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UNIVERSITY OF LONDON  
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INSTITUTE OF ADVANCED  
LEGAL STUDIES

50005

No. 33 of 1958

In the Privy Council

### 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).

BETWEEN:

EDWARD RAMIA LIMITED . . . . . *Claimants-Appellants.*

AND

AFRICAN WOODS LIMITED . . . . . *Opposers-Respondents.*

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

BETWEEN:

EDWARD RAMIA LIMITED . . . . . *Opposers-Appellants.*

AND

AFRICAN WOODS LIMITED . . . . . *Claimants-Respondents.*

(CONSOLIDATED APPEALS)

### Case for the Respondents

1. This is an appeal from the Judgment and Order of the West African  
Court of Appeal dated the 19th day of March, 1956, setting aside the Judgment  
and Order of the Supreme Court of the Gold Coast, Concessions Division Land  
Court, Kumasi, Ashanti, dated the 13th day of January, 1955, whereby the Land  
Court dismissed the opposition in Concession Enquiry No. 447.

10 2. In Concession Enquiry No. 447 the Appellants filed on the 26th day of June, 1953, notice of a Concession dated the 26th day of May, 1953, granted to the Appellants by the Stool of Bekwai acting by its responsible authority the Omanhene and Linguist of the Stool. On the 23rd day of March, 1954, the Appellants filed a "supplemental document" dated the 26th day of February, 1954. Appx. p.1  
Appx. p.24

Appx. p.31

3. The Respondents by notice dated the 3rd day of June, 1954, entered opposition to the grant of a certificate of validity to the Appellants as to the Concession the subject matter of Enquiry No. 447 in so far as it purported to be coincident with a grant claimed by the Respondents in Concession Enquiry No. 450. The material ground of opposition was that the Appellants lease was not granted in accordance with the provisions of Section 11 (now Section 12) of the Concessions Ordinance.

Appx. p.32

4. No notice was given by the Appellants to the Chief Regional Officer of Ashanti of their application to the Stool of Bekwai for the grant of a Concession. There was no enquiry by the direction of the Chief Regional Officer as required by Section 12 (3) of the Ordinance and the lease executed on the 26th day of May, 1953, was not executed in the presence of the Chief Regional Officer or a Government Agent and there was no certification to the due execution of the said lease by any such Officer.

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Appx. p.10

5. The Respondents had on the 20th day of November, 1953, been granted a Concession in strict accordance with Section 12 of the said Ordinance over lands part of which were coincident with the alleged Concession granted to the Appellants.

Appx. p.24

6. By the aforesaid "supplemental document" dated the 26th day of February, 1954, the Appellants purported to rectify the failures in the original lease. The said "supplemental document" contained the following recital:

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Appx. p.24/25

"Whereas by an Indenture of Lease dated the 26th day of May, 1953, and made between the Lessors herein of the one part and the Lessee herein of the other part All that piece or parcel of land intended hereby to be demised, was granted by the Lessors to the Lessee, which said lease is filed in the Concessions Court, Kumasi, Ashanti, and numbered as No. 447 Kumasi, And whereas it has been found that the said lease should have been signed in the presence of the Government Agent who should approve of the terms and conditions therein provided for Concession purposes and Whereas the said formality has now been complied with and it is expedient to supplement the said Indenture of Lease by these presents, and be read as one with the same."

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Further the said supplementary document granted a Concession for a period of fifteen years from the date of the signing thereof over an area of land that differed from the original lease.

Appx. p.35/22

Appx. pp.38-44

Appx. pp.45-50

Appx. p.49/8

Appx. p.49/13

7. On the 5th day of July, 1954, the two Concession Enquiries No. 447 and No. 450 were consolidated and on the 1st day of November, 1954, the hearing of both Enquiries was held. The Judgment of the Learned Trial Judge was given on the 13th day of January, 1955, who held that the Respondents knew of the Concession granted to the Appellants before the execution of the lease to them ; that the first lease granted to the Appellants did not comply with Section 11 (now Section

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12) of the Concessions Ordinance but that as the Respondents had notice of it they were not entitled in equity to ignore it. He further held as follows:

“ In the Concessions Ordinance I see nothing which forbids an owner of land and a person who seeks to acquire a concession from doing so without the consent of the Chief Commissioner. It clearly states that the application shall be made to the chief or chiefs concerned for the grant of such concession and further, that he shall give notice in writing of such application to the Chief Commissioner. I also see nothing in the Ordinance which states that, if this is not done, the Concession shall be null and void. The Ordinance states that the concession shall not be valid. I think it is the Court which can describe a concession not complying with the provisions of Section 11 of the Concessions Ordinance as invalid.”

In this case the grantors have not sought to repudiate their contract with the grantees. Both the grantors and the grantees agreed to remedy the error, and did so by executing a second lease in compliance with the provisions of the Concessions Ordinance: but before that the opposers who had notice of the grant to the claimants took a concession in respect of a portion of the same land.”

and dismissed the opposition with no order as to costs.

8. The Respondents appealed to the West African Court of Appeal on the grounds:

“ That the learned trial Judge was wrong in law

- (i) In holding that the Claimant to Concession Enquiry 447 (Ashanti) and being the opposer to Concession Enquiry 450 (Ashanti) (hereinafter referred to as “ the Respondent ”) had obtained an equitable right to be granted a lease valid under Section 12 of the Concessions Ordinance Cap. 139 (at that time Section 11 of the Concessions Ordinance 1939) despite non-compliance with Section 12 of the Concessions Ordinance (at that time Section 11).
- (ii) In holding that the Respondent’s lease dated the 26th February, 1954 was a valid lease despite non-compliance with Section 8 of the Concessions Ordinance in respect thereof and such as took priority over the Appellant’s lease dated the 3rd October, 1953 obtained in compliance with the provisions of Section 12 (then Section 11) of the Concessions Ordinance and in respect of which notice has been filed as required by Section 8 of the Ordinance.
- (iii) In holding that a Concession obtained without compliance with the requirements of Section 12 (then Section 11) of the Concessions Ordinance did not render such a concession void *ad initio*.”

9. The West African Court of Appeal allowed the appeal. In the course of his judgment Coussey P. said:—

Appx. p.66/34

“The question turns on whether Section 11 (now Section 12) of the Ordinance, which lays down the procedure to be followed to obtain a concession in Ashanti, is imperative or directory. The Appellant submits that it is mandatory and that a failure by a concessionaire to give notice to the Chief Regional Officer of his application to the chief for the grant of the concession ; a failure of the chief and the concessionaire to appear before the Chief Regional Officer or a Government Agent as prescribed in Section 12 (3), cannot be remedied. It is also argued by reference to Section 12 (4) that no concession can come into being until after the concessionaire and Chief have settled the terms of agreement before the Chief Regional Officer or Government Agent. Section 12 (4) also provides that the instrument, which is the concession shall be executed by the parties before the Chief Regional Officer or Government Agent who shall certify to the due execution of the concession. The Respondent, on the other hand, contends that the Ordinance does not stipulate that if a concession is not obtained as laid down by Section 12 it is null and void and it is argued that if at any time before the enquiry by the Court the terms of Section 12, which are directory, have been observed, the Court may grant a Certificate of Validity.”

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Appx. p.68/41

Appx. p.70/28

Appx. p.71/9

Appx. p.71/13

And following the Judgment of Denman J. in *Caldow v. Pixell* 1877 36 L.T. p.469 at p.470 held that the words of Sections 12 and 13 were imperative. Coussey P. further held that the original concession granted to the Appellants could not be perfected by a subsequent instrument and that no equities whatever were raised in favour of the Apellants. Korsah, J. A. & Baker, Ag. J. A. concurred. The Court therefore allowed the appeal, set aside the Judgment of the Court below declared the Appellants Concession invalid and remitted the matter to the Court below to adjudicate on the Respondents application in Enquiry No. 450.

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10. The Respondents application in Concession Enquiry No. 450 was heard on the 14th May, 1956, and opposed by the Appellants whose opposition was upheld and the Concession declared invalid.

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11. By the extension of time (No. 9) Order 1955 of the 17th day of November, 1955, which was published in Gazette No. 94 of the 26th day of November, 1955, under L.M. 355/55 the period under the provisions of Section 10 of the Concessions Ordinance in respect of Concession Enquiry No. 447 (Ashanti) was extended to the 26th day of July, 1956. No further order extending the said time has been made and as all the necessary steps have not been taken and final application has not been made to the Court for a certificate of validity prior to the 26 day of July, 1956, the said Concession the subject matter of this appeal has lapsed.

Appx. pp.75-76

Appx. p.79/21

12. Conditional Leave to Appeal to Her Majesty in Council was granted to the Appellants on the 28th day of June, 1956, and final leave granted on the 7th day of January, 1957.

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13. The Respondents respectfully submit that this appeal should be dismissed with costs and the judgment of the West African Court of Appeal upheld for the following amongst other

REASONS.

1. BECAUSE the alleged Concession the subject matter of this appeal has lapsed.
2. BECAUSE the West African Court of Appeal were right in holding that the provisions of the Concessions Ordinance are imperative and mandatory and the failure to comply with the said provisions could not be subsequently remedied.
3. BECAUSE the West African Court of Appeal were right in declaring the Appellants concession invalid.

DINGLE FOOT.

THOMAS O. KELLOCK.

In the Privy Council

ON APPEAL FROM THE WEST AFRICAN  
COURT OF APPEAL

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GOLD COAST SESSION ACCRA

BETWEEN:

EDWARD RAMIA LTD.

AND

AFRICAN WOODS LTD.

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CASE FOR THE  
RESPONDENTS

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