was one of those messengers.

CROSS-EXAMINED BY AKUFO ADDO:

Yes my mother came from WUSUTA. I call myself an Akrosso man.

Q. Burupai is an Ewe village inhabited by Wusuta people?

A. My grandfather built it.

10 Q. It is inhabited by Wusutas and Ewes and has been inhabited like that for some time?

A. Yes - by Buabasa's children.

Q. You know the Wusuta Chief? A. Yes.

Q. You know Dei Tawia of Otuprada?

A. Yes - I know him.

Q. You know that for some years these Chiefs claimed that your village and the other villages belonged to them?

A. I never heard that.

20 Q. Did you know that a few years ago the Ohene of Bukuruwa brought an action against Wusuta about the land where your village is?

A. I heard so.

Q. Did you come to Court while the case was going on? A. No.

Q. When you heard that did you have any talk with the Nkwatiahene about that case?

A. At that time my father was alive. I don't know if he had any talk with the Nkwatiahene.

30 Q. Did you hear that the Benkumhene won the case?

A. I heard it. My father had then died.

Q. Have you since that time ever had any talks with the Nkwatiahene about the land?

A. No.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.37.

Evidence of 4th Witness for the Defendant -

Kwabena Buabasa.

19th June 1952.

Cross-Examination.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.37.

Evidence of 4th Witness for the Defendant -

Kwabena Buabasa.
19th June 1952.

Cross-Examination.
- continued.

Q. Do you get receipts for the tolls?

A. No.

Q. Do you know that tolls like this have to go to the Kwahu Treasury?

A. I don't know that. The Nkwatiahene did not tell me that.

In reply to Court:

Q. Since that case has the Bukuruwahene ever sent to you for tolls? A. No.

Cross-Examined:

10

Q. When was the last time you paid any tolls to the Nkwatiahene?

A. Last year.

Q. Has Nkwatiahene ever told you that if Bukuruwahene asked for tolls you were not to pay him?

A. No.

Yes Faso was founded by a Wusuta man. I know Kodjo Dei. He is dead.

Q. It was the Chief of Nkami who made him Headman?

A. It was my father who installed him as Headman. My father told me that elephant tusks demanded by the Nkamihene did not belong to him and said that they were taken to the Nkwatiahene.

20

Q. Where was Ohene Beng living when your father saw him?

A. He lived at Nkwatia but visited Faso to make the road to Krachi.

Q. Do you know how far the Nkwatiahene's land extends? A. I don't know.

Re-EXAMINED:

30

Re-Examination.

Q. Did you see the road being constructed?

A. No - it was my father who told me. I took part in clearing that road - it is called Ferguson's Road. I don't know where the road started.

(a witness of excellent demeanour).

No. 38.

EVIDENCE OF FIFTH WITNESS FOR THE DEFENDANT -
HUMPHREY KWAMI ANTONYIMA

HUMPHREY KWAMI ANTONYIMA (m) s.s. in English:
5th WITNESS FOR DEFENDANT

In the Supreme
 Court of the
 Gold Coast
 Eastern Judicial
 Division (Land
 Division),
 Accra.

10 Tailor. Live at Kpala on the land in dispute.
 My grandfather Sei Kwami was the first man there
 and he built the village. He was an Ewe man from
 CHUME. I knew him. He died about 21 years ago.
 My father lived there after him. He died on 5th
 August, 1949. His name was Kwami Antonyima. I am
 now in charge of this village. I used to visit
 my father from Koforidua where I was a tailor.

Evidence for
 the Defendant.

No.38.

Evidence of 5th
 Witness for the
 Defendant -

Q. Were you ever told how your grandfather came on
 the land?

Humphrey Kwami
 Antonyima.

19th June 1952.

20 A. My father told me that his father met a person
 from Kwahu and from Nkwatia who asked him who
 had given him permission to stay there and
 said the land belonged to Nkwatia and that my
 grandfather then went to see the Nkwatiahene.

Examination-in-
 chief.

Q. How many houses were there from your earliest
 recollection?

A. About 20 - swish and timber houses. There are
 now about 50. At first they planted ground-
 nuts, yams and cassava - but recently there has
 started cocoa farming. A part of the land is
 good for cocoa.

30 The people living in the village are all
 Ewes. There is a school Roman Catholic's.
 It has been there since 5 or 6 years. They
 paid for farming to my father - but have not
 paid to me yet. I have only been there about
 a year and a half as I had to finish my father's
 funeral customs.

40 I know the villages of Agotime and Bethel.
 Atimakpo lives at Agotime. He is an Ewe man.
 My father had a case with the Bukuruwahene. I
 was then at Koforidua - it was heard in the
 C.E.P'S Court. I went to Court (refers to
 Exhibit "A").

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

My father looked after Agotime. When they farmed they did give money to my father. Atimakpo was one.

CROSS-EXAMINED BY AKUFO ADDO:

Evidence for the Defendant.

Q. Your grandfather came from the German side of the Volta and settled on the land?

A. Yes - yes he came from Kyami on the German side.

Q. And when he arrived he called the place Kyami?

A. Yes. Yes - he became Headman of that place.

Evidence of 5th Witness for the Defendant -

Q. No doubt your grandfather would know more about the land than you? 10

Humphrey Kwami Antonyima.

A. Yes. I've heard of the Crabbe Enquiry.

19th June 1952.

Q. Your grandfather was one of the people who went to that case? A. No.

Examination-in-chief.

Q. How old was your grandfather when he died?

- continued.

A. He was very old - but I could not say how old.

Cross-Examination.

Q. In 1903 he was the Headman of Kyami (Chomi)?

A. Yes.

In reply to Court:

My grandfather's name was Osei Quamin.

20

COURT:

Mr. Akufo Addo asks that p.143 of Exhibit "E" be admitted in evidence with regard to the question and answer -

"Q. Have you ever sold any land to anybody?

"A.It belonged to my grandfather Yaw Eku, "for generations" to evidence that his grandfather testified to a fact which is contradicted by what this witness says his father related to him as being a declaration of his grandfather. I will admit that evidence on the same principle as hearsay evidence has been and is invariably let in - in proof of refutation of people's interests in land - upon proof that the land he referred to then was the Kpala.

30

There is here motive to misrepresent 35.

Cross-Examined:

- Q. At that enquiry your grandfather said the land belonged to his grandfather?
- A. Have heard of a man called Jan.
- Q. How far is Chomi from Kpala?
- A. About 2½ hours' walk. After living at Chomi he left there and came to Kpala. He made no farms at Chomi. I know Paso. I only passed by them when a small boy. It was not sold to my grandfather.
- Q. Did you know that your father sold some land in this area to a man called Atimakpo?
- A. I did not know that. I never heard of any trouble between Bukuruwa people and my father. I am not a Wusuta. Yes I heard of the case against the Wusutas. I did not hear that they claimed the land as their own.
- Q. When did you first hear that Bukuruwa and Nkwatia were fighting over the land?
- A. When I got my subpoena last April. My father charged his tenant £2 a year and gave some of it to the Nkwatiahene.

RE-EXAMINED:

Chomi is east of the Volta.

(Good demeanour).

No. 39.

EVIDENCE OF SIXTH WITNESS FOR THE DEFENDANT -
ATUMAKPO DJADJAGLO

ATUMAKPO DJADJAGLO (m) s.s. in Ewe:
6th WITNESS FOR DEFENDANT

Farmer. Farm near Agotime Village - near Bethel on the land in dispute. Have been on the land for fifteen years. I went to Kwami Antonyima

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.38.

Evidence of 5th Witness for the Defendant -

Humphrey Kwami Antonyima.
19th June 1952.

Cross-Examination.
- continued.

Re-Examination.

No.39.

Evidence of 6th Witness for the Defendant -

Atumakpo Djadjaglo.

19th June 1952.
Examination-in-chief.

In the Supreme
Court of the
Gold Coast
Eastern Judicial
Division (Land
Division),
Accra.

Evidence for
the Defendant.

No.39.

Evidence of 6th
Witness for the
Defendant -

Atumakpo
Djadjaglo.

19th June 1952.

Examination-in-
chief.

- continued.

and asked him for a piece of land. He was the last witness's father. He agreed to give me some. I saw him at Kpala. I told him I wanted to buy a piece of land. He said he had some to sell. He sold a piece of land to me for £350. I had been on the land and that same month some people came from Bukuruwa and said the land belonged to them. I told them that they should go and see Antonyima and that I was prepared to give them more money for it. The land was measured. 12 fathoms (full arm length) was to equal one rope and 100 ropes long by 50 ropes was measured. 10

Bukuruwa and Wusuta people later had a case.

Q. Before Antonyima sold the land to you did he take you to anyone?

A. No. Nothing was written down - except a receipt for £200 - I have not completed the payment.

Q. Afterwards did he take you anywhere? A. No.

In reply to Court:

At the time he sold it to me I believed that it was his own land. I've planted cocoa. 20

Cross-
Examination.

CROSS-EXAMINED BY AKUFO ADDO:

Q. Since Bukuruwa people sent to you and said the land was theirs - have you been paying any tolls upon the land?

A. When I went onto the land they told me it was theirs and that they were going to fight for it - I agreed to be their tenant if they won - but I've never paid any tolls and up to now they have constantly troubled me. The Omanhene of Kwahu then told me that there was a case and that until it was finished I should pay tolls and then he would know what to do and I then started paying tolls 2 years ago - 6/- a year - the Omanhene had a police station there and I paid the money there to the Native Authority police and they gave me receipts for it. 30

(The witness produces 2 Kwahu Native Authority Receipts each for 6/- being "Annual Rates" for 1950/51 and 1951/52).

Yes - I paid Rates not Tolls.

Q. The Omanhene told you that the land belonged to the Bukuruwa people?

A. He did not say that.

No re-examination.

(excellent demeanour)

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.39.

Evidence of 6th Witness for the Defendant -

Atumakpo Djadjaglo.

19th June 1952.

Cross-Examination - continued.

10

No. 40.

EVIDENCE OF SEVENTH WITNESS FOR THE DEFENDANT - KOFI FOFIE

KOFI FOFIE (m) s.s. in Twi:
7th WITNESS FOR DEFENDANT.

Farmer. Live at Chemfe - the new Chemfe - about 2 hours' walk from Bethel. Before going there I lived at Faso (describes the village north of Mpoti). Its proper name is Fanu and not Faso. I first went there about 20 years ago. My father, Okyeame Onwona, was living there. He was a hunter. He was the caretaker of the Nkwatiahene in that area. He died about 15 years ago.

20

Q. When you first saw the place how many houses at Fanu?

A. About ten, made of tree bark and thatch. Since my father died Kofi Anso is there. He is my father's nephew.

Q. How many years ago did you leave Fanu to go to Chemfe?

No.40.

Evidence of 7th Witness for the Defendant -

Kofi Fofie.

19th June 1952.

Examination-in-chief.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.40.

Evidence of 7th Witness for the Defendant -

Kofi Fofie.
19th June 1952.

Examination-in-chief.

- continued.

Cross-Examination.

A. When I left Fanu my father was alive. That was about 20 years ago. I went there to look after some strangers to whom my father had given land there - Obobi and Buampong were among them. One came from Akwapim and the other from Asokori (New Juaben). They are still there.

Q. On what conditions were they allowed to live there?

A. On the "abusa" system to cultivate cocoa. The trees are now yielding cocoa. They were planted about 8 years ago. They have been harvested about 6 times. 10

We were living at old Chemfe 12 years ago and then moved to the present Chemfe to be nearer the place the strangers were cultivating cocoa. I have cocoa at old Chemfe. The trees are about 12 years old.

Q. Before you lived there was anyone living there?

A. When I came nobody was there - but a relative of my father had lived there earlier as my father told me. When I got there - there was a camp. I am a Headman at Chemfe. I have given land to about 100 people around there. 20

CROSS-EXAMINED BY AKUFO ADDO:

Q. It is a fact that the relatives of your father were the factors that brought this case. You are a hunter and so was your father and he refused to give Bukuruwa a share of the game?

A. He never demanded any from me. I've never heard that Bukuruwa swore an oath about the land. 30

Q. But you know there has been this dispute for 25 years?

A. Yes - I've heard it - but I've taken no part - my father told me about it about 17 years ago. My father told me that Bukuruwa complained that my father had supported Antonyima in a case at Koforidua.

Adjourned to 20.6.52.

(Sgd.) J. Jackson,
J.

20.6.52.

IN THE SUPREME COURT OF THE GOLD COAST,
EASTERN JUDICIAL DIVISION (LAND DIVISION)
held at Victoriaborg, Accra, on Friday the
20th day of June 1952, before Jackson, Ag.
C.J.

In the Supreme
Court of the
Gold Coast
Eastern Judicial
Division (Land
Division),
Accra.

Nana Osei Twum

v.

Nana Asante Yiadom

Evidence for
the Defendant.

No.40.

10 KOFI FOFIE resumes evidence
7th WITNESS FOR DEFENDANT
CROSS-EXAMINATION (Contd.)

Evidence of 7th
Witness for the
Defendant -

Q. Cocoa farming in the area is a recent develop-
ment?

Kofi Fofie.

20th June 1952.

A. No, it has been there a long time. It was about
20 years ago.

Cross-
Examination -
continued.

In reply to Court:

20 I remember the first man to plant cocoa there -
he was Kweku Antwi the hunter. Kweku Baadu has
inherited them - going from New Chemfe and looking
towards the Volta it is on the right hand side.
Kweku Antwi came from Nkwatia.

Cross-Examined:

Q. There are also a large number of Bukuruwa farms
there?

A. I have not seen them. I've not. Yes I have
given permission to more than 100 people to farm
on the land.

Q. That happened after the case started?

30 A. No - I had already given them permission a long
time ago.

I made no new farms after the injunction was
served on us.

Q. How long ago did you grant permission to Obobi
and Buamong?

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.40.

Evidence of 7th Witness for the Defendant - Kofi Fofie.

20th June 1952. Cross-Examination - continued.

A. Four years before the earthquake (1939).

Q. For past 4 years the Bukuruwas and Nkwatias have had clashes on the land?

A. Yes - I was there.

Q. And your father sold some land there to Nana Mate Korle - Konor of Manya Krobo?

A. That I don't know.

Q. You know that Konor's people came on the land at one time?

A. Yes - they worked on the "abusa" system at New Chemfe. That was about 25 years ago. 10

Q. These people were driven away by the Bukuruwa people?

A. No - they are still there today.

Q. You know that these people have brought an action against Nkwatiahene reclaiming their purchase money? A. No.

No re-examination.

No.41.

Evidence of 8th Witness for the Defendant -

Kweku Bimpong.

20th June 1952.

Examination-in-chief.

No. 41.

EVIDENCE OF EIGHTH WITNESS FOR THE DEFENDANT - 20
KWEKU BIMPONG

KWEKU BIMPONG (m) s.s. in Twi:
8th WITNESS FOR DEFENDANT

Farmer. Farm at New Chemfe. Came from Asokori (Koforidua). Came to Chemfe 3 years before the earthquake (1939). Am still there. My cocoa has grown.

Onwona gave me the land to farm on. I know Kofi Fofie. He is the son of Onwona.

Remember when Bukuruwas won the case against the Fwes. The Bukuruwa people after that case have never tried to drive me. Obobi also farms there. He was there before I came. 30

CROSS-EXAMINED BY AKUFO ADDO:

I can remember people dying during the influenza (1918). My uncle was the actual man who got the permission to farm. I have never been a driver's mate - when a young man I applied to learn and my master did not teach me so I left.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Q. At outbreak of war you were still learning to drive?

Evidence for the Defendant.

A. No. I know Kwami Kai at Odonkokrome.

No.41.

10 Q. He and some people came and drove you from the land - you brought in some Nkwatia people and there was a clash?

Evidence of 8th Witness for the Defendant -

A. If anybody told you that - it was not true. My uncle is very old and does no work.

Kweku Bimpong.
20th June 1952.

Q. How long have you actually been on that land?

Cross-Examination.

A. Three years before the earthquake.

Q. In last 2-3 years many Nkwatia people have rushed on the land?

20 A. Since we first came - they have come increasingly.

Q. You know there has been a dispute about the land for a long time?

A. Only recently I heard of this action.

RE-EXAMINED:

My uncle's name is Kwadjo Tawia. He got one piece of the forest. Cultivated one portion and I cultivated the other portion. My harvest is about 20 loads a year - my uncle gets about 60.

Re-Examination.

30

(appeared to be reliable)

In the Supreme
Court of the
Gold Coast
Eastern Judicial
Division (Land
Division),
Accra.

No. 42.

EVIDENCE OF NINTH WITNESS FOR THE DEFENDANT -
GYAN FOSU

GYAN FOSU (m) s.s. in Ewe:
9th WITNESS FOR DEFENDANT.

Evidence for
the Defendant.

No.42.

Evidence of 9th
Witness for the
Defendant. -

Gyan Fosu.

20th June 1952.

Examination-in-
chief.

Chief and a farmer. Live at Nyinampong. My ancestor came from ABATE (Eweland). I was born at Nyinampong (witness aged about 50). My grandfather I knew. His name was Gyanbibi. There were then about 50 houses there scattered all over the bush and all Ewes under my grandfather who told me that he crossed the Volta to this side with his father and at that time no one was living there. They were there he said when the Germans and English fixed the boundary (Treaty of Berlin), and it was then that the Nkwatiahene told my grandfather that the land belonged to him and that he should serve him. My grandfather died when I was about 18 years old and I was put in his place because my father was sick. I am the Odikro (Headman) there - so was my grandfather before me. 10

I was sued by the Benkumhene and Nkamihene 3 years after my grandfather died. Case heard at Abene - appealed to Commissioner, Eastern Province at Koforidua - myself and Antonyima (refers to Exhibit "A"). 20

Cross-
Examination.

CROSS-EXAMINED BY AKUFO ADDO:

When my grandfather came first there was no one at all on the land. My grandfather first came to the land after the Asante War (about 1900). 30

Q. How long had he been there before Nkwatiahene said the land belonged to him?

A. At the time when Mr. Ferguson was making the road and that was before the Kaiser War (1914/18).

In reply to Court:

I was not asked by anyone to subscribe to the case between Bukuruwa and the Ewes.

Cross-Examined:

Kofi Sefa was the Nkwatiahene who told my grand- 40

father that the land belonged to him. Yes I've heard that the dispute is an old one. At my place there is no cocoa - only yams and cassava - it is not good for cocoa. Nkwatiahene told me he was having a land dispute with the Bukuruwahene. He told me that about 3 months ago and called me as witness. That was the first time I had ever heard of it.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

10 Q. For some time Bukuruwahene has been troubling you?

Evidence for the Defendant.

A. Yes - they sued me - but since then they have not disturbed me.

No.42.

No re-examination.

Evidence of 9th Witness for the Defendant -

(excellent demeanour).

Gyan Fosu.

20th June 1952.

Cross-Examination - continued.

No. 43.

EVIDENCE OF TENTH WITNESS FOR THE DEFENDANT - OKYEAME KWABENA OSEI

No.43.

OKYEAME KWABENA OSEI (m) s.s. in Twi:
10th WITNESS FOR DEFENDANT.

Evidence of 10th Witness for the Defendant -

20 Petty trader. Live at Nkwatia. I know vil-
lage of BUYURI. I used to live there. Lived
there for 27-29 years and left there about 2 years
ago. I lived there with my grandfather Kwesi At-
uobi. When I was there first it was a hunting
camp and there were about 4 hunters' huts there.
My uncle was a hunter. It is grass land and only
good for hunting. My uncle is now dead. Kwesi
Kuma my uncle succeeded him. He is also dead and
30 I now succeed. My uncle told me that his ances-
tors had founded the place as a hunter's rest.

Okyeame
Kwabena Osei.

20th June 1952.

Examination-in-
chief.

CROSS-EXAMINED:

Q. Have you heard of Dei Kumi who lived at Buyuri?

Cross-
Examination.

A. No. I was last at Buyuri about 4 months ago
on a visit.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.43.

Evidence of 10th Witness for the Defendant -

Okyeame Kwabena Osei.

20th June 1952.

Cross-Examination - continued.

Q. Did you hear that Wusuta people and other Ewes had claimed the land as their own?

A. Yes I heard about that action.

Q. Did you know the Ewes claimed Buyuri to belong to them?

A. I did not hear that - all I heard was that the Ewes got permission from the Nkwatiahene to live at Buyuri.

Q. Did you hear what land the Ewes claimed to be their own? A. Yes. 10

Q. What was the land?

A. Bungalow (refers to area around Odonkokrom).

Q. Where were you when that case came on?

A. I was at Nkwatia.

Q. While case was going on did you go to Buyuri?

A. Yes, I used to go.

Q. Did you discuss the case with him? A. No.

No re-examination.

No.44.

Evidence of 11th Witness for the Defendant.-

Kwabena Ntiamoa.

20th June 1952.

Examination-in-chief.

No. 44.

EVIDENCE OF ELEVENTH WITNESS FOR THE DEFENDANT - 20
KWABENA NTIAMOA

KWABENA NTIAMOA (m) s.s. in Twi:
11th WITNESS FOR DEFENDANT

Linguist to Ohene of Nkwatia. I know Ata Nkwanta (north-east of Buyuri). There were 2 huts there. Kofi Siaw was my grandfather - he said the Nkwatiahene had a fishing pool in which my grandfather fished for him. My grandfather died a long time ago - but I knew the one who succeeded him and named Kweku Kru. We fished there seasonally - I succeeded my uncle Kru 21 years ago. 30

CROSS-EXAMINED BY AKUFO ADDO:

Q. A hut was built at Ata Nkwanta only about 25 years ago?

A. My grandfather made a hut there. It fell into ruins. The same happened with Kru and his fell into ruins. When I succeeded I built a hut there about 20 years ago.

In reply to Court:

Nobody else was there when I built it.

10 Cross-Examined:

It is a hunter's camp. I did not hear about the oath sworn by the Bukuruwahene. I heard that the Omanhene of Kwahu had sat on the case and I went there. Have been a linguist for 19 years. Bukuruwahene said he had a boundary with the Nkwatiahene and he wanted the Omanhene to demarcate the boundary. It was not demarcated.

In reply to Court:

20 Q. Is it one of the duties of a linguist to make himself familiar with land boundaries?

A. It is not the custom for a linguist to know them.

Q. Who is the person whose duty it is to know them?

A. It is the duty of the Head of the Royal Family (Adehyec-Hene). He is shown the boundaries when he is given the care of the Stool.

No re-examination.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.44.

Evidence of 11th Witness for the Defendant -

Kwabena Ntiamoa.

20th June 1952.

Cross-Examination.

In the Supreme
Court of the
Gold Coast
Eastern Judicial
Division (Land
Division),
Accra.

No. 45.

EVIDENCE OF TWELFTH WITNESS FOR THE DEFENDANT -
KWADJO ADOFO

KWADJO ADOFO (m) s.s. in Twi:
12th WITNESS FOR DEFENDANT

Evidence for
the Defendant.

No. 45.

Evidence of 12th
Witness for the
Defendant -

Kwadjo Adofo.

20th June 1952.

Examination-in-
chief.

Headman at Aburam (on west boundary with Pitiku).
Have lived there about 30 years. I was born at
Nkwatia and then went there with my grandfather
Kwesi Twerefuor. He was a hunter. He is dead.
He died about 10 years ago. Kwami Kuma succeeded
him - he was the nephew. He is dead and I am now
in charge there. 10

Besides the old hunting camp from where we have
arrived - we've made a new place we call OFINSU.
There is cocoa farming there. It started 18 years
ago. I was the first man to plant cocoa there.
People have come there now to live with me - about
120 of them. They came about 13 years ago. Most
of them are Nkwatia people and they pay the yearly
tax to the Nkwatiahene. 20

About 2 years ago Bukuruwa people came and
started making cocoa farms there. They came from
the direction of DEDESU. I know Kwesi Yenkumi.
He comes from Nkwatia. He lives near me - he is
a hunter.

Cross-
Examination.

CROSS-EXAMINED BY AKUFO ADDO:

Q. How old are these new farms belonging to the 120
people?

A. Some have farms one year old and some 2 years
old. 30

Q. Did you see the surveyor employed by the Nkwat-
iahene? A. Yes.

Q. Did he go through your village?

A. He came and stayed there for 3 days.

Q. Did you tell him about your farm and the 120
people?

A. No - when he came he said "is this your
village?" and I said "yes". He said "Is this
your farm?" and I said "yes".

Q. How long ago did you demolish the old hunter's camp at Aburam?

A. This year - there are so many people troubling me and the village is on a cocoa farm. People were spoiling my cocoa by splashing soap on to it when washing themselves.

Q. You know Anochie and Kwesi Mensa of Bukuruwa?

A. Yes - but I don't know where they work. I live with them at Nkwatia but they say that their ancestors came from Bukuruwa.

Q. And Anochie has been disputing your farm with you?
A. No.

Q. Is there not a case between you pending in the Kwahu Native Court?

A. No - there is none.

Q. Anochie was on the land before you?

A. No, I was the first man before he came.

Q. When did he come?

A. He came about 10 years. When he came to work on the land he started living at Dedesu with Bukuruwa people. Yes Anochie's trees are fully grown.

No re-examination.

No. 46.

EVIDENCE OF THIRTEENTH WITNESS FOR THE DEFENDANT -
KWABENA BAH

KWABENA BAH (m) s.s. in Twi:
13th WITNESS FOR DEFENDANT

Farmer. Live at Bebu. My grandfather lived there. I was born there. My grandfather came from Adomfe in Asante Akim. He told me he had permission to hunt there from the Nkwatiahene. On

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.45.

Evidence of 12th Witness for the Defendant -

Kwadjo Adofo.
20th June 1952.

Cross-Examination.
- continued.

No.46.

Evidence of 13th Witness for the Defendant -

Kwabena Bah.
20th June 1952.

Examination-in-chief.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

his death Kwami Afram succeeded him and he was my father. My father died about 20 years ago. I have a cocoa farm there. I started planting cocoa 8 years ago. I know Kojo Edu. He is my uncle. He is dead. He died before my grandfather died. He was also a hunter. When we hunt and get game we used to take the tusks of the elephant, left ear and tail and one shoulder.

Evidence for the Defendant.

Q. Did you ever see that?

No.46.

A. Yes - in the time of Kweku Asanti of Nkwatia. 10

Evidence of 13th Witness for the Defendant -

In reply to Court:

Kwabena Bah.

I have killed an elephant myself. That was 29 years ago. We informed the Ohene who then sent a messenger and the messenger took the Ohene's share.

20th June 1952.

Examination-in-chief.

Examined:

- continued.

There are now 28 people there with me farming cocoa. They are people from Nkwatia. They came about 7 years ago.

CROSS-EXAMINED BY AKUFO ADDO:

Cross-Examination.

At time of influenza I was a young boy (indicates about 6 years). 20

Q. You say you killed that elephant 29 years ago?

A. Yes.

Q. How were you able to say it was 29 years ago?

A. Because I don't know "book" - it was a long time ago. Nana Kofi Sefa was then the Nkwatiahene. My grandfather stayed at Bebu and died there and was buried at Nkwatia.

Q. There are no houses at Bebu?

A. I am living there.

Q. You remember 9 years ago a surveyor came on the land? 30

A. Yes - he came frequently. I've seen about 4 surveyors there. I remember a European Surveyor coming there about 2 years ago.

Q. Did you see one sent by the Nkwatiahene to make a plan?

A. Yes. I showed him my farm.

Q. When did the 28 people start farming?

A. About 8 years ago. The Bukuruwa people are farming to the north of us.

Q. How far is it from your farm to the nearest Bukuruwa farm?

A. About an hour's walk.

Q. What do you call the place where they farm?

A. I don't know its name. I've never heard about any oath being sworn by Bukuruwahene.

10 Q. When did Nkwatiahene first see you about giving evidence in this case?

A. I was at my village when I got the subpoena. Nkwatiahene did not tell me he was going to call me before I received the subpoena.

Q. When did you last see the Nkwatiahene before this case?

20 A. About 4 months ago when my brother died and I reported the death to him. Yes - my grandfather was an Asante. Hunters are succeeded by their sons.

No re-examination.

No. 47.

EVIDENCE OF FOURTEENTH WITNESS FOR THE DEFENDANT
KWESI MIREKU

KWESI MIREKU (m) s.s. in Twi:
14th WITNESS FOR DEFENDANT

30 Hunter. Hunt at Papasi on the land in dispute. I first went there 40 years ago. My uncle Kyirifoa Boame was the founder of the place. After him Kwami Beng came. He is my uncle. I knew Kwami Beng there but not Kyirifoa Boame. They all were hunters. There were then six hunter's huts. Have lived there since then hunting. I do nothing but hunt.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No, 46.

Evidence of 13th Witness for the Defendant -

Kwabena Bah.

20th June 1952.

Cross-Examination:

- continued.

No. 47.

Evidence of 14th Witness for the Defendant -

Kwesi Mireku.

20th June 1952.

Examination-in-chief.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.47.

Evidence of 14th Witness for the Defendant -

Kwesi Mireku.

20th June 1952.

Examination-in-chief.

- continued.

Cross-Examination.

Exhibit "15"

In reply to Court:

We hunt individually. Now we get bush cow there.

Examined:

In the past I have killed 37 elephants. I killed a female and the District Commissioner Kwahu arrested me and I was fined £7. I was imprisoned with Chief Sessa. That was at about the time of the influenza (1918). I am caretaker of Boakoma. It is a fetish. I worship it and give it something to eat. Some of the hunters come and pay monies - some £1 - for me to pray for them.

10

CROSS-EXAMINED BY AKUFO ADDO:

I come from Nkwatia.

Q. You have a hunting camp at Faso?

A. Yes.

Q. Actually near Faso there is a village named after you? A. Yes.

Q. That camp is on the River Fo?

A. Yes - I fish there. (1930 Survey Sheet 139 admitted and marked No. "15").

20

In reply to Court:

Q. Is that the village to which you went 40 years ago? A. No.

Cross-Examined:

Q. You live at Kwesi Mireku?

A. I live at Papasi - I go to Faso and fish there. I do not live at Kwesi Mireku - I used to go there and fish.

30

In reply to Court:

Q. Whose land is it on which Kwesi Mireku is?

A. Nkwatia.

Cross-Examined:

It is a day's journey (20 miles). I only heard that the Omanhene was going to demarcate a boundary. I heard about the case against the Ewe people.

Q. Around Papase there are hunters from other parts of Kwahu?

A. Yes. I did not hear of one called Frentun.

Re-EXAMINED:

10 Q. If you want to speak to the Nkwatiahene through whom will you go?

A. The linguist.

No. 48.

EVIDENCE OF FIFTEENTH WITNESS FOR THE DEFENDANT -
KOFI DARKU

KOFI DARKU (m) s.s. in Twi:
15th WITNESS FOR DEFENDANT

20 Live Nkwatia. Have a village on the land in dispute called Faso-Chirifokrome. My grand uncle Chirifuo first founded it. He was an Elder and the brother to the Odehyehene (Head of Royal Family). Chirifuo is dead. After him my grand uncle Kwesi Yebuah lived there. He was a hunter. Another grand uncle Kwesi Tono lived there and then came Kobina Foli who was my uncle and I succeeded him.

30 Hausas live there now in about 8 huts. There are 3 huts of my uncle. Some of the Hausas hunt and the others farm cocoa, and some of them do. I also cultivate cocoa. It was started by my uncle Kobina Foli about 28 years ago. It is 11 years

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.47.

Evidence of 14th Witness for the Defendant.

Kwesi Mireku.

20th June 1952.

Cross- Examination - continued.

Re-examination.

No.48.

Evidence of 15th Witness for the Defendant.

Kofi Darku.

20th June 1952.

Examination-in-chief.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

ago since I succeeded my uncle. I first knew the village about 43 years ago.

I have given some of the land around there to people to work on. Some are Nkwatia people - others come from Asanti and Krobo.

The Krobo people came and worked on "abusa" system about 15 years ago.

Evidence for the Defendant.

In reply to Court:

No.48.

Q. Who receives and enjoys the 1/3?

Evidence of 15th Witness for the Defendant.

A. A Clerk receives it and takes it to the Nkwatia-hene. I refer to the Treasury Clerk. 10

Kofi Darku.

20th June 1952.

CROSS-EXAMINED BY AKUFO ADDO:

Examination-in-chief. - continued.

Q. You know that Nkwatia Stool is referred to as a son of the Bukuruwa Stool?

A. No - I've never heard of that.

Cross-Examination.

I know the boundaries of the Nkwatia Stool land. On the north it is bounded on the north by a hill called ABOAM - there used to be a village there. That is Kobina Baa's ancestor's village. From there you go to Bebu (describes land surveyed by Nkwatia). 20

Adjourned to 21.6.52.

(Sgd.) J.Jackson,
J.

21st June 1952.

21.6.52.

IN THE SUPREME COURT OF THE GOLD COAST,
EASTERN JUDICIAL DIVISION (LAND DIVISION)
held at Victoriaborg, Accra, on Saturday,
the 21st day of June, 1952, before Jackson,
Ag. C.J.

30

Nana Osei Twum

v.

Nana Asante Yiadom III

From folio 444.

KOFI DARKU (m) resumes evidence
15th WITNESS FOR DEFENDANT

CROSS-EXAMINATION (Contd.)

Q. Can you now describe the boundaries of the whole of Nkwatia Stool lands?

10 A. Facing the East - Adawtum Stream on the North - from there to a rock called Abotwire - then to Fripaw Stream. The southern boundary is a stream OYERA - Kisi Amoramu a hill. From there you go to the source of the Dede River - CHEBI stream which flows into the Afram. From CHEBI you go to AWIODUA - a ditch - then to ONUMA (a hill) and then to ADA - a river and from there APATUPRE - to PAMRUDO. From there to QUABENA (a stream) and then goes to the Volta.

In reply to Court:

Q. With whom have you a boundary on the West?

A. With Asakraka a part of the Nifa Wing of Kwahu.

Q. What marks your boundary with Asakraka?

20 A. The Oyera stream.
(Nchenechene marks on Sheet 134 approximately 6° 42').
(Sheet admitted and marked "16").

Fradaka is on Nkwatia's land.

Cross-Examined:

NTESO (Sheet 134) does not belong to Nkwatiahene. Oyerasu is a hut 3 hours' walk from Nteso. That is boundary between Nkwatia and Asakraka. Nkwatia land is North of Oyerasu River.

Q. And then on the North of that land - with whom have you a boundary? A. Nteso.

30 Q. It is true, is it not, that when Abene, Aduamo, Nkwatia etc. came - Bukuruwa were already settled on Kwahu land?

A. Yes. Bukuruwahene I heard had lived at Asabi.

Q. And when he went back to Bukuruwa he left that place in charge of his Gyasehene?

A. I've heard that.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.48.

Evidence of 15th Witness for the Defendant.

Kofi Darku.

21st June 1952.

Cross-Examination - continued.

Exhibit "16".

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.48.

Evidence of 15th Witness for the Defendant.

Kofi Darku.
21st June 1952.

Cross-Examination
- continued.

Q. And he placed the Nkamihene at Nkami where it is now?

A. No. I don't know that he did that.

Q. Cocoa farming on this land is a very recent development?

A. Not very long.

Q. The oldest farm is about 18 years old?

A. Some more than that.

Q. What age is the oldest cocoa farm then?

A. About 20 years. I went with the surveyor about 7 months ago - I directed him. I have cocoa farms on the land. We went to the village of Chirifuokrome but not to the farms. There are no Bukuruwa people farming there. I know that they farm at Aboam (ABUWAM). That is the only place that I have seen them. 10

No re-examination.

No.49.

Evidence of 16th Witness for the Defendant -

Kofi Dwamena.
21st June 1952.

Examination-in-chief.

No. 49.

EVIDENCE OF SIXTEENTH WITNESS FOR THE DEFENDANT
KOFI DWAMENA

KOFI DWAMENA (m) s.s. in Twi:
16th WITNESS FOR DEFENDANT

20

Asafohene. I am a cocoa farmer. Live at Ampoti. Have lived there about 36 years. Before that I lived at Nkwatia - I went to Ampoti to live with my uncle Kwesi Oware. My grand uncle first lived there - he died and Kwesi Oware. My grand uncle was a hunter and so was Kwesi Oware. Kwesi Oware died about 40 years ago. I farmed cassava and yams and I hunted a little. There are now about 8 houses there - 2 swish houses - the rest are made of tree bark. 30

When Kwesi Oware was living there, there were about 20. There is no cocoa there. It is grass land.

CROSS EXAMINED BY AKUFO ADDO:

I remember time Bukuruwahene swore an oath about the land.

Q. At that time there was only one hut at Ampoti?

A. No - the houses were three.

Q. Ampoti was a hunter's resting place?

A. It was a hunter's place.

Q. You don't mean you've lived there continuously for 36 years?

10 A. Yes - but I visit other places - these times are times of trade. I have many settlements where I farm.

No re-examination.

(very good demeanour - man of about 75 years of age).

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Evidence for the Defendant.

No.48.

Evidence of 16th Witness for the Defendant -

Kofi Dwamena.

21st June 1952.

Cross-Examination.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division, Accra.

EVIDENCE OF SEVENTEENTH WITNESS FOR THE DEFENDANT
KOFI BUOR

KOFI BUOR (M) s.s. in Twi:
17th WITNESS FOR DEFENDANT

Evidence for the Defendant.

No.50.

Evidence of 17th Witness for the Defendant -

Hunter. Live at Abrewa (western side of land north of Chirifuokrome). Have lived there about 20 years. My grandfather Odanie Panyin lived there before me. He died about 20 years ago. I lived with him for about 3 years before he died. Apart from hunting - I only plant cassava for our own consumption. No Bukuruwa people are there.

10

Kofi Buor:
21st June 1952.
Examination-in-chief.

CROSS-EXAMINATION:

Cross-Examination.

I have seen no Bukuruwa people there at all.

Adjourned to 23.6.52.

(Sgd.) J.Jackson,
J.

No. 51.

ORDER AMENDING WRIT AND STATEMENT OF CLAIM

IN THE SUPREME COURT OF THE GOLD COAST,
EASTERN JUDICIAL DIVISION (LAND DIVISION)
held at Victoriaborg, Accra, on Monday the
23rd day of June, 1952, before Jackson,
Ag. C.J.

Nana Osei Twum II

v.

Nana Asante Yiadom III

In the Supreme
Court of the
Gold Coast
Eastern Judicial
Division (Land
Division),
Accra.

No.51.

Order amending
Writ and
Statement of
Claim.

23rd June 1952.

10

BOSSMAN:

I close my case without the documentary evidence
I had proposed to call.

AKUFO ADDO:

Have filed an application to amend the claim as
set out in this writ to read -

" A declaration of ownership of the piece or
"parcel of land edged in red on the plan marked
" "1" and

20

"by deleting the figure "1936" appearing in the
"third line of the last paragraph of the State-
"ment of Claim and substitute therefor the
"figure "1942".

BOSSMAN:

No objection.

COURT:

Writ and Statement of Claim are amended accord-
ingly. I admit the whole proceedings marked as
"D" in evidence.

Exhibit "D".

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

No. 52.

ADDRESS BY BOSSMAN FOR THE DEFENDANT

BOSSMAN addresses Court:

No.52.
Address by Bossman for the Defendant.
23rd June 1952.

Question of estoppel by "res judicata" by reason of joinder of predecessor in title of the present defendant in earlier proceedings. Submit that judgment of Court below in Exhibit "E" (Suit 190/42), Court in that case clearly had in mind that Nkwatiahene had gone out of the case. Judgment of Appeal Court Exhibit No. "10" - Court at p.5/6 said "Nkwatia who had withdrawn from the suit as a co-defendant".

10

There is no estoppel by record and no estoppel by conduct has been pleaded. At p.64 of proceedings Mr. Sawyerr then Counsel for Bukuruwahene announced that Nkwatiahene retired because the Omanhene of Kwahu had been joined - Mr. Sawyerr for both Bukuruwahene and Omanhene of Kwahu.

Traditional evidence - Plaintiff's case is that they were in Kwahu before the Denkyira War and had originated from Denkyira before that War and had alone-fought-Attara-Finam-who-occupied-land-west-of-the-Volta-and-right-up-to-the-source-of-the-Affram.

20

Denkyira War a historical event which can be roughly fixed in time - just before beginning of 18th century.

It is admitted that Attara Finam War did take place before the Denkyira War.

We submit that at that time Bukuruwa had not yet left Denkyira. Page 70 of Exhibit "E" "According to our tradition the Denkeras "One section under Baadu refused to serve "Ashanti, and migrated to Bukuruwa". Submit that Bukuruwa arrived in Kwahu as one of the direct results of the Denkyira War.

30

Refer to proceedings before Chief Commissioner of Ashanti (Exhibit "D") - traditions of Kwahus set out there. In that case and mine northerly portion of Attara Finam's land was claimed by the Omanhene of Kwahu - submit that he sued in representative capacity (Awuah v. Ofori Atta (1924) F.C. 23-25 224).

40

He sued on behalf of the whole of Kwahu - Bukuruwa is a part and parcel of Kwahu and if Bukuruwa's tradition was valid and true it would have served the Omanhene in that case equally well as the tradition which in fact he evidenced.

The Kwahu's tradition was rejected by the Court of the Chief Commissioner and that of Kamawu accepted. In so far as plaintiff seeks to rely on conquest of the area from Attara Finam - submit sic. he has originally failed and that the dates proved by history are dead against him.

Look at the possibility. Attara Finam a very powerful Chief - is it likely that a remnant from Denkyira could defeat this warrior.

We must look to something else to find Bukuruwa's connection with this land and I submit it was by a pure piece of historical coincidence a little before 1900 that Bukuruwa came to be connected in any way with portions of the land. Our story is that it was by means of the Asabis and Nkamis that sic they came connected with the land.

At time Akwamu migrated from Nyanawase - 1733-34 - these two small tribes were part and parcel of the migratory Akwamus and that they settled as being independent of Kwahus who were then well west of the River Volta and that it was during the war called ADU BOFUO (1868-71) that these communities joined in that war with the Kwahus against the Krepis (east of the Volta) and that after that war the Stool of ASABI was taken to Asante - plaintiff can give no explanation for that - it was the Asabi complaint against Bukuruwa of their cowardice that first introduction of the Stool at Asabi was when Minta of Bukuruwa took it there during that war as was the custom. He was beheaded - then Nkansa of Nkami took the Stool and he lost his head en route to Kumasi where both Stools were retained by the Asantes as war booty.

A little before the Yaa Asantewa War (1900) through intercession of Adontenhene of Kwahu the Stools were given back to the Kwahus and they then sought out distant relatives of these Stools and gave it to them and established Bukuruwa ascendancy over the ASABI and NKAMI lands.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

No.52.

Address by
Bossman for the
Defendant.

23rd June 1952.
- continued.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

No. 52.

Address by Bossman for the Defendant.

23rd June 1952
- continued.

About 1903 there was an Enquiry between Kwahus as a whole and the Ewes in relation to the land (Exhibit "E"); finding of Commission at page 161. "It is a matter of common knowledge" After the acquisition of the Stools Bukuruwa came connected with those lands at ASABI and NKAMI.

Defendant's tradition:- His story is that he was related to the Kumawuhene. That has not been challenged. Defendant's contention is that the whole of Kumawu, Agogo, Kwaman and Nsuta people fought and drove Attara Finam from this land and that after Attara Finam was driven across the Volta they returned to their homes and did not then immediately occupy the land they had conquered. 10

But Agogos did occupy a portion and we rely on the judgment (Exhibit "D") in Court of Chief Commissioner of Ashanti that Kumawu established his rights to Attara Finam lands as against KWAHU (Omanhene). Defendant's case is that knowing the land had been conquered he left Kumawu with intention to use the land and did so first by his hunters and later by using it. 20

Of great significance that land immediately to the west and right up to Nkwatia belonged to the Nkwatiahene.

It was an eastern move of the Kwahus towards the Volta that villages started as hunting camps. Crabbe Enquiry shows that certainly in 1903 there were well established villages on the land e.g. Faso near the Volta. (Pages 173-175 of Exhibit "E") - letters from Faso Chief to the Nkwatiahene put in evidence by Bukuruwahene to discredit the claim made by the Ewes that they founded Faso. Even if Bukuruwa had conquered it they would have to give effective occupation or control. 30

Bethel at north-west point is the limit of Bukuruwa's occupation. Submit that Nkwatias have always been in occupation. Refer to Exhibit "D" p.103. "I hold that as regards" - that case heard in 1927 - land then used solely for hunting and fishing and these then were the marks of ownership. 40

Even considering that Bukuruwa did conquer the whole area - they left the area in dispute and

Nkwatias squattered upon it and used the land as if the Nkwatiahene was the owner by giving to his messenger portions of the animals killed on the land.

Plaintiff sought to establish that there had been a parol award by arbitration acting in accordance with custom.

10 There was undoubtedly some attempt to settle but submit that what was done does not satisfy the requirements of a valid arbitration that will be recognised by the Courts of this Country.

Proceedings commenced in State Council in 1929, folio 238 of Exhibit No. "11". The State Council had no jurisdiction in absence of any transfer (Cap. 76 S.96(2)) - parties agreed to settle the matter out of Court (Exhibit No. "11") and each party agreed to settle on term that each party would retain its own villages and hunting grounds.

20 Omanhene of Kwahu advises that dispute should not develop into a Court case and Head of Kwahu endeavoured to get the matter settled; it was he who convened a meeting of the whole Oman.

As to what took place there is a conflict of evidence. Parties agreed that matter should be settled by State Council - as to what took place I submit evidence was most unsatisfactory.

30 Exhibit "14" - affidavit - representation of Omanhene immediately after event - ".... in May 1942 it became necessary etc., etc.". "... agreed to adopt the suggestion of the State Council made in 1929" - willingness for boundary to be made - provided each retained their hunting camps.

Submit this does not establish an agreement to be bound by the decision of the State Council. Evidence of Bukuruwahene and Omanhene both regarded it as an effort to settle the dispute but no more than that.

40 Refer to Exhibit "B". No. 50/47 W.A.C.A. Essie Gyesiwa etc. v. Kobina Mensah 10th December, 1947. "... The evidence shows that the appellant was summoned etc. etc."

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

No.52.

Address by Bossman for the Defendant.

23rd June 1952
- continued.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

No.52.

Address by Bossman for the Defendant.

23rd June 1952
- continued.

Submit that there was no conclusive submission to arbitration so as to bind the parties.

2 W.A.C.A. Kponuglo & Ors. v. Kodadja (Deane C.J.) p.24. "The respondent's claim being one of trespass". p.29 "The evidence regarding possession ..." exclusive possession test of ownership. Submit that this case must be decided by the user of the land and that this is conclusive in our favour.

In result ask that plaintiff's claim be dismissed and that judgment be entered for the Defendant upon the counterclaim.

10

No.53.

Address by Akufo Addo for the Plaintiff.
23rd June 1952.

No. 53.

ADDRESS BY AKUFO ADDO FOR THE PLAINTIFF.

AKUFO ADDO replies:-

Bossman's first point was in respect of plea of estoppel. Plea rests on 2 grounds (1) ground relating to a case heard in the Court and (2) an arbitration award in accordance with customary law.

20

Paragraph 5 of Statement of Claim. My submission is that the operative part is that Defendant's predecessor did not proceed with his claim and did not take further part in the proceedings - this is a plea of estoppel by conduct and also a plea of "res judicata".

COURT:- What did his conduct demonstrate?

AKUFO ADDO:-

That Bukuruwa Stool owned the land. Mr.Sawyer did not appear for Nkwatiahene but for Omanhene of Kwahu. The judgment at p.116 was one entered for the plaintiff and that judgment is a judgment against all the Defendants before the Court. No defence had been filed by the Nkwatiahene nor had he been discharged from the proceedings.

30

Defendant has been at paint to establish here that he did not go on with the case because there was an agreement between himself and the Omanhene and the Bukuruwa Stool that Nkwatiahene should stand out while Bukuruwa fought the case. Evidence of Nkwatiahene was that he occupied a higher position in relation to the land than does the Bukuruwahene.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

10 What prevented Nkwatiahene being joined as a co-plaintiff if in fact his claim was admitted by the Omanhene of Kwahu and the Bukuruwahene.

No.53.

Mr. Bossman cross-examined witnesses as to such an agreement at Abene. The Omanhene was in the witness box and gave no evidence about this at all.

Address by Akufo Addo for the Plaintiff.

23rd June 1952
- continued.

20 Defendant himself admitted there was no agreement between himself and the Bukuruwahene about the last case. Defendant gave no evidence about this agreement whatsoever in examination-in-chief - it came out in cross-examination. This agreement is alleged to have taken place a few days after he was joined as a co-defendant. Title of case included Nkwatiahene as one of the parties pp.39-40 of Record.

30 If there had been some agreement by Nkwatiahene to withdraw the name of Nkwatiahene would not have appeared on subsequent documents prepared by Counsel for Omanhene of Kwahu. One would have thought that after the case the Nkwatiahene would have asked for something to be done about the expenses he had incurred in the case. We have heard nothing at all and as all actions in fact have been taken by Bukuruwahene one can well understand why Nkwatia did not contest the case.

Our case was that the Nkwatias have always been in unlawful possession - even to extent of the hunting - farming on the land of a comparatively recent development.

40 My submission is that fact he allowed proceedings to go on until judgment was given for Bukuruwahene precludes him from saying anything contrary to the judgment in the case and the judgment of Land Court and West African Court of Appeal - findings mostly were that Ewes had either got the land from the Ohene of Asabi or the Ohene of Nkami.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

No. 53.

Address by
Akufo Addo for
the Plaintiff.
23rd June 1952
- continued.

Cap. 76 Part 10.

Tradition.

How now can Nkwatiahene come now and say these findings are not correct. On issue of the arbitration essence of customary arbitration is that parties agree to accept the decision of the arbitrators. Am aware that evidence as to this aspect of the case is conflicting - but one thing that runs right through that evidence is both parties' acceptance to a settlement being made. If decision was not satisfactory and accepted by both parties why was the £30 paid - that is evidence that boundary was accepted.

10

My friend referred to the proceedings in 1929 and then to an affidavit - what was suggestion contained in 1929 proceedings? It was that a deputation should go and fix a boundary. That affidavit does not run counter to the 1929 proceedings.

Defendant in effect does not deny what took place in 1942 - what more is required than an award by arbitration and to prevent the same claim being re-litigated. This was a meeting of the Omanhene, Chiefs and Councillors and even if it were a State Council in its capacity as a State Council and I know of no law to prohibit it acting as an arbitrator.

20

TRADITION:- Evidence of plaintiff is that his ancestor was the first to settle in Kwahu and gave to the land the name of Kwahu.

Whatever the conflict in tradition in being handed down from father to son one must view the tradition in the light of events upon the land within living memory.

30

Of the 2 contesting parties who can be said to be the owner of the land in dispute?

Asabi and Nkami were established villages on land - established by Bukuruwa people. Defendant sought to give an account of how they came into existence and so to destroy plaintiff's case. References to these 2 villages are found in Crabbe Enquiry - which established that after Nkansa was killed - Omanhene of Kwahu took charge of the Stools there.

40

Admitted that Ohene of Bukuruwa once lived at Asabi and that when he returned to Bukuruwa he left Nkansa his Gyasehene in charge of the land.

Various accounts have been given as to the origin of the Asabis and Nkamis. Claimed by one witness to be Akwamu villages and that Stools were captured and later returned to Ohene of Bukuruwa - why was that? Plaintiff says that Nkansa was his sub-chief and that the people of Asabi were people of Bukuruwa.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

10 If Your Lordship were to accept tradition given by Defendant - Your Lordship will have to arrive at 2 conclusions (a) that it is Kumawu land and (b) that it is Akwamu land. Plaintiff's right of ownership has been characterised by every possible effort to protect those rights.

No.53.

Address by Akufo Addo for the Plaintiff.

23rd June 1952
- continued.

In 1927 Bukuruwahene swore an oath on Nkwatiahene that share of animals killed on land had not been given to Bukuruwahene - then no farms - only hunting huts.

20 From 1927 up till now the Bukuruwahene has always maintained that his boundary was where he claims it to be now.

On the other hand Nkwatiahene has given 3 or 4 different reasons. Exhibit "12" "I claim all land between Dey, Obosum and Affram Rivers".

Adjourned to 24.6.52.

(Sgd.) J.Jackson,
J.

24.6.52.

30 IN THE SUPREME COURT OF THE GOLD COAST,
EASTERN JUDICIAL DIVISION (LAND DIVISION)
held at Victoriaborg, Accra, on Tuesday
the 24th day of June, 1952, before Jackson
Ag. C.J.

Nana Osei Twum II

v.

Nana Asante Yiadom III

From folio 457.

AKUFO ADDO resumes:

24th June 1952.

Dealing with inconsistent claim of Nkwatia.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

Refer to Exhibit "12". When Defendant's predecessor in title sought to be joined he caused an Affidavit to be filed (p.27 of Exhibit "e") - p.27 paras. 2 and 3. (R. Fa - R. Affram). Submit these inconsistencies show that the claim of Nkwatia is not a genuine one. Inconceivable that a true owner cannot be consistent as to his boundaries.

No. 53.

Address by
Akufo Addo for
the Plaintiff.
24th June 1952
- continued.

Refer also to Counterclaim and description of land then given and to the description of the land in that Counterclaim filed in the Native Court - referred to in the proceedings there on 28.7.50. That description tallies neither with para. 7 of the Statement of Defence nor the amended claim as shown in plan No. "2" - whereas the claim of Bukuruwa has been consistent throughout.

10

If this had been Kumawu land - between where Kumawu and Agogo lands are now are situate the Stool lands of the various Kwahu Chiefs.

If Nkwatiahene's claim is justified then Kumawu at one time must have exercised rights of ownership over the land - there is no such evidence. In very early days Bukuruwahene established himself at Asabi with a sub-chief at Nkami. These are not mere hunting villages - but permanent residences of the Bukuruwas - can Court credit the evidence of tolls being demanded for sale of grey baft in market at Asabi.

20

In the 1925 case my submission is that the issue related solely to the land attached to his own Stool i.e. the Paramount Stool - that the tradition given by the Omanhene of Kwahu was rejected and that of the Kumawuhene preferred - does not affect the tradition of Bukuruwa land further east. If Bukuruwas are bound by that decision - then Nkwatias are equally bound and are deemed to have held out that account of history as being their tradition.

30

When Stools were reclaimed from Kumasi no objection made when Stools were returned to Bukuruwa - either from Akwamu or descendants of Nkansa.

40

The Stool was everything to the people not so much as its occupant.

EVIDENCE OF OCCUPATION:

We have always admitted presence of hunting camps built by Nkwatia people. Until 1900 not more than 2 or 3.

The maps in evidence - surveys made in 1926 - very few hunting camps then in existence. Oath sworn in 1927 and then no farming except for hunters' own consumption. Whole trouble arose from question of hunting - the failure to give to the Bukuruwahene portions of wild animals killed.

10

Quite natural that Nkwatiahene then should start sending people on the land so as to establish a claim. Nkwatias then crossed the boundary between the land of Petiku on the north and Tafo on the south.

No permanency in regard to hunting camps. Refer to pp. 173-175 - letters in Exhibit "E". West African Court of Appeal said with reference to those letters (refer to Exhibit "10" (judgment of Court)) at p.5. "Before proceeding further refer to Exhibits "M", "N" and "O"....."

20

Order 38 R.1 provides only for withdrawal or discontinuance of Counterclaim.

Order 3 R.5 (second para.) - a withdrawal implies no more than an admission of the Plaintiff's claim.

Submit that taken all in all - Bukuruwahene's conduct throughout - that his claim is a right one and that defendant's counterclaim should be dismissed.

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Judgment reserved to 8.8.1952.

(Sgd.) J. Jackson,
J.

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

No.53.

Address by Akufo Addo for the Plaintiff.

24th June 1952
- continued.

In the Supreme
Court of the
Gold Coast
Eastern Judicial
Division (Land
Division),
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No. 54.

JUDGMENT OF TRIAL, ACTING CHIEF JUSTICE, J. JACKSON

8th August, 1952.

JUDGMENT

IN THE SUPREME COURT OF THE GOLD COAST,
EASTERN JUDICIAL DIVISION (LAND DIVISION)
held at Victoriaborg, Accra, on Friday
the 8th day of August, 1952, before Jack-
son, Acting Chief Justice.

Transferred Suit No. 45/1950. 10

No. 54.
Judgment of
Trial Judge,
Acting Chief
Justice J.
Jackson.
8th August 1952.

Nana Osei Twum II, Ohene
of Bukuruwa

Plaintiff

v.

Nana Asante Yiadom III,
Ohene of Nkwatia

Defendant

and

Transferred Suit
No. 14/1951.

Kwabena Oduro

Plaintiff

v.

Kwapong Mosi, Ohene Kwadjo
(Consolidated)

Defendants

20

JUDGMENT

These two actions No. 45/1950 Nana Osei Twum II, Ohene of Bukuruwa v. Nana Asante Yiadom III, Ohene of Nkwatia and No. 14/1951 Kwabena Oduro v. Kwapong Mosi and Ohene Kwadjo were consolidated for trial by an order made by this Court on the 12th July, 1951.

The land which was in dispute in the earlier action between Osei Twum II and Asante Yiadom is shown in the map filed in Court by the Plaintiff on the 22nd February, 1951.

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The perimeter of land claimed to be the property of the Bukuruwa Stool is shown edged in red and contains an area of approximately 1100 square miles. Within that area is indicated another area delineated and coloured in yellow ocre. This is the land which the Ohene of Bukuruwa avers is a part of his

land, but which is now claimed by Asante Yiadom III to be the property of the Nkwatia Stool.

The Nkwatia Stool in a counter-claim set up in paragraph 7 of their statement of defence prayed for a declaration of title to this area outlined in yellow ocre.

In a plan filed in this Court on the 8th January, 1952, by Asante Yiadom (exhibited and marked as No. "2"), the perimeter on that plan (No. "2") shown as hatched in pink, whilst the area shown by Osei Twum II on the map (Exhibit No. "1") as coloured in yellow ocre is reproduced on the plan No. "2" and is delineated by a line hatched in blue. It was agreed by Counsel for the parties that the trial of the issue raised in the counter-claim should be in respect of this area shown in Exhibit "2" i.e. the one delineated with a pink hatched line.

The writ issued out of the Native Court of Okwahu Abetifi on the 14th June, 1950, and as amended on the 23rd June, 1952, is in respect of (a) £100 damages for trespass (b) recovery of possession and (c) a declaration of ownership of the land shown as being edged in red upon Exhibit No. "1".

The writ in Suit No. 14/1951 was issued out of the Okwahu Abetifi Native Court on the 10th April, 1951, and claimed a declaration of title to land situate at Kyemfere, £100 damages for trespass and an injunction. On the 12th July, 1951, this Court directed that the Plaintiff delineate on the plan, then being prepared in respect of Suit No. 45/1950, the area in respect of which he sought the declaration, and also the area in respect of which damages were caused by the alleged trespass.

These directions have not been carried out.

I will now address my mind to the Suit Osei Twum II v. Asante Yiadom III.

In paragraph 5 of his pleadings the Plaintiff sets up two grounds of estoppel by way of "res judicata": (a) that the Defendant is bound by a decision given by this Court on the 2nd May, 1947, and (b) by an Arbitration held in 1942 in accordance with native custom.

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8th August 1952
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In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

No. 54.

Judgment of Trial Judge, Acting Chief Justice J. Jackson.

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The former judgment referred to is the one delivered by M'Carthy, J. on the 2nd May, 1947, and which is set out at pages 109-116 in the proceedings admitted in evidence and marked as Exhibit "E".

The land described in the writ issued on the 13th March, 1940, shows that the land then in issue was precisely the same as the land in issue before me now, having an area of approximately 1100 square miles, but which is delineated by M'Carthy, J. as being an area of some 20 square miles. In any event Counsel agree, and I am satisfied, that the subject matter of the earlier case and of this case is identical.

10

It is conceded that the Defendant Dwamena Ayrepeh II was the predecessor in title of the present Defendant Asante Yiadom III.

On the 1st February, 1944, Mr. Bannerman, Solicitor for Dwamena Ayrepeh II filed a motion for his joinder as a Defendant in that suit. In an affidavit made on the 1st February, 1944, the linguist and Adkyehene of the Nkwatia Stool, with the consent of the Ohene, averred that the lands claimed by the Ohene of Bukuruwa included a part of the Stool lands of Nkwatia and which had belonged to their Stool since time immemorial.

20

On the 11th February, 1944, Mr. Bannerman moved this Court in terms of that motion and affidavit. The Court then ordered that Dwamena Ayrepeh II be joined as a co-defendant and that he be served with a copy of the writ of summons and all papers filed in the proceedings. He was further ordered to file a statement of his defence within 21 days.

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From that decision the Bukuruwa Stool appealed and on the 22nd November, 1944, that appeal was dismissed by the West African Court of Appeal (page 269 - Exhibit "E").

No statement of defence was filed as ordered and there is nothing upon the record to show that subsequent to the 11th February, 1944, either Dwamena Ayerepeh or his Counsel Mr. Bannerman ever appeared before the Court or took any further part in the proceedings. On the 25th August, 1945, Nana Akuamoa Akyeampong, the Omanhene of Kwahu was

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joined as a co-plaintiff. On the 6th August, 1946 Mr. Sawyerr appearing then on behalf of both the Bukuruwa Stool and the Omanhene of Kwahu informed M'Carthy, J. that he understood that Chief Dwamena Ayerepoh II, who was absent, did not intend to defend (see p. 289 - Exhibit "E").

In the Supreme Court of the Gold Coast Eastern Judicial Division (Land Division), Accra.

10 From that date and until the last word of the judgment given on the 2nd May, 1947, not another mention is made of this defendant, and then, judgment is entered for the Plaintiffs.

There appears to have been no formal discharge of the Defendant from the action, no leave granted to Mr. Bannerman to retire from the case, there appears just to have been a "fade out".

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In the judgment given by the West African Court of Appeal on the 1st March, 1948, their Lordships described the position in the following words "his sub-chief of Nkwatia who had withdrawn from the suit as a co-defendant".

20 Counsel for Nkwatia submitted that this withdrawal was made as the result of an agreement made by Nkwatia with the co-plaintiffs, the Bukuruwa Stool and the Omanhene of Kwahu with the object of not embarrassing the conduct of the case of the Bukuruwa Stool against a common enemy, namely the Wusutas (Ewes), and that by their conduct they cannot now set up this plea of estoppel.

30 I ruled that I would give my decision upon these pleas in respect both of this judgment and the arbitration after I had heard the evidence.

I will now address my mind to that evidence. There seems in any event to be one matter on which the parties are in agreement and that is that a powerful warrior named Attara Finam was in occupation of this land at one time.

The case for the Bukuruwa Stool is that this land was occupied by the subjects of the Stool after Attara Finam had been driven out of the land and driven across and east of the River Volta.

40 The case for the Nkwatia Stool is a denial of these facts, and an averment that the occupation of this land was effected as the result of the war

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with Ataara Finam and in which war Nkwatias were allied with the Omanhene of Kumasi and Agogohene, both of them Ohenes in Ashanti.

To appreciate the history as it is narrated it is essential to keep the map of the Gold Coast before one and keep in mind that the land in dispute is no less than 35 miles distant from its western extremity to the towns of Bukuruwa and Nkwatia.

The evidence is quite clear that the people of Bukuruwa were originally a part of the old and powerful Denkyera State, a nation which was ultimately destroyed by its subject-nation the Ashantis some time between the years 1698-1700. The historians Cardinal and Ward to whose histories I was referred differ little in this respect. Osei Tutu was then the leader of the Ashantis and is regarded as the first Asantihene of an independent and victorious Asanti.

10

There is a conflict of evidence within the Bukuruwa Stool as to the time of the first occupation by Bukuruwa of the site upon which this present town stands. The evidence of Yao Nkwatia given on the 3rd June says that the first Ohene named Osei Twum came with his sub-chiefs and people at a time when Osei Tutu was the Asantehene and that they came to this place when looking for new lands to settle on after they had been defeated in the Denkyera/Asante War. On the other hand Otukwa, who gave evidence on the 11th June, said he settled where Bukuruwa is now before the Denkyera/Asante War, but when cross-examined said he had no knowledge that the Ataara Finam war had been fought before the Denkyera/Asante War.

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In this respect I am of the opinion that the traditional evidence given by the Nkwatias supports the history that the war against Ataara Finam was sometime just before the Denkyera/Asante War. This finding is in accord with a judgment given by the Chief Commissioner, Asanti's Court when in action brought in 1927 by the then Omanhene of Kwahu against the Kumawuhene and Agogohene he delivered judgment on the 14th February, 1928 (I refer to pages of those proceedings admitted in evidence and marked as Exhibit "D"). It is quite clear that at the time of that war the State now

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known as Kwahu was not established in the region where it now exercises its jurisdiction, and that the present State, if the historians are to be relied upon, started its new and present era, when it broke away from the Asanti Government as described at page 186 of Volume I of Claridge's History of the Gold Coast and Ashanti. It is quite clear that at the time when Ataara Finam occupied this land and the land north of the Obosum River and as far north as Atebubu and Kete-Krachi (north Asanti), the Kwahu State where we know it to be today, had no existence then.

10

So far as that war against Ataara Finam was waged north of Obosum River and around the upper reaches of the Afram River it was one fought primarily by the Kumawus.

But what was happening lower down the Afram River and towards its confluence with the Volta and between that section of the Afram and the Obosum River to its north? That is the land now in dispute. If the Bukuruwas were in occupation then of the town in which they now dwell, their tradition that they attacked Ataara Finam and drove his people from that area i.e. an attack upon the left flank of Ataara Finam community, that tradition bears the stamp of credibility and knowing their warlike Denkyera stock, of possibility or even probability.

20

Coupled with the occupation of Bukuruwa of the large area of land between (a) the Obosum River and the northern boundary claimed by Nkwatia and (b) that area between the Afram River and the southern boundary claimed by Nkwatia, then that traditional history bears the hall mark of truth, unless that occupation can be explained satisfactorily otherwise.

30

That is what I understand is the explanation given by Nkwatia. On the 16th June Asante Yiadom III the Ohene of Nkwatia gave evidence. After briefly describing the defeat of Ataara Finam by the combined forces of Kumawu, Agogo, Nsuta, Akwamu, Bassa and Nkwatia the evidence was that having driven the enemy across the Volta the victorious army wholly withdrew from the territory occupied by Ataara Finam and went back to their own homes and this it was said was three years before

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the Denkyera War. That war quite clearly occupied the attention of the whole Asanti nation until 1700.

It is said that there was some dispute regarding the succession to the Stool at Ofinsu and that by way of compensation the Nkwatiahene's predecessor in title, in consideration of his agreement to abandon his claims, agreed to accept a portion of the unoccupied land from which Ataara Finam had been driven. Then it is said a settlement was made at Twiden (about 2 miles south-west of Agogo in Asante) where they met one Mampong Adjei (now the Ohene at Abene, the capital of the modern Kwahu State) and then met Bukuruwa people, whom he testified in common with the evidence of Yao Nkansa (Bukuruwa) had been driven there after the Denkyera's defeat by the Asantes. The testimony goes on to say that the Bukuruwa people then on pain of death, surrendered to the Nkwatias; that their Headman swore an oath of allegiance, was appointed to be an Odikro (Headman) and was not raised to the rank of Ohene until the Omanhene of Kwahu elevated him to that rank in 1933. He said that the Bukuruwas were Kwahus before they got there. This would seem to indicate that the period of time to which his traditional history related must have been sometime after 1870 and after Kwahu's disaffection and withdrawal from its Ashanti allegiance.

It was then, if this evidence is accepted, that Nkwatia first became a settlement, and 35 miles south-west by west from the nearest point of the land now in dispute and south of the Affram River. That does not appear to bear out a tradition that he was given permission to occupy a part of the land from which Ataara Finam was driven, since there is no cogent evidence that Ataara Finam activities ever extended south of that river.

But the evidence is quite clear that from Nkwatia individual hunters did establish hunting camps at places within the area now in dispute such as Chemfe and Papasi.

But this affords no explanation as to how Bukuruwa came to occupy the large areas of the land to the north and south and to establish on the banks of the River Volta the villages called Asebi and Nkami.

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10 This witness refers to the Glover War and which was reputed to be sometime about 1874 and testified that the village of Asebi was then inhabited by people of the Akwamu Tribe and who also took part in that war, but in almost the same breath admitted that the Stool of Bukuruwa then reposed in the village of Asebi and that owing to interference and treachery the occupant of Bukuruwa Stool then, one Nkansa, was murdered and the Stool taken to Kumasi.

He added that from that period Bukuruwa almost ceased to exist until the Stools were ultimately recovered by Bukuruwa after the Yaa Asantewa War (1900-1901) and the capture of Kumasi by the British Forces.

20 Nkansi again it is stated was originally an Akwamu settlement and became associated with Bukuruwa after the Crabbe Commission in 1901 when the Omanhene of Kwahu ordered the Nkamsis to serve him through the Bukuruwa Stool.

This I must stress is the Nkwatia case and not that of Bukuruwa who affirmed that the settlements both at Asabi and Nkansi were made immediately after the Ataara Finam War.

30 None of this evidence explains what undoubtedly appears to have been the pre-eminence of the Bukuruwas in this area, certainly in 1874 when there was established in Asebi the Bukuruwa Stool and which in some evidence, not necessarily conclusive, of long and uninterrupted occupation.

In my judgment the history tends to corroborate that given to me on the 11th June by Otukwa, the Asabihene and Mankrado of Bukuruwa, and negatives the tradition given by Nkwatia to the effect that they occupied this land by the permission of the Kumawuhene and that it was a part of the land occupied by the Kumawus and their allies in the Ataara Finam War.

40 But there can be still another aspect in explanation of the occupation of the land and that one is evidenced in the judgment of M'Carthy, J. given on the 2nd May, 1947, in the case of Yaw Nkansa II & Another v. Wudanu Kwasi & Others, in which the Plaintiffs were the Dasehene of Bukuruwa

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and the Omanhene of Kwahu and the Defendants were people of Wusuta (Ewes) and another Defendant the Nkwatiahene who was joined and then took no further part in the proceedings.

The traditional history given then in explanation of the origin of the occupation of the land by Bukuruwa was precisely the same as was given to me at this trial and the case then was against the Wusutas who belong to the large Ewe tribe who occupy the land east of the Volta River. The Bukuruwa's case was that the Ewes occupied the land with their permission. The Wusuta's case was that the land occupied by them was a part of their own Stool property and that they occupied it as the first owners.

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The learned Judge then leaned to the view that if the Ewes had been in occupation of this land at all as owners they were certainly driven out of it when the Asantis together with the Kwahus overran this country and the country across to Volta both to the east and the south and that any Ewe who subsequently settled on this land did so with the consent of the Bukuruwa Stool. As to the time in history the town of Asabi was founded the learned Judge is silent.

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What does emerge from this welter of apparent contradictions, and which one even meets in countries who possess their written histories, is that Asabi had its origin at Bukuruwa, that the Stool became established in the new settlement and that in that locality it occupied a place of some considerable importance rather tending to lose an identity with Bukuruwa and to assume the one of Asabi, and that it maintained it until the time when the Stool holder Nkansa was betrayed and murdered and the Stool taken to Kumasi. Even after that they were regarded rather more as Asabis than as Bukuruwas, a fact which emerges very clearly by a study of the evidence given before Mr. Commissioner Crabbe in 1903 (pp. of Exhibit "E").

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It is impossible to be dogmatic in such matters. But in my judgment the trend of history does support the claim by Bukuruwa that for very many generations they have been recognised as the land owning community in this area and that Nkwatia can justify no such claim by tradition. Whether they

can justify such a claim by reason of original and long possession I will now consider.

10 There is no evidence which I can accept that any settlements were established by the Nkwatias upon the land in dispute other than isolated huts which hunters used for resting, and that these conditions were the ones prevailing until about 1927 when an oath was sworn by the Bukuruwahene upon the Nkwatiahene and which was reported to be due to the Nkwatia hunters presenting portion of wild animals killed to the Nkwatiahene instead of the Bukuruwahene, an act which was tantamount to setting up a claim to ownership of the land.

20 The earliest documentary record of the dispute which then started, and is still in issue today, is a copy of proceedings held in the Native Tribunal of the Omanhene of Kwahu on the 5th April, 1927. It is of some interest to note that at this date the parties were referred to as the Ohene of Nkwatia and the Odikro of Bukuruwa. The latter averred that the Dem (or Demi) stream was the only boundary between the property of the Stools of Bukuruwa and Nkwatia and said that the people of Nkwatia had crossed this river and trespassed into the Stool lands of Bukuruwa situate to the east. The Dem stream runs from north to south just west of the western boundary delineated upon the plans exhibited in Court.

30 The Ohene of Nkwatia claimed all the land between the Dem, Volta, Afram and Obosum Rivers. In fact all of the land now claimed by Bukuruwa, but to the entirety of which now they do not pretend to establish ownership.

40 Then from the Omanhene of Kwahu followed a suggestion that this land should be apportioned equally between Bukuruwa and Nkwatia and on the 7th April, 1927, the Tribunal met again and endeavoured to find a basis for the settlement of the boundary. The Omanhene of Kwahu then suggested that this land should be divided into two equal parts, the eastern portion abutting upon the River Volta to go to Bukuruwa and the western portion as far as the Dem stream on the west to go to Nkwatia and that if any Nkwatia villages should fall into that part apportioned to Bukuruwa they should remain the tenants of Bukuruwa and vice versa. The Nkwatiahene

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objected to this division. The Bukuruwahene then suggested a lateral apportionment so that both would have access to the Volta River. An order was then made that a boundary be cut, but there is nothing upon the record, or heard by me to indicate which of these two boundaries were to be cut. In any event nothing was done and there is no further documentary evidence until 1929 and that is the original record of proceedings in the State Council of Kwahu held at Abene on the 2nd August, 1929 (Exhibit No. "11").

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There the representatives of Bukuruwa and Nkwatia expressed their desire to settle the matter out of Court and they were permitted to do so. There was again a failure to agree.

On the 16th September, 1931, this dispute was again referred to in an appeal from a judgment of the Native Tribunal of the Omanhene of Kwahu which came before the Acting Deputy Commissioner Mr. Cardinal (now Sir Allen Cardinal). This related to lands known as Atonsu, Kpala and Nyinampon.

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Nyinampon and Kpala are the two villages shown on the plan exhibited in this case and which are situated about 7 miles somewhat south of due west from Nkami. Atonsu, I cannot trace upon the maps before me, but it appears to be even further west of the Volta than are Kpala and Nyinampon. The issue then, in this area, was the same as it is today, namely that it is land managed and controlled by Nkami serving Kwahu through Bukuruwa whilst the then defendants-appellants Ayan-fosu and Anto-Nyima averred that they occupied this land and served Kwahu through Nkwatia.

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The Odikro of Nkami and Kwabena Boadu who had then sought a declaration of title set out in their claim that these lands known as Atonsu, Kpala and Nyinampon were "bounded on the north and west by the Plaintiff's Stool lands, on the south by Nkwatia Stool lands and on the east by the Volta. There was no further definition as to where this boundary with Nkwatia was situate and there was no plan, but the Odikro of Nkami, who claimed title under the Bukuruwa Stool did recognise, rightly or wrongly, that the Bukuruwa Stool land had a boundary with the Nkwatia Stool land somewhere to the south. Judgment was entered by the Tribunal for

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the Plaintiffs. At page 2 of the copy of proceedings the learned Commissioner says:

" it is to be observed that the land in question stretches from the Fa River to the Obosum River and from the Volta River to at least the stream Atonsu which the Plaintiffs-respondents place at three days journey from Aboma Salifu. The area is therefore of very great extent and probably approximates 45 miles at the widest from east to west and about 30 miles from north to south".

The stream Atonsu which is referred to would appear to be that stream situate about 5 miles to the west of the Dede stream and just off the maps exhibited in Court.

This does afford some kind of evidence that in 1931 Nkami did recognise that Nkwatia owned land to the south and by inference it would appear to suggest that the River Fa was the southern boundary, but not necessarily a title of full ownership. The appeal was allowed. Its only effect was that the rights of occupation of the Defendants-Appellants were affirmed but the vexed question as to whether they should serve Kwahu through Nkwatia or through Bukuruwa was left undetermined.

Now during these years the occupation of the land claimed by Nkwatia to be their Stool property, and who were formerly solely hunters, had learned the value of cocoa farming, and land which was formerly only hunted over by them is being occupied for cocoa farming by subjects of Nkwatia and furthermore grants of this land are being made to strangers for the same purpose in the name of the Nkwatiahene.

No action appears to have been taken in any Tribunal to challenge these grants purporting to be ones made by customary law out of the Stool lands of Nkwatia and nothing more is heard until sometime about 1942 when the present Omanhene of Kwahu, Akuamoa Akyeampong, who gave evidence on the 13th June, made an attempt to settle this boundary problem. This is the matter pleaded in paragraph 5(b) of the statement of claim averring that the proceedings held in 1942 constituted an arbitration

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held in accordance with native custom and that the Defendant is estopped by the award then made.

The evidence of the Omanhene of Kwahu makes it abundantly clear what was the nature of these proceedings. He said:-

" I put it before the Oman that I did not want litigation about lands and I wanted the Chiefs to assist me in settling the dispute and that each should show the villages.

" The Krontihene (then representing the Nkwatiahene) agreed that so far as I settled the matter to their satisfaction that would be all right. The Bukuruwahene agreed. I told them I did not want either of them to narrate the traditional history about the land but only to name the villages.

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" There was a map on which the villages were shown. I looked at that map and deputed people to cut a boundary between them. The Divisional Chiefs (Ahenfo) deputed people.

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" Q. What boundary were they to cut?

" A. Between the Bukuruwahene and Nkwatiahene.

" Q. Did you and the Chiefs decide where that boundary was to be?

" A. I said the boundary to be cut was to be such that everyone's village was to be within his own boundary.

" Q. Those people who were to cut the boundary had nothing to guide them?

" A. No. I told them to look at the villages and everyone was to have their own villages."

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Yao Ntim, the Benkumhene of Kwahu, who gave evidence on the 6th June was one of the principal Chiefs who was present when this effort at settlement was made. His evidence was as follows :-

"Q. Who asked the Bukuruwa and Nkwatiahenes to come before you?

"A. There was a dispute. The two Mankrados of Bukuruwa and Nkwatia came to the State Council and asked the State Council to settle the matter for them. When they came it was agreed that each should count all the villages in which they each farmed. Both towns named all their villages. The Omanhin then produced a map and asked the Clerk of the State Council to demarcate the boundary. When the Clerk was demarcating it on the map I said that I did not understand English and asked them to speak in the vernacular. The Omanhin refused and deputed people to go and demarcate the boundary as it had been demarcated on the map by the Clerk.

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"Q. Was this the decision of the Omanhin alone or of the whole State Council?

"A. Where the line was drawn was the decision of the whole Council and the parties agreed to it.

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"Q. Did this line drawn leave the village of Papasi on the Bukuruwa side or on the Nkwatia side?

"A. When I deputed a linguist I did not go myself and so I could not say where the line went.

"Q. What was your decision - did you decide that the villages named by each party were to be given to the party naming them?

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"A. The Chiefs had wanted to accompany the people who were going to cut the boundary, but on second thought we thought there might be trouble so we decided to let people deputed go and cut the boundary and then come and report. They were told to demarcate according to the line drawn on the plan. The Bukuruwa people had mentioned their villages and Nkwatia theirs but the Omanhene had a map".

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The evidence of Mr. G.P. Johnson the Secretary of the Kwahu State Council was to the effect that the representative of the Nkwatiahene did not wish the matter to proceed until a new Ohene had been

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enstooled at Nkwatia but that the Omanhene insisted that the matter should be settled. He could not say where this boundary was to be cut and testified that no record was made in writing of these proceedings.

The evidence satisfies me that the delegates then demarcated a boundary and which is the one shown as the western boundary on the plans exhibited and marked as Nos. "1" and "2".

This is the evidence upon which I am asked to say that there has been an award made by the Omanhene of Kwahu in 1942 and which is binding upon the defendant Stool.

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I am satisfied that the villages named by Nkwatia were those situate within the area of land to which they now seek a declaration of title. I am satisfied that it was the intention of the Omanhene that the boundary should be cut in such a way as would reserve both to Bukuruwa and Nkwatia Stools these villages which had been founded and subsequently occupied by them and in my opinion, it was an eminently sensible solution to effect a partition of land which for the greater part, had been effectively occupied by no one, but which each party wished to reserve to himself for future exploitation and profit, and I am saying this is no derogatory sense.

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What in effect was done, was that a boundary was cut which, in no manner, carried into effect the will of the Omanhene. For this reason alone the plea of estoppel must fail.

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I am also of the opinion that if it had ever been the intention of either of the parties that the decision of the Omanhene should be final and binding there would have been kept a written record of those proceedings. I am of the opinion that those proceedings cannot qualify to obtain the character of an arbitration by native custom, and solely reflected the unsuccessful but well meaning attempts of the Omanhene to obtain a peaceful settlement among his subjects and to prevent the expense of litigation.

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Reverting now to the evidence relating to evidence of occupation of the land. I have already

referred to the fact that men of Nkwatia hunted and erected hunting camps within this land. I will now review the evidence in respect of occupation of this land by strangers and confine myself to that evidence when it has been testified to by the stranger and not by an interested party who has narrated his transaction with a stranger but has failed to call the stranger to give his account of this contract.

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10 The only witness who professed to come within this category who was called by the Bukuruwa Stool was Yao Kra who gave evidence on the 13th June and who first occupied land within the area called Adukrom about 19 years ago and when the dispute had already started. This area is in the extreme north western area of the land claimed by Nkwatia and within which area is the village named Bethel. He testified that at the time he first arrived there were many people farming there and that he recently learned that they were people of Nkwatia. This evidence is of little value either way as the events to which he testifies are "post litem motam" Subsequently in reply to a question put by me the witness admitted that whilst his mother was an Asante woman his father was the present Bukuruwa-hene.

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I will now analyse that evidence as advanced for the Nkwatia Stool in this respect.

30 On the 19th June Kobina Obubasa gave evidence. He lives and was born at Brupai a village situate on the banks of the Volta, south of Faso and of the River Foa. He is a man of 53 years of age and by reputation his grandfather came there from Akrosso i.e. north of the Obosum River and obtained permission to live there from Ohene Beng a linguist from Nkwatia. He testified that the people of Faso and Brupai were related on his mother's side. She was an Ewe and Faso was reputed to have been founded by an Ewe before this witness was born.

40 He testifies that formerly there was a Native Tribunal which sat at Faso of which his father was a member and sat with the Fasohene under the Nkwatiahene. People living at Brupai, and fishing there, pay tolls to him and of which he gives a part to the Nkwatiahene and similarly he pays to the Nkwatiahene monies realised from the sale of

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meat from hunters killing animals on the land in the vicinity. This witness' testimony remained unshaken by cross-examination and in my opinion he was a truthful witness. There was certainly no evidence that the inhabitants either of Faso or Brupai had ever paid tolls to the Bukuruwahene.

On that same day I heard the evidence of another Ewe man named H. Kwami Antonyima whose grandfather was reputed to have founded the village of Kpala (situate on the north-eastern corner of the land in issue). It was his father who established his right of occupancy in this area. I refer to the appeal record Exhibit "A" Odikro Kofi Beko of Nkami and Kwabena Boadu v. Gyan Fosu and Anti Nyima. This was in 1931. That action as I have mentioned before left it undecided as to whether the Bukuruwahene or the Nkwatiahene had the management and control of this part of the land. Again he and his predecessors were strangers. By reputation i.e. what his father told him, the permission to occupy the land was given by Nkwatia. There was no evidence of payment of tolls either to Bukuruwa or to Nkwatia - the only evidence was that Ewes farming on the land had formerly paid tolls to his father who died in 1949. Again I formed the opinion that this witness was a truthful person.

That same day, 19th June, Atumakpo Djadjaglo, also an Ewe, gave evidence. For the past 15 years he has farmed on land near Bethel (in the north-western corner of the land in issue) and he obtained permission to farm there from Kwami Antonyame, the father of the last witness who lives at Kpala. It was sold for £350 and the rights of Antonyame to make this grant to him was challenged immediately by the Bukuruwahene.

These acts were "post litem motam" and afford little evidence upon which much reliance can be placed.

The evidence of Kwaku Frempong, a man who came from Asokori (Koforidua), was that his uncle had obtained permission to farm at New Chemfe and that he went there first in about the year 1936 and that since then people of Nkwatia have farmed the land in increasingly large numbers each year.

The evidence of Gyan Fosu heard on the 20th June was that he was an Ewe farming on land at Nyinampong (south of Kpala) and that by repute gleaned

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from his grandfather who was reputed to be the first settler in that area, when the Anglo-German boundary was fixed at the Volta River the Nkwatia-hene had told him that he was to serve him.

10 This witness was one of the Defendants-appellants in the appeal heard before the Deputy Commissioner, Eastern Province in 1931 and in which the Plaintiffs-respondents claiming to serve Kwahu through Bukuruwa were non-suited after the Native Tribunal had granted to them a declaration of title in respect of this land and which in their claim they had recited that the land was bounded on the south by Nkwatia Stool lands.

There seems to be little doubt that certainly more than 20 years ago the Nkamis recognized that Nkwatia owned land to the south of them and that is what Nkwatia now aver in their counterclaim.

20 Apart from traditional evidence the other witnesses dealt with the fact that hunters from Nkwatia had hunted over this land for very many years, had founded hunting camps and had sent a part of the meat of wild animals killed on the land to the Nkwatiahene.

There was no evidence of any occupation on this central strip marked in yellow ocre upon plan No. "1" by any person who had received permission from Bukuruwa.

30 Now whilst the history up to 1700 or so does suggest that the Bukuruwa people were the first people to effectively occupy the land around the settlements at Asabi and Nkami and that Asabi certainly was regarded as a settlement of permanence with a tribal organisation founded upon a Stool, that dominion obtained by them does appear to have been lost.

One reason given in evidence was that Nkansa the occupant of the Stool was murdered and his Stool taken to Kumasi.

40 If that fact is accepted it would afford a very cogent reason for the decline of the power of Asabi and of Bukuruwa in its train.

That Nkwatia subsequently did acquire some

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dominion in the land is self evident, only I cannot accept the evidence that this was occasioned in the way evidenced - namely that the land was granted to Nkwatia by the Kumawuhene.

In my judgment the reasons are those set out in the judgment of M'Carthy, J. namely that the land was overrun by the Kwahus fighting on the side of the Ashantis when they were victorious and overran the Krepis (Ewe) counting about 1866-69 (p. 312³¹⁰ Exhibit "E"). In my judgment it was at this period of history that Kwahu qua Kwahu first obtained complete dominion over this area of land and that with the wrecking of the Bukuruwa element, that of Nkwatia emerged, if not in the ascendant, certainly as an element with whom strangers dealt as if they were the owners of this land. In the turbulent and chaotic days of the last century territories passed rapidly from hand to hand and there was little or no permanence of settlement other than in the capital town of the tribe.

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The Stool of Asebi was restored however sometime after 1900 and from thence onwards there appears to have been this struggle for pre-eminence. In the minutes of the State Council of Kwahu dated the 2nd August, 1929, the parties subscribe to these matters as follows Kofi Sefa, Ohene of Nkwatia, whilst Kwabena Badu subscribe as Odikro of Bukuruwa. The Odikro I am told was elevated to the rank of Ohene sometime about 1931.

In my judgment the Nkwatias have established certain rights within a large part of the area claimed by them which possess all the features of ownership by customary law subject to the overriding rights of allegiance to the Kwahu State and that to deny to them these rights would be an attempt to set back the clock to some period prior to 1866, with results which would amount to a denial of justice to many occupants of the land, who have occupied it in good faith or without being challenged as to their possession and which occupation, apart from hunting, could be termed original settlement in virgin forest land.

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Again is seen the economic driving force at plan namely the exploitation of virgin bush for the production of cocoa and other economic crops and in its train the litigation founded upon

traditional claims which in history contained little permanence and has only obtained any form of permanence by the judgments of the Courts in land cases, and obtained by the test approved by custom and by these Courts namely the first effective and permanent occupation of the particular area of land.

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10 Before defining these rights I address my mind to the plea of estoppel raised in paragraph 5(a) of the Statement of Claim namely that as an action commenced on the 13th March, 1940 between the people of Bukuruwa, as plaintiff, and people of Wusuta (Ewes) as defendants the Nkwatiahene, at his request, and opposed by Bukuruwa as far as the West African Court of Appeal, was joined as a Defendant on the 11th February, 1944.

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20 The affidavits attached to the motion made then by the Nkwatiahene and the reply made by the Ohene of Bukuruwa in an affidavit sworn by him on the 10th February, 1944, leave no room for doubt as to the issue and that was that as the result of an arbitration made by the Kwahu State Council there had been an award and that as the result of that award, none of the land then in issue, and which is in issue now, is a part of the Nkwatia Stool lands.

30 At the trial Nkwatia sought to show that they were not bound by the judgment given in 1947 declaring Bukuruwa to be the owners of this land as they had made an agreement out of the Court that this internal dispute between Bukuruwa and Nkwatia would be deferred until after the case against the Ewes had been concluded, and that for this reason Nkwatia took no further part in the action, and that upon the joinder of the Omanhene of Kwahu as a co-plaintiff the Nkwatiahene just dropped out of the action.

40 On the 17th April, 1947 (p. ³⁰⁶~~308~~ - Exhibit "E") G.V. Johnson, the Clerk to the Omanhene of Kwahu gave evidence and testified that the internal dispute between Nkwatia and Bukuruwa had been nearly settled by the Omanhene.

It is quite clear that from 1929 up to the 14th June, 1950, when the writ in this action was issued there had been no settlement of this dispute.

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The evidence in relation to this alleged agreement by Nkwatiahene not to take part in the proceedings in which he was joined as a defendant is afforded by :-

(a) The evidence of Yao Nkansa given on the 3rd June who testified that the Nkwatiahene came to Court at the beginning of the case but that later on he stopped coming and gave no evidence.

He admitted under cross-examination that at the earlier trial it had been a part of their case that the Chief of Faso (on the Volta) was under the Ohene of Nkwatia, but in this next case averred that the Chief at Faso was always installed by them (Bukuruwas).

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He denied that there had ever been a meeting of the whole Kwahu State at which it was agreed that Bukuruwa and Nkwatia should sink their differences until the case was concluded.

(b) The Omanhene of Kwahu who gave evidence on the 13th June gave no evidence that can afford any light upon this matter, it was negative and evasive.

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(c) Asante Yiadom's evidence given on the 16th June, 1952. He is the Ohene of Nkwatia and the successor to Dwamena Ayerepeh II the Defendant in the 1947 case, and who has been destooled. In evidence in chief he was not asked a single word in respect of this matter.

It was not until he was cross-examined by Mr. Akufo Addo on the 17th June that this matter was touched upon at all and this is the evidence verbatim:

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"Q. Did your Stool ever take any steps at all to assert its rights - on which occasion were you a plaintiff?

"A. I've never taken action against him Bukuruwa).

"Q. It was quite clear to you, as it was to everyone, that the Ewes were claiming what you say is your land?

"A. Whenever they take anything from the land they give me a part.

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"Q. Do you mean to suggest that you did not know the Ewes were claiming this land as their own?

"A. I did not know that.

"Q. Why did Nkwatiahene come and join as a Defendant, why did he not join as a co-plaintiff with the Bukuruwahene?

"A. The Omanhene said that if I joined the Defendant it would be taken that I was on the side of the Ewes.

10 "Q. Did you come to any agreement with the Bukuruwahene in this respect?

"A. No.

"Q. Was this arrangement before or after the Omanhene had been joined as Plaintiff?

"A. It was before.

"Q. In the Omanhene's statement of claim (p.275 - Exhibit "E") he said that Nkwatia was not entitled to any part of that land?

20 "A. If he had claimed the land we would have sued him.
Yes Dwamena Ayerepeh II is in Accra now".

It is upon this evidence I am asked to say that there was an agreement made between the parties during the 1940-1947 trial that the Nkwatiahene should withdraw from the action so as not to prejudice this case against the Ewes and that for this reason it be inequitable and wrong in law to permit the Bukuruwahene to raise such a plea now.

30 If there had been any such agreement made, i.e. at a meeting of the Kwahu State then, it is indeed remarkable that not one question was put to the Omanhene of Kwahu to testify to that fact when the Bukuruwahene put him in the box. The evidence of the defendant that he had come to no such agreement with the Bukuruwahene in this respect also negatives any question of agreement.

If parties applying to be joined and having been joined take no further part in those proceedings

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they are deemed to have acquiesced in what has been done, unless for good cause shown they obtain the consent of the Court to be discharged from the proceedings.

If there had been such an agreement Counsel for the Nkwatiahene would have been aware of it and would have applied to this Court for leave for his client to withdraw from the action and which leave would hardly have been granted by any Court for the reasons now pleaded; indeed to avoid a multiplicity of actions such leave, I think, would have been refused.

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However that may be, the learned Judge entered judgment for the plaintiff Stool Bukuruwa and that judgment is binding upon all the parties joined in the action and which included Nkwatia.

The claim then was for a declaration of title that the land then in issue was the ancestral property of the Plaintiff's Stool. There was a conflict as to the boundaries of the land set out in the writ and paragraph 1 of the Plaintiff's statement of claim, but Counsel before me now argue that the line delineated in pink upon the plan exhibited and marked as Exhibit No. "1" did define the limits of the land then in issue and which contained some 1100 square miles and not 20 square miles as stated in the 1947 judgment and on the 2nd May, 1947, the declaration so claimed was granted to the Bukuruwa Stool and the Defendant now, in my judgment is estopped from denying that fact, or re-litigating it nor in my judgment can I be permitted to reserve to him any lesser title in this land which the learned Judge in 1947 might have reserved to him by way of title to possession derived from long and uninterrupted occupation.

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But if as the result of an appeal, my decision in respect of the plea of estoppel is found to be wrong, then, in respect of that area whose boundary I have marked in green with the letters A B C D E F G H J K L M on the plan exhibited and marked as No. "2", I am of the opinion, for the reasons already stated, that upon the counterclaim the Nkwatiahene is entitled to a declaration that he, his Stool subjects and any strangers who may occupy that land by permission of the Nkwatiahene are entitled to exclusive rights of occupation within the limits of that area.

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Subject to this reservation, made to avoid the possible expense of a further hearing in this matter, I do grant the Bukuruwa Stool a declaration that they are the owners of all that land which is delineated by a red line upon the plan exhibited in Court and marked as No. "1".

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10 In the absence of any proof as to special damage I do assess the damages for trespass at £25, and do grant to the Bukuruwa Stool an Order for the recovery of that part of this land by which they have been dispossessed.

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20 In regard to Suit 14/1951 - Kwabena Oduro v. Kwapong Mosi and Ohene Kwadjo consolidated for trial, by an order made on the 12th July, 1951, it was ordered on the 12th July, 1951, that the area of land in respect of which the Plaintiff sought a declaration be delineated on the plan ordered to be filed in respect of Suit 45/50. That order was not complied with and no evidence was led by the Plaintiff. No application was made to me by Counsel for either party and I do now non-suit the Plaintiff.

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Annan for Akufo Addo -

Ask that Court assess Counsel's costs and that other costs be taxed.

Bossman -

As plea of estoppel has been successful, Plaintiffs are only entitled as if judgment has been given on that plea alone.

30 Court -

Costs to be taxed. I assess Counsel's costs at 100 guineas.

(Sgd.) J. Jackson,
ACTING CHIEF JUSTICE.

Counsel -

Mr. Nii Odoi Annan for Mr. Akufo Addo for Plaintiff.

Mr. Kofi Adumua-Bossman for Defendant.

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In the
West African
Court of Appeal
Gold Coast
Session at
Victoriaborg
Accra.

No. 55.

NOTICE AND GROUNDS OF APPEAL

FILED 11.8.52.
At 11.15 a.m.
(Intd.) A.R.D.
f. REGISTRAR LAND COURT,
ACCRA.

No.55.

Notice and
Grounds of
Appeal.

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

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9th August 1952.

NOTICE OF APPEAL PURSUANT TO
RULE 12(4) WEST AFRICAN COURT
OF APPEAL RULES 1950.

TAKE NOTICE that the Defendant-Appellant (NANA ASANTE YIADOM III) being dissatisfied with the Decision of the Land Court contained in the judgment of His Lordship Mr. Justice Jackson, J., dated the 8th day of August, 1952, DOTH HEREBY APPEAL to the West African Court of Appeal upon the Grounds set out in paragraph 3 hereof, And will at the hearing of the Appeal seek the Relief set out in paragraph 4.

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2. The Appellant further states that the name and address of the person directly affected by the Appeal is that set out in paragraph 5.

3. The Grounds of Appeal are as follows :-

1. The Learned Trial Judge was manifestly in error in his view or decision that although the evidence satisfies him that the Defendant is the Owner of the Area claimed by the said Defendant as his Stool Land and delineated in Plan No.2, nevertheless the said Defendant was Estopped from claiming ownership to the same or denying the Plaintiff's claim to ownership thereof by reason of the Judgment of the Land Court (confirmed by the West African Court of Appeal) in Suit No.1/1942, Yaw Nkansah representing the Bukuruwa Stool versus Wudanu Kwasi & Others of Wusuta, for the following reasons :-

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- (a) Because the Defendant was not, factually and legally, a party to the trial and Judgment in that Suit, and could not therefore be bound by the Judgment in that Suit.
- (b) Because, although the Defendant's predecessor was joined as Co-Defendant in the early stages of that Suit, it was agreed by the Plaintiff, the original Defendants and the Trial Court in that Suit, that the said Defendant's predecessor had withdrawn before commencement of and was taking no part in the trial, and the judgment in the said Suit expressly excluded, or recognised as excluded the said Defendant's predecessor as a party in or to the said Judgment.
- (c) Because it was unnecessary, as was wrongly held by the Trial Judge that it was necessary, that the Defendant should prove any formal Agreement of withdrawal from the former Suit (Yaw Nkansa, etc., vs: Wudanu Kwasi & Ors.) and even if it were, there was overwhelming evidence on Record including admissions on the part of the Plaintiff establishing such an agreement to withdraw, by reason of which the Defendant's predecessor assisted the Plaintiff's predecessor with evidence against the Wusuta Defendants in the former Suit.
- (d) Because the whole tenure and terms of the Judgment relied on as establishing Estoppel against the Defendant, shows that it affected only the Wusuta Defendants whose names are expressly mentioned in the Judgment and did not in any way refer or operate against Kwahu subject.
- (e) Because the decision is quite contrary to the principles of "Estoppels" whereby only parties to the Judgment or their privies can be bound.

In the West African Court of Appeal Gold Coast Session at Victoriaborg, Accra.

No.55.

Notice and Grounds of Appeal.

9th August 1952
- continued.

In the West African Court of Appeal Gold Coast Session at Victoriaborg, Accra.

4. Relief sought from the West African Court of Appeal is to set aside the Decision that the Defendant is Estopped from claiming the area claimed by him and to enter Judgment in his favour granting him the reliefs sought in his Counter-Claim - and dismissing the Plaintiff's claims against the said Defendant in respect of that area.

No.55.

5. The person directly affected by the Appeal is:-

Notice and Grounds of Appeal.

NANA OSEI TWUM II, Ohene of Bukuruwa.

10

9th August 1952
- continued.

DATED AT AZINYO CHAMBERS, ACCRA, THIS 9th DAY OF AUGUST, 1952.

(Sgd.) K. Adumua-Bossman,
SOLICITOR FOR DEFENDANT-APPELLANT.

CERTIFICATE OF SERVICE

Upon the 15th day of August, 1952, copy of this Notice of Appeal and Grounds of Appeal was served by me on Nana Osei Twum II, the Plaintiff-Respondent herein personally at Bukuruwa.

(Sgd.) ? ?
Bailiff.
15/8/52.

20

No.56.

No. 56.

Application by Nana Asante Yiadom III for an Order substituting Nana Yaw Nkansah II for Nana Osei Twum II.

APPLICATION BY NANA ASANTE YIADOM III
FOR AN ORDER SUBSTITUTING NANA YAW NKANSAH II
FOR NANA OSEI TWUM II

Filed 10.1.55.
at 8.05 a.m.
(Intd.) A.K.T.
for Regr. W.A.C.A.

30

8th January 1955.

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

Appeal No.21/1953.

Nana Osei Twum II, Ohene of Bukuruwa, Kwahu, Plaintiff-Respondent

v.

Nana Asante Yiadom III, Ohene of Nkwatia, Kwahu, Defendant-Appellant.

In the West African Court of Appeal Gold Coast Session at Victoriaborg, Accra.

APPLICATION FOR AN ORDER OF SUBSTITUTION

(Rule 25, W.A.C.A. Rules 1950)

No.56.

10 MOTION ON NOTICE by Kofi Adumua-Bossman, Counsel for Nana Asante Yiadom III, the Defendant-Appellant in the above-named appeal, for an Order to substitute for the purpose of the prosecution of this Appeal the name of Nana Yaw Nkansah II, Gyasehene and Acting Ohene of Bukuruwa for that of Nana Osei Twum II, who has been destooled and has ceased to be the representative of the Bukuruwa Stool during the pendency of this Appeal. And for such further or other Order as to the Court may seem meet.

Application by Nana Asante Yiadom III for an Order substituting Nana Yaw Nkansah II for Nana Osei Twum II.

8th January 1955
- continued.

20 TO BE MOVED on Monday the 17th day of January, 1955, at 9 o'clock in the forenoon or so soon thereafter as Counsel can be heard.

DATED at AZINYO CHAMBERS, ACCRA, THIS 8th JANUARY, 1955.

(Sgd.) K. Adumua-Bossman,
SOLICITOR FOR DEFENDANT-
APPELLANT.

TO THE REGISTRAR,
WEST AFRICAN COURT OF APPEAL,
GOLD COAST SESSION, VICTORIABORG, ACCRA,

and

30 TO NANA YAW NKANSAH II, GYASEHENE
AND ACTING OHENE OF BUKURUWA KWAHU.

CERTIFICATE OF SERVICE

UPON the 11th day of January 1955, a copy of this Motion was served by me on Nana Yaw Nkansah II, Gyasehene, personally at Bukuruwa.

(Sgd.) ? ? ?
BAILIFF-IN-CHARGE
12.1.55.

In the West African Court of Appeal Gold Coast Session at Victoriaborg, Accra.

No. 57.

AFFIDAVIT OF ASANTE YIADOM III IN SUPPORT OF ORDLR FOR SUBSTITUTION

Filed 10.1.55.
At 8.05 a.m.
(Intd.) A.K.T.
for Repr. W.A.C.A.

No.57.

Affidavit of Asante Yiadom III in support of order for substitution.

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

10

8th January, 1955.

Appeal No.21/1953.

Nana Osei Twum II, Ohene of Bukuruwa Kwahu, Plaintiff-Respondent

v.

Nana Asante Yiadom III, Ohene of Nkwatia Kwahu, Defendant-Appellant

AFFIDAVIT IN SUPPORT OF MOTION

I, ASANTE YIADOM III, Ohene of Nkwatia Kwahu, make Oath and say as follows :-

1. That I am the Defendant-Appellant herein. 20
2. That during the pendency of this Appeal, Nana Osei Twum II formerly Ohene of Bukuruwa has been destooled and his destoolment formally accepted or acknowledged by Government Agent, as per letter from the Government Agent, Mpraeso Kwahu to the President of the Kwahu State Council certified whereof is hereto annexed as Exhibit "A".
3. That the person who by Native Customary Law acts as Acting Ohene and Caretaker of the Bukuruwa Stool, until the election and installation of a new Ohene (Chief) is Nana Yaw Nkansah II, Gyasehene of Bukuruwa as appears in letter certified copy whereof is hereto annexed as Exhibit "B". 30
4. That I make this Affidavit in support of Application for an Order for Substitution in

terms of Motion paper herein.

Sworn at Accra at 12.30 p.m. } (Sgd.) Nana Asante
this 8th day of January, } Yiadom III.
1955

Before me,

(Sgd.) A.A. Sangokeye,
COMMISSIONER FOR OATHS.

In the West African Court of Appeal Gold Coast Session at Victoriaborg, Accra.

No.57.

CERTIFICATE OF SERVICE

10 UPON the 11th day of January, 1955, a copy of this Affidavit was served by me on Nana Yaw Nkansah II, Gyaschene personally at Bukuruwa.

Affidavit of Asante Yiadom III in support of order for substitution.

8th January, 1955.

- continued.

(Sgd.) ? ?
Bailiff-in-Charge,
12.1.55.

No. 57.

No.57.

EXHIBIT "A" ANNEXED TO AFFIDAVIT OF ASANTE YIADOM III IN SUPPORT OF ORDER FOR SUBSTITUTION.

Exhibit "A" annexed to Affidavit of Asante Yiadom III in support of order for substitution.

This is the Exhibit marked "A" referred to in the Oath of Asante Yiadom III sworn before me this 8th day of January, 1955.

8th January, 1955.

20 (Sgd.) A.A. Sangokeye,
COMMISSIONER FOR OATHS.

(Copy)

GOVERNMENT AGENT'S OFFICE,
P.O. BOX 26,
MPRAESO,
11th DECEMBER, 1954.

No.0169/sf.2/36.

Dear Nana,

Nana Osei Twum II, Bukuruwahene

Your letter 54/100/1943 of 13th September, 1954.

30 From a study of the documents in my office it appears that the provisions of the State Councils (Colony and Southern Togoland) Ordinance, 1952, and the Native Authority (Colony) (Local Register) Regulations, 1945, were complied with.

In the West African Court of Appeal Gold Coast Session at Victoriaborg, Accra.

Under the provisions of the State Councils (Colony and Southern Togoland) Regulations, 1954, The destoolment has now been noted in my Local Chiefs and State Councils Register.

(Sgd.) I. E. Cochran,
GOVERNMENT AGENT.

No.57.

Exhibit "A" annexed to Affidavit of Asante Yiadom III in support of order for substitution.

8th January, 1955
- continued.

Nana Ofosu Ayeh,
Adontenhene of Kwahu,
President of the Kwahu State Council,
Abetifi.

10

CERTIFIED TRUE COPY

(Sgd.) K. B. Brown,
REGISTRAR.

Mpraeso.
4/1/55.

CERTIFICATE OF SERVICE

UPON the 11th day of January 1955, a copy of this Exhibit "A" was served by me on Nana Yaw Nkansah II, Gyasehene, personally at Bukuruwa.

20

(Sgd.) ? ?
Bailiff-in-Charge.
12.1.55.

Exhibit "B" annexed to Affidavit of Asante Yiadom III in support of Order for substitution.

8th January, 1955.

EXHIBIT "B" ANNEXED TO AFFIDAVIT OF ASANTE YIADOM III IN SUPPORT OF ORDER FOR SUBSTITUTION

This is the Exhibit marked "B" referred to in the Oath of Asante Yiadom III sworn before me this 8th day of January, 1955.

(Sgd.) A.A. Sangokeye,
COMMISSIONER FOR OATHS.

30

(COPY)

No. 71/100/1943.
STATE COUNCIL'S OFFICE,
ABETIFI.
KWAHU DISTRICT,
15th December, 1954.

Dear Osafohene,

Nana Osei Twum II, Ex-Ohene of Bukuruwa.

I am forwarding you herewith copies of communications between the Kwahu State Council and

Government relating to the status of Nana Osei Twum II Ex-Ohene of Bukuruwa.

2. Now that the destoolment has been recognised by Government in accordance with the provisions of the State Councils (Colony and Southern Togoland) Ordinance, 1952, you should get the Elders of Bukuruwa to take inventory of the Stool Properties and be prepared to nominate a Candidate to the Stool.

10 3. This letter is sent or despatched to you per special bearers.

I am,
Your Dear Nana,

Ofosu Ayeh II
ADONTENHENE OF KWAHU

AG. PRESIDENT, KWAHU STATE COUNCIL.

his
x
mark

In the West African Court of Appeal Gold Coast Session at Victoriaborg, Accra.

No.57.

Exhibit "B" annexed to Affidavit of Asante Yiadom III in support of Order for substitution.

8th January, 1955

- continued.

NANA YAW NKANSAH II,
GYASEHENE OF BUKURUWA,
BUKURUWA.

20

W/Mark
(Sgd.) J.K.Darkwah,
for STATE SECRETARY,
KWAHU STATE COUNCIL.

Information copies to:-

1. The Government Agent, Mpraeso
2. Nana Yaa Sakaa, Ohemaa of Bukuruwa, Bukuruwa.

CERTIFICATE OF SERVICE.

30

UPON the 11th day of January 1955, a copy of this Exhibit "B" was served by me on Nana Yaw Nkansah II, Gyasehene personally at Bukuruwa.

(Sgd.) ? ?
Bailiff-in-Charge.
12.1.55.

4. That Mr. Akufo Addo, Counsel for the Bukuruwa Stool, has advised that in the circumstances the Elders of the Stool should empower me or any other Elder specifically to represent the Stool in this Appeal without attaching to such power the right to the performance of any of the duties of the Ohene of Bukuruwa, and he (Mr. Akufo Addo) has suggested that the Elders be invited to Accra to meet him in order to advise them accordingly.

In the West African Court of Appeal Gold Coast Session at Victoriaborg, Accra.

No. 58.

5. That until I am empowered by the Elders of the Stool to represent the Stool as advised by Mr. Akufo Addo I am unable to allow myself to be substituted.

Affidavit of Yaw Nkansa II reference application for Order for substitution.

Sworn at Accra this 14th } (Sgd.) Yaw Nkansa II.
day of January, 1955 }

14th January, 1955.

- continued.

Before me,

(Sgd.) R. A. Bannerman,
COMMISSIONER OF OATHS.

20

No. 59.

No. 59.

COURT ORDER GRANTING SUBSTITUTION.

Court Order granting substitution.

31st January, 1955.

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

31st January, 1955.

Cor: Foster Sutton, P., Coussey, and Hearne, JJ.A.

Civil Motion No. 2 of 1955.

Nana Osei Twum II

v.

Nana Asante Yiadom III

30

Motion on notice for an order for substitution.

Mr. Akufo Addo for Respondent.

Mr. Bossman for Applicant.

BOSSMAN: Moves.

AKUFO ADDO: No objection.

Order in terms of motion.

Costs in the cause.

31.1.55.

(Sgd.) S. Foster Sutton, P.

No. 60.

In the West African Court of Appeal Gold Coast Session at Victoriaborg, Accra.

COURT NOTES OF ARGUMENT OF COUNSEL FOR APPELLANT

31st January, 1955.

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

No.60.

Cor: Foster Sutton, P., Coussey, and Hearne, JJ.A.

Court Notes of Argument of Counsel for Appellant.

Civil Appeal No.21 of 1953

31st January, 1955.

Nana Yaw Nkansah II, Gyasehene
and Acting Ohene of Bukuruwa
substituted for Nana Osei Twum

Plaintiff-Respondent

10

v.

Nana Asante Yiadom III, Defendant-Appellant

Mr. Bossman for Appellant.
Mr. Akufo Addo for Respondent.

BOSSMAN:

Was trial Judge correct in his decision that Defendant-appellant was estopped by previous judgment of M'Carthy, J., which was upheld by W.A.C.A. and Privy Council.

20

P. - 2nd witness for the Plaintiff in former case, respondent in this case. He represented the Kwahu State of which the present Appellant was a Wing Chief. Refers to p. 306 Internal dispute between Nkwatia and Bukuruwa which has nearly been settled by the Omanhene.

We did not claim through either party in former suit - we were under the Omanhene. Omanhene came in to fight the case for the whole of the Kwahu State. Refers to p. of record.

30

Trial Judge decided plea of estoppel must fail p. 22. Did not give his reasons - no papers were served. Was probably revived in final argument.

After joinder in former case present Appellant did appear he did not take any further steps in the action.

Case became a dispute between Kwahu and Wusuta. Refers to passage in M'Carthy's judgment page 308-309 line 19. Whole judgment deals with claim between Kwahus and Ewe - Wusuta. M'Carthy relied upon an arbitration between whole of Kwahus in which present Appellant's Stool was represented.

In the West African Court of Appeal Gold Coast Session at Victoriaborg, Accra.

Former case proceeded on basis Kwahu - qua Kwahu and did not purport to deal with any internal dispute within Kwahu Stool.

No.60.

10 Former judgment does not purport to deal with Kwahu rights inter se. Submits you have to look at substance of case.

Court Notes of Argument of Counsel for Appellant.

His title through his sub-Chief of Nkwatia - Kwahu was claiming through us - not as through him.

31st January, 1955.
- continued.

The proof of our title was used to support Kwahu case.

Reads from M'Carthy's judgment p.308 - "The main issue in this case"

20 No judgment was ever given against him - his real interest was with Plaintiff. There was no adjudication against him.

No. 61.

No.61.

COURT NOTES OF ARGUMENT OF COUNSEL FOR RESPONDENT.

Court Notes of Argument of Counsel for Respondent.

AKUFO ADDO:

Spencer Bower p. Submits that when Omanhene joined he filed Statement of Claim p. 274.

31st January, 1955.

30 Submits that declaration in former case was in favour of Bukuruwa Stool - Omanhene said in Statement of Claim that land was Bukuruwa. But see para 2.

See - and the Plaintiff serves the Co-Plaintiff with the said land - submits to exclusion of present Appellant - para 4.

"None of the Defendants herein own or possess the said land or any portion of it".

In the West African Court of Appeal Gold Coast Session at Victoriaborg, Accra.

Appellant's case is there had been a settlement that he should drop out. If that is so Complainant's claim was a gross breach of faith. Evidence p. 127 Omanhene was called, but he was not cross-examined about alleged agreement that Appellant should drop out.

No. 61.

Court Notes of Argument of Counsel for Respondent.

31st January, 1955.
- continued.

See Appellant's answer p. 128 line 1.

"Q. In the Omanhene's Statement of Claim he said "that Nkwatia was not entitled to any part of that land?"

"A. If he had claimed the land we would have sued him".

10

Mr. Johnson produced the letters not Appellant - line 5 p. 305.

N.B. p. 306 - line 19 "which has nearly been "settled by the Omanhene".

We refer him to evidence in Exhibit "E" - p. ~~299~~₃₀₀ - from line 17.

Statement of Claim of present Respondent in former case - was served on present Appellant - see p. 276.

20

Note: See admission as to boundary ending at "Nframenyo" - p. ~~296~~₂₉₇ line 23.

Boundaries were inspected - and Appellant was invited to attend the survey - he then applied to be joined and filed his motion and Affidavit. Refers to Affidavit in reply p. 264.

Kofi Baadu -

They even appealed against joinder of Appellant.

30

If they had been able to satisfy the trial Judge that they dropped out by reason of the alleged agreement that would have been a different matter. In former suit he claimed whole area of land - para. 2. of Affidavit p. 261. In present suit he modified his claim.

Refers to trial Judge's decision against estoppel p. 20. It after became clear that they were relying on the alleged agreement.

Note: Case went to trial on footing of no estoppel.

40

Submits point is not made a ground of appeal
- in grounds filed.

BOSSMAN:

Submits - If it goes to jurisdiction Court
must act upon it. Did not cross-examine Omanhene
because of ruling - Comment in judgment unfair -
to have cross-examined would have been to treat
matter as still open. The plan which was tendered
by Plaintiffs showed four of our villages on it.

10

Plan. Nkwatia villages. p.33.

See evidence pp. 33-34.

Evidence of Gyasehene of Bukuruwa pp.33-34.

Plaintiff's 1st witness

They could have asked that judgment be entered
against him none was by default or otherwise.

C.A.V.

(Intd.) S.F.S., P.
31.1.55.

In the West
African Court
of Appeal
Gold Coast
Session at
Victoriaborg,
Accra.

No.61.

Court Notes of
Argument of
Counsel for
Respondent.

31st January,
1955.

- continued.

In the West African Court of Appeal Gold Coast Session at Victoriaborg, Accra.

No. 62.

JUDGMENT OF WEST AFRICAN COURT OF APPEAL GOLD COAST SESSION

IN THE WEST AFRICAN COURT OF APPEAL GOLD COAST SESSION

No. 62.

Coram:

Judgment. 4th March 1955.

Foster-Sutton, P. Coussey, J.A. Hearne, J.A.

Civil Appeal No. 21/53 10

Tr. Suit No. 45/1950.

Friday, 4th March, 1955

Nana Yaw Nkansah II, Gyasehene and Acting Ohene of Bukuruwa substituted for Nana Osei Twum, Plaintiff-Respondent

v.

Nana Asante Yiadom III, Defendant-Appellant

JUDGMENT

FOSTER-SUTTON, P.: The only question we are concerned with on this appeal is whether the learned trial Judge was right in dismissing a counter-claim by the Appellant for a declaration of title to the area of land shown hatched in pink on the plan, Exhibit "2". 20

The trial Judge found as a fact that the Appellant had "established certain rights within a "large area claimed by them which possess all the "features of ownership by customary law subject to "the overriding rights of allegiance to the Kwahu "State and that to deny to them these rights would "be an attempt to set back the clock to some period "prior to 1866, with results which would amount to "a denial of justice to many occupants of the land"; "but he went on to find that the Appellant was es- "topped from claiming ownership of the land in "question by reason of the judgment of M'Carthy, "Ag. C.J., in Suit No. 1 of 1942, Yaw Nkansah II "Dsasehene of Bukuruwa, Kwahu and another v: Wudanu "Kwasi and others of Wusuta, which was a claim by 30 40

the predecessor of the present Respondent for a declaration of title against representatives of the Wusuta to a large area of land which the parties in the present action conceded included the land covered by the counter-claim.

A copy of the proceedings and judgment in the former case were admitted in evidence as Exhibit "E".

In the West African Court of Appeal Gold Coast Session at Victoriaborg, Accra.

No.62.

Judgment.

4th March 1955
- continued.

10 The facts upon which the plea of estoppel was founded are set out in the passage of the judgment of the learned trial Judge which reads as follows:

" It is conceded that the Defendant Dwamena Ayrepeh II was the predecessor in title of the present Defendant Asante Yiadom III.

20 " On the 1st February, 1944, Mr. Bannerman, Solicitor for Dwamena Ayrepeh II filed a motion for his joinder as a Defendant in that suit. In an Affidavit made on the 1st February, 1944, the linguist and Adkyehene of the Nkwatia Stool, with the consent of the Ohene, averred that the lands claimed by the Ohene of Bukuruwa included a part of the Stool lands of Nkwatia and which had belonged to their Stool since time immemorial.

30 " On the 11th February, 1944, Mr. Bannerman, moved this Court in terms of that motion and Affidavit. The Court then ordered that Dwamena Ayrepeh II be joined as a co-defendant and that he be served with a copy of the writ of summons and all papers filed in the proceedings. He was further ordered to file a statement of his defence within 21 days.

" From that decision the Bukuruwa Stool appealed and on the 22nd November, 1944, that appeal was dismissed by the West African Court of Appeal (Page 269 - Exhibit "E").

40 " No statement of defence was filed as ordered and there is nothing upon the record to show that subsequent to the 11th February, 1944, either Dwamena Ayirepeh or his Counsel Mr. Bannerman ever appeared before the Court or took any further part in the proceedings. On the 25th August, 1945, Nana Akuamoia Akyeampong,

In the West
African Court
of Appeal
Gold Coast
Session at
Victoriaborg,
Accra.

No.62.
Judgment.
4th March 1955.
- continued.

"the Omanhene of Kwahu was joined as a co-plaintiff. On the 6th August, 1946, Mr. Sawyerr appearing then on behalf of both the Bukuruwa Stool and the Omanhene of Kwahu informed M'Carthy, J. that he understood that Chief Dwamena Ayirepeh II, who was absent, did not intend to defend (see p. 289 - Exhibit "E").

" From that date and until the last word of the judgment given on the 2nd May, 1947, not another mention is made of this Defendant, and then, judgment is entered for the Plaintiffs. 10

" There appears to have been no formal discharge of the Defendant from the action, no leave granted to Mr. Bannerman to retire from the case, there appears just to have been a 'fade out'.

The Respondent's case was that his predecessor withdrew from the suit as a result of an agreement made by the Nkwatia with the Bukuruwa Stool and the Omanhene of Kwahu with the object of not embarrassing the conduct of the case of the Bukuruwa Stool against a common enemy, namely, the Wusutas (Ewes). His Counsel maintained that once the Omanhene of Kwahu was joined as a co-plaintiff the action became a fight between the Kwahu and Wusutas, and that it was obviously considered desirable not to complicate the issue by internal disputes between subjects of the Omanhene of Kwahu. 20

The Respondent denied that any such agreement had been entered into, and the learned trial Judge after discussing the evidence touching on the question made the following comments:

"If there had been any such agreement made i.e. at a meeting of the Kwahu State then, it is indeed remarkable that not one question was put to the Omanhene of Kwahu to testify to that fact when the Bukuruwahene put him in the box. The evidence of the Defendant that he had come to no such agreement with the Bukuruwahene in this respect also negatives any question of agreement. 40

" If parties applying to be joined and having

"been joined take no further part in those proceedings they are deemed to have acquiesced in what has been done, unless for good cause shown they obtain the consent of the Court to be discharged from the proceedings.

" If there had been such an agreement Counsel for the Nkwatiahehe would have been aware of it and would have applied to this Court for leave for his client to withdraw from the action and which leave would hardly have been granted by any Court for the reasons now pleaded; indeed to avoid a multiplicity of actions such leave, I think, would have been refused.

" However that may be, the learned Judge entered judgment for the Plaintiff Stool Bukuruwa and that judgment is binding upon all the parties joined in the action and which included Nkwatia".

It is the case that the Omanhene of Kwahu, who was called as a witness by the Respondent, was not cross-examined regarding the alleged agreement, and the learned trial Judge also adversely referred to the fact that the Appellant was not asked anything about the agreement when he gave his evidence in chief, but Counsel for the Appellant submitted that these comments were unfair since the trial Judge had, on the 15th November, 1951, before any evidence was led, made a preliminary ruling against the plea of estoppel.

It is clear from the record that such a ruling was made, it also seems clear that the ruling was made because it was thought at the time that the Appellant's predecessor had not been served with copies of certain documents in the former case. Later on it seems to have been discovered that the documents had been served, and the plea of estoppel was revived, but it is not clear when this happened. I have not been able to find any note on the point in the record, and neither Counsel seemed able to throw much light on the matter. The fact is that the record of the former proceedings was put in evidence by consent during the cross-examination of the Plaintiff, and it seems to me that the Respondent's Counsel ought then to have realised that the question of estoppel was still being regarded

In the West African Court of Appeal Gold Coast Session at Victoriaborg, Accra.

No.62.

Judgment.

4th March 1955
- continued.

In the West
African Court
of Appeal
Gold Coast
Session at
Victoriaborg,
Accra.

No. 62.

Judgment.

4th March 1955
- continued.

as an issue in the case. I cannot help thinking, however, that there was some room for misunderstanding on the matter, and that if the learned trial Judge had realised that there was this uncertainty he might not have been so strong in his comments.

However, there are points which, in my view, strongly support the Appellant's contention that there was an understanding that his predecessor should drop out of the action when the Omanhene had been joined as a co-plaintiff and it became clear that the battle was really between the Kwahu and the Wusuta (Ewes).

Firstly, it seems odd that he should after strenuous efforts to be joined as a Defendant, for no apparent reason unless it was for the one alleged, suddenly drop out of the case. In this connection I think it relevant to refer to three pieces of evidence given by witnesses called by the Plaintiffs in the former case. The 6th witness, Emmanuel Otukwa, said: "At one time Nkwatia claimed the middle part of the land in dispute from us. As the result of the intervention of the Omanhene the claim was settled", and again, "For some reason or other the Nkwatias got joined as co-defendants, but on the Omanhene becoming co-plaintiff, they withdrew", and their 18th witness, G.V. Johnson, clerk to the Omanhene and State Secretary, said "The Nkwatias claim that they own land between Asabi and Nkami lands. They do not claim any other parts of the land in dispute. However this is an internal dispute between Nkwatia and Bukuruwa, which has nearly been settled by the Omanhene"; secondly, it is quite clear that in the former case the Omanhene claimed title to a portion of the land in dispute through the Nkwatia Stool, vide the three letters Exhibits "M", "N" and "O" which were put in evidence through the State Secretary, G.V. Johnson, thirdly, the passage in the judgment of M'Carthy, Ag. C.J., where he said "The Plaintiffs press for a declaration in respect of all the land claimed by them, although it is realised that such a judgment will only be binding on the Wusuta Stool and those claiming under it", from which it would seem clear that the case had been treated by all concerned as a battle between the two opposing Stools, Kwahu and Wusuta, and fourthly, the name of the appellant's predecessor

ceased to appear in the title of the case, and no judgment was asked for, or given, against him at the conclusion of the trial.

In all the circumstances I am of the opinion that the Appellant is not estopped from setting up his present claim by reason of the judgment in the former case, and I think the learned trial Judge erred in holding that he was.

In the West African Court of Appeal Gold Coast Session at Victoriaborg, Accra.

No.62.

Judgment.

4th March 1955
- continued.

10 I would accordingly allow this appeal, set aside the judgment of the Court below, and enter judgment for the Defendant on his counter-claim, granting him a declaration of title to the area of land the boundaries of which were marked in green on the plan Exhibit "2" with the letters "A B C D E F G H J K L M" by the learned trial Judge. The Defendant to have his costs in the Court below to be taxed and his costs on this appeal fixed at £244.12.0.

(Sgd.) S.Foster Sutton, P.

20 COUSSEY, J.A.: I concur " J.Henley Coussey, J.A.

HEARNE, J.A.: I concur " H.H. Hearne, J.A.

K. A. Bossman for the Appellant.
Akufo Addo for the Respondent.

No. 63.

No.63.

ORDER GRANTING FINAL LEAVE TO APPEAL

22nd August, 1955.

Order granting Final Leave to Appeal.

IN THE WEST AFRICAN COURT OF APPEAL
GOLD COAST SESSION:

22nd August, 1955.

30 Coram Coussey, J.A., sitting as a Single Judge of Appeal.

Civil Motion No.43 of 1955

Nana Yaw Nkansah II etc.

v.

Nana Asante Yiadom III.

Motion on notice by Plaintiff-Appellant for an

In the West
African Court
of Appeal
Gold Coast
Session at
Victoriaborg,
Accra.

No.63.

Order granting
Final Leave to
Appeal.

22nd August,
1955.
- continued.

Order granting final leave to appeal to the Privy
Council.

Mr. Aryee for Applicant.

No appearance for Respondent.

Affidavit in support referred to.

ORDER - Final leave as prayed.

(Sgd.) J. Henley Coussey,
J.A.

EXHIBIT "12"PROCEEDINGS IN RE THE MATTER OF BUKURUWA-NKWATIA
LAND DISPUTE BOUNDARY CUTTING COMMISSIONER

Tendered in evidence by Counsel for Plaintiff,
admitted and marked Exhibit "12" in re Nana
Osei Twum II vs: Nana Asante Yiadom III.

(Intd.) B.A.
6.6.52.

In the Native Tribunal of the Omanhene of Kwahu,
Abene, G.C.C. 5th April, 1927.

10

Suit No.29/27.

In the matter of Bukuruwa - Nkwatia
Land Dispute Boundary Cutting Commission.

For the fees to cover the expenses of the com-
mission it was ordered that the Ohene of Nkwatia
and the Odikro of Bukuruwa should each pay £25.

The following officers of this Tribunal are
appointed to go and cut the boundary -

- 20
- £ 4 to 1. Kofi Anokye, Okyeame of Omanhene
 - £12 to 2. Kwaku Saka, Odekro of Ahinase, Capt.
 - £ 6 to 3. Mr. S.M. Asante, Omanhene's Clerk,
Abene.
 - £ 4 to 4. Odekro of Kwahu Tafo for Benkum
 - £ 4 to 5. for Adonten
 - 6. for Nkwatia
 - 7. Odame and Kk. Gyima for Bukuruwa.

The Odekro of Bukuruwa gives his boundary of the
disputed land as follows :-

30

Starting from Dem Stream, to its junction with
the Mframaanyo. From the start the boundary runs
along the course of the Dem Stream from its source
towards its mouth till it is joined by the Mframa-
anyo, and on till the Dem joins the Afram River.
Before the Dem joins the Afram River it is joined
by the Yireka Stream and from this point Bukuruwa
has boundary with the Kwahu Tafo Stool.

Exhibits

Exhibit "12".

Proceedings in
re The Matter
of Bukuruwa-
Nkwatia Land
Dispute
Boundary Cutting
Commissioner.

5th April 1927

7th April 1927.

Exhibits

Exhibit "12"
 Proceedings in
 re The Matter
 of Bukuruwa-
 Nkwatia Land
 Dispute
 Boundary Cutting
 Commissioner.
 5th April 1927
 7th April 1927
 - continued.

At the course of the Dem River, Bukuruwa has boundary with the property of Pitiko Stool. The Dem Stream is the only boundary between the property of the Stools of Bukuruwa and Nkwatia. It is this Dem that the Nkwatias have crossed and trespassed on Bukuruwa Stools Lands.

Nkwatia - I claim all the land between the Dem, Volta Afram and Obosom Rivers.

The Omanhene - The land in dispute should be shared into two equal shares for Bukuruwa and Nkwatia. 10

Nkwatia - My sub-chiefs are due to arrive here any moment, and when they come, I shall say what I think of this arrangement.

Hearing adjourned sine die.

Nana Akuamoa Boaten
 O.K.

his
 x
 mark

W/M (Sgd.) E.R. Addow,
 Repr.

20

7th April, 1927.

Hearing resumed -

The Ohene of Nkwatia called upon to say what he thought of the Omanhene's suggestion.

My land is far away from Obosom. My land has boundaries with Bukuruwa, Asabi, Tafo and Pitiko.

The boundary starts from Aboam Hill and goes on by an imaginary straight line Odufee River, passing through Nnasara Kwae, Affram - nsu, Kayera, Kyemfeeh Onweaben, Katano villages owned by Nkwatia. From the Aboam Hill the line ends at junction of Odufee stream and the Volta River. 30

The opposite side of the boundary starts from Mframa-anyo to Bepokoko, it passes by the Tankram pool to Bepokoko. The land extends from the Volta River to the Bompang near Ekye.

The Dem Stream lies in the middle of this land.

Nkwatia -

Demso is mine, Ampoti, Kwasempeh, Nnadesah, Kwabena koko, Otan Nkwanta, Nsomenasua, Abotwerie, to Faaso Bekuasi on the Volta River. It was Owusutah Chief who begged my ancestors and my ancestors gave them permission to stay on the land. They were allowed to stay on the Faa River. Kwame Akwa village is mine. Aframa village is mine, Gyifagyi village is mine. The land now in dispute is all mine. The only boundary I have with Bukuruwa is from Odufee to Aboam Hill.

Nkwatia -

I refused to appoint any messenger, unless these appointed messengers are only going to view the land in dispute and report to us. I will not appoint any messenger to go with the commission appointed by the Omanhene.

Bukuruwa -

The land at Bompang was dashed to Nkwatia by Bukuruwa. This land in dispute is the middle portion of land owned by Bukuruwa. I will not agree to have the land cut in two and divided between myself and Nkwatia.

Omhene -

The land in dispute is bounded as follows - Aboam Hill - Odufee - Volta River Bepokoko - Mframa anyo - Dem River.

This plot of land is to be cut into two equal parts the half along the Volta River to belong to Bukuruwa and the one adjoining the Dem - Bompang land to be given to Nkwatia. If any Nkwatia villages fall into Bukuruwa's, the inhabitants should remain as tenants for Bukuruwa and vice versa.

Nkwatia -

I wish the Omanhene to hand back to me, the fees I paid to the commission, I will not be a party to this division, I wish to go out and let the Omanhene get up and give me the chance to get out.

Exhibits

Exhibit "12"
 Proceedings in
 re The Matter
 of Bukuruwa-
 Nkwatia Land
 Dispute
 Boundary Cutting
 Commissioner.
 5th April 1927
 7th April 1927
 - continued.

Exhibits

Exhibit "12"
 Proceedings in
 re The Matter
 of Bukuruwa-
 Nkwatia Land
 Dispute
 Boundary Cutting
 Commissioner.
 5th April 1927
 7th April 1927
 - continued.

Benkumhene -

Let the land be cut into two, lengthwise, to enable either party to get access to the Volta River.

Nkwatia -

I will not agree to let one of my villages go into Bukuruwa's land. Let the boundary commission share the money and use it for viewing the land only. After their report, the Omanhene can show where the boundary is to be placed.

Om: -

10

I have no intention to cause my Trib. to give J. herein so it is not necessary to view the land before sending out a com (fresh) for cutting the boundary. I have given my order and I am backed by all the elders of this Trib., the order is to be carried out and if any of the parties is aggrieved and wishes to carry on, he is free to do so.

Nkwatia elders through their Jasehene Atuobi -

The villages we mentioned were built a very long time ago, they are not new villages, if the Om. wants to take possession of the land in dispute, let him take it, and deprive both parties of it.

20

Nkwatia -

Let the Om. cause a survey of the land to be made before the land is shared.

Om: -

The land should be shared forthwith.

Nk -

30

I will not agree if a foot of my land is cut.

W/M
 (Sgd.) E.R. Addow,
 Regr.

Akuamo Boaten

his
 x
 mark

EXHIBIT "11"PROCEEDINGS OF STATE COUNCIL OF KWAHUExhibits

Exhibit "11"

Proceedings of the State Council of Kwahu - State,
held at Abene this 2nd day of August, 1929, before
Nana Kofi Akuamoah VI Omanhene of Kwahu;
Nana Kwasi Addo III Adontenhene of Kwahu;
Nana Yao Ntim Benkumhene;
Nana Kwasi Nyako I. Nifahene of Kwahu, with their
respective Elders Linguists and Councillors,
Odikro Kwasi Abora of Atibie.

Proceedings of
State Council
of Kwahu.

2nd August 1929.

10

Statement made by Kofi Boaten, Ankobeahene of
Bukuruwa.

I have come to terms with Odehyee Kwabena
Ofori of Nkwatia to the following: That to curtail
the indifferences that has come between the Stool
lands of Bukuruwa and Nkwatia we hereby agree to
settle our dispute out of the Court. We will de-
termine the boundary ourselves. Both myself and
Kwabena Ofori have run apology to Opanyin Kofi
Nyina and Kwaku Mari to beg the Omanhene because
of the oaths we have sworn.

sic.

20

Kofi Boaten

his
x
mark

Odehyee Kwabena Ofori states: I am the Odehyee
of Nkwatia. The land dispute between the Stools
of Nkwatia and Bukuruwa has stood pending for long
time. I have agreed mutually with the Ankobeahene
of Bukuruwa to decide the case outside the
Court. I have agreed and do hereby associate my-
self with Ankobeahene of Bukuruwa.

30

Kwabena Ofori

his
x
mark

We gladly associate ourselves with the State-
ments of Ankobeahene Kofi Boaten of Bukuruwa and
Ankobeahene Kwabena Ofori of Nkwatia. We make
this statement on behalf of our people and respec-
tive Stool and that we are prepared to substantiate
them.

Kwame Kae
Mankrado of Bukuruwa

his
x
mark

<u>Exhibits</u>	Kwasi Boo	their	
Exhibit "11"	Mankrado of Nkwatia	x	
Proceedings of State Council of Kwahu.	Kwabena Badu	x	
2nd August 1929	Odikro of Bukuruwa		
- continued.	Kofi Sefa	x	
	Ohene of Nkwatia	marks.	

Remarks:-

Nifahene Kwasi Nyako congratulated the two Adehyee (Boaten of Bukuruwa and Ofori of Nkwatia) for having come to mutual settlement about this long standing dispute. 10

The Council asked both parties to bring 2 cases Schnapps as a testimony of their true declaration.

The two cases Schnapps brought.

The following officers were appointed as Boundary Commissioners.

Eben. K. Sapong, Asst. Registrar.
Ankobeahene Kofi Amo of Abene
Okyeame Kofi Anokye of Abene
Osafohene Kwabena Omani of Obo. 20

The parties have agreed that the boundary should be cut so that each party retain its own former hunting villages and hunting grounds.

		their	
	Kofi Akuamo VI	x	
	Omanhene of Kwahu		
	Kwasi Addo III	x	
	Adontenhene of Kwahu		
	Yao Ntim	x	30
	Benkumhene of Kwahu		
	Kwasi Nyako (Sgd.)		
	Nifahene of Kwahu		
	Kwasi Abora	x	
	Odikro of Atibie		
		marks.	

	their	<u>Exhibits</u>
	x	Exhibit "11"
	x	Proceedings of State Council of Kwahu.
	x	2nd August 1929 - continued.
	x	
10	x	
	x	
	x	
	x	
	x	
20	x	
	x	
	x	
	x	
	x	
30	x	
	x	

marks

<u>Exhibits</u>		their	
Exhibit "11"	Kwadjo Abrokwa	x	
Proceedings of State Council of Kwahu.	Okyeame of Nkwatia		
2nd August 1929 - continued.	<u>sic</u> Kofi Ano	x	
	<u>Ankobeshen of</u>		
	Kwaku Kru	x	
	Osafohene of Nkwatia		
	Kwadjo Fosuhene	x	
	Okyeame of Nkwatia		
	Kwaku Wusu	x	
	Okyeame of Abene		10
	Kofi Anim	x	
	Okyeame of Abene		
	Kofi Anotchi	x	
	Okyeame of Abene		
	Kwabena Fofie	x	
	Okyeame of Abene		
	Kwasi Anim	x	
	Okyeame of Abene		
	Yao Kuma	x	
	Akyeamehene of Abene		20
		marks	

W/M.

(Sgd.) G. ?

Regr.

EXHIBIT "E"

RELEVANT PARTS OF PROCEEDINGS IN re YAW NKANSAH II
& ANOTHER v WUDANU KWASI & ANOTHER.

Exhibits

Exhibit "E".
Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.
13th March 1940
to 2nd May 1947.

EXHIBIT "3"

WRIT OF SUMMONS

Writ of Summons as amended by Orders of Court dated
25/8/45, 27/9/45, 25/10/45 and 17/4/47. (See
pages 38, 45, 49 and 106 of Record of Appeal).

Exhibit "3"
Writ of Summons
13th March 1940.

CIVIL SUMMONS

10

No.12/40.

In the Tribunal of the Paramount Chief
Divisional Chief

the Kwahu State
Division

Gold Coast Colony

Between: Yaw Nkansah II Dsasehene
of Bukuruwa, Kwahu,

Plaintiff

Nana Akwamoa Akyeampong,
Omanhene of Kwahu

Co-Plaintiff

20

versus

Wudanu Kwasi; Acting Chief
of Atipradaa, David Akuamoa
alias Yaw Akoi of Adukrom &
Chief Djaba III, Chief of
Wusuta

Defendants

Chief Dwamena Ayiripenh II
of Nkwatia, Kwahu

Co-Defendant

To Wudanu Kwasi, David Akuamoa alias Yaw Akoi, and
Chief Djabah III.

30

You are hereby commanded to attend the Tribu-
nal at Abene on the 10th day of April, 1940, at 9
o'clock a.m. to answer a suit by Nana Yaw Nkansah
etc., of Bukuruwa against you.

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947.
- continued.

The Plaintiffs' claim is as against the defendants for a declaration of title to All that piece or parcel of land situate in Kwahu, and bounded on the North by River Obosom, on the South by the River Afram, on the East by the River Volta and on the West by Abetifi, Nkwatia, Pitiku and Kwahu Tafo Stool lands.

AND for an Injunction to restrain the Defendants their against and servants from cultivating the said land or interfering with the Plaintiffs' ownership thereof.

sic
10

Issued at Abene the 13th day of March, 1940.

Exhibit "3"

Writ of Summons
13th March 1940
- continued.

Claim	...	Landed property
Tribunal fee	...	£ 1. 5. 0
Mileage & Service		<u>1. 2. 0</u>
		<u>£ 2. 7. 0</u>

(Sgd.) J.C. Addo
Regr.

(Sgd.) Akuamoah Akyeampon
Omanhene of Kwahu.

Certified True Copy

(Sgd.) ?

20

Registrar, Omanhene's Tribunal Abene.

Notice:- If you do not attend the Tribunal may give judgment in your absence.

Upon the 25th day of March, 1940, this summons was served by me on Yaw Akoi Defendant. This I did by serving a copy of the above summons (and the particulars of the claim) on the said Defendant personally at Adukrom.

Kwasi Donkor his
N.A.P. x
Abene. mark 30

W/W to mark.
(Sgd.) J.D. Asare,
N.A.P. Abene,
29.3.40.

I hereby certify that upon the 10th day of April, 1941, this summons was served by me on Chief Tawiah of Atipradaa the Defendant at Atipradaa.

(Sgd.) J.S. Nsiah,
N.A.P.
No.28.

40

CIVIL SUMMONSNo.12/40.Exhibits

Exhibit "E"

In the Tribunal of the Paramount Chief
Divisional Chief
 the Kwahu State
Division

Relevant parts
 of proceedings
 in re Yaw
 Nkansah II &
 Another v.
 Wudanu Kwasi &
 Another.

Gold Coast Colony

Between: Nana Kofi Baadu II of
 Bukuruwa

Plaintiff

13th March 1940
 to 2nd May 1947
 - continued.

10

and

Chief Tawia of Atipradaa and
 David Akuamoa alias Yaw Akoi
 of Adukrom

Defendant

To Chief Tawia of Atipradaa and David Akuamoa alias
 Yaw Akoi of Adukrom.

You are hereby commanded to attend this Tri-
 bunal at Abene on the 10th day of April, 1940 at
 9 o'clock a.m. to answer a suit by Nana Kofi Baadu
 II of Bukuruwa against you.

20

The Plaintiff's claim is as against the De-
 fendants for a declaration of title to All that
 piece or parcel of land situate at Kwaekesiem in
 Kwahu and bounded on the North by the River Faa,
 on the South by the River Afram, on the East by
 the River Volta and on the West by the Plaintiff's
 Stool land.

30

AND for an Injunction to restrain the Defen-
 dants their agents and servants from cultivating
 the said land or interfering with the Plaintiff's
 ownership thereof.

Issued at Abene the 13th day of March, 1940.

Claim	...	Landed property
Tribunal fee	...	£ 1. 5. 0
Mileage and Service		<u>1. 2. 0</u>
		£ 2. 7. 0

(Sgd.) Akuamoa Akyeampong
 Omanhene of Kwahu.

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

(Sgd.) J.C. Addo,
Regr.

Certified True Copy

(Sgd.) ?

Registrar, Omanhene's Tribunal Abene.

Upon the 25th day of March, 1940, this summons was served by me on Yaw Akoi defendant. This I did by serving a copy of the above summons (and the particulars of the claim) on the said Defendant personally at Adukrom.

10

Kwasi Donkor
N.A.P.
Abene.

His
x
Mark

W/W to mark.

(Sgd.) J. D. Asare,
N.A.P. Abene.
29.3.40.

I hereby certify that upon the 10th day of April, 1941, this summons was served by me on Chief Tawiah of Atipradaa the Defendant at Atipradaa.

20

(Sgd.) J.S. Nsiah
N.A.P.
No.28.

21. 3. 42.

In the Provincial Commissioner's Court Eastern Province, held at Koforidua on Saturday the 21st day of March, 1942 before His Worship Eric Anderson Burner, Esquire, Acting Deputy Provincial Commissioner.

30

Nana Kofi Baadu II
of Bukuruwa, Kwahu

Plaintiff

vs:

Chief Tawia of Atipradaa and
David Akuamoah alias Yaw Koi
of Adukrom

Defendants-Opposers

Motion on Notice of Akilagpa Sawyerr of Counsel

on behalf of the above-named Plaintiff for an Order transferring the above case from the Tribunal of the Paramount Chief of Kwahu to the Divisional Court, Accra. And for such further order or orders therein as to this Honourable Court might seem fit.

Mr. Sawyerr for Plaintiff mover.

Mr. Van Iare for Defendant-Opposers.

Counsel heard. Affidavit of Opposer read.

Exhibits

Exhibit "E"

Relevant parts of proceedings in re Yaw Nkansah II & Another v. Wudanu Kwasi & Another.

13th March 1940 to 2nd May 1947 - continued.

10 ORDER -

There has been and still is a Political Dispute between the Kwahus and the Owusutas (Wusutas) and I doubt if justice can be obtained at the Kwahu Tribunal so long as this state of affairs exists.

In the interest of justice I order that the hearing of this case now pending before the Kwahu Tribunal be stopped and transferred to the Divisional Court for hearing and determination.

(Sgd.) E. A. Burner,

Acting Deputy Provincial Commissioner

20

Certified True Copy

(Sgd.) ?

for Registrar,
C.E.P's Court.

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

N O T I C E

IN THE DIVISIONAL COURT AT VICTORIABORG, ACCRA.
EASTERN PROVINCE

HEARING NOTICE TO PARTIES

Transferred Suit No.1/1942.

Nana Kofi Baadu II
of Bukuruwa, Kwahu

Plaintiff

and

Chief Tawia of Atipradaa and
David Akuamoa alias Yaw Koi
of Adukrom

Defendants

10

To Nana Kofi Baadu II, of Bukuruwa Kwahu Chief
Tawia of Atipradaa and David Akuamoa alias
Yaw Koi of Adukrom.

TAKE NOTICE that the above cause has been set
down on Tuesday the 19th day of May, 1942, at 8.30
a.m. when it will come on for hearing.

If when the case is called you do not appear and
answer, the Court will proceed to hear the case
without you.

20

Issued at Victoriaborg, Accra this 16th day of
April, 1942.

By Order of the Court,
(Sgd.) R. A. Bannerman,
Registrar, Divl. Court.

Certificate of Service

Upon the 16th day of April, 1942 this notice was
served by me upon Nana Nkansah II of Bukuruwa rep-
resentative of Nana Kofi Baadu II of Bukuruwa.
This I did by serving a copy of the notice on the
said Nana Nkansah II personally at Accra.

30

(Sgd.) F.A.H. Botchey,
Officer.

Upon the 28th day of April, 1942, a copy of this notice was served by me upon Yaw Koi alias David Akuamoah personally at Adukrom.

Chief Tawia could not be found at Atipradaa, I understand gone to Wusuta in Kpandu District.

(Sgd.) Buattrie,
Bailiff.

Filed 13/6/42.

at 8.58 a.m.

F.A.H.B.

for Registrar, Dvl.Court,
Accra.

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

10

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN PROVINCE
DIVISIONAL COURT, ACCRA.

Nana Kofi Baadu II
of Bukuruwa, Kwahu

Plaintiff

and

Chief Tawiah of Atipradaa &
David Akuamoah alias Yaw Koi
of Adukrom

Defendants

20

MOTION ON NOTICE by Akilagpa Sawyerr of Coun-
sel for and on behalf of the above Plaintiff for
an Order for the joinder of Osei Tutu, Ohene of
Owusutaa as one of the Defendants herein.

And for such further Order or Orders herein
as to this Honourable Court might seem fit.

To be moved on Wednesday the 8th day of July, 1942,
at 8.30 o'clock in the forenoon or so soon there-
after as Counsel for the Plaintiff may be heard.

30

Dated at Accra this 12th day of June, 1942.

(Sgd.) Akilagpa Sawyerr,
SOLICITOR FOR PLAINTIFF.

THE REGISTRAR,
DIVISIONAL COURT, ACCRA.

and

TO THE ABOVE NAMED DEFENDANTS
THEIR AGENT OR SOLICITOR
ATIPRADAA AND ADUKROM.

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another. v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

Upon the 26th day of June, 1942, this Motion was served by me upon Chief Tawiah of Atipradaa and David Akuamoah alias Yaw Koi. This I did by serving a copy of the Motion on the said Chief Tawiah and David Akuamoah Yaw Koi personally at Wusuta-Atipradaa.

(Sgd.) B.P. Johnson.

Filed 13/6/42
at 8.58 a.m.
F.A.H.B.

for Registrar, Divl. Court,
Accra.

10

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN PROVINCE
DIVISIONAL COURT, ACCRA.

Between:

Nana Kofi Baadu II
of Bukuruwa, Kwahu

Plaintiff

and

Chief Tawiah of Atipradas
and David Akuamoah alias
Yaw Koi of Adukrom

Defendants

20

AFFIDAVIT OF TUKWA III.

sic I, TUKWA III, Mankrado of Bukuruwa and Odikro of Asabi in the Kwahu District, but not at Accra make Oath and say :-

1. I am Mankrado of Bukuruwa and Odikro of Asabi, and have been authorised by the Plaintiff to swear to this Affidavit on his behalf.
2. Osei-Tutu, Ohene of Owusutaa in the Mandated Territory of Togoland is interested in the land the subject matter of the above case, and the above named Defendants who are his subjects claim that they occupy the said land under his authority.
3. I crave leave to refer to the Affidavit which I swore to in support of the Plaintiff's application for a transfer of the above named case.

30

4. And I make this Affidavit in support of Plaintiff's application for a joinder of the said Osei Tutu, as one of the Defendants herein.

Sworn at Accra this 13th } (Sgd.) Tukwa III.
day of June, 1942.

Before me,

(Sgd.) V. L. Buckle,
COMMISSIONER FOR OATHS.

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

10 Upon the 26th day of June, 1942, this Affidavit was served by me upon Chief Tawiah of Atipradaa and David Akuamoa alias Yaw Koi. This I did by serving a copy of the Affidavit on the said Chief Tawiah and David Akuamoa alias Yaw Koi personally at Wusuta Atipradaa.

(Sgd.) B. P. Johnson,
Bailiff.

8th July, 1942.

20 In the Supreme Court of the Gold Coast Eastern Province held at Victoriaborg, Accra, on Wednesday the 8th day of July, 1942 before His Honour Mr. Justice Woolhouse Bannerman.

Nana Kofi Baadu II)
v.) Motion for a joinder.
Chief Tawia & Others)

Mr. Akilagpa Sawyerr moves -
Mr. Van Lare for Defendants - says he does not
oppose.

30 By the Court: Application granted in terms of motion paper and Affidavit - Let Osei Tutu, Ohene of Owusutaa be joined in this case as one of the Defendants. Let copy of the summons and all relevant documents be served on the aforesaid Osei Tutu accordingly.

Case to be mentioned on the 7th August.

(Sgd.) Woolhouse Bannerman,
Judge.

Exhibits

7th August, 1942.

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

In the Supreme Court of the Gold Coast, Eastern
Province held at Victoriaborg, Accra on Friday the
7th day of August, 1942, before His Honour Mr.
Justice Woolhouse Bannerman.

Nana Kofi Baadu II

v.

Chief Tawia & Others

13th March 1940
to 2nd May 1947
- continued.

Mr. Sawyerr for Plaintiff -
Mr. Van Lare for 2nd Defendant and the co-defendant. 10

Mr. Van Lare says the co-defendant has not as yet
been served with copy of the Writ of Summons etc.
as ordered by the Court. Mr. Van Lare says he is
not representing the 1st Defendant.

By the Court:- Adjourned to Monday 10th for mention.

W. B.

J.

Exhibit "14"

EXHIBIT "14"

Affidavit of
Okyeame Kwasi
Amoa & Another.
11th August,
1942.

AFFIDAVIT OF OKYEAME KWASI AMOA & ANOTHER

Tendered in evidence by Counsel for Plaintiff,
admitted and marked Exhibit "14" in re Nana
Osei Twum II vs: Nana Asante Yiadom III. 20

(Intd.) B.A.
13.6.52.

IN THE MAGISTRATE'S COURT OF THE GOLD COAST
EASTERN PROVINCE MPRAISO-KWAHU

IN THE MATTER OF AN APPLICATION ON BEHALF OF THE
KRONTHIENE AND ELDERS OF NKWATIA-KWAHU FOR AN
ORDER OF THE COURT REQUIRING NANA AKUAMOA
AKYEAMPONG TO SHEW CAUSE WHY HE SHOULD NOT BE
BOUND OVER TO KEEP THE PEACE PURSUANT TO SECTION
22 OF THE CRIMINAL PROCEDURE ORDINANCE CAP. 10. 30

AFFIDAVIT OF OKYEAME KWASI AMOA AND
OSAFOHENE RICHARD EMMANUEL ONWONA

Exhibits

Exhibit "14"

WE, OKYEAME KWASI AMOA and OSAFOHENE RICHARD EMMANUEL ONWONA of Abene in the Kwahu District make oath and say as follows :-

Affidavit of
Okyeame Kwasi
Amoa & Another.

AND FIRST, I, the said OKYEAME KWASI AMOA say :-

11th August,
1942.

That I am linguist to Nana Akuamoia Akyeampong Omanhene of Kwahu.

- continued.

10 AND SECONDLY, I, the said RICHARD EMMANUEL ONWONA, for myself say :-

That I am an Osafohene (Captain) to the Omanhene of Kwahu.

AND LASTLY, we both say :-

1. That we have the authority and power of the said Nana Akuamoia Akyeampong Omanhene of Kwahu to swear to this Affidavit on his behalf.

20 2. That the Omanhene of Kwahu has read what purports to be the Affidavit of Osafohene Ebenezer Amankwa Adow and Okyeame Kwabena Ntiamoa sworn to on behalf of the Stool and Elders of Nkwatia.

3. That for upwards of fifty years there has been a boundary dispute between the Stools of Bukuruwa and Nkwatia.

30 4. That in 1927 by an Oath sworn by Nana Kwabena Badu then the occupant of the Bukuruwa Stool, on Nana Kofi Sefa the occupant of the Stool of Nkwatia the boundary dispute came for adjudication before the Tribunal of the then Omanhene of Kwahu (Nana Kofi Boateng), and the deponents crave leave to refer to pages 139-142 of the Civil Record Book (1927/28) of the Omanhene's Tribunal for the proceedings.

40 5. That during the course of the trial of the suit mentioned in paragraph 3 supra the respective Ankobeahene of the two Stools moved the Omanhene's Tribunal for an order referring the matter to the State Council for a more amicable settlement.

Exhibits

Exhibit "14"
 Affidavit of
 Okyeame Kwasi
 Amoia & Another.
 11th August,
 1942
 - continued.

6. That the matter was thereupon referred to the State Council with the consent and approval of the respective Chiefs and their Elders and the deponents crave leave to refer to the State Council Record Book pages 238-241 dated the 2nd day of August, 1929 for the Proceedings.
7. The State Council with the approval and consent of the Chiefs decided to send a deputation to demarcate the boundary between the two Stools lands. 10
8. This decision did not materialise owing to the destoolment of the Omanhene and the matter has until recently seemed to be in abeyance.
9. That in May 1942 it became necessary to pursue the settlement above referred to owing to a threatened action at law by the present Chief of Bukuruwa (Nana Kofi Badu) and the desire of the Oman of Kwahu to avoid any such legal battles between two Stools of the State with their attendant expenses and ill-feeling. 20
10. That, therefore, at a State Council Meeting held at Abetifi on the 13th May 1942 the Chiefs of Nkwatia and Bukuruwa and their respective Elders agreed to adopt the suggestion of the State Council held in August, 1929, in connection with this dispute, namely the sending of a deputation by the State Council for purposes of demarcating the Boundary between the two Stools. 30
11. As an earnest of their bona fides the two Chiefs were requested to pay £6 (Six pounds) each to set their seals of approval and consent to the decision of the State Council, and each side paid £30 (Thirty Pounds) as deposits towards expenses to be incurred in connection with the demarcation.
12. The State Council decided that the deputation should consist of members appointed by each Division of the State. 40
13. That therefore the facts deposed to in paragraphs 4, 5, 6, 7 and 8 of the Affidavit of Osafohene Ebenezer Anakwa Adow and Okyeame Kwabena Ntiamoa are not true.

14. That in the month of June, this year the demarcation of the Boundary in question took place without let or hindrance and without any incidents.

15. That WE make this Affidavit in support of the Omanhene's opposition to the Application before this Court.

Exhibits

Exhibit "14"
Affidavit of
Okyeame, Kwasi
Amoa & Another.
11th August,
1942
- continued.

10 Sworn at Accra, this 11th day
of August, 1942 by Okyeame }
Kwasi Amoah of Abene after the }
foregoing Affidavit has been }
read over and interpreted to } (Sgd.)
him in the Twi language by me } Okyeame Kwasi Amoah.
of Accra when he seemed per- }
fectly to understand the }
same before making his mark }
thereto: }

(Sgd.) V.L. Buckle.

20 Sworn at Accra, this 11th day
of August, 1942 by Osafohene } (Sgd.) R.E. Onwona.
Richard Emmanuel Onwona: }

Before me,

(Sgd.) V.L. Buckle,
COMMISSIONER FOR OATHS.

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

6th October, 1942.

In the Supreme Court of the Gold Coast, Eastern
Province held at Victoriaborg, Accra on Tuesday
the 6th day of October, 1942 before His Honour
Charles Edward Woolhouse Bannerman, Ag. C.J.

Nana Kofi Baadu II

v.

Chief Tawia & David Akuamoaa etc.

Mr. Sawyerr for Plaintiff.

Mr. Van Lare for 2nd and co-defendant.

10

Adjourned to tomorrow.

W. B.
Ag. C.J.

7th October, 1942.

In the Supreme Court of the Gold Coast Eastern
Province held at Victoriaborg, Accra, on Wednesday
the 7th day of October, 1942 before His Honour
Charles Edward Woolhouse Bannerman, Ag. C.J.

Nana Kofi Baadu II

v.

Chief Tawia, David Akuamoaa
alias Yaw Kofi & Osei Tutu II

20

Mr. Sawyerr for Plaintiff.

Mr. Van Lare for 2nd defendant and co-defendant.

Mr. Sawyerr says there appears to be some dispute
as to whether the co-defendant has been served.
Suggests that the Court may order that the co-
defendant should be served with the copy of the
summons together with copies of the proceedings
up to the date he was joined as co-defendant.
That the co-defendant is at present in Accra.

30

Mr. Van Lare is willing to accept service on behalf
of the co-defendant, if necessary.

By the Court - Ordered accordingly - let the

co-defendant be served with a copy of the summons together with copies of all the proceedings up to the date he (the co-defendant) was joined. Let service be effected on the co-defendant or on Mr. Van Lare.

Adjourned to 11th November, 1942.

(Sgd.) Woolhouse Bannerman,
Ag. C.J.

Certificate of Service

10 Upon the 8th day of October, 1942, a copy of this Order of the 7th October, 1942, together with a copy of the Writ of Summons and copies of all proceedings up to date was served by me on Mr. W.B. Van Lare, Counsel for the co-defendant personally at Accra.

(Sgd.) Anthonio Nee Ankrah,
Bailiff.

18.11.42.

20 In the Supreme Court of the Gold Coast, Eastern Province held at Victoriaborg, Accra on Wednesday the 18th day of November, 1942, before His Honour Mr. Justice Woolhouse Bannerman.

Nana Kofi Baadu II

v.

Chief Tawia & Ors.

Mr. Sawyerr for the Plaintiff -
Mr. Bossman with him Mr. Van Lare for defendants.

Mr. Bossman says that a plan is absolutely necessary.

30 Mr. Sawyerr says a plan at this stage is not necessary. After pleadings a plan could be made if necessary. He does not consent at this stage for a plan to be made.

I will look up precedent.

Adjourned to tomorrow.

W.B.

Exhibits

Exhibit "E"

Relevant parts of proceedings in re Yaw Nkansah II & Another v. Wudanu Kwasi & Another.

13th March 1940
to 2nd May 1947
- continued.

Exhibits

20.11.42.

Exhibit "E"
Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

In the Supreme Court of the Gold Coast, Eastern
Province held at Victoriaborg, Accra, on Friday
the 20th day of November, 1942, before His Honour
Mr. Justice Woolhouse Bannerman.

Nana Kofi Baadu II
v.

1. Chief Tawia
2. David Akuamoah
3. Osei Tutu II.

10

Mr. Sawyerr for the Plaintiff.
Mr. Bossman and Mr. Van Lare for Defendants.

Mr. Sawyerr produces copy of Chief Justice's ruling
in the Asamoah v. Kofi Mensah & Others.

Mr. Van Lare cites unreported case of Chief Sakpaku.
v. Chief Lanyo Ahiable & Others W.A.C.A. 27/5/42.

By the Court - Each case must be dealt with on its
merits. I shall order pleadings at this stage
and if at the close of proceedings it becomes
necessary for a plan to be made I will do so. I
will, if necessary, grant leave to defendants to
amend their defence.

20

Let the Plaintiff serve each of the defendants
with a statement of claim within 30 days from date
and the defendants to serve a statement of defence
21 days thereafter. Plaintiff to serve a reply
14 days after service of Statement of Defence.

Adjourned to 5th February, 1943 for mention.

(Sgd.) Woolhouse Bannerman,
Judge.

30

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN PROVINCE
DIVISIONAL COURT, ACCRA

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

Transferred Suit
No.1/1942.

Between: Nana Kofi Baadu II
of Bukuruwa, Kwahu Plaintiff

and

10

Chief Tawia of Atipradaa
and David Akuamoa alias
Yaw Koi of Adukrom Defendants

Osei Tutu of Wusuta Co-Defendant

THE PLAINTIFF'S STATEMENT OF CLAIM

20

1. The Plaintiff is the Ohene of Bukuruwa in the Kwahu District and the owner as such Ohene of All that piece or parcel of land situate at Kawekesiem in Kwahu, and bounded on the north by the River Faa, on the South by the River Afram, on the East by the River Volta, and on the West by the Plaintiff's Stool land.

2. The said land is the ancestral property of the Plaintiff's Stool to which it is attached, and has been in the possession and occupation of the Plaintiff and his predecessors on the said Stool of Bukuruwa from time immemorial.

30

3. The Defendant Osei Tutu is the Chief of Wusuta in Togoland and the Defendants Chief Tawia and David Akuamoa alias Yao Koi are natives of Togoland and subjects of the defendant Osei Tutu.

4. During the German occupation of Togoland, Adom the father of the Defendant Chief Tawia sought for and obtained the permission of one of the Plaintiff's predecessors to reside on the land in dispute with his family and to hunt and make farms thereon on payment of tolls to the Plaintiff's predecessor through his Jasehene.

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

5. The said Adom lived on the said land with his family including the Defendant Chief Tawia for several years and paid tolls to the Plaintiff's predecessors during his occupation until his death. 10
6. The said Adom was succeeded on the land by his son the Defendant Chief Tawia who also paid tolls for several years after the death of his father, but subsequently refused to do so.
7. The Defendant David Akuamoaa obtained permission from the Plaintiff about the year 1933 to farm on the said land and paid tribute to the Plaintiff therefor until 1938 when he also refused to pay further tribute to the Plaintiff.
8. The Defendant's Chief Tawia and David Akuamoaa are still farming and hunting on the land in dispute, but refuse to pay tolls to the Plaintiff's Stool, and together with the Defendant Osei Tutu, now lay claim to the said land as part of the Stool property of the Wusuta Stool on which the Defendant Osei Tutu sits as Chief. 20

The Plaintiff therefore claims as against the Defendants,

Amended by
Order dated
17.4.1947.
L.M.
Ag. C.J.

(1) A declaration of his title to All that piece or parcel of land situate in Kwahu and bounded on the North by the River Obosom, on the South by the River Afram, on the East by the River Volta, and on the West by Abetifi, Nkwatia, Pitiku and Kwahu Tafo Stool lands. 30

(2) And an Injunction to restrain the Defendants their agents and servant from cultivating the said land or interfering with the Plaintiff's ownership thereof.

Dated at Accra this 19th day of December, 1942.

(Sgd.) Akilagpa Sawyerr,
SOLICITOR FOR PLAINTIFF.

THE REGISTRAR
DIVISIONAL COURT,
ACCRA.

40

AND

TO THE ABOVE NAMED DEFENDANTS
THEIR AGENT OR SOLICITOR, MR. W.B. VAN LARE,
ACCRA.

Filed 21.12.42.
at 12.5 p.m.
H.K.C.
for Registrar, Divl. Court
Accra.

Exhibits

Exhibit "E"
Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

Upon the 21st day of December, 1942 a copy of
this Statement of Claim was served by me upon
Mr. W.B. Van Lare, Solicitor for the Defendants
herein personally at Accra.

10

(Sgd.) Anthonio Wee Ankrah
Bailiff.

13th March 1940
to 2nd May 1947
- continued.

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN PROVINCE
DIVISIONAL COURT, ACCRA

Transferred Suit
No. 1/1942

Nana Kofi Baadu II
of Bukuruwa Kwahu, Plaintiff

v.

20

Chief Tawia of Atipradaa
and David Akuamoa alias
Yaw Koi of Adukrom, Defendants

Osei Tutu of Wusuta, Co-Defendant

AFFIDAVIT OF MATHEWS COMMEY BEGARTSE AGBETTOH.

I, MATHEWS COMMEY BEGARTSE AGBETTOH native of
Kpandu, Togoland British Mandate make oath and say
as follows :-

30

1. That I am authorised by the 1st Defendant
herein Chief Tawiah of Atipradaa to swear to
this Affidavit on his behalf.
2. That Osei Tutu who is the principal Defendant
herein was sued in his representative capacity
as Chief of the Wusuta Division.
3. That I claimed title to the land in dispute
through and under the Divisional Stool of

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

Wusuta which the said Osei Tutu represents in
this case.

4. That I am informed and verily believe that the hearing of the above named case is fixed for the 17th day of February, 1943.
5. That charges for destoolment have been served by the Wusuta Division upon the said Osei Tutu the principal Defendant herein and hearing of the said case is fixed for the 4th day of March, 1943, before Akpini State Council Kpandu. 10
6. That in view of the fact that the principal Defendant herein Osei Tutu through and under whom I claimed title is shaky as regards his representation of the Stool I have no confidence in his prosecuting the case.
7. That the above-named case cannot properly be tried and determined if the case before the Akpini State Council is not heard and the position of the principal Defendant is determined as to whether he is the proper person to be sued in the capacity he was sued or be substituted. 20
8. That to save making expenses I swear to this Affidavit praying that the case be adjourned sine die pending the hearing and determination of the case before the Akpini State Council and for any other order or orders as to the Court may seem fit.

Sworn at Accra this 5th }
day of February, 1943, } (Sgd.) M.C.B. Agbettoh. 30
by the above-named de- }
ponent }

Before me,

(Sgd.) E. K. Aryee,
COMMISSIONER FOR OATHS.

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN PROVINCE
DIVISIONAL COURT, ACCRA.

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nransah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

Transferred Suit
No. 1/1942

Nana Kofi Baadu II of
Bukuruwa, Kwahu

Plaintiff

v.

Chief Tawia of Atipradaa
and David Akuamoah alias
Yaw Koi of Adukrom

Defendants

and

Osei Tutu of Wusuta

Co-Defendant

STATEMENT OF DEFENCE FILED ON BEHALF OF THE
DEFENDANT DAVID AKUAMOA alias YAW KOI & THE
CO-DEFENDANT OSEI TUTU HEREINAFTER REFERRED
TO AS SECOND AND THIRD DEFENDANTS

1. The 2nd and 3rd Defendants deny generally the
main allegations of the Plaintiff contained
in paragraphs 1-8 inclusive of the said Plain-
tiff's Statement of Claim.
2. In further answer to paragraph 1, the said
2nd and 3rd Defendants specifically deny that
the Plaintiff as Ohene of Bukuruwa is the
owner of all that piece or parcel of land des-
cribed in paragraph 1 of the Statement of
Claim, and the said 2nd and 3rd Defendants say
that the major portion of the land described
belongs to the three Defendants herein for
their subjects and people - and that the re-
maining portion belongs to other neighbouring
chiefs, but that no portion of the land des-
cribed in paragraph 1 of the Statement belongs
to or is owned by the said Plaintiff.
3. In further answer to paragraph 2 of the State-
ment of Claim, the said 2nd and 3rd Defendants
say that the Plaintiff's Stool has never been
the owner of the land claimed in the Writ
nor has the said land been in any way attached
to the said Plaintiff's Stool and the said

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

Defendants emphatically deny that the said land has ever been in the possession and occupation of the Plaintiff and his predecessors from time immemorial - AND the said 2nd and 3rd Defendants say that the major Portion of the land claimed has belonged to them together with the 1st Defendant from time immemorial and that it is subject of the respective stools of the Defendants that have been in possession and occupation from time immemorial and have cultivated extensively up to date hereof.

10

4. Paragraph 3 of the Plaintiff's Statement is admitted, but with the amplification or further explanation that Osei Tutu is the Head Chief of Wusuta and Chief Tawia, his sub-chiefs and David Akuamoah his subject.
5. In reply to paragraph 4 and 5 of the Statement of Claim, it is emphatically denied that Chief Tawia ever sought and obtained leave from any predecessor of the Plaintiff before occupying his portion of the land in dispute, and the 2nd and 3rd Defendants say that to their knowledge Chief Tawia the 1st Defendant and his predecessors as Chiefs of Atipradaa together with their subjects and people, occupied their portion of the land in dispute and were cultivating same long before the German advent in Togoland.
6. In further answer to paragraphs 5 and 6 it is denied that any tolls were ever paid to the Plaintiff by any of the Defendants in respect of the said Defendants' occupation of the land - and the Defendants allege that all of them or their subjects and servants have occupied and cultivated the land in dispute as owners thereof without any question of paying tolls to any person or persons in respect of such occupation of the land.
7. In answer to paragraph 7 of the Statement of Claim the 2nd Defendant denies that it was only in 1933 that he went into occupation of the land in dispute or that he obtained permission from the Plaintiff and paid tolls to the said Plaintiff - and the 2nd Defendant says that his predecessors had occupied and

20

30

40

lived on the land before him - and that he himself has been on the land for a long time without paying tolls to any person.

Exhibits

Exhibit "E"

8. The Defendants admit paragraph 8 of the Statement of Claim, and say that they have always maintained that the land is their Stool land - and the Defendants deny that the Plaintiff is entitled to either or both of the Reliefs claimed in the Writ.

Relevant parts of proceedings in re Yaw Nkansah II & Another v. Wudanu Kwasi & Another.

10 Dated at Azinyo Chambers Accra this 5th day of February, 1943.

13th March 1940 to 2nd May 1947 - continued.

(Sgd.) K. Adumua-Bossman,
SOLICITOR FOR DEFENDANTS.

THE REGISTRAR,
DIVISIONAL COURT, ACCRA.

AND

TO THE ABOVE NAMED PLAINTIFF
NANA KOFI BADU II OF BUKURUWA KWAHU,
HIS SOLICITOR OR AGENT, ACCRA.

20

Filed 10.2.43
at 8.30 a.m.
H.K.C.
for Registrar, Divl. Court
Accra.

Upon the 11th day of February, 1943, a copy of this Statement of Defence was served by me on A. Sawyerr, Esquire, Solicitor for the Plaintiff herein through his Chief Clerk C.S. Odoi personally at Accra.

30

(Sgd.) Jacob Darku,
Bailiff.

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN PROVINCE, DIVISIONAL COURT,
ACCRA, A.D. 1943.

Transferred Suit
No. 1/1942.

Nana Kofi Baadu II
of Bukuruwa Kwahu

Plaintiff

v.

Chief Tawia of Atipradaa
and David Akuamoza alias
Yaw Koi of Adukrom

Defendants

10

Osei Tutu of Wusuta

Co-Defendant

STATEMENT OF DEFENCE ON BEHALF OF CHIEF TAWIA OF
ATIPRADA A HEREIN REFERRED TO AS THE 1st DEFENDANT

1. The 1st Defendant admits paragraph 3 of the Plaintiff's Statement of Claim but with the amplification that he the said 1st Defendant is a sub-chief of Osei Tutu of Wusuta the 3rd Defendant herein. sic.
2. Save and except the admission contained in paragraph 1 supra the 1st Defendant denies each and every allegation contained in paragraphs 1, 2, 4, 5, 6, 7 and 8 of the Plaintiff's Statement of Claim. 20
3. In further answer to paragraph 2 of the said Statement of Claim the 1st Defendant says that part of the land in dispute now in the occupation and possession of the 1st Defendant has never at any time within human memory formed part of the Stool lands of the Plaintiff and that the Plaintiff and his predecessors-in-title have never been in possession and occupation of the said land. 30
4. In further answer to paragraphs 4, 5 and 6 the 1st Defendant says that his predecessor-in-title as sub-chiefs of the Wusuta Divisional Chief and their subjects, long before the time of his father the said Adom and long before the advent of the Germans in Togoland,

occupied, possessed and quietly enjoyed without interruption his portion of the land in dispute which has since been attached to the sub-stool of Atipradaa with the Customary Licence of the Divisional Chief of Wusuta and his predecessors-in-title; and that they the 1st Defendant, his predecessors-in-title and their subjects have since their possession of the said land from time immemorial built a number of villages on the said land, one of the villages being Atikpaleh the Stool headquarters of the sub-stool of Atipradaa.

10

5. The 1st Defendant therefore prays that inasmuch as the said land has from time immemorial formed part of the Stool lands of the Wusuta Division the Plaintiff is not entitled to the Declaration and the Relief sought in his said Statement of Claim.

20

Dated at Kwakwaduum Chambers, Accra, this 13th day of April, 1943.

(Sgd.) Akufo Addo,
SOLICITOR FOR 1st DEFENDANT.

TO THE REGISTRAR,
DIVISIONAL COURT,
ACCRA.

AND

TO THE ABOVE-NAMED PLAINTIFF
NANA KOPI BAADU II OF BUKURUWA KWAHU,
OR HIS SOLICITOR.

30

Filed 14.4.43
at 8.50 a.m.
H.K.C.
for Registrar, Divl. Court,
Accra.

Upon the 15th day of April, 1943, a copy of this Statement of Defence was served by me upon Akilagpa Sawyerr Esquire, Solicitor for the Plaintiff herein personally at Accra.

40

(Sgd.) Anthonio Nee Ankrah,
Bailiff.

Exhibits

Exhibit "E"

Relevant parts of proceedings in re Yaw Nkansah II & Another v. Wudanu Kwasi & Another.

13th March 1940
to 2nd May 1947
- continued.

Exhibits

EXHIBIT "4"

Exhibit "E"
Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

MOTION AND AFFIDAVIT FOR JOINDER OF
DWAMENA AYIREPEH II, as CO-DEFENDANT

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN PROVINCE
DIVISIONAL COURT, ACCRA

Nana Kofi Baadu II of
Bukurua, Kwahu Plaintiff

v.

Chief Tawia of Atipradaa
David Akuamoaa alias Yaw
Koi of Adukrom Defendants
Osei Tutu of Wusuta Co-Defendant

10

Exhibit "4"
Motion and
Affidavit for
joinder of
Dwamena Ayirepeh
II as co-
Defendant.

31st January,
1944.

TAKE NOTICE that this Honourable Court will
be moved by EDMUND ALEXANDER BANNERMAN of Counsel
for and on behalf of Chief Dwamena Ayirepeh II of
Nkwatia Kwahu for an Order joining him as a De-
fendant in the above-named suit upon the grounds
set forth in the Affidavit in support hereof:
AND for such other order or orders as to the Court 20
may seem fit.

To be moved on Tuesday the 8th day of February,
1944 at 8.30 o'clock in the forenoon or so soon
thereafter as Counsel can be heard.

Dated at Accra the 31st day of January, 1944.

(Sgd.) E.A. Bannerman,
SOLICITOR FOR APPLICANT.

THE REGISTRAR,
DIVISIONAL COURT, ACCRA.

AND TO THE ABOVE-NAMED PLAINTIFF 30
OR HIS SOLICITOR, ACCRA,

AND

TO THE ABOVE-NAMED DEFENDANT & CO-DEFENDANT,
THEIR SOLICITORS OR AGENTS, ACCRA.

Filed 1.2.44.
at 8 a.m.
J.H.G.
for Registrar, Divl. Court,
Accra.

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN PROVINCE
DIVISIONAL COURT, ACCRA.

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

Nana Kofi Baadu II of
Bukuruwa, Kwahu Plaintiff

v.

Chief Tawia of Atipradaa
David Akuamoa alias Yaw
Koi of Adukrom Defendants

10 Osei Tutu of Wusuta, Co-Defendant

AFFIDAVIT OF OKYEAME ASARE ABROKWA ADIHYEHENE
sic. KWAHU MENSAN IN SUPPORT OF NOTICE HEREIN.

WE, OKYEAME ASARE ABROKWA and OPANYIN KWAKU
MENSAN of Nkwatia-Kwahu make oath and say as
follows :-

1. That we are the linguist and Adihyehene re-
spectively of the Nkwatia Stool and have the
authority and consent of the Ohene and Elders
of Nkwatia to depose to the facts herein in
support of this application on behalf.
2. That in the above-named suit now pending be-
fore this Honourable Court the Plaintiff
claims against the Defendants a Declaration of
Title to All that piece or parcel of land
situate at Kwaekesiem in Kwahu and bounded on
the north by River Faa on the South by River
Afram on the East by River Volta and on the
West by the Plaintiff's Stool land and also
for an Injunction restraining the Defendants
from interfering with Plaintiff's ownership.
3. The land described above forms part of the
Stool lands of Nkwatia and has belonged to
our Stool from time immemorial.
4. On the 29th October, 1943 the Ohene of Nkwatia
received a letter from Nana Osei Tutu of Wu-
suta, the Co-defendant informing him of the
proceedings herein pending before the Court
and of an order by this Honourable Court re-
questing all parties to point out their boun-
daries to surveyors (I crave leave to refer
to the said letter).

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

5. On the 22nd of November, 1943 Nana Kofi II the Plaintiff herein, also wrote to the Ohene of Nkwatia informing him of the above-named suit and asked him to send some elders of Nkwatia to witness the survey of the land in dispute (I crave leave to refer to the said letter).
6. The Ohene of Nkwatia sent some of his elder to witness the survey and they discovered that practically the whole land in dispute is Nkwatia Stool land and that there are about 27 villages on the said land founded by and belonging to Nkwatia people. sic. 10
7. The applicant as Ohene of Nkwatia has interest in the lands claimed by the parties herein and will be vitally affected by the result of the suit particularly as both the Plaintiff and the co-defendant have brought the proceeding herein to his notice.
8. We make this Affidavit in support of the Application herein for an order of joinder of the applicant herein as a Defendant in the above-named suit. 20

Sworn at Accra, this 31st day of January, 1944, the foregoing having been first read over interpreted and explained to the deponents by E.K. Ofori in the Twi language when they seemed perfectly to understand the same before affixing their signatures or marks thereto

(Sgd.) Okyeame Asare
Abrokwa

Opanyin Kwaku Mensah his
x
mark 30

Before me,

(Sgd.) B. Crosby-Davis,
COMMISSIONER FOR OATHS.

(Sgd.) E.K. Ofori,
Interpreter.

Filed 1.2.44
at 8 a.m.
J.H.G.
for Registrar, Divl. Court. 40
Accra.

Upon the 1st day of February, 1944 a copy of

this Affidavit with attached Motion Paper was served by me upon A.K. Sawyerr, Esquire, Solicitor for Plaintiff herein personally at Accra.

(Sgd.) Titus D. Epu,
Bailiff.

Upon the 1st day of February, 1944 a copy of this Affidavit with attached Motion Paper was served by me upon A.K. Sawyerr, Esquire, Solicitor for Plaintiff herein personally at Accra.

10

(Sgd.) Titus D.E.Epu,
Bailiff.

Exhibits

Exhibit "E"

Relevant parts of proceedings in re Yaw Nkansah II & Another v. Wudanu Kwasi & Another.

13th March 1940 to 2nd May 1947
- continued.

8th February, 1944.

In the Supreme Court of the Gold Coast, Eastern Province held at Victoriaborg, Accra, on Tuesday the 8th day of February, 1944, before His Honour Mr. Justice Quashie-Idun, Ag. J.

Motion -

Nana Kofi Baadu I

v.

20

Chief Tawia of Atipradaa and Others

Motion on Notice for order to join Chief Dwamena Ayirepeh II as Defendant.

Mr. Bannerman for Applicant.

Mr. Sawyerr for Plaintiff states no sufficient time to file Affidavit in reply.

Mr. Attoh for Mr. Bossman states the same.

Court notes that Counsel were served with motion paper and Affidavit on the 1st February.

30 By Court - Adjourned 11/2/44. Costs of £1. 1/- for Mr. Bannerman as against each of the Defendants served.

(Sgd.) S.O. Quashie-Idun,
Ag. J.

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

Exhibit "5"

Affidavit of
Kofi Baadu

10th February,
1944.

EXHIBIT "5"AFFIDAVIT OF KOFI BAADU.

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN PROVINCE,
DIVISIONAL COURT, ACCRA.

Nana Kofi Baadu II
of Bukuruwa, Kwahu, Plaintiff

and

Chief Tawia of Atipradaa
David Akuamoaa alias Yaw
Koi of Adukrom Defendants

10

Osei Tutu of Wusuta, Co-Defendant

I, KOFI BAADU, Ohene of Bukuruwa, and the
Plaintiff in the above-named case make oath and
say :-

1. The Affidavit of Okyeame Asare Abrokwa and
Opanyin Kwaku Mensah of Nkwatia sworn to
herein has been read and interpreted to me.
2. Paragraphs 3, 6 and 7 of the said Affidavit
are untrue. 20
3. I crave leave to refer to the Writ of Summons
and the pleadings of the several parties here-
in, and to all the other papers in the case.
4. About two years ago I took out a Writ of
Summons against the Ohene of Nkwatia who
seeks to be made a co-defendant herein for
the demarcation of the boundary between our
respective Stool lands. The matter was sub-
mitted to the arbitration on the Kwahu State
Council who subsequently gave a decision and 30
demarcated the boundaries between our Stool
lands.
5. The lands the subject matter of the above ac-
tion do not include any portion of any land
which is the property of the said Nkwatia
Stool.

6. I will be greatly embarrassed in the presentation of my case should the said Ohene of Nkwatia be joined herein as a co-defendant.

7. And I make this Affidavit in opposition to the Application of the said Ohene of Nkwatia for a Joinder.

10 Sworn at Accra this 10th day of February, 1944, the foregoing having been first read over interpreted and explained to the Deponent by me in the Twi language when he seemed perfectly to understand the same before affixing his mark thereto

Kofi Baadu his x mark

Exhibits
Exhibit "E"
Relevant parts of proceedings in re Yaw Nkansah II & Another v. Wudanu Kwasi & Another.

13th March 1940 to 2nd May 1947 - continued.

Exhibit "5"
Affidavit of Kofi Baadu.

10th February, 1944 - continued.

Before me,

(Sgd.) V. L. Buckle,
COMMISSIONER FOR OATHS.

20

Filed 10/2/44
at 11 a.m.
J.H.G.
for Registrar, Dvl. Court.
Accra.

Upon the 10th day of February, 1944 a copy of this Affidavit was served by me upon E.A. Bannerman, Esquire, Solicitor for the Co-defendant herein personally at Accra.

(Sgd.) Anthonio Nee Ankrah,
Bailiff.

ExhibitsEXHIBIT "6"

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.
13th March 1940
to 2nd May 1947
- continued.

COURT NOTES ORDERING CHIEF DWAMENA AYIREPEH II
AS CO-DEFENDANT.

11th February, 1944.

In the Supreme Court of the Gold Coast, Eastern
Province held at Victoriaborg, Accra, on Friday
the 11th day of February, 1944, before His Honour
Mr. Justice Quashie-Idun, Ag. J.

Motion -

Nana Kofi Baadu II

v.

Chief Tawia & Others.

10

Exhibit "6"

Court Notes
ordering Chief
Dwamena
Ayirepeh II as
co-defendant.
11th February,
1944.

Motion on notice for Order joining Chief Dwamena
Ayirepeh II as Defendant.

Mr. Bannerman for Applicant.

Mr. Sawyerr for Plaintiff.

Mr. Attoh for Mr. Bossman for 2nd and 3rd De-
fendants states leave matter for Court.

Mr. Bannerman moves in terms of motion paper and
Affidavit. Refers to paragraphs 2, 3, 4, 6 and
7 of Affidavit. Refers to Schedule 3 Order 3
Rule 5. The claim is for a declaration of title
to land and not for remedy against persons for a
tort. Judgment in rem would affect us. Refers
to English and Empire Digest on Pleading Practice
sic. etc., page 411, pp. 1104 -

20

Mr. Sawyerr argues contra: submits that the appli-
cant is not entitled to be joined as a party.
Rule 5 Order 3 gives a discretionary power. Sub-
mits that there is no common question of fact or
law between Plaintiff and the Applicant. Refers
to Order 14 Rule 4 of the White Book. The appli-
cant's remedy is to bring action against the parties
before the Court for trespass. If the order is
made it will embarrass the Plaintiff at the trial
especially at this stage. Submits that the appli-
cation should not be granted.

30

Mr. Bannerman replies - submits that as to paragraph 4 of the Affidavit of the Plaintiff the allegation is denied and that even if it is true, it would be a matter of estoppel against the applicant and if it is maintained, applicant can be struck out from the suit. Refers to 1943 White Book page 247 Order 14 Rule 4. Submits that only the Defendant can claim to be embarrassed.

10 By Court - After reading Affidavit filed in this matter and hearing Counsel the Court hereby orders that the applicant be joined as a co-defendant in the suit. Applicant to be served with a copy of the Writ of Summons and all papers filed in the proceedings - application by applicant. Applicant to file Statement of his Defence within 21 days and reply thereto by Plaintiff and other parties within 14 days.

Mr. Bannerman states that order should be made for Applicant to point out the land to the Surveyor.

20 By Court Let applicant point out to the Surveyor the land in order that same may be demarcated - plans to be submitted to the Court. Costs of this to be borne by applicant. Costs of this Motion allowed, applicant assessed at £2.10/- against the Plaintiff.

Exhibits

Exhibit "E"
Relevant parts of proceedings in re Yaw Nkansah II & Another v. Wudanu Kwasi & Another.

13th March 1940 to 2nd May 1947
- continued.

Exhibit "6"

Court Notes ordering Chief Dwamena Ayirepeh II as co-defendant.

11th February, 1944.
- continued.

(Sgd.) S.O. Quashie-Idun,
Ag. J.

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re YawNkansah II &
Another v.
Wudanu Kwasi &
Another.13th March 1940
to 2nd May 1947
- continued.CERTIFICATE OF THE ORDER OF THE COURT
IN THE WEST AFRICAN COURT OF APPEAL

MOTION EX-PARTE for the Plaintiff-Appellant herein for an Order for the substitution of Dzaba II, the newly installed Chief of Wusuta in place of the Defendant-Respondent Osei Tutu, who has been destooled AND for such further Order or Orders therein as to this Honourable Court may seem fit.

Dated the 12th day of October, 1944.

10

Nana Kofi Baadu II Plaintiff-Appellant

v:

Chief Tawia,
David Akuamoah alias
Yaw Koi, Osei Tutu
of Wusuta and Chief
Dwamena Ayirepeh II. Defendants-Respondents

This Motion coming on for hearing on the 14th day of October, 1944, before Doorly, Ag. C.J., Gold Coast sitting as a Single Judge of Appeal in the presence of Hon. A. Sawyerr for the Applicant. 20

I HEREBY CERTIFY that an Order was made as follows :-

Substitution as prayed.

Given under my hand and the Seal of the Court this 14th day of October, 1944.

(Sgd.) A.N. Doorly,
AG. CHIEF JUSTICE.

(L.S.)

CERTIFICATE OF THE ORDER OF THE COURT
IN THE WEST AFRICAN COURT OF APPEAL

Exhibits

Exhibit "E"

Appeal from the Order of Quashie-Idun, Ag. J.
of the Divisional Court of the Eastern Province,
Accra, dated the 11th day of February, 1944.

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

Nana Kofi Baadu II of
Bukuruwa, Kwahu Appellant

versus

13th March 1940
to 2nd May 1947
- continued.

10

Chief Tawia of Atipradaa
and David Akuamoah alias
Yaw Koi of Adukrom Defendants-Respondents

Dzaba II, Ohene of
Owusuta and Chief
Dwamena Ayirepeh II of
Nkwatia-Kwahu Co-Defendants-Respondents

20

This appeal coming on for hearing on the 22nd
day of November, 1944 before Kingdon, C.J. Nigeria
(President) Harragin, C.J. Gold Coast and Doorly,
J., Gold Coast in the presence of Hon. A. Sawyerr
for the Appellant, and Mr. N.A. Ollenu for the
Respondents.

I HEREBY CERTIFY that a Judgment was given as
follows :-

The appeal is dismissed with costs assessed
at £21.10.6. in favour of Chief Dwamena Ayirepeh
II.

The Court below to carry out.

30

Given under my hand and the Seal of the Court
this 22nd day of November, 1944.

(Sgd.) Donald Kingdon,
PRESIDENT.

(L.S.)

Exhibits

EXHIBIT "7"

Exhibit "E"
Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

MOTION AND AFFIDAVIT FOR JOINDER OF
NANA AKWAMOAH AKYEAMPONG as CO-PLAINTIFF

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN JUDICIAL DIVISION
LANDS COURT, ACCRA

Nana Kofi Baadu, of
Bukuruwa, Kwahu Plaintiff

versus

Chief Tawia of Atipradaa
David Akuamoah alias
Yaw Koi of Adukrom and
Osei Tutu of Wusuta Defendants

Chief Dwamena Ayirepeh II
of Nkwatia, Kwahu, Co-Defendant

10

Exhibit "7"

Motion and
Affidavit for
Joinder of
Nana Akwamoah
Akyeampong as
co-plaintiff.

24th August,
1945.

MOTION ON NOTICE by Akilagpa Sawyerr of Coun-
sel for the above-named Plaintiff for an Order for
Nana Akuamoah Akyeampong Omanhene of Kwahu to be
joined as a Plaintiff herein.

AND for such further Order or Orders therein
as to this Honourable Court might seem fit.

20

To be moved on Saturday the 25th day of Aug-
ust, 1945, at 8.30 o'clock in the forenoon or so
soon thereafter as Counsel for the Plaintiff may
be heard.

Dated at Accra this 24th day of August, 1945.

(Sgd.) Akilagpa Sawyerr
SOLICITOR FOR PLAINTIFF

THE REGISTRAR,
LANDS COURT, ACCRA.

30

THE DEFENDANTS OR THEIR
AGENT OR SOLICITOR, ACCRA

AND

TO THE ABOVE-NAMED CO-DEFENDANT
HIS AGENT OR SOLICITOR, ACCRA.

UPON the 25th day of August 1945 I hereto ef-
fect service on K.A. Bossman, N.A. Ollennu and Akufo
Addo but they refused to accept service and say
that service should be effected on their clients
personally.

(Sgd.) Titus Epu.
Bailiff.

40

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN JUDICIAL DIVISION, LANDS COURT
ACCRA.

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

Nana Kofi Baadu II of
Bukuruwa, Kwahu Plaintiff

v.

Chief Tawia of Atipradaa
David Akuamoah alias Yaw
Koi of Adukrom and Osei
Tutu of Wusuta Defendants

10

Chief Dwamena Ayirepeh II
of Nkwatia, Kwahu Co-Defendant

AFFIDAVIT OF KWESI AMOA

I, KWESI AMOA of Abene in the Kwahu District, but
now at Accra make oath and say :-

1. I am the Kyidomhene of Abene aforesaid and
have been sent by the Omanhene of Kwahu, Nana
Akuamoah Akyeampong to swear to this Affidavit
on his behalf.
- 20 2. All the lands in the Kwahu District are under
the said Omanhene and his sub-chiefs through-
out the whole District look after their re-
spective portions of the said lands on his
behalf.
3. The land the subject matter of the above ac-
tion is a portion of the lands under the said
Omanhene who has great interest therein.
4. I make this Affidavit in support of the appli-
cation of the said Omanhene to be made a

Exhibits

Co-Plaintiff herein.

Exhibit "E"
Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.
13th March 1940
to 2nd May 1947
- continued.

Sworn at Accra, this 24th day)
of August, 1945, after the)
foregoing had been read over)
interpreted and explained to)
the within-named Kwesi Amoa)
in the Twi language by Emml.)
Otukwa when he seemed per-)
fectly to understand the same)
before making his mark)

his
Kwesi Amoa x
mark
Witness to mark
(Sgd.) Emml. Otukwa
in Krontihene

10

Before me,

(Sgd.) R. A. Bannerman,
COMMISSIONER FOR OATHS.

Filed 24.8.45
at 9.20 a.m.
S.K.D.
for Registrar,
Divisional Court,
Accra.

25th August, 1945.

20

In the Supreme Court of the Gold Coast, Eastern
Judicial Division, held at Victoriaborg, Accra, on
Saturday the 25th day of August, 1945, before
M'Carthy, Ag. Chief Justice.

Nana Baadu II

v.

Chief Tawiah & Others

Application for joinder of Omanhene as Co-Plaintiff
Sawyerr for Nana Akuamoah Akyeampong Omanhene of
Kwahu states that notice of motion has not been
served on Defendants, but asks that motion be heard
ex parte as obviously the Omanhene has an interest
in the case and has a right to become a party.

30

By Court -

An order will be made ex parte for joinder of
the Omanhene as Co-Plaintiff. Notice of this or-
der to be given to all interested parties.

Liberty to apply within 14 days of service of notice.

Omanhene to be served with copies of pleadings filed. Statement of Claim to be delivered within 14 days, 14 days for defence, and 7 days for reply (if any).

L.M.

Exhibits

Exhibit "E"

Relevant parts of proceedings in re Yaw Nkansah II & Another v. Wudanu Kwasi & Another.

13th March 1940 to 2nd May 1947 - continued.

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN JUDICIAL DIVISION
LAND COURT, ACCRA.

10

(L.S.)

Transferred Suit
No. 1/1942

(Sgd.) L.V.M'Carthy,
ACTING CHIEF JUSTICE.

Nana Kofi Baadu II of
Bukuruwa, Kwahu

Plaintiff

versus

Chief Tawia of Atipradaa
David Akuamoaa alias Yaw
Koi of Adukrom and Osei
Tutu of Wusuta

Defendants

20

Chief Dwamena Ayirepeh II
of Nkwatia, Kwahu

Co-Defendant

ORDER FOR JOINDER.

UPON HEARING Mr. Akilagpa Sawyerr of Counsel for the Plaintiff herein AND UPON READING the Affidavit of Kwesi Amoa, Kyidomhene of Abene, filed on 24th August, 1945, in support of application for an Order for Nana Akuamoaa Akyeampong, Omanhene of Kwahu, to be joined as Co-Plaintiff herein:

30

Exhibits

Exhibit "E"

Relevant parts of proceedings in re Yaw Nkansah II & Another v. Wudanu Kwasi & Another.

13th March 1940 to 2nd May 1947 - continued.

IT IS FURTHER ORDERED that the said Co-Plaintiff deliver his Statement of Claim within 14 days: Defendant's Statement of Defence to be filed 14 days thereafter, and Co-Plaintiff's reply (if any) within 7 days after service of the Defence.

IT IS FURTHER ORDERED that Notice of his Order be served on all parties interested and that liberty is granted to either party to apply within 14 days of service of Notice. sic.

Given under my hand and the Seal of the said Court at Victoriaborg, Accra the 25th day of August, 1945. 10

(Sgd.) K.O. Quansah,
REGISTRAR, DIVISIONAL COURT.

Exhibit "8"

Co-plaintiff's Statement of Claim.

7th September, 1945.

EXHIBIT "8"

CO-PLAINTIFF'S STATEMENT OF CLAIM

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN JUDICIAL DIVISION
LANDS COURT, ACCRA

Nana Kofi Baadu II of Bukuruwa Plaintiff 20

Nana Akuamoza Akyeampong Omanhene of Kwahu, Abene Co-Plaintiff

v.

Chief Tawia of Atipradaa
David Akuamoza alias Yaw Koi of Adukrom, Osei
Tutu of Wusuta and
Chief Dwamena Ayiripeh II of Nkwatia, Kwahu Defendants 30

CO-PLAINTIFF'S STATEMENT OF CLAIM

1. The Co-Plaintiff is the Omanhene of Kwahu, and the Paramount Chief of the Kwahu State; the Plaintiff being the Ohene of Bukuruwa and one his sub-chiefs. sic.

2. All the lands in the said Kwahu State are under the jurisdiction of the Co-Plaintiff and are owned and possessed by the different Chiefs and Sub-chiefs of the said State for and on behalf of themselves and the Co-Plaintiff as the Paramount Chief of the said Kwahu State.

10 3. The land the subject matter of the above suit is in the said State, and under the jurisdiction of the Co-Plaintiff. The said land has been attached to the Stool of the Plaintiff from time immemorial for and on behalf of the said Plaintiff and the Co-Plaintiff as the Omanhene of Kwahu; and the Plaintiff serves the Co-Plaintiff with the said land.

4. None of the Defendants herein own or possess the said land or any portion thereof or is in any way entitled thereto.

And the Co-Plaintiff claims :-

20 (a) A declaration that the land the subject matter of the above suit is a portion of the Kwahu lands attached to and possessed by the Stool of the Plaintiff for and on behalf of the said Plaintiff and the Co-Plaintiff.

(b) And an Injunction to restrain the Defendants their agents and servants from cultivating the said land or in any wise interfering with the ownership thereof of the Plaintiff, and Co-Plaintiff.

Dated at Accra this 7th day of September, 1945.

(Sgd.) Akilagpa Sawyerr
SOLICITOR FOR PLAINTIFFS

THE REGISTRAR,
EASTERN JUDICIAL DIVISION, ACCRA.

AND

TO THE ABOVE-NAMED DEFENDANTS
THEIR AGENTS OR SOLICITORS,
ACCRA.

Exhibits

Exhibit "E"

Relevant parts of proceedings in re Yaw Nkansah II & Another v. Wudanu Kwasi & Another.

13th March 1940 to 2nd May 1947
- continued.

Exhibit "8"

Co-Plaintiff's Statement of Claim.

7th September, 1945
- continued.

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

Exhibit "8"

Co-Plaintiff's
Statement of
Claim.

7th September,
1945
- continued.

Filed 7.9.45
at 2.05 p.m.
S.K.D.
for Registrar,
Divisional Court,
Accra.

UPON the 13th day of September, 1945, this State-
ment of Claim of the Co-Plaintiff was served by me
on Chief Dwamena Ayiripeh II. This I did by
serving a copy of the above Statement of Claim of
the Co-Plaintiff on the said Chief Dwamena Ayiri-
peh II personally at Nkwatia.

10

(Sgd.) J. Augustus Kundoh,
Bailiff,
M'S COURT, MPRAESO.

UPON the 21st day of September, 1945, this State-
ment of Claim of the Co-Plaintiff was served by
me on David Akuamoa alias Yaw Koi. This I did by
serving a copy of the above Statement of Claim
of the Co-Plaintiff on the said David Akuamoa
alias Yaw Koi personally at Adukrom.

20

(Sgd.) J. Augustus Kundoh,
Bailiff,
M'S COURT, MPRAESO.

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN JUDICIAL DIVISION
LANDS COURT, ACCRA.

Nana Kofi Baadu II of
Bukuruwa & Another Plaintiffs

v.

Chief Tawia & Others Defendants

Exhibits

Exhibit "K"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

10 MOTION EX PARTE by Akilagpa Sawyerr of Coun-
sel for the above-named Plaintiffs for an Order
for the substitution of Yaw Nkansah II, Dsasehene
of Bukuruwa herein in place of the above-named Nana
Kofi Baadu II.

And for such further Order or Orders as to
this Honourable Court might seem fit.

To be moved on Thursday the 27th day of Sep-
tember, 1945, at 8.30 o'clock in the forenoon or
so soon thereafter as Counsel for the Plaintiffs
may be heard.

20 Dated at Accra this 25th day of September,
1945.

(Sgd.) Akilagpa Sawyerr,
SOLICITOR FOR PLAINTIFFS.

THE REGISTRAR,
EASTERN JUDICIAL DIVISION,
LANDS COURT, ACCRA.

Filed 26.9.45
at 9.15 a.m.
S.K.D.
for Registrar,
Divisional Court,
Accra.

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN JUDICIAL DIVISION
LANDS COURT, ACCRA

Nana Kofi Baadu II
& Another Plaintiffs

v.

Chief Tawia & Others Defendants

AFFIDAVIT OF YAW NKANSAH II

I, YAW NKANSAH II, Dsasehene of Bukuruwa, but now
at Accra, make Oath and say:-

10

1. Nana Kofi Baadu II of Bukuruwa, the first
Plaintiff herein was destooled recently and
Yaw Nkansah II, Dsasehene is the proper person
who according to Native Custom to act as Ohene
of Bukuruwa in the absence of a Mantse on the
Stool.

2. I make this Affidavit in support of my appli-
cation for substitution as first Plaintiff
herein in place of the destooled Nana Kofi
Baadu II.

20

Sworn at Accra this 25th) Yaw Nkansah II
day of September, 1945) DSASEHENE-BUKURUWA.

Before me,

(Sgd.) R.A. Bannerman,
COMMISSIONER FOR OATHS.

Filed 26.9.45.
at 9.15 a.m.
S.K.D.
for Registrar,
Divisional Court, 30
Accra.

27th September, 1945.

In the Supreme Court of the Gold Coast, Eastern Judicial Division, held at Victoriaborg, Accra, on Thursday, the 27th day of September, 1945, before M'Carthy, Acting Chief Justice.

Nana Kofi Baadu II

v.

Chief Tawia & Others.

Exhibits

Exhibit "E"

Relevant parts of proceedings in re Yaw Nkansah II & Another v. Wudanu Kwasi & Another.

13th March 1940
to 2nd May 1947
- continued.

Ex parte motion for substitution as Plaintiff.

10 Sawyerr for Applicant.

Refers to Affidavit of Yaw Nkansah II filed the 26th September, 1945.

By Court -

Let Yaw Nkansah be substituted for Nana Kofi Baadu II as Plaintiff.

Notice of this Order to be served on all parties concerned.

L.M.

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.
13th March 1940
to 2nd May 1947
- continued.

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN JUDICIAL DIVISION
LAND COURT, ACCRA.

(L.S.)

(Sgd.) L.V. M'Carthy.

Transferred Suit
No. 1/1942.

Nana Kofi Baadu II of
Bukuruwa,

Plaintiff

Nana Akwamoa Akyeampong
Omanhene of Kwahu

Co-Plaintiff

versus

Chief Tawia of Atipradaa,
David Akuamoa alias
Yaw Koi of Adukrom
Osei Tutu of Wusuta

Defendants

Chief Dwamena Ayiripeh II,
of Nkwatia, Kwahu

Co-Defendant

10

ORDER FOR SUBSTITUTION

UPON HEARING Mr. Akilagpa Sawyerr of Counsel
for Plaintiffs herein, AND UPON READING the Affi-
davit of Yaw Nkansah II, Dsasehene of Bukuruwa
filed on the 26th day of September, 1945, in sup-
port of an application for an Order for the sub-
stitution of Yaw Nkansah II, Dsasehene of Bukuruwa
in place of the above-named Nana Kofi Baadu II,
the Plaintiff herein, now destooled:

20

IT IS HEREBY ORDERED that Yaw Nkansah II,
Dsasehene of Bukuruwa, in his capacity as the
proper person who according to Native Custom is to
act as Ohene of Bukuruwa in the absence of a Mantse
on the Stool be substituted as Plaintiff in place
of the said Nana Kofi Baadu II.

30

IT IS ALSO ORDERED that Notice of this Order
be served on all parties concerned.

Given under my hand and the Seal of the said
Court at Victoriaborg Accra, the 27th day of Sep-
tember, 1945.

(Sgd.) K.O.Quansah
REGISTRAR LAND COURT.

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN JUDICIAL DIVISION
LANDS COURT, ACCRA.

Nana Yaw Nkansah II of
Bukuruwa & Another Plaintiffs
versus
Chief Tawia & Others Defendants

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

10

MOTION EX PARTE by Akilagpa Sawyerr of Counsel
for the above-named Plaintiffs for an Order for the
substitution of Wudam Kwasi, Acting Chief of Ati-
pradaa in place of the Defendant Chief Tawia of
Atipradaa and Chief Dzabra III Chief of Wusuta in
place of the Defendant Osei Tutu herein.

sic.

And for such further Order or Orders therein
as to this Honourable Court might seem fit.

To be moved on Thursday the 25th day of Octo-
ber, 1945, at 8.30 o'clock in the forenoon or so
soon thereafter as Counsel for the Plaintiffs may
be heard.

20

Dated at Accra this 24th day of October 1945.

(Sgd.) Akilagpa Sawyerr,
SOLICITOR FOR PLAINTIFFS.

THE REGISTRAR,
EASTERN JUDICIAL DIVISION,
VICTORIABORG, ACCRA.

30

Filed 24.10.45
at 9.30 a.m.
S.K.D.
for Registrar,
Divisional Court,
Accra.

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN JUDICIAL DIVISION
LANDS COURT, ACCRA

Nana Yaw Nkansah II of
Bukuruwa & Another Plaintiff
versus
Chief Tawia & Others Defendants

AFFIDAVIT OF YAW NKANSAH II

I, YAW NKANSAH II, Dsasehene of Bukuruwa, but now
at Accra aforesaid make Oath and say :- 10

- 1. I am informed and verily believe that the
Defendant Chief Tawia of Atipradaa died a few
months ago, and that Chief Wudam Kwasi is now
acting in his stead as Chief of Atipradaa. sic
- 2. I am also informed and verily believe that
the Defendant Chief Osei Tutu of Wusuta was
destooled recently and that Chief Dzabra III
has been elected and installed in his stead
as Chief of Wusuta.
- 3. I make this affidavit in support of my appli- 20
cation for the substitution of Chief Wudam
Kwasi Acting Chief of Atipradaa in place of
the Defendant Chief Tawia of Atipradaa, and
Dzabra III in place of the Defendant Osei Tutu. sic

Sworn at Accra, this 24th)
day of October, 1945) Yaw Nkansah II.

Before me,
(Sgd.) R. A. Bannerman,
COMMISSIONER FOR OATHS.

Filed 24.10.45 30
at 9.30 a.m.
for Registrar,
Divisional Court,
Accra.

25th October, 1945.

In the Lands Division of the Gold Coast, Eastern Judicial Division, held at Victoriaborg, Accra, on Thursday the 25th day of October, 1945, before M'Carthy, J.

Nana Yaw Nkansah II

v.

Chief Tawia & Others.

Exhibits

Exhibit "E"

Relevant parts of proceedings in re Yaw Nkansah II & Another v. Wudanu Kwasi & Another.

13th March 1940
to 2nd May 1947
- continued.

Ex parte motion for substitution of Defendants.

10 Sawyerr for Applicants.

Refers to Affidavit of Yaw Nkansah II filed 24.10.45.

By Court -

Let Chief Wudanu Kwasi Acting Chief of Atipradaa be substituted for Chief Tawia of Atipradaa deceased, and let Dzabra III be substituted for Osei Tutu destooled.

Notice of this order to be served on all parties affected.

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN JUDICIAL DIVISION
LAND COURT, ACCRA.

(L.S.)

(Sgd.) L. M'Carthy.

Transferred Suit
No. 1/1942

Yaw Nkansah II, Dsasehene
of Bukuruwa, Kwahu

Plaintiff

Nana Akwamoa Akyeamong
Omanhene of Kwahu

Co-Plaintiff

10

versus

Chief Tawia of Atipradaa
David Akuamoa alias Yaw
Koi of Adukrom

Osei Tutu II of Wusuta

Defendants

Chief Dwamena Ayiripeh II
of Nkwatia, Kwahu

Co-Defendant

UPON HEARING Mr. Akilagpa Sawyerr of Counsel
for the Plaintiffs herein AND UPON READING the Af-
fidavit of Yaw Nkansah II, in support of applica-
tion by ex-parte motion for Order for the substi-
tution of Wudam Kwasi, Acting Chief of Atipradaa
in place of the Defendant Chief Tawia of Atipradaa
and Chief Dzabra III, Chief of Wusuta in place of
the Defendant Osei Tutu II herein:

20

IT IS HEREBY ORDERED that Wudam Kwasi be
substituted in his capacity as Acting Chief of
Atipradaa for the Defendant Chief Tawia of Atipra-
daa, deceased.

sic

IT IS ALSO ORDERED that Chief Dzabra III be
substituted in his capacity as Chief of Wusuta in
place of Defendant Osei Tutu, destooled.

30

IT IS FURTHER ORDERED that Notice of this
Order be served on all parties affected.

Given under my hand seal of the said Court at
Victoriaborg, Accra, the 25th day of October, 1945.

sic

(Sgd.) K.O. Quansah
REGISTRAR DIVISIONAL COURT.

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN PROVINCE JUDICIAL DIVISION
LAND COURT, ACCRA.

Nana Kofi Baadu II
substituted to Yaw Nkansah
Dsasehene of Bukuruwa Plaintiff

Nana Akwamoa Akyeampong,
Omanhene of Kwahu Co-Plaintiff

versus

10 Chief Tawia of Atipradaa,
David Akuamoah alias Yaw
Koi Osei Tutu of Wusuta Defendants

Chief Dwamena Ayiripeh II
of Nkwatia Kwahu Co-Defendant

MOTION ON NOTICE

THIS IS THE MOTION ON NOTICE by Mathias Commey Begartse Agbettoh, Nephew to Togbui Isidor Kwasi Djaba II, Divisional Chief of Wusuta, Principal Defendant herein, for and on behalf of the said
20 Togbui Isidor Kwasi Djaba II, in support of an application praying to this Honourable Court for an Order to substituted him, the said Togbui Isidor Kwasi Djaba II, Divisional Chief of Wusuta, Principal Defendant in place of Chief Tawia and Osei Tutu, Chief Tawia being dead and Osei Tutu being also destooled and he, the said Togbui Isidor Kwasi Djaba II, the present Occupier of the Divisional Stool of Wusuta, the owner of the land in
30 dispute and therefore the proper person to act in their absence in accordance with Native custom, and for adjournment of the hearing of the case to enable him study the case and arrange his defensive claim.

Exhibits

Exhibit "E"

Relevant parts of proceedings in re Yaw Nkansah II & Another v. Wudanu Kwasi & Another.

13th March 1940
to 2nd May 1947
- continued.

sic.

To be moved on Wednesday the 7th day of November, 1945, at 8.30 o'clock in the forenoon or so sooner thereafter as the Mover can be heard.

Dated at Kpandu this 27th day of October, 1945.

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

(Sgd.) M.C. Agbettoh,
FOR AND ON BEHALF OF TOGBUI ISIDOR
KWASI DJABA II, MOVER.

THE REGISTRAR,
LAND COURT,
EASTERN JUDICIAL DIVISION, ACCRA,

AND

THE PLAINTIFFS HEREIN,
THEIR SOLICITOR OR AGENT, ACCRA.

10

UPON the 3rd day of November, 1945, two copies
of this motion paper together with attached Affidavits
were served by me upon Akilagpa Sawyerr, Esq.,
Solicitor for the Plaintiffs herein, personally at
Accra.

(Sgd.) T.E. Akpan,
Bailiff,
5/11/45.

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN JUDICIAL DIVISION
LAND COURT, ACCRA.

20

sic Nana Kofi Baadu II
substituted to Yaw Nkansah
Dsasehene of Bukuruwa Plaintiff

Nana Akwamoa Akyeampong
Omanhene of Kwahu Co-Plaintiff

versus

Chief Tawia of Atipradaa
David Akuamoa alias Yaw
Koi Osei Tutu of Wusuta Defendants

30

Chief Dwamena Ayiripeh II
of Nkwatia Kwahu, Co-Defendant

AFFIDAVIT BY MATHIAS COMMEY DEBATSSE AGBETTOH ON
BEHALF OF TOGBUI ISIDOR KWASI DJABA II, DIVIS-
IONAL CHIEF OF WUSUTA FOR AN ORDER OF THIS HON-
OURABLE COURT TO SUBSTITUTE HIM AS DEFENDANT IN
PLACE OF THE 1ST AND 3RD DEFENDANTS IN THE ABOVE-
NAMED CASE, AND FOR ADJOURNMENT OF THE HEARING OF
THE SAID CASE TO ENABLE HIM STUDY THE CASE AND
ARRANGE HIS DEFENSIVE CLAIM.

40

I, MATHIAS COMMEY BARGATSE AGBETTOH of Kpandu,

Nephew of Togbui Isidor Kwasi Djaba II, Divisional Chief of Wusuta make Oath and say :-

Exhibits

Exhibit "E"

1. That I was instructed by Togbui Isidor Kwasi Djaba II Divisional Chief of Wusuta to swear to this Affidavit on his behalf and depose as follows :-
2. That the land, the subject matter in dispute is owned by and attached to the Wusuta Divisional Stool which I am presently occupying.
- 10 3. That Chief Tawia, 1st Defendant herein, claimed the said land through and under my Stool and was sued in that sense.
4. That Osei Tutu II was also sued in his representative capacity - of an occupier and therefore Agent of the Stool at the time.
5. That Chief Tawia, 1st Defendant herein died, and Osei Tutu II was destooled.
- 20 6. That I was installed in the place of Osei Tutu II as the Divisional Chief of Wusuta, and I am therefore occupier and for the time being, the Agent of the said Wusuta Divisional Stool owning the land in dispute and to which it has been attached since from time immemorial.
7. That I am informed and I verily believe that Osei Tutu II, the Ex Divisional Chief and principal Defendant whom I have succeeded has submitted no deposition in connection with the claim by the Wusuta Divisional Stool to the land in dispute.
- 30 8. That I swear to this Affidavit on behalf of Togbui Isidor Kwasi Djaba II Divisional Chief of Wusuta, my Nephew for an Order by this Honourable Court to substitute me in place of Chief Tawia, deceased who claimed and was sued through and under me, and Osei Tutu II, Ex Divisional Chief of Wusuta who was destooled in my capacity of owner of the land as the proper person to act in their absence in accordance with Native Custom, and for adjournment of the hearing of the case to enable me study the case and arrange my
- 40

Relevant parts of proceedings in re Yaw Nkansah II & Another v. Wudanu Kwasi & Another.

13th March 1940
to 2nd May 1947
- continued.

Exhibits

defensive claim.

Exhibit "E"
 Relevant parts
 of proceedings
 in re Yaw
 Nkansah II &
 Another v.
 Wudanu Kwasi &
 Another.

Sworn before me at }
 Kpandu this 27th day } (Sgd.) M.C.B. Agbetteh
 of October, 1945 } DEPONENT.

(Sgd.) T.J. Whitaker,
 DISTRICT MAGISTRATE.

13th March 1940
 to 2nd May 1947
 - continued.

19th June, 1946.

In the Supreme Court of the Gold Coast, Eastern
 Judicial Division, Lands Division, held at Victor-
 iaborg, Accra on Wednesday the 19th day of June, 10
 1946 before Korsah, J.

Yaw Nkansah II & Another

v.

W. Kwasi & 3 OthersBy Court - Adjourned till 20.6.46.

(Sgd.) K.A. Korsah,
 Judge.

20th June, 1946.

In the Supreme Court of the Gold Coast, Eastern
 Judicial Division, Lands Division, held at 20
 Victoriaborg, Accra, on Thursday, the 20th day of
 June, 1946 before Korsah, J.

Yaw Nkansah II & Another

v.

Wudanu Kwasi & Others

Mr. Bossman for Defendants.

The Chief of the town one of the Defendants
 has been destooled and as a result there is no
 successor officially recognised.

Adjourned to 6th August.

(Sgd.) K.A. Korsah,
 J.

6th August, 1946.

In the Supreme Court of the Gold Coast, Eastern Judicial Division, Lands Division, held at Victoriaborg, Accra, on Tuesday the 6th day of August, 1946 before M'Carthy, Ag. Chief Justice.

Yaw Nkansah II & Another

v.

Wudanu Kwasi & Others.

Sawyerr for Plaintiffs.

10 Asks for hearing date.

Yao Koi present.

Chief Djarba III represented by Fia Yao

Wudanu Kwan (Kwasi) absent.

Chief Dwamena Ayiripeh II absent.

(Sawyerr says that he understands that the last-named does not intend to defend).

Hearing date fixed for 12th September, 1946.

20 Hearing Notices to be served on Defendants absent or unrepresented today. Bossman Counsel for some Defendants also to be notified.

L.M.

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN JUDICIAL DIVISION
LAND COURT, ACCRA.

Transferred Suit
No. 1/1942.

Nana Nkansah, Jasehene and

Nana Akwamoa Akyeampong

Omanhene of Kwahu - Abene,

Plaintiffs

30 vs:

sic Nudan Kwasi & Others of

Wusuta

Defendants

APPLICATION FOR JOINDER

MOTION ON NOTICE by Kofi Adumua-Bosman, Counsel

Exhibits

Exhibit "E"

Relevant parts of proceedings in re Yaw Nkansah II & Another v. Wudanu Kwasi & Another.

13th March 1940 to 2nd May 1947 - continued.

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

for Asuo Kwasi IV, Ohene of Tongor for an Order
for Joinder of the said Applicant as Co-Defendant
herein AND for any further Order as to the Court
may seem meet.

To be moved on Thursday the 29th day of August,
1946, at 8.30 o'clock in the forenoon or so soon
thereafter as Counsel can be heard.

Dated at Azinyo Chambers, Accra, this 10th day of
August, 1946.

(Sgd.) K. Adumua-Bossman
SOLICITOR FOR APPLICANT.

10

TO THE REGISTRAR,
LAND COURT, ACCRA.

AND

TO THE ABOVE-NAMED PLAINTIFFS,
NANA NKANSAH JASEHENE AND
NANA AKWAMOA AKYEAMPONG,
OMANHENE THEIR AGENT OR SOLICITOR,
ACCRA.

Filed 16.8.46
at 11.20 a.m.
for Registrar,
Divisional Court,
Accra.

20

CERTIFICATE OF NON-SERVICE

Upon the 17th day of August, 1946, I made an
attempt to serve two copies of this Motion for
Joinder with attached Affidavits in support on
the Hon. Akilagpa Sawyerr, Solicitor for the
Plaintiffs herein but he refused to accept service
and asked that the paper be posted to Kwahu for
service on the Plaintiffs.

30

(Sgd.) H.B. Korang,
Bailiff.
17.8.46.

Attempt made by me on the 24th day of August, 1946
at Bukuruwa to effect service of Motion on Notice
on Nana Nkansah Jasehene of Bukuruwa but he could

291.

not be found in the town of Bukuruwa. I was informed by the Stool Clerk that Nana Nkansah left for Accra on Monday the 19th August, 1946.

(Sgd.) J. Augustus Kundoh,
Bailiff,
M'S COURT.

10 UPON the 26th day of August, 1946, this Motion on Notice was served by me on Nana Akuamoaa Akyeampong, Omanhene of Kwahu. This I did by serving a copy of the above Motion on Notice on the said Nana Akuamoaa Akyeampong personally at Abene.

(Sgd.) J. Augustus Kundoh,
Bailiff,
M'S COURT, MPRAESO.

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN JUDICIAL DIVISION
LAND COURT, ACCRA.

Transferred Suit
No. 1/1942

20 Nana Nkansah Jasehene and
Nana Akwamoaa Akyeampong
Omanhene of Kwahu Abene, Plaintiffs
v.
sic Nudan Kwasi & Others
of Wusuta, Defendants

AFFIDAVIT IN SUPPORT OF APPLICATION HEREIN

I, ASUO KWASI IV Ohene of Tongor make Oath and say as follows :-

- 30 1. That I am the Applicant for joinder as Co-Defendant herein.
2. That at the Survey of the Area claimed by the Plaintiffs herein pursuant to Order of Court made herein for that purpose, the Plaintiffs claimed and cause to be demarcated a large tract of land, embracing a substantial portion of my territory and Stool land.

Exhibits

Exhibit "E"

Relevant parts of proceedings in re Yaw Nkansah II & Another v. Wudanu Kwasi & Another.

13th March 1940 to 2nd May 1947
- continued.

Exhibits

Exhibit "E"

Relevant parts of proceedings in re Yaw Nkansah II & Another v. Wudanu Kwasi & Another.

13th March 1940 to 2nd May 1947 - continued.

3. That I shall be affected by the result of the Suit and make this Affidavit in support of Application for Joinder as Co-Defendant herein.

Sworn at Accra this }
15th day of August, }
1946

Asuo Kwasi IV
OHENE OF TONGOR.

Before me,

(Sgd.) K.O. Quansah
COMMISSIONER FOR OATHS.

10

Filed 16.8.46
at 11.20 a.m.
S.K.D.
for Registrar,
Divisional Court,
Accra.

Attempt made by me on the 24th day of August, 1946 at Bukuruwa to effect service of the copy of Affidavit on Nana Nkansah, Jasehene of Bukuruwa, but he could not be found in the town of Bukuruwa: I was informed by the Stool Clerk that Nana Nkansah left for Accra on Monday the 19th August, 1946.

20

(Sgd.) J. Augustus Kundoh
Bailiff,
M'S COURT, MPRAESO.

UPON the 26th day of August, 1946, this Affidavit was served by me on Nana Akuamoah Akyeamong, Omanhene of Kwahu. This I did by serving a copy of the above Affidavit on the said Nana Akuamoah Akyeamong personally at Abene.

30

(Sgd.) J. Augustus Kundoh,
Bailiff,
M'S COURT, MPRAESO.

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN JUDICIAL DIVISION
LAND COURT, ACCRA.

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

Transferred Suit
No. 1/1942

Nana Yao Nkansah II
& Others

Plaintiffs

v.

Wudam Kwasi & Others

Defendants

10

AFFIDAVIT OF NANA NKANSA

I, YAW NKANSA, JASEHENE of Bukuruwa in Kwahu, but
now at Accra aforesaid, make Oath and say :-

1. I have read the Affidavit of Asuo Kwasi IV, Ohene of Tongor, in support of his application to be made a Defendant herein.
2. The above suit is with reference to the ownership of a piece of land situate near the River Volta, and the dispute is as between the Kwahus under the 2nd Plaintiff Akwamoa Achiampong Omanhene of Kwahu on the one side and the Owusutas under the Paramount Chief of the Akpini State in the British Mandated Territory of Togoland on the other side.
3. The Applicant Asuo Kwasi IV Ohene of Tongor is not connected in any way with either party in the said case but is in the Peki State under Kwadjo Dei Paramount Chief of the Peki State in the Gold Coast.

20

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued

4. I crave leave to refer to the Writ of Summons herein, and to all the papers in the case.
5. The case has been pending in the Divisional Court Accra since 1942 and pleadings have been filed and plan of the land in dispute made since 1943.
6. The Applicant has always been coming to Accra and attending this Court with the Defendants since the case was transferred here in March 1942; and he was present with the Defendants on the land in dispute when the Surveyor and the parties inspected same in May 1943 for the purposes of the plan that has been made herein in accordance with the Order of this Honourable Court dated 2nd February, 1943.
7. The Plaintiffs have already been put to very heavy expenses in connection with the case and have been coming down to Accra with their witnesses over and over again at great expense for the hearing thereof.
8. The application for joinder herein at this stage is being made simply with a view to embarrass the Plaintiffs and for purposes of delay.
9. Paragraphs 2 and 3 of the Affidavit of the Applicant herein are untrue.
10. I make this Affidavit in opposition to the

10

20

Affidavit of the Applicant for Joinder herein.

Sworn at Accra this 11th }
day of September, 1946 } Yao Nkansah II

Before me,

(Sgd.) K.O. Quansah,
COMMISSIONER FOR OATHS.

Filed 11.9.46.
at 2.10 p.m.
S.K.D.
for Registrar,
Divisional Court,
Accra.

Exhibits
Exhibit "E"
Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued

10

CERTIFICATE OF SERVICE

UPON the 12th day of September, 1946, a copy of
this Affidavit was served by me on K. A. Bossman,
sic Esquire, Solicitor Plaintiff personally at Accra.

(Sgd.) R. A. Lartey,
Bailliff,
12/9/46.

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

31st August, 1946.

In the Supreme Court of the Gold Coast, Eastern
Judicial Division, Land Division, held at Victoria-
borg, Accra, on Saturday the 31st day of August,
1946, before Korsah, J.

Yaw Nkansah II & Another

v.

Wudanu Kwasi & Others

Lokko holds Sawyerr's brief for Plaintiffs.
Defendant in person.
Bossman for Applicant for joinder.

10

Adjourned to 12th September.

(Sgd.) K.A. Korsah.

12th September, 1946.

In the Supreme Court of the Gold Coast, Eastern
Judicial Division Lands Division, held at Victoria-
borg, Accra, on Thursday, the 12th day of September
1946 before M'Carthy, Ag. C.J.

Yaw Nkansah II & Others

v.

Wudanu Kwasi & Others

20

Application for joinder of Asuo Kwasi IV as Co-
Defendant.

Bossman for Applicant.
Sawyerr for Respondent.

Refers to Affidavit of Applicant of 15th Aug-
ust, 1946. Applicant was present at the time of
the survey and says that the area claimed embraces
land belonging to him.

Sawyerr objects

30

Refers to Affidavit of Yaw Nkansah of 11th
September, 1946.

By Court - The balance of convenience at this stage
is against the joinder of yet another party, par-
ticularly as this would delay the hearing.

Application refused.

L.M.

16th September, 1946.

In the Supreme Court of the Gold Coast, Eastern Judicial Division, Lands Division, held at Victoriaborg, Accra on Monday the 16th day of September, 1946, before M'Carthy, Ag. C.J.

Yaw Nkansah II & Others

v.

Wudanu Kwasi & Others.

Akilagpa Sawyerr for Plaintiff.
10 Bossman for 2nd Defendant.

Evidence of Emmanuel Otukwa continued -

The land in dispute belongs to the Baadu Stool which is under the Paramount Stool of Kwahu. The land is bounded on the North by the River Aboso. The Akroso people are on the other side of the river.

20 Fia Yao and another person representing the Wusuta Chief told the Surveyor that the people across the river on the North were Akrosos and Nkunyias. On the West (from north to south) we have boundaries with the Stools of Abetifi, Pitiko, Nkwatia and Tafo and Begoro. The Nkwatia boundary with us ends on the south at Mframnyo.

30 From the Volta the Afram is the boundary between us and the Akwamus. We have villages all round the land in dispute. At the junction of the Volta and Afram is the village of Mpeasem, North of this is Konforma, then Edjebeni, Akolikope, Ewakope, Ahupe and so on. Only a few of the Defendants villages are shown in the Government survey map. This is because they are mostly recent.

Adjourned to this afternoon at 2.30.

L.M.

Exhibits

Exhibit "E"

Relevant parts of proceedings in re Yaw Nkansah II & Another v. Wudanu Kwasi & Another.

13th March 1940
to 2nd May 1947
- continued.

Exhibits

Exhibit "E"

Relevant parts
of proceedings
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Nkansah II &
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Wudanu Kwasi &
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13th March 1940
to 2nd May 1947
- continued.

Yaw Nkansah II & Others

v.

Wudanu Kwasi & Others

Same Counsel -

Examination-in-chief of Otukwa continued -

Faso is a town on the Volta boundary. It was founded by Yaw Beng, a Kwahu from Abetifi. During the German occupation of Togoland Dei came and hid there with his followers. He begged Yaw Beng for permission. This was given and confirmed by Chief Baadu, to whom he paid tribute. 10

He lived at Faso with Yaw Beng. When the latter died he took over the place.

The Wusuta villages on the land are mostly new and small. Higher up is Dadiase a town on the Volta. One Kojo Bafuor a Wusuta got into trouble because he killed an elephant on the land, and did not give our Chief one of the tusks. The Government held an enquiry into the question of ownership between the Kwahus and the Wusutas. There was a decision in favour of the Kwahus. 20

Cross-examined by Bossman -

The Asabis and the Nkamis are the same people. Asabi was settled before Nkami. We are Akans, and Kwahus. The Asabi never stayed at Nyanawasi under the Akwamus. It is not true that the Asabis migrated to the Volta with the Akwamus, or that the Asabis and Nkamis quarrelled with the Akwamu Chief and went north to Asabi and neighbourhood.

Kofi Bekow was at one time Chief of Nkami. 30
The present Chief is Okuntun Diawo. I cannot speak of the history of the Nkamis. When I said that the Nkamis and Asabis were one I meant that all are under one Chief. The Nkamis serve the Asabi Stool. The Nkamis came from Nyanawasi. We conquered them.

The Asabis came from Denchera. The Nkamis at one time served the Akwamus at Nyanawase, but were driven away by the Akwamus. They did not migrate together with the Akwamus and settle with 40

them at Anum. The Asakis were on the land before the Akwamus left Nyanawase. Then Asabis and the Bukuruwas are all one.

It is not true that the Asabis and Nkwamis at first lived together at Asabi and that later the Nkamis obtained permission from the Avemes to settle at Nkami.

10 I heard that they settled at Basampa before going to Nkami. I never heard that they were at Dukludja before Nkami. We fought the Nkamis south of the Afram at Aframso. After we beat them we let them settle at Basampa.

Adjourned to tomorrow morning.

L.M.

17th September, 1946.

In the Supreme Court of the Gold Coast, Eastern Judicial Division, Lands Division, held at Victoriaborg, Accra on Tuesday the 17th day of September, 1946 before M'Carthy, Ag. C.J.

20 Yaw Nkansah II & Others
v.
Wudanu Kwasi & Others

Emmanuel Otukwa

6TH WITNESS FOR PLAINTIFFS:

Cross-examination of Otukwa continued

30 According to our tradition the Denkeras were defeated by the Ashantis. One section of the Denkeras under Baadu refused to serve Ashanti, and migrated to Bukuruwa. I do not know how soon afterwards Baadu fought against Taalafina. He died at Asabi, to where he moved his residence. Adom succeeded him and lived at Asabi where he died. Adom was succeeded by Mfodwo Kwame, who was succeeded by Anochi I, who was succeeded by Minta I then Anochi II, then Abura then Minta II. All these lived at Asabi.

Exhibits

Exhibit "E"

Relevant parts of proceedings in re Yaw Nkansah II & Another v. Wudanu Kwasi & Another.

13th March 1940 to 2nd May 1947
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Exhibits

Exhibit "E"

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13th March 1940
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Yaw Nkansah I became acting Chief after Minta II, and took the Stool to the Ashantehene. Some years later the Abene Chief who had become Paramount Chief in the absence of the Baadu Stool sent for their Stool. It was then returned to Kwahu. One Kweku Tano was put on the Stool by the Stool family of Eɛdu and the Abene Chief (the Paramount Chief) at Bukuruwa. This town was then rebuilt after having been deserted. When Baadu settled at Asabi he took the Stool there.

10

It is not true that Adom brought the Asabis from Nyanasasi to Asabi, or that Baadu never removed from Bukuruwa. There are a Gyase Stool and a Mankrado Stool at Asabi. The great oath of the Paramount Chief of Kwahu is Asasi Aban, which relates to a disaster to an Abene Chief in a cave.

The Kwahus first came under Kofi Tchum from Denkera. When he died Baadu occupied his Stool, and in Baadu's time the Kwahu State was founded. Ya Dom was one of the first Nkwatia Chiefs. At one time Nkwatia claimed the middle part of the land in dispute from us. As the result of the intervention of the Omanhene the claim was settled.

20

Re-examined by Sawyerr -

The Omanhene held an arbitration on the dispute, and demarcated the boundary between Nkwatia and Bukuruwa. This is shown on the map (Exhibit "A"). We then brought this action. For some reason or other the Nkwatias got joined as co-defendants, but on the Omanhene becoming co-plaintiff, they withdrew.

30

When the Baadu Stool was away in Ashanti the sub-chiefs of the Stool took charge of the land.

By Bossman: I remember an enquiry held by two District Commissioners at Asabi.

17th April, 1947.

In the Supreme Court of the Gold Coast, Eastern Judicial Division, Lands Division, held at Victoriaborg, Accra, on Thursday, the 17th day of April, 1947, before M'Carthy, Ag. C.J.

Yaw Nkansah II & Another	<u>Plaintiffs</u>
v.	
<u>Wudanu Kwasi & Others</u>	<u>Defendants</u>

Exhibits

Exhibit "E"
Relevant parts
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in re Yaw
Nkansah II &
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Another.

13th March 1940
to 2nd May 1947
- continued.

10 Resumed from p. 469.
Same Counsel.

SAMUEL HOPE DONKOR, Sworn states:
16th Witness for Defendants:
Examination-in-Chief:

I am Regent of Peki State. I represent Kwadjo Dei Fiaga of Peki who is too old to function. I attend on subpoena to him.

I know the Wusutas, Botokus Avemes and Tongors.

20 They are Krepis. They were under the Fiaga of Peki up to the time of the German occupation of Togoland. Up to then the territory occupied by these tribes on the west of the Volta were under my Stool.

30 The Tongor territory which is in westerly bend of the Volta and remained British protection, is still under the jurisdiction of my Stool. But it lost control of the other tribes and lands when the Germans gained under them. Before then all the Ewes were under British protection. Before then the Kwahus did not claim that their land extended to the Volta.

The Asabis and Nkamis who had settled by the western bank of the Volta were my subjects. Ewe land extended west as far as the junction of the rivers Dede and Dem.

The Fiaga of Peki was the King of the Ewes. The British called these old Krepis and I have in Court stick given to my ancestor over a hundred years ago, with the words "King of the Krepis"

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13th March 1940
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- continued.

inscribed on the silver knob. The British arms are embossed on it also. Although the Wusutas, Avemes and Botokus are no longer under me officially under my Stool, the connection is not entirely severed.

When the Peki Stool is displayed to the public, we send for them, and they used to come. The Tongors serve Peki through Boso.

I have given the Asabis land to settle on through the Tongors on their first arrival in our parts. They were given land called Gyamani on the east of the Volta. After that they moved to Botoku land on the west at Asabi.

10

There was a split and one section of them moved north to Nkami in Aveme land. I know of the Ferguson Road. Before it was constructed my Stool gave permission to Government through Ferguson, who produced 2 cases of gin. He asked that our subjects should be allowed to assist in its construction.

20

Cross-examined by Sawyerr -

I am slightly literate. I am 39 years of age.

I have been giving our tradition as told me by the Elders.

The Peki Stool was at one time under Akwamus.

The Nkamis and Asabis have severed connection with Peki, and I do not know whom they serve now. They severed connection with my Stool at the time of the German occupation of Togoland.

30

I know of a town called Dukluja.

Re-examined by Bossman -

Dukluja is in Aveme land exactly opposite to Nkami.

By Court -

Before the German occupation the Wusutas, Avemes and Nkonyas and other Ewe tribes served Peki through Anum.

Anum served Peki, and was not its ally. It formed the right wing of Kodjo Dei. Later Boso became the right wing (Nifa).

VICTOR KVASI KUMA GHAZARI III Sworn states -
17th Witness for Defendants:
Examination-in-Chief:

I am the Divisional Chief of Aveme, which is now under Kpandu in the British Sphere of Togoland.

10 At one time we were under Akwamus. Later we served Peki through Anum.

I can sign my name, and read and write in English.

Some time ago I had a case with Kpando in the District Commissioner's Court about Aveme land. Brempong, the Dsaschene represented Wusuta, but gave evidence as to the boundaries.

20 Kofi Bekoe Chief of Nkami gave evidence in that case. He admitted that the Nkamis got their land from Avema. That was the truth. It was in 1925.

Exhibits "H" and "J" bear my signature.

One day I visited the Chief of Nkami at Nkami privately.

30 I told him that my subjects were farming on his side, and that we should arrange to tax them and share the proceeds. The Nkami Chief was to collect the tax. He agreed to my proposal. Nothing was put in writing that day. He told me that his clerk was not there, but that when he saw him he would get him to put my proposal again.

Exhibits

Exhibit "E"

Relevant parts of proceedings in re Yaw Nkansah II & Another v. Wudanu Kwasi & Another.

13th March 1940 to 2nd May 1947
 - continued.

sic.

Six days later he invited me to meet him at Tokor. Chief Bekoe had with him a literate who read out a paper which contained the terms of my proposal, to the effect that any of our subjects farming on the western side of the river should pay a tax to be shared by us two Chiefs, and that at the end of each year they should present two sheep for each Chief.

Exhibits

Exhibit "E"

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13th March 1940
to 2nd May 1947
- continued.

It was not then stated that I had begged for land from Bukuruwa and Nkami for my subjects. I was given two documents which I signed. I showed them on my return home to my clerk, who told me of their contents.

The Clerk reported me to Tong Yaw. I was queried by Tong Yaw and my Elders to whom I explained what had happened.

I was fined £24 cash, 3 sheep and 3 bottles of gin, which I produced. 10

Tong Yaw took the documents. He said that he would see the Nkami Chief about them.

I was not told what happened, as I was in trouble with my people.

This was in 1930. Kofi Bekoe knew quite well the land belonged to me.

Agraman is north of Aveme town on the east of the Volta. Agraman is under the Aveme Stool.

Onyamigah was Chief of Agraman. I remember him. 20

The Aveme Elders who are shown in Exhibits "H" and "J" as having signed them did not do so in my presence. When I got into trouble at Aveme these Elders confirmed what I had said. They accompanied me to Nkami.

Subject to tendering an old German map which will probably arrive tomorrow, Bossman closes his case.

Sawyerr asks permission to prove letters containing relevant statements by the Chief of Fasu contrary to statements made by the representative of Fasu who gave evidence in this case. 30

Bossman objects that it is too late.

Objection overruled.

GYIMAH VICTOR JOHNSON sworn states -
13th Witness for Plaintiffs:
Examination-in-Chief:

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Exhibit "E"

Relevant parts
of proceedings
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- continued.

10 I am Clerk to the Omanhene and State of Kwahu.
I am the State Secretary. I produce from official
custody three letters forwarded to the Chief of
Nkwatia by the Chief of Fasu. One is dated
8.1.1923, another 20.4.1925, another 12.3.1927.
There is also a statement of account dated
24.10.1926 signed by Haizel to the Chief of Fasu.
I know his handwriting. I had official correspon-
dence with him. The three letters are signed by
him. His name was J.W. Sam Haizel. He is now
dead.
(Tendered. Bossman objects that they are not
admissible. Haizel's signature on the letters
does not prove them. He should attend and prove
them.

20 Sawyerr replies. Haizel was the clerk of
the Fasu Stool and it was part of his duty to write
letters on behalf of the Fasu Chief. Official
correspondence thus conducted is admissible against
the Fasu Stool on proof of his signature. It will
be appreciated that he is now dead.

By Court to witness -

30 I have been in the Omanhene's Office since
1920. I visited Fasu in 1927 and stayed with
Haizel for three weeks. I saw him employed as
clerk to the Fasu Stool, and saw him write letters
dictated by the Chief.

I saw no other literate person besides Haizel
in Fasu at the time.

(Three letters admitted as Exhibits "M", "N"
and "O". Statement of Account as Exhibit "P").

Exhibits "M",
"N", "O", "P".

The Kwahu Paramount Stool exercises jurisdic-
tion over the land in dispute, both administrative-
ly and judicially.

Cross-examined by Bossman -

40 There was formerly a Native Tribunal at Asabi
- that was under the Native Jurisdiction Ordinance
and before the 1927 Ordinance (N.A.O.). There were
also Tribunals at Fasu, and Nkami.

Exhibits

Exhibit "E"

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- continued.

I am telling the truth. Here is a letter written on behalf of the Chief of Fasu to the Chief of Nkwatia dated 11.11.1924, which proves it (Exhibit "Q").

In 1926 and 1927 I was attached to the Chief of Nkwatia's office. Except for that period I have been in the Omanhene's office. When I was in the Nkwatia Office I saw all the Exhibits produced by me. The Nkwatia Stool office was closed in 1944 and all records including the Exhibits were transferred to the Omanhene's office of which I am in charge.

10

I do not know how these letters came to be written. I was not there at the time.

The Nkwatias claim that they own land between Asabi and Nkami lands. They do not claim any other parts of the land in dispute. However this is an internal dispute between Nkwatia and Bukuruwa, which has nearly been settled by the Omanhene.

I do not know of any date when Government recognised Asabi and Nkami. From ancient times they have been part of Kwahu.

20

I am a native of Nkwatia.

I deny that it was only in 1900 that Kwahu claimed jurisdiction over Nkami and Asabi.

By the Court -

The Asabis are Kwahus by origin. They migrated to Asabi from Bukuruwa, a three days' journey by foot.

Bukuruwa is a sub-division under the Adontenhene who is under the Omanhene. Bukuruwa is separated from the land in dispute by land belonging to other divisions, but this is not unusual in Kwahu.

30

Sawyerr asks permission to amend the description of the land claimed in the writ of summons. Reminds the Court that he had made this application earlier and that the Court had asked for the amendment to be typed.

By Court -

40

Let writ of summons and claim in statement of claim be amended as prayed.

Adjourned to tomorrow.

L.M.

EXHIBIT "9"

JUDGMENT OF LAND COURT IN RE YAW NKANSAH II
& ANOTHER v. WUDANU KWASI & OTHERS.

2nd May, 1947.

In the Supreme Court of the Gold Coast, Eastern
Judicial Division, Lands Division, held at Vic-
toriaborg, Accra, on Thursday the 2nd day of May,
1947, before M'Carthy, Ag. C.J.

Transferred Suit
No. 1/1942

Yaw Nkansa II Dsasehene
of Bukuruwa, Kwahu,

Plaintiff

Nana Akwamoa Akyeampong
Omanhene of Kwahu,

Co-Plaintiff

v.

Wudanu Kwasi, Acting Chief
of Atipradaa, David Akuamoa
alias Yaw Koi of Adukrom
and Chief Djaba III, Chief
of Wusuta,

Defendants

JUDGMENT -

The Writ of Summons in this case was issued
on the 13th March, 1940, in the Kwahu State Tribunal
at the instance of Nana Kofi Badu II Chief Bukuruwa
as Plaintiff against Chief Tawia of Atipradaa and
David Akuamoa alias Yaw Koi of Adukrom. The case
was transferred to the Divisional Court by Order
of the Commissioner of the Eastern Province dated
the 21st March, 1942, and by virtue of recent
legislation falls within the jurisdiction of this
Court (the Land Court). Chief Osei Tutu of Wusuta,
the overlord of Chief Tawia, was joined as Co-
Defendant on the 8th July, 1942.

Pleadings having been ordered, the Statement
of Claim was delivered on the 19th December, 1942.
The Claim as amended is for a declaration of title
to a large area of land bounded on the north by the

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
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Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

Exhibit "9"

Judgment of
Land Court in
Re Yaw Nkansah
II & Another
v. Wudanu Kwasi
& Others.

2nd May 1947.

sic.

Exhibits

Exhibit "E"

Relevant parts
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in re Yaw
Nkansah II &
Another v.
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Another.

13th March 1940
to 2nd May 1947
- continued.

Exhibit "9"

Judgment of
Land Court in
Re Yaw Nkansah
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& Others.

2nd May 1947
- continued.

River Obosum, on the South by the River Afram, on the East by the River Volta, and on the West by Kwahu territory belonging to various divisions of the Kwahu State. The land contains forest in which until recently elephants were hunted, farm lands, rivers, and numerous villages, these especially on the West bank of the important River Volta.

The land claimed has been surveyed under an Order of the Court dated the 10th February, 1942. All parties took advantage of the opportunity to indicate to the Surveyor boundaries and any features on the land which they desired to be shown in the plan. The preparation of the plan was a big undertaking, and it was not completed until the 8th February, 1944.

10

The Statement of Defence of the 1st Defendant Chief Tawia, is dated the 13th April, 1943, that of the 2nd and 3rd Defendants is dated the 5th February, 1943.

20

The trial of the case was delayed by efforts made by the 3rd Defendant Chief Osei Tutu and his superior the Head Chief of the Akpini State to have the dispute referred to arbitration.

By the time the actual trial started before me Yaw Nkansah II, Dsasehene of Bukuruwa had been substituted for Kofi Badu II as Plaintiff and Akwamoa Akyeampong Omanhene of Kwahu, had been joined as Co-Plaintiff. Also Wudanu Kwasi had been substituted for Chief Tawia of Atipradaa, and Chief Djaba III for Chief Osei Tutu of Wusuta.

30

Although the hearing started on the 12th September, 1946, it was not until the 16th September, that Mr. Bossman appeared for the 2nd Defendant, or until the 20th September that the 1st and 3rd Defendants were represented, by the same Counsel. Although this course of events was obviously unsatisfactory all parties were enable to put their cases fully before the Court.

sic

The main issue in this case is sufficiently clear. The Plaintiff's claim is that the Bukuruwa Stool hold the land under the Kwahu Stool, the ultimate owner. The 3rd Defendant pleaded that the major part of the land is the property of the Wusuta

40

Stool, and that various sub-chiefs including the 1st Defendant, the Chief of Atipradaa, hold parts of it under his Stool and that the 2nd Defendant is his tenant. This is the position taken by the 1st and 2nd Defendants. The 3rd Defendant does not claim all the land claimed by the Plaintiffs. He says that such portions as do not belong to his Stool belong to certain other Ewe Stools.

10 On the 24th September, 1946, it was ordered that these Stools, Aveme, Botoku and Tonkaw should be joined as Co-Defendants. But when the case was next called on the 24th February, 1947, after an unavoidably long adjournment, this Order was rescinded by consent. It was felt that the joinder would lead to embarrassing complications and protract the hearing.

20 The 3rd Defendant submits that in any event the Plaintiffs cannot obtain a declaration outside the land claimed by him on behalf of Wusuta. The Plaintiffs press for a declaration in respect of all the land claimed by them, although it is realised that such a judgment will only be binding on the Wusuta Stool and those claiming under it. It does not seem to me that the Wusuta Stool need be concerned with anything done in relation to land not claimed by it. The Plaintiffs' case of course is that none of the land belongs to Wusuta. The land claimed by Wusuta is not delineated on the plan (Exhibit "A").

30 The main territory of the Kwahus, who constitute a large single State, lies west of the land in dispute. Further to the north-west they have a boundary with the Ashantis. The Wusutas, Avemes, Botokus and Tonkaws belong to the large Ewe tribe whose main territory lies on the other side of the Volta, and who comprise many States. The term "Ewe" is generic and corresponds to "Akan", the name given to the stock to which most of the States in the Colony and Ashanti belong.

40 The Wusutas and the other Ewe Divisions mentioned are established on the other side of the Volta, where they hold territory, and have their respective principal towns. Although the broad River Volta might well form a boundary between the Ewes on the east and the Kwahus on the west, it may be that the Ewes have long been settled at least

Exhibits

Exhibit "E"

Relevant parts of proceedings in re Yaw Nkansah II & Another v. Wudanu Kwasi & Another.

13th March 1940 to 2nd May 1947
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Exhibit "g"

Judgment of Land Court in Re Yaw Nkansah II & Another v. Wudanu Kwasi & Others.

2nd May 1947
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Exhibit "E"

Relevant parts
of proceedings
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Another.

13th March 1940
to 2nd May 1947
- continued.

in parts of the land in dispute. The Kwahus arrived in these parts after the Ewes.

The Kwahus and the Ewe tribal organisation (sometimes called "Krepi") to which the Wusutas formerly belonged have each an eventful history, which the land in dispute is involved. Evidence has been given of the respective traditions, parts of which have passed into history, and references have been made in the course of the case to passages in Ward's Short History of the Gold Coast, relating to wars between the Ashantis and the Krepis in 1866-69 (pages 155, 162 and 163 and elsewhere).

10

Exhibit "G"

Judgment of
Land Court in
Re Yaw Nkansah
II & Another
v. Wudanu Kwasi
& Others.

2nd May 1947
- continued.

The Kwahus fought on the side of the Ashantis who were victorious and overran the Krepi country, not only on the east of the Volta but also south of it, including Anum and Peki. At that time the Peki Stool was at the head of the Krepis, and Wusuta served Peki through Anum. About 1869 the Ashanti army returned to Ashanti.

20

It seems probable that any Wusutas then settled on the west bank of the Volta on the land in dispute would have fled before the enemy, and that for some time at any rate there could have been no question of the Kwahus serving Wusuta or any other Ewe Stool. Conditions in those parts continued to be unsettled for a number of years. It is likely though that at least some of the Wusutas who fled before the enemy resettled on the land in dispute after the withdrawal of the Ashantis. The Wusuta case is that the Wusutas regained dominion over the land.

30

The next relevant matter to mention is the advent of the Germans who in 1886 acquired Ewe territory, called by them Togoland, the international boundary of which the British in the region under consideration was the Volta.

It is notorious that it was a feature of German policy to weaken tribal organisation. The evidence establishes that the Germans prohibited their subjects from crossing to British territory except by special permission. There was no possibility of official contact between the Wusuta and other Ewe Stools on the German side (east) and such of their peoples as were living on the British side

40

(west) of the Volta. From the German point of view these Stools ceased to have any political or territorial rights in respect of British territory, and it is clear that they were not able to assert any. This state of affairs lasted 1886 to 1914.

10 It is against this background that it is necessary to view a dispute between Wusuta Chiefs established on the British side and the Kwahus, which came to a head in 1903. The dispute concerned the ownership of much of the land now in dispute. On the one hand were the Kwahu Stool represented by its linguist, the Chief of Bukuruwa, the Chief of Asabi, whose Stool was alleged to hold the land under Bukuruwa, and the Chief of Nkami another local Chief at that time under Asabi. On the other hand were Kwasi Kumah who claimed to be a Chief of Ourisita (Wusuta) on the German side and to be the Chief of Nframa on the land in dispute. He claimed in effect to be the senior Wusuta Chief on the British side and stated that most of the Wusuta settlements on that side were under him. With him were ranged the other local Wusuta Chiefs.

30 The dispute in many essentials was much the same as in the present case. Much the same traditions were given before the arbitrator, the Travelling Commissioner, to whom the dispute was referred for settlement. The arbitration proceedings are in evidence (Exhibit "D"). There was a full enquiry at the end of which the Commissioner summed up his award in these terms (Exhibit "F"):-

40 "That as it is a matter of common knowledge
 "the land from Mprasam (and afterwards, from
 "the Ada River - 3 miles north of Mprasam) up
 "to Akroso formerly belonged to the Asabis;
 "that after the Ashantis took Nkansa, the King
 "of the Asabis into Ashanti and killed him
 "there, the Kwahu King, either by payment or
 "other consideration, was given and took
 "charge of the Asabi lands; and as no evidence
 "has been given before the Court other than to
 "show that all the Defendants in the case are
 "either refugees from the German side, or
 "strangers here: therefore all the land that
 "was formerly Asabi now belong to Kwahu, and
 "all the Chiefs and people now living on this
 "land are subject to and serve the King of
 "Kwahu and his Stool".

Exhibits

Exhibit "E"

Relevant parts of proceedings in re Yaw Nkansah II & Another v. Wudanu Kwasi & Another.

13th March 1940 to 2nd May 1947 - continued.

Exhibit "G"

Judgment of Land Court in Re Yaw Nkansah II & Another v. Wudanu Kwasi & Others.

2nd May 1947 - continued.

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

The one important respect in which the arbitration may be distinguished from the present proceedings is the fact that the principal Wusuta Chief who lived under the Germans was for obvious reasons unable to appear or be officially represented.

On this ground Mr. Bossman Counsel for the Defendants maintains that the award is not evidence against the 3rd Defendant, the Chief of Wusuta (whose territory is now part of Togoland under British Mandate). His argument is that there has been nothing to deprive him of his rights of property in British territory.

10

Exhibit "9"

Judgment of
Land Court in
Re Yaw Nkansah
II & Another
v. Wudanu Kwasi
& Others.

2nd May 1947
- continued.

The position in 1903 was that the Wusuta Head Chief had for political reasons been unable to assert any rights over the land in dispute for seventeen years, and that so far as could be seen this would remain to be so indefinitely. It was expedient for administrative reasons and generally in the public interest that the dispute should be settled one way or another. The Arbitration proceedings were conducted in the fairest manner possible in the circumstances. Under Native Customary Law assuming that the ultimate ownership rested in the Wusuta Head Chief, the local Wusuta Chiefs would have vested interests in the land held under him. As the Head Chief's rights were indefinitely in abeyance it seems reasonable that the local Wusuta Chiefs should be regarded as succeeding to them, for the time being at any rate. If these local Chiefs had proved to the satisfaction of the arbitrator that the land had been held by the Wusutas independently of the Kwahus, they would have been declared the owners. The departure of the Germans could not have been anticipated, but when this occurred it would have been open to the Head Chief to seek to resume his territorial rights in relation to his former sub-chiefs. As the Kwahus won, I do not see how the Wusuta Stool, 54 years after the German occupation of Togoland, (counting from the date of the writ) can expect the Court to ignore the award made 37 years before the issue of the writ in the circumstances above-mentioned.

20

30

40

Mr. Sawyerr does not contend that the award operates as an estoppel, but he does contend that it is evidence against the Defendants and I agree with him.

It seems to me highly relevant that the Travelling Commissioner, who dealt with the dispute on a town in the land in dispute, and heard a large number of witnesses who could speak as to relevant matters within their own knowledge, should have decided in favour of Kwahus. He obviously was in a far better position than I to find out the truth of the matter.

10 Having regard to the nature of the pleadings, I should, if of opinion on the evidence before me, that the Commissioner came to a wrong decision give effect to that opinion. But having weighed the evidence outside the award my view is that the balance is slightly in favour of the Kwahu Stools.

20 Mr. Bossman in his final address, notwithstanding the mass of evidence adduced on both sides, did not consider it worth while to deal except very generally with any point other than the admissibility of the award. For my part I do not propose to discuss the evidence in detail.

30 I would however state that it does appear that at present there are more Ewes on the land than Kwahus. This is probably due to movements that have taken place since 1903, the date of the award. It should be added that this does not affect the legal position. In 1903 it appeared to the arbitrator that all the people who stood on the side of the Wusutas in the dispute were either refugees from the German side or strangers. This negatives any contention that immediately before the first German occupation the Wusutas were in control of the land, or that this was the position between then and the time of the award. This also is the impression I have derived from the evidence. It is only right though that I should make it clear that in my final conclusion I have been influenced by the award.

40 In the result I find in favour of the Plaintiffs, and grant the declaration claimed.

Costs to be assessed. Counsel's costs assessed at ninety guineas.

(Sgd.) L.M. M'Carthy,
ACTING CHIEF JUSTICE.

I concur.

(Sgd.) K. Asante,
ASSESSOR.

Exhibits

Exhibit "E"

Relevant parts of proceedings in re Yaw Nkansah II & Another v. Wudanu Kwasi & Another.

13th March 1940 to 2nd May 1947
- continued.

Exhibit "G"

Judgment of Land Court in Re Yaw Nkansah II & Another v. Wudanu Kwasi & Others.

2nd May 1947
- continued.

ExhibitsExhibit "M"

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

Tendered in evidence by Plaintiffs objected to
admitted and marked Exhibit "M" in re Nkansah
II, & Another vs: W. Kwasi & Others.

(Intd.) K.A.
17.4.47.

Fasu
Volta River,
8th January, 1923.

To the Chief of Nkwatia.

10

Dear Chief,

I have the honour beg to acknowledge the receipt of your favourable letter dated on the 29/12/22 received with thanks, and the contents therein were carefully noted. And the reply I beg therefore to state that personal apprehensions of the said Krepí, which you had been forgotten the party's name to up make of issuing warrant to be signed by D. C. Kwahu. I now beg to remind you again that the name of the said party was Kwamin Tawiah Chief of Otikpalale and his Linguist Gsai Kuma. They is to be charged, of crossing matters of the Gold Coast to over side Togo, to the Head Chief of Owusuta for settled. Such as your oath's matters and ordinary cases.

20

2. He had been sold the almost part of the big sticks, on that land at Otikpalale for Sawyers for sawing Planks and Beams, without any account been made to me since three (3) years and some months ago. Even I had been sent for him for several times for account and he was rejected to attend my calling.

30

3. Again including the Botoe men who are fishing in your part of River Volta. He was to received collection from them and without a penny had been sent to me since three (3) years and some months ago. And through that I wish you

sic

send a warrant as this being a hard matter.

I have the honour to be
Sir,
I am your humble Servant,

Cudjoe Dei
CHIEF OF FASU.

his
x
mark

Exhibits
Exhibit "E"
Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

10 N.B. I here mourn the dead of Kwamin Affram son
Cudjo Desi who expired in dead at Awulahai and
beg to let you know I have been written a letters
to the families. Please forwarded to me.

P.S. Send me some writing paper and envelopes
as none here to use at all.

Kwadjoe Dei
his
x
mark

Exhibit "N"

20 Tendered in evidence by Plaintiffs objected to
admitted and marked Exhibit "N" in re Nkansah
II & Another vs: W. Kwasi & Others.

(Intd.) K.A.
17.4.47.

Fasu,
Volta River District,
20th February, 1925.

Kofi Sefa,
Chief of Nkwatia.

Dear Chief,

30 I have the honour beg to acknowledge the re-
ceipt of your letter dated on the 10th instant,
received, and the contents thereto, were carefully
understood: And the reply I beg therefore to say
that in references in matter of the land at Fasu,
which wishes me to send you an ancient details about
that, to my surprise is quite wonder that the Chief
of Bukuruwa is troubling you all the time concerning

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

Fasu's land. Whilst the said land was not his; but what I can say about that land is this, I do not know, the said Chief of Bukuruwa mentioned on your letter written to me that he had sworn an Oath on you about the land at Fasu, and is taking you before to the King of Coomasi or Accra that the land is for him, it matters not, but so long as am here, please be not afraid. He must take you to any place which he likes best, when case comes to witness I will come and be a witness whatever on behalf of you against the said Chief who is trying to deprive the said land from you. But I know perfectly that said portions of the land at Fasu which under my control is for you alone to whom am collecting yearly Tolls for you from the said land. But how, the said Chief of Bukuruwa sworn an Oath on you that the land is for him, are you sure? And is he dreaming? Please Sir, do not mind him, I am on behalf of you always. My clerk shall be at your end for a short run of time. Do not be afraid about the Land's case between you and Chief of Bukuruwa, so long as am here you may always play; and enjoy your health. Nothing strange more to report.

10

20

Best compliments to you and all the Betters joining in health.

I am faithfully yours

Cudjoe Dei
CHIEF OF FASU

his
x
mark

30

Writer
(Sgd.) ?
J.C.F.

P.S. Note that all the villages under my control have been written to you already since a year ago concerning about your land here. Please! are you remember that?

C. D.
Chief of Fasu.

Exhibit "O"

Tendered in evidence by Plaintiffs objected to admitted and marked Exhibit "O" in re Nkansah II & Others v. Kwasi & Others.

(Intd.) K.A.
17.4.47.

Fasu,
District of Kwahu
Volta River Branch
12th March, 1927.

Exhibits

Exhibit "E"

Relevant parts of proceedings in re Yaw Nkansah II & Another v. Wudanu Kwasi & Another.

13th March 1940
to 2nd May 1947
- continued.

10

To Kofi Sefah,
Chief of Nkwatia.

Dear Chief,

20

I have now beg to acknowledge the receipt of your letter, in references in matter of my present position as you said, has duly come to hand with many thanks, and the contents therein were carefully noted, and the reply I beg therefore to say that, will you please, kindly oblige me to know my present Rank? If should in case you have been placed anther man as sub-chief besides me here to take a charge over on aforesaid land in disputes between yourself and Bukuruwa, you may let me know at once per returning bearer, just to know what step to take? But the reason of my so saying because from since the Representative came here he has not done any wrong concerning about his affairs, that would induce me to send in a report about him his word was justice, and has even put the land of

sic

30

Nyamapong Lifie in disputes between myself and Chief of Nkami in good order now had set a scheme between Nyampong and Nkami, and now a days Nkami's put stop of coming there, by the authority of the Representative sent here by Omanhene of Kwahu, had I seen that, is taking the land for Bukuruwa, I might have reported to you ere long, therefore on the receipt of this my humble petition, you may try your possible best and send him what so ever ask from you, don't failed. I know perfectly that, the Representative is trying or does well for you do not hear anybody else complaint, accept when hear from me. If you follows people advice, otherwise you will spoil your litigation,

sic

40

Exhibits

Exhibit "E"

Relevant parts
of proceedings
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi &
Another.

13th March 1940
to 2nd May 1947
- continued.

because the man is fighting for you always about the said land, don't be afraid he is on behalf of you. The Representative incline his ear, before giving Judgment to all cases tried here, only justice he follows, there is no least charge against to be reported to you, since he came here for Omanhene's duties in regarding to the dispute Lands between you and Bukuruwa's Chief. I end here.

Best Compliments,

10

I have the honour to be
Dear Chief,

Your most obedient Servant,

Cudjoe Dei
CHIEF OF FASU
VOLTA RIVER BRANCH.

his
x
mark

Writer
(Sgd.) ?
Free of Charge.

P.S.

20

This few line would inform you that a certain man named Kwaku native of Kratchi lost at a village called Nyanapong, I went to his search for a couple of days and was not discovered, and beg to let you know his funeral custom still lay down, till further orders from you or Omanhene of Aveme before able resume the funeral.

C.D.

Exhibit "P"

Tendered in evidence by Plaintiffs objected to admitted and marked Exhibit "P" in re Nkansah II & Others v. W. Kwasi & Others.

(Intd.) K.A.
17.4.47.

24/10/26.

Exhibits

Exhibit "E"

Relevant parts of proceedings in re Yaw Nkansah II & Another v. Wudanu Kwasi & Another.

10 The list of games of animal collected at Fasu Volta River Branch Kwahu District in charge of the Representative Kwasi Asare for Omanhene of Kwahu Abene on the land in dispute between Kwatia and Bukuruwa is as follows :-

13th March 1940 to 2nd May 1947 - continued.

	26.6.26	Chief Dei	£ 2. 14. 0	
	27.6.26	Gifagi fishing	3. 13. 0	
	do.	Abochere	16. 0	
	27.8.26	Gatsi Kofi	1. 18. 6	
	do.	1 Tusks <u>Telephant</u>	6. 10. 0	sic
		Atiprada Bonts fishing	8. 0. 0	
20	7.10.26	Bulpai as do.	1. 5. 0	
		Kobina Koko	1. 10. 0	
		Nyanapong	1. 0. 0	
		Total amount	£ 27. 6. 6	
		Deducted 1 Tusk Elept.	6. 10. 0	
			£ 20. 6. 6	sic
		Divided into 3 parts		
		2 parts for Asare	13. 11. 0	
		1 part do. Chief Dei	6. 15. 6	
			£ 20. 6. 6	
30		Total Amount for Asare	13. 11. 0	
		" 1 Tusk Elephant	6. 10. 0	
			£ 20. 1. 0	

Copy
(Sgd.) ?

Exhibits

Exhibit "E"
 Relevant parts
 of proceedings
 in re Yaw
 Nkansah II &
 Another v.
 Wudanu Kwasi &
 Another.
 13th March 1940
 to 2nd May 1947
 - continued.

Exhibit "Q"

Tendered in evidence by Plaintiffs and marked
 Exhibit "Q" in re Nkansah II & Others v.
 Kwasi & Others.

(Intd.) K.A.
 17.4.47.

Fasu,
 Volta River District,
 11th November, 1924.

To Kofi Sefah,
 Chief of Nkwatia.

10

Dear Chief,

This few lines will inform you that the Gun-
 powder, Lead permits and Native Jurisdiction Ordinance Book sent per Yao Tsikrong without a letter of instructions been duly come to hand. Please sir, I may let you know that, without the other Court articles, such as Record Books, Summons Book, Receipt Books, Warrant Books, Summons to Witness Book, and Defendant Bill of Cost Books, etc.: Without such Books besides the Ordinance Book, I cannot do otherwise with the said Ordinance. Hence on the receipt of this letter, please try your best and forward me the remaining Books mentioned on the letter sent to you, so as to enable me to feel my Court. Reply awaiting early.

20

I am your son,

Cudjoe Dei
 CHIEF OF FASU.

his
 x
 mark

Writer,
 (Sgd.) ?
 T. C. Fasu.

30

EXHIBIT "10"

JUDGMENT OF WEST AFRICAN COURT OF APPEAL
 In re YAW NKANSAH II & ANOTHER v.
 WUDANU KWASI & OTHERS

1st March, 1948.

10 In the West African Court of Appeal, Gold Coast Session, held at Victoriaborg, Accra, on Monday the 1st day of March, 1948, before Their Honours John Alfred Lucie-Smith, C.B.E., C.J., Sierra Leone (Presiding J.), James Henley Coussey, and Samuel Okai Quashie-Idun, J.J., Gold Coast.

Exhibits

Exhibit "10"
 Judgment of West African Court of Appeal in re Yaw Nkansah II & Another v. Wudanu Kwasi & Others.

1st March 1948.

Civil Appeal
No.43/1947

Yaw Nkansah II, Dsasehene
 of Bukuruwa - Kwahu Plaintiff-Respondent

Nana Akwanoa Akyeampong,
 Omanhene of Kwahu, Co-Plaintiff-Respondent

versus

20 Wudanu Kwasi, Acting Chief
 of Atipradaa, David Akuamoa
 alias Yaw Akoi of Adukrom
 and Chief Dzabra III,
 Chief of Wusuta, Defendants-Appellants

JUDGMENT - Read by Coussey, J., Gold Coast.

30 This is an appeal by the Defendants against a judgment of the Lands Division of the Supreme Court (M'Carthy, Acting C.J.) in a suit in which the Plaintiffs obtained a declaration of title to a large area of land, about twenty square miles in extent, having as its eastern boundary the river Volta, the principal river in the Gold Coast Colony and which, until the expulsion of the Germans about the year 1915, was the international boundary between British territory and German Togoland.

The Plaintiffs on the writ of summons as finally amended, are the Omanhene or Paramount Chief of Kwahu and his subordinate Chief the Dsasehene of

Exhibits

Exhibit "10"

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& Others.

1st March 1948.

Bukuruwa. The Kwahus are one of the large Akan States of the Gold Coast.

The third Defendant is the Chief of Wusuta, one of a large tribe known as the Ewe whose lands extend eastward from the eastern bank of the Volta.

The action was originally brought by the Plaintiffs against Chief Tawia of Atipradaa, a sub-chief of the Stool of Wusuta and the second Defendant Akuamoa a subject of the Aveme Stool, both Ewes to whom the Plaintiffs allege they gave permission to live and work on portions of the disputed area. 10

According to the Plaintiffs' case, after many years' occupation by the first and second Defendants and, in the case of the first Defendant, of his predecessor also during which period they had rendered tribute to the Plaintiffs, about the year 1940 on the authority of the third Defendant their superior Chief they disputed the Plaintiffs' title, hence the third Defendant was joined on the Plaintiffs' application and a declaration of title is sought against him also. 20

The immediate cause of the litigation is that the first and second Defendants had refused further to recognise the Plaintiffs' title in the circumstances above stated. Both parties relied upon their traditional history and also upon evidence of present occupation of the land in dispute. To explain why their occupation had not been so full as the title they claim warranted, the Defendants suggest that the declaration of the River Volta as the Anglo-German boundary in the year 1886 prevented their exercise of full dominion over the land from that time, because as German subjects they were not allowed to cross the frontier. In spite of this, however, they say that a connection was maintained between them and the Ewes settled on the land. 30

Reviewing the rival traditions the trial Judge, supported by recorded history, found that the Ashantis, a powerful nation from the north, in one of their wars, 1866-1869, fought and drove the Krepis, led by the Peki Stool and with them the Wusutas, from the land in dispute to the east of the Volta River. In that war the Kwahus were 40

allies of the Ashantis. When the Ashanti army receded the Kwahus, as allies of the Ashantis, remained in possession of the land in dispute as owners, the Ashantis advancing no claim thereto.

The learned Judge summed up the situation, after the Ashanti war referred to, as follows :-

10 "It seems probable that any Wusutus then
 "settled on the west bank of the Volta on the
 "land in dispute would have fled before the
 "enemy, and that for sometime at any rate
 "there could have been no question of the
 "Kwahus serving Wusuta or any other Ewe Stool.
 "Conditions in those parts continued to be
 "unsettled for a number of years. It is
 "likely though that at least some of the
 "Wusutas who fled before the enemy resettled
 "on the land in dispute after the withdrawal
 "of the Ashantis. The Wusuta case is that
 "the Wusutas regained dominion over the land".

20 This accords with the methods by which one tribe
 by conquest acquired ownership of the territory
 of another. In such circumstances when conditions
 became settled it is within native concepts that
 the new owners would allow the conquered Wusuta
 and other Ewe people to occupy parts of the land
 for cultivation so long as no adverse claim was
 made. (See Kuma v. Kuma. Privy Council, 15th No-
 vember 1938).

30 In our view the learned Judge drew a fair and
 proper conclusion from the rival traditions pre-
 sented by the parties.

40 In the course of the trial, the proceedings
 and award of a Travelling Commissioner in an En-
 quiry relating to the disputed land in which cer-
 tain Ewe Chiefs, including the third Defendant's
 predecessor on the one part and the Plaintiffs
 represented by the Chief of Nkami on the other
 part were admitted in evidence as part of the
 Plaintiffs' case, although they had not been plead-
 ed by them. After reviewing the state of affairs
 at the time of that Enquiry, the trial Judge found
 that the award referred to supported the Plaintiffs'
 case. We set this out in his own words :-

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Exhibit "10"

Judgment of
 West African
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1st March 1948
 - continued.

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Exhibit "10"

Judgment of
West African
Court of Appeal
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi
& Others.

1st March 1948
- continued.

"It seems to me highly relevant that the
"Travelling Commissioner, who dealt with the
"dispute in a town on the land in dispute,
"and heard a large number of witnesses who
"could speak as to relevant matters within
"their own knowledge, should have decided in
"favour of Kwahus. He obviously was in a far
"better position than I to find out the truth
"of the matter.

"Having regard to the nature of the
"pleadings, I should, if of opinion on the
"evidence before me that the Commissioner
"came to a wrong decision, give effect to that
"opinion. But having weighed the evidence
"outside the award my view is that the balance
"is slightly in favour of the Kwahu Stools."

10

At the end of his judgment the learned Judge
declared that he had been influenced by the award
in his final conclusion.

The judgment appealed from is criticised on
two main grounds: (1) That the onus was on the
Plaintiffs to establish a right to a declaration
of title and that the Plaintiffs' evidence did not
destroy the Defendants' case that they were the
original Krepi or Ewe settlers on the land who had
always maintained possession without acknowledging
the title of the Kwahus. (2) That the arbitration
proceedings and award were not admissible in evi-
dence against the Defendants.

20

Dealing firstly with the 2nd objection, in our
view the proceedings at the Enquiry were not in
fact admitted in evidence for the purpose of form-
ing part of the Plaintiffs' case. Looking at the
record we observe that the proceedings were ten-
dered to enable the Court to see the scope of the
Enquiry in order to rule as to the admissibility
of the award. The Defendants' Counsel did not
object to their admission for this purpose, but it
is clear on general principles that the notes of
evidence given at that Enquiry could not be used
as evidence of the facts then shown to exist; that
evidence was not admitted on the ground that some
or all of the witnesses were dead, or on any other
exceptional ground which would have rendered it
admissible.

30

40

The submission to arbitration is in writing. It does not provide that an award shall be in writing and therefore a parol award is not excluded, although a written award is more usual.

10 According to the report of the Commissioner it appears that a parol award was in fact made. The fact that a parol award appears to have been made, in our view, rules out Exhibit "F" as the award of the Commissioner; it is in fact a report to the Governor of the effect of the award delivered. There is no evidence therefore before the Court as to the terms of the actual award made, although there is evidence in the Plaintiffs' case that it was in favour of the Chief of Nkami and the Kwahus.

20 Before proceeding further we shall refer to three Exhibits "M", "N" and "O", letters said to have been written by Cudjoe Dei, Ewe Chief of Fasu village on the land in dispute to the Nkwatia Chief of Kwahu. These letters were tendered by the Plaintiffs as containing admissions of their title. The writer of the letters is said to be dead. Cudjoe Dei is illiterate and the letters are said to bear his mark. Containing admissions as they are said to do of the Co-Plaintiff's title through his sub-chief of Nkwatia who had withdrawn from the suit as a Co-Defendant, we are not satisfied that they were strictly proved to convey what Cudjoe Dei intended so that they might be admitted in evidence to weigh against the defence. It was open to the Plaintiffs as Cudjoe Dei is alive, to have called him as a witness and to put the letters to him as a foundation for their admission in evidence. In dealing therefore with the other main ground of appeal we have excluded from our consideration the proceedings and the so-called award and the three letters referred to. We have now to consider the following finding of the trial Judge which has already been referred to. We set it out again :-

30

40

Exhibits

Exhibit "10"

Judgment of
West African
Court of Appeal
in re Yaw
Nkansah II &
Another v.
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& Others.

1st March 1948
- continued.

"Having regard to the nature of the pleadings I should, if of opinion on the evidence before me that the Commissioner came to a wrong decision, give effect to that opinion. But having weighed the evidence outside the award my view is that the balance is slightly in favour of the Kwahu Stools."

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Exhibit "10"

Judgment of
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& Others.

1st March 1948
- continued.

This is a general finding of fact in the Plaintiffs' favour on the evidence before the Court, and we propose to examine the evidence to see how far this can be supported. It is unfortunate that in a case which occupied the trial Court for a considerable time there was not a full analysis of the evidence. In a great measure this appears to be due to the attitude adopted by Counsel for the Defence in his final address to the Court and indeed to the general conduct of the defence. We feel it our duty therefore in this appeal under the general powers of this Court provided for by Rule 31 of the Rules of the West African Court of Appeal to examine the evidence fully to arrive at our judgment. In doing so we keep before us the principles which have been urged very forcibly for the Defendants-Appellants, namely that the onus is on the Plaintiffs to satisfy the Court that they are entitled on the evidence brought by them to a declaration of title and that they must rely on the strength of their own case and not on the weakness of the Defendants case, and further that if the whole evidence in the case be conflicting and confused and there is little to choose between the rival stories the Plaintiffs fail.

During the four days that this appeal has been argued before us, it has been increasingly clear to us that the evidence is far from slightly in favour of the Plaintiffs' Stools as the learned Judge found. We are satisfied upon a review of all the evidence that the Plaintiffs are entitled to the declaration. The traditional evidence as found by the trial Court is consistent in our view with the conditions existing today. Taking first the Plaintiffs' case as to the grant of occupation of a portion of the land at Atipradaa near Asabi to Adom, the predecessor of the first Defendant and the acknowledgment by the original first Defendant and his predecessor of the Plaintiffs' title, in our view, this is proved by the Plaintiffs' witnesses Yaw Nkansah II and Kweku Dumfe. We do not overlook the fact that when Counsel came into the case for the Defendants, although Kweku Dumfe was recalled into the witness-box, Counsel for the Defendants did not cross-examine him on the important evidence the witness had given and Counsel stated further that he did not wish to cross-examine other witnesses who had been called up to that stage in proof of the grants to the

second Defendant Akuamoia and to the first Defendant's predecessors Chief Tawia and Adom. The evidence of Robert Kojo Kaaning, the Plaintiffs' fifth witness, must be referred to. He gave material evidence to the effect that he obtained from the Chief of Asabi, a Kwahu sub-chief, a portion of the land in dispute near Asabi and near to Chief Tawia and that he lived on and farmed his land. He says that in the year 1932 when he found that some sawyers had trespassed on his land he spoke about it to Chief Tawia the second Plaintiff's predecessor in the presence of his sons and that Chief Tawia told him to report to the Chief of Asabi the owner of the land. This evidence, unchallenged as it was, is an important admission of the Plaintiffs' title because the Plaintiffs' case is that Chief Tawia was also occupying the Plaintiffs' land. It was not cross-examined to. Similarly as to the Plaintiffs' case against the second Defendant Akuamoia. In his statement of claim the first Plaintiff averred that David Akuamoia obtained permission about the year 1933 to farm on the land and that he paid tribute to this Plaintiff until the year 1938 when he refused to pay further tribute. The Defendants denied by their Defence that any such permission had been obtained from the Plaintiffs, or that any such tolls had been paid. Evidence was given by the Plaintiffs' representative Yaw Nkansah and also by Thomas Sampon, a Presbyterian, in support of the grant to Akuamoia, and in the course of the proceedings when the actual memoranda made by Akuamoia at the time of the grant were tendered in evidence, the Defendant Akuamoia through his Counsel admitted the documents evidencing the grant to him, whereas in the pleadings filed, he had categorically denied any such permission. Akuamoia did not give evidence.

The question arises: if the land in dispute were in the ownership of the Defendants and other Ewe Stools, why should Adom and Akuamoia apply to a Kwahu Chief for permission to farm portions of the land on tribute? The Defendants say they were prevented from exercising control over the land owing to the German occupation. At the longest estimate German hindrance ceased at the conclusion of the 1914-18 war when the former German territory to the east of the Volta River in these parts came under British Mandate. To our mind that in 1933 Akuamoia should obtain a grant evidenced in writing

Exhibits

Exhibit "10"

Judgment of
West African
Court of Appeal
in re Yaw
Nkansah II &
Another v.
Wudanu Kwaci
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Exhibits

Exhibit "10"

Judgment of
West African
Court of Appeal
in re Yaw
Nkansah II &
Another v.
Wudanu Kwasi
& Others.

1st March 1948
- continued.

long after German restriction had ceased is strong support of the Plaintiffs' title. It is inconsistent with the case of the Defendants and of the ownership claimed by the Defendant Stools.

Robert Prah, the Defendants' twelfth witness, who was Chief of Wusuta before the present Co-Defendant, states that he found the Defendant Akuamoa working on the land and that on learning that he was allowed to farm there by the Chief of Bukuruwa, he ordered him to stop paying tribute to the Bukuruwa Chief and consequently, as already stated, these proceedings were instituted by the Plaintiffs. He fixes the date of this incident at the year 1940 which coincides with the institution of these proceedings. The Defendants called as their fifth witness John Tonu Yao, Nifahene to Ghazari III, Head Chief of Aveme, who now claims the northern area of the land in dispute up to the river Obosom. In the course of his evidence he claimed that Nkami on the west bank of the Volta River and its lands belong to his Stool. He was confronted with an Agreement admittedly made by Chief Ghazari (Exhibits "H" and "J") who however, when called to give evidence some six months later, endeavoured to explain away the effect of the Agreement.

That Agreement provides evidence that the Head Chief of Aveme did "beg" for some land from the Kwahu Chief of Nkami, the land being situate at Ofram Aboma. The place referred to is deep in the land in dispute. The evidence of Chief Ghazari given at the conclusion of the Defendants' case is in itself expressive of the Plaintiffs' title. He says "Exhibits "H" and "J" bear my "signature. One day I visited the Chief of Nkami "at Nkami privately. I told him that my subjects "were farming on his side and that we should arrange to tax them and share the proceeds."

In our view this is an admission that the Chief of Aveme's subjects were farming on Kwahu land in the control of the Chief of Nkami namely land on the western side of the River Volta as opposed to Aveme or Ewe land on the eastern side of the river and that if Chief Ghazari's account of the arrangement can be accepted but as to which we express no opinion, the Kwahus were to receive tribute for occupation of their land whilst part

of the money collected would go to the Ewe Chief of Aveme not in right of the land, but because the Ewe people were his subjects. This affords in our opinion strong support of the Plaintiffs' case. We have no doubt that it was considered by the learned Judge in arriving at his general finding.

10 Then there is the Akroso Chief a neighbouring owner called by the Plaintiffs who testified that the land to the south of the Obosom river which is the northern limit of the disputed land belongs to the Plaintiff the Chief of Bukuruwa.

20 Apart from traditional evidence the evidence of occupation the Defendants relied upon an alleged admission made by Kofi Bekoe, a former Chief of Nkami to the effect that the Nkami people in the course of their migrations crossed the Volta River to a place called Dukludja and that later the Chief of Aveme gave the Nkami people permission to settle at the site of the present Nkami. In support of this the transcript of evidence of Kofi Bekoe in certain proceedings between Head Chief Gazari III v. Head Chief Dagadu III before a District Commissioner was put in evidence. We are unable to find that this record supports the Defendants' contention. Reviewing that evidence it is not possible to say with certainty what land was then in dispute. If the claim in the suit had been put in evidence it might have assisted the Court.

30 Nowhere in the evidence do we find a statement that the Chief of Aveme granted the site of the present Nkami to the Nkami Chief, or that he granted any land whatever finally to the Nkamis on the western bank of the River Volta. Mention is made of a clay pit and that the people of Aveme would take the soil of the pit, presumably as proof of title to the land, but it is not clear to us where the clay pit was or is or that it is anywhere on the land now in issue.

40 Viewing that evidence as a whole and noting the frequent references in it to Kpandu, the witness may well have been speaking of other land far away on the eastern side of the Volta which admittedly is in the ownership of Ewe tribes. We note that most of the older villages on the land bear Akan names; some of the more recent villages claimed by the Defendants also bear Akan names.

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- continued.

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1st March 1948
- continued.

Most of the streams on the land bear Akan names also, all indicating Kwahu occupation. Taking therefore the evidence as a whole and giving due weight to the documentary evidence admissible, we have come to the conclusion that the Plaintiffs are the owners of the land claimed; that they did discharge the onus of proof; that the Plaintiffs' case was not answered satisfactorily by the evidence offered by the Defence and that there is therefore no reason for interfering with the decision arrived at by the trial Judge after a patient hearing which he must have formed his own estimate of the various witnesses.

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The appeal is dismissed with costs assessed at £71.15. 6.

(Sgd.) J. Lucie-Smith,
PRESIDING JUDGE,
(CHIEF JUSTICE, SIERRA LEONE).

J. Henley Coussey,
JUDGE, GOLD COAST.

20

S.O.Quashie-Idun,
JUDGE, GOLD COAST.

Counsel -

Mr. K.A. Bossman for Appellants.
Mr. Akilagpa Sawyerr (with him Mr.S.Sakyi Djan)
for Respondents.
