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UNIVERSITY OF LONDON  
W.C.1.  
- 7 FEB 1961  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

IN THE PRIVY COUNCIL

50904

No. 33 of 1958

ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL  
GOLD COAST SESSION ACCRA

Concession Enquiry No. 447 (Ashanti) (Finaso and  
Oda River Forest Reserve Timber Concession).

B E T W E E N:

EDWARD RAMIA LIMITED Claimants-Appellants

- and -

AFRICAN WOODS LIMITED Opposers-Respondents

- and -

Concession Enquiry No. 450 (Ashanti) (Finaso and  
Oda River Forest Reserve Timber Concession)

B E T W E E N:

EDWARD RAMIA LIMITED Opposers-Appellants

- and -

AFRICAN WOODS LIMITED Claimants-Respondents

(CONSOLIDATED APPEALS)

CASE FOR THE APPELLANTS

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CASE FOR THE APPELLANTS

20 1. This is an appeal by leave of the West African  
Court of Appeal from a judgment of that Court deli-  
vered on the 19th day of March 1956 setting aside  
the judgment of Mr. Justice Quashi-Idun in the Lands  
Division of the Ashanti Judicial Division of the  
Supreme Court of the Gold Coast. By his judgment  
the learned judge had dismissed the opposition of  
Respondents to the grant of a Certificate of  
Validity in respect of a concession granted by the  
Stool of Bekwai and the Bekwai Local Council to the  
Appellants.

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pp. 79-80  
pp. 61-71  
pp. 45-50

30 2. The grant and the validity of concessions are  
regulated by the Concessions Ordinance of the Gold  
Coast, ordinance number 19 of 1939, now contained  
in volume 3 of the Laws of the Gold Coast (1951  
Edition). The more important Sections of this

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Ordinance touching this Appeal are hereinafter set out:

Section 2. The relevant part reads, "In this Ordinance 'Concession' means any instrument whereby any right title or interest in or to land, or in or to minerals, timber, rubber, or other products of the soil in or growing on any land or the option of acquiring any such right, title or interest purports to be granted or demised by a native, but does not include an assignment or sub-demise of the whole or any part of the rights granted by any concession or a sale, mortgage, lease or agreement to lease land within a town or village, from which sale, mortgage lease or agreement all rights, title, and interest in or to minerals are excepted." 10

Section 3. The relevant part reads, "Any agreement whereby any right, interest, or property in, to or over land, in or to minerals, metals, precious stones, timber, rubber or other products of the soil in or growing on any land, or the option of acquiring any such right, interest or property, purports to be granted by a native to a person who is not a native, shall be void unless it is in writing." 20

Section 6. The relevant part reads, "The Court shall have power, jurisdiction, and authority to enquire into and certify as valid or invalid any concession, except so far as otherwise provided in this Ordinance, and shall exercise such power, jurisdiction and authority subject to and in accordance with the provisions of this Ordinance ....." 30

Section 8.

(1) "Notice of every concession shall within two months of the date thereof be filed in the Court having jurisdiction to enquire into the concession by the person claiming to be entitled to the benefit thereof (hereinafter called the "Claimant")."

(2) This sub-section defines which Court had jurisdiction.

(3) "The notice shall be in Form A of the Schedule and shall contain the particulars specified in the said form and together with the said notice there shall be delivered a plan of the land comprised in such concession which shall be prepared in accordance with any regulations from time to time made under Section 5." 40

(4) "The Claimant shall also file within the said period of two months such other documents (including a copy of the concession) or duly certified copies thereof as he relies upon in respect of his right to the concession and together with any such documents there shall be filed a list of such documents in such form as may be provided by rule....."

10 (5) "Every concession, in respect of which compliance has not been made with the provisions of this section, shall on the expiration of two months after the date of the concession become null and void and all rights of the Claimant with respect to the concession shall thereupon determine absolutely:

Provided that the Court may in its discretion for good cause shown, and upon such terms as to it seem fit, extend the said period of two months for one or more terms not exceeding in all four months."

Section 12.

20 (1) "Any person desiring to obtain a concession in respect of an area of land of which either the whole or the greater part is situate in Ashanti shall make application to the chief or chiefs concerned for the grant of such concession and the chief or chiefs concerned may grant such concession."

(2) "Any person who has made application as aforesaid (hereinafter called the Applicant) shall give notice in writing to the Chief Regional Officer of Ashanti of such application."

30 (3) "Upon receipt of any such notice the Chief Regional Officer of Ashanti shall instruct the chief or chiefs concerned to appear before him or before a Government Agent, and the Chief Regional Officer or Government Agent shall ascertain from them, in the presence of the applicant or his agent, whether they are willing to grant the concession applied for, and shall make such other enquiries touching the grant of the concession as he shall consider necessary, and shall arrange with the  
40 applicant or his agent in the presence of the chief or chiefs concerned the sum which should be paid annually in consideration of the concession."

(4) "The terms of the agreement reached between the applicant and the chief or chiefs concerned after the aforesaid appearance before the Chief Regional Officer or Government Agent shall

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be embodied by the applicant in a concession which shall contain full particulars of the boundaries and which shall be executed by the interested parties in the presence of the Chief Regional Officer or a Government Agent, and the Chief Regional Officer or the Government Agent before whom any such interested party executes such concession shall certify to the due execution of such concession by such party."

Section 13 (sub-section 11). "No concession shall be certified as valid unless, in the case of a concession granted in respect of an area of land of which either the whole or the greater part is situate in Ashanti, the concession has been obtained in accordance with the provisions of Section 12." 10

Section 32.

(1) "A certificate of validity shall be good and valid from the date of such certificate as against any person claiming adversely thereto, and shall be effective in respect of the whole area of land contained by the boundaries stated in such certificates, whether or not any discrepancy exists between such area and the area indicated by the notice and plan of the concession referred to respectively in subsections (1) and (3) of Section 8." 20

(2) "A certificate of validity.....shall be conclusive evidence that all the requirements of the ordinance.....and all matters precedent and incidental thereto have been complied with....."

The Section numbers used throughout this case are those of the Concessions Ordinance as it is printed in the Laws of the Gold Coast (1951 Edition) and as used in the judgment of the West African Court of Appeal. Sections 12 and 13 were respectively referred to by the learned trial judge as Sections 11 and 12. 30

3. The concession which is the subject of this Appeal is situate in Ashanti.

4. The events giving rise to this Appeal are as follows:

(a) On the 26th day of May 1953 the Appellants, after application to the Chief of the State of Bekwai (the Omanhene of Bekwai), obtained a concession in respect of timber for 15 years from that date in the terms of an instrument signed on that day by the said Omanhene and others (hereinafter collectively referred 40

to as "the Bekwai chiefs"). The Appellants had not notified the Chief Regional Officer of their application (as required by Section 12(2) of the Concessions Ordinance), nor was the instrument executed before the Chief Regional Officer or a Government Agent (Section 12(4)). This instrument is hereinafter referred to as "the original grant".

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- 10 (b) On the 20th day of July 1953 notice of the original grant was filed together with supporting documents (all dated the 26th day of June 1953) in the Supreme Court of the Gold Coast (section 8). The resultant Enquiry was numbered 447. p.9 LL.20-30
- 20 (c) On the 3rd day of October 1953 the Respondents obtained a concession from the Bekwai chiefs in the terms of an instrument signed on that day in the presence of a Government Agent and witnessed by him, in respect of an area of land included within the concession granted to the Appellants by the original grant. This instrument is hereinafter referred to as "the Respondents' grant". pp. 12-22
- (d) On the 21st day of November 1953 notice of the Respondents' grant was filed together with supporting documents (all dated the 20th day of November 1953) in the Supreme Court of the Gold Coast. The resultant Enquiry was numbered 450. p.23 LL.10-35
- 30 (e) On the 26th day of February 1954 an instrument expressed to be supplementary to the original grant was executed by the Bekwai chiefs and the Appellants in the presence of a Government Agent and was certified by him as a duly executed concession. This instrument is hereinafter referred to as "the supplementary grant". It recited that there had been failure to comply with certain provisions of the Concessions Ordinance in the original grant, and it was clearly intended by the Bekwai chiefs and the Appellants to cure any resultant defect by means of the supplementary grant. pp.24-31 L.3  
"
- 40 However, the supplementary grant was expressed to be in respect of an area of land slightly smaller than the area of the original grant and to be for a term of 15 years from the date of the supplementary grant, and it may therefore be, as hereinafter set out, that it comprised a concession in its own right.
- (f) On the 30th day of March 1954 the supplementary grant was filed in the Supreme Court. p.95 LL.1-15

- Record  
p.31 LL.12-30 (g) On the 3rd day of June 1954 notice of opposition to the original grant, together with the grounds of the opposition, were filed by the Respondents in Enquiry number 447. Such opposition is provided for by Section 14 of the Ordinance.
- p.31 LL.23-33 (h) On the 5th day of July 1954 the two concessions Enquiries, 447 and 450, were consolidated by order of the Supreme Court.
- pp. 36-37 (i) On the 28th day of July 1954 the Appellants filed their Reply to the opposition of the Respondents in Enquiry number 447. 10
- pp. 38-44 (j) The trial took place before Mr. Justice Quashie-Idun on the 1st day of November 1954, and he delivered a reserved judgment on the 13th day of January 1955 by which he dismissed the Respondents' opposition in Enquiry number 447 and made no finding in respect of Enquiry number 450 (that is to say the enquiry into the Respondents' grant).
- pp. 45-50
- pp.53-60 L.20 (k) From this judgment the Respondents appealed to the West African Court of Appeal. After a hearing on the 5th and 6th days of March 1956 that Court set aside the judgment of the learned trial judge, declared the Appellants' concession invalid, and remitted the matter to the Supreme Court of the Gold Coast to adjudicate upon concession Enquiry number 450. 20
- pp.61-71
- (Not printed in the Record, but copies are available)
- (l) After a hearing on the 14th, 15th and 17th days of May 1956 in respect of the remitted Enquiry number 450, Mr. Justice Benson on the 19th day of May 1956 declared the Respondents' grant to be invalid on the grounds that the Bekwai chiefs in granting it had not understood the nature and terms of the grant and were under the impression that the land already leased to the Appellants did not include the land leased to the Respondents. 30
- " It should be observed that when obtaining their grant the Respondents had knowledge of the original grant to the Appellants.
- " The judgment of Mr. Justice Benson was not appealed against to the West African Court of Appeal, nor is it the subject of this Appeal which is concerned only with the original grant and the supplementary grant to the Appellants, that is to say Enquiry number 447. 40
5. The learned trial judge held that the intention of the legislature was purely to protect the grantors



of concessions in Ashanti from the exploitation of unscrupulous persons and that where the grantors themselves have not raised any objection to the terms contained in the lease, as is the case with the grants to the Appellants, it would be inequitable to say that the lease granted as such was null and void. He held that the Court had a discretion to declare a concession invalid, but did not exercise his discretion to do so, and he dismissed the Respondents' opposition to the validity of the Appellants' concession.

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p.48 LL.1-11

p.50.LL.1-20

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6. The West African Court of Appeal in their judgments said that the question turned on whether Section 12 of the Ordinance, which prescribes the procedure to be followed in obtaining a concession in Ashanti, is imperative or directory, and they held that the words of the Section and of Section 13, sub-section 11, are imperative words. The judgment then continued in regard to the original grant, "That deed may be good as a demise of land and the covenants therein no doubt are binding on the parties, but it never came into existence as a concession owing to non-observance by the parties of the imperative provisions of Section 12."

p.66 LL.33 to  
p.67 L.15p.68 LL.42-50  
p.69 LL.1-15

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As to the effect of the supplementary grant, the West African Court of Appeal said, "Unfortunately the Respondent was in a dilemma. If he abandoned his notice of concession in Enquiry number 447 as to the demise of 26th May 1953 and set up the second instrument of the 23rd March 1954 as a new concession, his right would be postponed by the Appellants' (the Respondents to this Appeal) concession which had meanwhile been granted on the 20th November 1953 in strict accordance with Section 12."

p.69 LL.42 -  
end of page.

p.70 LL.1-20

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In proceeding to allow the appeal and declare the Appellants' concession invalid it was implicit in the judgments that if the Court does not certify a concession as valid it must of necessity declare it to be invalid.

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7. It is respectfully submitted that the learned trial judge was correct in holding that he had a discretion in the matter, and that he was correct in exercising that discretion so as to declare that the Appellants had a valid concession.

p.50 LL.1-12

8. In the enquiry he was concerned with the effect of two documents, the original grant and the supplementary grant, and it is submitted that by his



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judgment he was certifying as valid the concession constituted by the original grant and the concession constituted by the supplementary grant. It is respectfully submitted that the West African Court of Appeal were wrong in their view that the Appellants were in a dilemma, and that the Appellants were entitled to ask the Court to hold that both or one of the grants constituted a valid concession. In overruling the learned trial judge as to the validity of the original grant, the Court of Appeal were therefore wrong in not holding that the result of this was to leave the Appellants with a valid concession in the terms of the supplementary grant; for the supplementary grant constituted a concession which had been obtained in accordance with the provisions of Section 12, it was filed in the Supreme Court within two months, and it was therefore eligible for certification. It is appreciated that notice of the supplementary grant was not filed in the form prescribed by Section 8 (3), but it is submitted that this is not such a defect as will of itself render the concession invalid, particularly in view of the fact that all the information required by the prescribed form was given on the document which was filed. 10 20

9. If the above be the wrong interpretation to be placed upon the supplementary grant, then it is respectfully submitted that it should be taken together with the original grant as constituting one concession the terms of which have been agreed within the requirements of Section 12 but the date of commencement of which was ambiguous and within the discretion of the learned trial judge to determine, and which should have been determined by him in the exercise of this discretion as either the date of the original grant or the date of the supplementary grant. 30

This discretion, it is submitted, is not only inherent in the powers of the Court but is also provided for by subsection 1(a) of Section 15 of the Concessions Ordinance, which reads: 40

"Subject to any conditions contained in an Order of the Governor in Council made under Section 22(2)(b) it shall be lawful for the Court in its discretion.....(a) Before deciding that a concession is valid to vary or alter the parties to a concession or modify the terms of a concession."

10. Further, it is respectfully submitted, the West African Court of Appeal erred in concluding, as it is submitted they did conclude, that if, through breach of the provisions of Section 12 of the Ordinance, a concession could not be certified as valid by the Court, then it must for that reason alone be certified as invalid. Section 6 gives to the Court jurisdiction to certify a concession as valid or invalid, but it does not, nor does any other Section, make it mandatory upon the Court to do one or the other.

Thus, it is respectfully submitted, a concession which has not been the subject of a certificate of validity is nevertheless for many purposes a valid concession, will prevail absolutely while there is no certified concession in existence, and its existence must affect the title of any subsequent concessionaire who takes with notice of it; and therefore the West African Court of Appeal, in declaring the concession of the Appellants to be invalid, were depriving the Appellants of rights which they possessed as the grantees of a concession which was valid for all purposes except that it did not qualify for a certificate of validity.

11. It is also submitted that even if the West African Court of Appeal had a discretion to declare the Appellants' concession invalid, there were no adequate grounds upon which the Court could properly exercise that discretion when the Appeal was heard.

In this connection, it is understood that the Respondents obtained a concession on the 19th July 1956 in respect of all or part of the land in the original grant, being the subject of concession Enquiry No. 470 (Ashanti) and which has subsequently been certified as valid, on the 27th September 1957 (Certificate of Validity No. 132), but the Appellants do not possess full knowledge of how this grant was obtained, nor of its terms, and respectfully submit that it is not relevant to this Appeal.

12. The grants which constituted the concessions included also rights in the Appellants to make railroads, roads, paths, passages, to cut canals, erect pumping stations and so on. These rights, it is submitted, do not form part of a concession as defined in Section 2 of the Ordinance, but are additional or collateral rights which do not depend for the validity upon the same considerations as govern

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the validity of a concession. In pursuance of these rights the Appellants constructed some 22 miles of roads, and it is further submitted that the decisions of the West African Court of Appeal and of the Supreme Court of the Gold Coast should not have been such as to detract from the value of these rights to the Appellants.

13. Further, it is respectfully submitted, in construing the Concessions Ordinance, the Court should not if any other construction is possible adopt a construction which would have the effect of permitting the Bekwai chiefs, who granted a concession to the Appellants on such terms as were fair and reasonable for the Bekwai chiefs (as shown, it is submitted, by the learned trial judge's approval of its terms and by the Government Agent's certification of the supplementary grant), to treat it unilaterally as null and void. 10

14. Finally, it is submitted, even if the documents constituting the original grant and the supplementary grant were not valid as a concession or concessions within the meaning of the definition in Section 2 of the Ordinance, they were, nevertheless, valid agreements in writing under Section 3 of the Ordinance, so that whatever their defects, if any, as concessions, the covenants in them are enforceable both in law and in equity. 20

15. Against the decision of the West African Court of Appeal the Appellants now appeal and they respectfully submit that the decision of the West African Court of Appeal was wrong and that the decision of the learned trial judge should be restored wholly or in part for the following among other 30

REASONS

- (1) BECAUSE the learned trial judge had a discretion to certify that the Appellants had a valid concession, and he rightly so certified.
- (2) BECAUSE the supplementary grant operated to rectify ab initio, alternatively from the date of the supplementary grant, any defect in the original grant. 40
- (3) BECAUSE the Appellants' concessionary rights are contained in the totality of the original

grant and the supplementary grant, which, taken together, comply with the requirements of the Concessions Ordinance.

- (4) BECAUSE the supplementary grant of itself complied sufficiently with the provisions of the Concessions Ordinance as to constitute a valid concession, and there was no prior certified concession.
- 10 (5) BECAUSE even if neither the original grant nor the supplementary grant was rightly certified as valid by the learned trial judge, nevertheless nothing in the Concessions Ordinance, or in equity, required that they be certified as invalid.
- (6) BECAUSE even if the West African Court of Appeal had a discretion to declare the Appellants' concession invalid, there were no adequate grounds before the Court upon which the Court could properly exercise that discretion.
- 20 (7) BECAUSE the Appellants obtained rights under their grants valid as against the Bekwai chiefs and anybody who thereafter had notice of such rights and only invalid against any subsequent grantee of a certified concession from the date of the certification.
- (8) BECAUSE by the original grant or the supplementary grant or both together the Appellants obtained rights which were for all purposes valid except against anybody who acquired rights inconsistent therewith without notice of the Appellants rights, and there would have been no jurisdiction to grant a certificate of validity to anybody in respect of rights acquired by them when they had notice of the rights conferred on the Appellants by the original or supplementary grant or both of them.
- 30 (9) BECAUSE at all material times the Respondents had full notice and knowledge of the rights conferred on the Appellants by the original and supplementary grants.
- 40 (10) BECAUSE the covenants in the grants are valid covenants.
- (11) BECAUSE the decision of the learned trial judge was right and should be supported.

FRANK SOSKICE.

MARK SMITH.