

G.H. G.3 41, 1960

1.

IN THE PRIVY COUNCIL

No. 31 of 1958

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

UNIVERSITY OF LONDON
W.C.I.
- 7 FEB 1958
INSTITUTE OF ADVANCED
LEGAL STUDIES

B E T W E E N :

- 1. H.E. GOLIGHTLY and
- 2. TETTEY GBEKE II (Defendants) Appellants

50011

- and -

- 1. E.J. ASHRIFI
- 2. A.E. NARH and
- 3. CHARLES PAPPOE ALLOTEY
(Plaintiffs) Respondents

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and connected Appeals (Consolidated)

CASE FOR THE APPELLANTS

1. This is an appeal from the Judgment of the West African Court of Appeal, dated the 4th March 1955, dismissing an appeal by the Appellants from the Judgment of the Supreme Court of the Gold Coast, dated the 31st May 1951, and partly allowing an appeal by Nii Adotei Akufo, the Respondent in Suit No. 7 of 1951, by varying the Judgment of the Supreme Court of the Gold Coast, dated the 31st May, 1951 on one issue.

Record
p.293

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p.105

2. The appeal relates to an estate in Accra about two square miles in extent known as "the Kokomlemle lands" and will be referred to hereinafter as "the Kokomlemle lands".

3. Twenty five suits were separately instituted in the Tribunal of the Paramount Chief of the Ga State on various dates between the 29th April 1940

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p.105, 1.22

Record
p.111, 1.24

and the 27th July 1950, and all the twenty five suits were subsequently transferred to the Supreme Court of the Gold Coast.

p.43, 1.41

4. The Trial Court consolidated the suits into one consolidated action and delivered a single Judgment in the consolidated action, after a trial lasting about fifteen weeks.

p.67, 1.13

From the Trial Court an appeal was preferred in sixteen out of the twenty five original suits by the Appellants and a separate appeal was preferred in Suit No. 7 of 1944 by Nii Adotei Akufo, the Respondent in that Suit (No. 7 of 1944). 10

The present appeal relates to eight of the sixteen suits considered by the Court of Appeal. The eight suits are set out in the title to this appeal.

5. The Respondents to each of the eight suits, the subject of this appeal, derived their title through the Respondent, Numo Ayitey Cobblah, Korle Priest, who will be referred to hereinafter as "the Korle Priest". 20

The Appellant Nii Tettey Gbeke II will be referred to hereinafter as "the Appellant".

6. The Korle Priest, who is the representative of the Korle family of Accra, is the present occupant of the Korle Stool.

The Appellant, who is the representative of the Atukpai family of Accra, is the present occupant of the Atukpai Stool.

The Korle Priest also claims to represent the Ga Mantse Stool and the Gbese Stool. 30

The Ga Mantse, who is the Paramount Chief of the Ga State, is the present occupant of the Ga Stool.

The Gbese Mantse, who is the Chief of the Gbese Division or Quarter of the Ga State, is the present occupant of the Gbese Stool.

The Ga Mantse and the Gbese Mantse deny the claim put forward by the Korle Priest to represent the Ga Stool or the Gbese Stool.

The Gbese Mantse, as one of the Divisional Chiefs of the Ga State, owes political allegiance to the Ga Mantse who is his Paramount Chief.

10 The Appellant and his people and the Korle Priest and his people are in the Gbese Division or Quarter and thus owe political allegiance to both the Ga Mantse, as their Paramount Chief, and the Gbese Mantse, as their Divisional Chief. The Appellant and his people own no political allegiance to the Korle Priest.

7. The history of the dispute is stated by the Court of Appeal in the passage following:

20 "The appeal concerns a large area of land lying to the North of the town of Accra, which is now being developed as a residential suburb. Until comparatively a few years ago this land was open country of little value. There were a few mud-hut settlements on it; it was poor farming land but mango and cashew trees grew on it and cassava farms were dotted about. With the growth of Accra the land in dispute, which is about two square miles in extent, has become very valuable and the evidence shows that when this was realised by those who had, or claimed, an interest in it there was a scramble to sell to those who wished to erect homes, schools and other buildings on the land. In some of the suits, a declaration of title, damages for trespass and injunction were
30 claimed; in others, a declaration of title and recovery of possession."

8. The sole question for determination in this appeal is, as stated by the Court of Appeal, "What is the position of the Korle Priest?" p.302, 1.5

The Trial Court and the Court of Appeal held that the Korle Stool is a co-owner with the Ga Stool and the Gbese Stool and that the prior consent of all three entities is necessary to an outright alienation of the Kokomlemle lands. p.304, 1.42

40 9. The position of the Korle Priest in regard to alienations of the Kokomlemle lands, the subject matter of the present dispute, was expressly put in issue in a previous suit, Suit No.12 of 1943, between the Korle Priest, as the Plaintiff, and the Appellant as the principal Defendant. Ex.18, p.706

Record

It is respectfully submitted that the Courts below erred in law in not appreciating the true nature of that action, and that the decision in the previous suit operates as res judicata or as an estoppel in the present dispute.

10. The dispute in the Courts below as to the position of the Korle Priest turned upon issues of native customary law and native tenure in West Africa.

p.305, 1.1

The Trial Court held that Stool lands can never be sold outright except to satisfy a Stool debt. The Court of Appeal disagreed with the Trial Court and held that an outright alienation of Stool lands is valid and that its validity "has for many years past come to be recognised by native usage", and that the decision of the Trial Court "appears to us to be far too sweeping to be upheld". 10

The Appellants respectfully submit that the decision of the Court of Appeal, that by native customary law and native tenure in West Africa an outright alienation of Stool lands is valid, is right and does not attack the Judgment of the Court of Appeal on that decision. 20

Ex."3", p.599

11. On the 27th December, 1941 the Government of the Gold Coast Colony and the Appellant executed an Agreement whereby the Appellant agreed, inter alia, to permit the Government to enter on the Kokomlemle lands and use any parcel of land within the Kokomlemle lands for laying out on the said lands roads, streets, lanes, drains, dustbins, latrines, incinerators, wash-houses and any other works necessary for purposes of public utility, health and convenience. 30

p.706, 1.36

12. On the 29th April, 1943 the Korle Priest instituted the previous Suit in the Tribunal of the Paramount Chief of the Ga State against the Appellant for a declaration of title to the Kokomlemle lands and damages for trespass. On the 19th May, 1943 the case was transferred to the Divisional Court and then to the Lands Division of the Supreme Court. 40

p.626

The Writ of Summons in its original form contained a claim to a declaration that the Kokomlemle lands belong to "the Korle We Family of Accra". In

its original form the Statement of Claim contained a claim for a declaration that the Korle Webii family are the owners of the said lands, though in paragraph 1 it is stated that the said family hold the lands for the Ga people.

Record

On the 13th December, 1946, the Ga Mantse and the Gbese Mantse applied to be joined as co-plaintiffs on the ground that they wish to assert their rights as absolute owners of the Kokomlemle lands. The Korle Priest filed an Affidavit in opposition. The application was rejected on the ground that having regard to the conflicting claims the two Chiefs could not be joined as co-plaintiffs.

p.708, 1.24

M'Carthy, J. observed -

p.708, 1.32

"As I thought that the joinder either as co-plaintiffs or co-defendants would further complicate the case, and as Counsel for the plaintiff and the defendant were opposed to it, I did not make them parties to the action. Besides, joinder would have involved further pleadings, and I was pressed for time."

13. The hearing of the suit commenced before M'Carthy, J. on the 25th February, 1947. On the 12th March, 1947, after much evidence had been given on behalf of the Korle Priest, his Counsel obtained leave to amend the Writ of Summons and the Statement of Claim. In the Writ of Summons the words "belongs to the Korle We family of Accra" were replaced by the words "as the property of the Korle We family of Accra who hold it for themselves and the Ga Mantse and the Gbese Mantse.". In the Statement of Claim the words in paragraph 1 "who hold it for the Ga People" were replaced by the words "who hold it for themselves, the Ga Mantse and the Gbese Mantse"; and, further, sub-paragraph 4(a) was replaced by the following:-

p.628, 1.23
p.707, 1.31

p.626

p.627, 1.21

p.628, 1.10

"(a) a declaration that the said lands are the property of the Korle Family of Accra who hold it for themselves, the Ga Mantse and the Gbese Mantse."

As observed by M'Carthy, J. in his judgment -

p.708, 1.5

"The amendments make little material difference. Counsel for the plaintiff made it clear before

Record

and after the amendments that the claim meant that the land belongs to or is the property of the Korle Webii Family in the fullest legal sense of either expression, any rights of property in the Ga Mantse, Gbese Mantse or anybody else being thus excluded. This contention was fully adopted by the Korle Webii witnesses who gave evidence."

14. The Korle Priest adduced the evidence of twenty witnesses who gave evidence as to tradition, dealings with the land, occupation of the land, and surrounding circumstances. The Appellant adduced the evidence of fourteen witnesses who gave evidence as to tradition, dealings with the land, occupation of the land, and circumstances. 10

In support of their case the Korle Priest and the Appellant adduced documentary evidence.

p.706

15. M'Carthy, J. delivered judgment on the 31st May, 1947.

p.707, 1.8

It was agreed that the issue between the Korle Priest and the Appellant should be determined first, as most of the Defendants derived their title from the Appellant. 20

p.707, 1.13

As observed by the learned Judge, the Appellant and the Korle Priest belong to the Gbese Division of the Ga State, and the head of the Gbese Division is the Gbese Mantse who is now the senior Ga Divisional Chief; the Korle Priest holds a special position among the people of Accra because the Korle Priest are traditional owners of the Korle Fetish (deity) and are responsible for the worship of the Korle spirit, which is regarded as one of the most important Accra deities; and the Korle Priest who sits on the Korle Stool is the head of the members of the extended Korle We Family. 30

16. The learned Judge summed up the evidence led as to tradition by the Korle Priest to prove

p.708, 1.14

(a) a sacred trust to administer lands under their control for the benefit of the people of Accra, and that this had all along been their practice; 40

p.708, 1.17

(b) that the Korle Priest had often acted in

association with the Ga Mantse and the Gbese Mantse in the disposal of lands in Accra, but this was entirely a matter within their own discretion as they could deal with the lands in Accra as they thought fit, subject to their interpretation of the sacred trust;

Record

10 (c) that in the latter part of the seventeenth century when most of the people now called Accras lived at Ayawaso, a hill about twelve miles north of Accra, forbears of the Korle Webii, a group of hunters, made their way to the sea, where Accra now stands, and a woman belonging to the group walking by the Korle Lagoon found some sacred pots, and she was possessed by the Korle Spirit, which by her mouth told her family that henceforth they should tend and worship the Korle Spirit; p.708, 1.42

20 (d) that for this purpose the Korle Webii should hold all the Korle lands extending east and north of the Korle Lagoon as custodians for the deity, including the Kokomlemle lands; and p.709, 1.7

(e) that the Korle Priest had from time to time made grants of land to individuals or to Stools often upon payment of customary offerings, and dues, and the grantees were expected at the time of the annual Korle festival to send customary offerings. p.709, 1.10

30 17. The Korle Priest adduced documentary evidence of grants of Kokomlemle lands made (a) according to native custom, and (b) by deed; the grants being made in some instances in association with the Ga Mantse and Gbese Mantse, or with Gbese Mantse, or, in some cases, by themselves alone. p.709, 1.17

The Korle Priest adduced documentary evidence that they received compensation for lands acquired by the Government, the money being shared with the Chiefs, and that they sued and were sued in respect of Kokomlemle lands. p.709, 1.23

18. The learned Judge summed up the evidence led as to tradition by the Appellant to prove p.709, 1.33

40 (a) that in 1827, a year after the defeat of the Ashantis in the battle of Akantamansu had saved the Gas from the danger of invasion, the leader of the Appellant Stool had been rewarded for his military services by the grant of the Kokomlemle lands; and

Record
p.709, 1.38

(b) that it was a grant of a portion of Ga Stool land in 1827 made by the senior Ga Chiefs and Priests.

19. The Appellant adduced documentary evidence of

p.710, 1.11

(a) a Declaration in writing made by the Korle Priest and his elders on the 18th September, 1898, before the Ga Mantse and the Gbese Mantse declaring the land therein described as "Korle land" as being the property of the Korle Priest who stated to have inherited it from time imemorial, and to hold the land in fee simple; the said land being shown as immediately north of the Kokomlemle lands;

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p.711, 1.16

(b) an Admission made by the Acting Korle Priest, Tetteh Quaye Molai, in a case tried in the Ga Mantse's Tribunal on the 20th October, 1939, (Tetteh Quaye Molai v. Abla Kotey & Ors.) that Akwandoh land (which is part of the Kokomlemle lands) was not the property of the Korle Priest but that "The Korle Webii are caretakers over it for the Ga Mantsemei"; and

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p.711, 1.25

(c) a similar admission made by the same Priest in a trespass action brought in the Ga Mantse's Tribunal in respect of part of the Kokomlemle lands (Ashrifie v. Golightly).

20. The learned Judge held

p.712, 1.25

(a) that the evidence as to the form and procedure followed in making the grants relied on by the Korle Priest is of an equivocal nature;

p.712, 1.30

(b) that of the two principal Fetish Priests, the evidence of Sakumo Wulomo did not help the Korle Priest, and the evidence of Nai Wulomo was definitely hostile to the claim put forward by the Korle Priest;

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p.713, 1.10

(c) that the Declaration of 1898 does not necessarily imply that the Korle Priest did not hold other lands than the land in question (Korle land);

p.713, 1.24

(d) that although the lands held by the Korle Stool are in some sense vested in that Stool, the admissions made by the Acting Korle Priest in the

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Record

two cases in the Ga Mantse's Tribunal indicate the true position as well as could be expected, and it is significant that the claim to caretakership was accepted without comment by the members of the Tribunal who would be well-informed on the subject;

(e) that a caretaker is always subject to control by the owner even though he may have an interest in the land; p.714, 1.11

10 (f) that it is inconceivable that the caretaker is entitled to bring an action even as caretaker in respect of lands in his charge, knowing that this is contrary to the wish of the owner or co-owner, unless it is shown in the case of co-ownership that the co-owners refuse to co-operate for the protection of the property; p.714, 1.13

(g) that here the plaintiff does not sue as caretaker, a status which he emphatically repudiated; and p.714, 1.19

20 (h) that as the plaintiff has totally failed to establish his right to bring this action in the capacity of absolute owner he will be non-suited as against all the defendants. p.714, 1.22

21. The Korle Priest appealed from the judgment of M'Carthy, J. to the West African Court of Appeal.

22. The Judgment of the Court of Appeal was delivered by the President, Sir Walter Harragin, C.J., Gold Coast, on the 13th December, 1947. p.293

23. The Court of Appeal held

30 (a) that the amendments to the Writ of Summons and the Statement of Claim indicate the uncertainty of the Korle Priest as to the terms and the conditions under which the property came into his possession; p.722, 1.32

(b) that there is no doubt that the Korle people to a great extent accepted the position of the Korle Priest that they should hold all the lands east and north of the Lagoon for the deity, including the Kokomlemle lands; p.723, 1.46

40 (c) that the ancestors of the Korle Priest have made a number of grants in respect to Kokomlemle lands and other lands; p.724, 1.1

Record
p.724, 1.3

(d) that some of the grants of land were made by the Korle Priest alone and in some of the grants the Ga Mantse and the Gbese Mantse were joined as co-grantors;

p.724, 1.14

(e) that the Declaration of 1898 was made before the Ga Mantse and the Gbese Mantse who witnessed the document whereby the Korle Priest granted to the Korle People a certain area of land immediately north of the Kokomlemle lands as a complete transfer in fee simple with no suggestion that it is being held for themselves, the Ga Mantse and the Gbese Mantse, and that if the claim of the Korle Priest to the ownership of Kokomlemle lands in correct, this Declaration is quite incomprehensible;

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p.724, 1.39

(f) that it is a recognised principle in land cases and it does not admit of argument that the plaintiff when claiming a declaration of title must succeed on the strength of his case; and

p.725, 1.2

(g) that if the Korle Priests are in fact the caretakers, no matter what definition is placed upon that word, they certainly cannot claim to hold the land in what would amount to fee simple.

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p.725, 1.16

24. The Court of Appeal came to the conclusion (it is respectfully submitted erroneously) that the learned Trial Judge was perfectly correct to non-suit the claim of the Korle Priest rather than dismiss the case "thus giving them an opportunity of clarifying their position if it is possible".

The appeal was accordingly dismissed with costs.

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25. Against that judgment of the Court of Appeal affirming the judgment of M'Carthy, J. dismissing the claim of the Korle Priest to a Certificate of Title over the Kokomlemle lands, the Korle Priest did not appeal to Her Majesty in Council.

p.105, 1.21

26. On or about the 29th April, 1940, Suit No. 7 of 1951, the first of the present suits, was instituted in the Tribunal of the Paramount Chief of the Ga State by the Respondents, E.J. Ashrifi, A.E. Narh, and Charles Pappoe Allotey, as Plaintiffs, against the Appellants, H.E. Golightly and Tettey Gbeke II, as Defendants, claiming damages for trespass and an injunction and was subsequently trans-

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ferred to the Supreme Court of the Gold Coast.

Record

27. On the 26th April, 1943, Suit No. 11 of 1943, the second of the present suits, was instituted in the Tribunal of the Paramount Chief of the Ga State by the Respondents, C.B. Nettey, Kortie Clanhene and Nee Nettey, as Plaintiffs, against the Appellant, Tettey Gbeke, as the 6th Defendant, claiming a declaration of title to the land in suit, damages for trespass and an injunction and was subsequently transferred to the Supreme Court of the Gold Coast. 10 p.5
28. On the 3rd June, 1943, Suit No. 15 of 1943, the third of the present suits, was instituted in the Tribunal of the Paramount Chief of the Ga State by the Respondent Mamie Afiyea, as Plaintiff, against the Appellants Tettey Gbeke II and Comfort Okraku, as Defendants, claiming a declaration of title to the land in suit, damages for trespass and a perpetual injunction and was subsequently transferred to the Supreme Court of the Gold Coast. p.6
29. On the 25th November 1943, Suit No. 2 of 1944, the fourth of the present suits, was instituted in the Tribunal of the Paramount Chief of the Ga State by the Appellant Nii Tettey Gbeke, as Plaintiff, against the Respondents Eric Lutterodt, Quarshie Solomon, Conrad Lutterodt and Numo Ayiteh Cobblah, as Defendants, claiming damages for trespass and perpetual injunction and was subsequently transferred to the Supreme Court of the Gold Coast. 20 p.21
30. On the 28th January 1944, Suit No. 7 of 1944, the fifth of the present suits, was instituted in the Tribunal of the Paramount Chief of the Ga State by the Respondent Nii Adotei Akufo, as Plaintiff, against the Appellant Nii Tettey Gbeke, as 13th Defendant, claiming damages for trespass, recovery of possession of the land in suit and a permanent injunction and was subsequently transferred to the Supreme Court of the Gold Coast. 30 p.22
31. On the 16th February 1949, Suit No. 5 of 1949, the sixth of the present suits was instituted in the Tribunal of the Paramount Chief of the Ga State by the Respondents A.A. Allotey and Eric P. Lutterodt, as Plaintiffs, against the Appellant Nii Tettey Gbeke II, as Defendant, claiming a declaration of title to the land in suit, damages for trespass and an injunction and was subsequently transferred to the Supreme Court of the Gold Coast. p.34

Record
p.38

32. On the 26th September 1949, Suit No. 46 of 1950, the seventh of the present suits, was instituted in the Tribunal of the Paramount Chief of the Ga State by the Appellant Nii Tettey Gbeke II, as Plaintiff, against the Respondents D.A. Owuredu and R.O. Ammah, as Defendants, claiming damages for trespass, recovery of possession of the land in suit and a perpetual injunction and was subsequently transferred to the Supreme Court of the Gold Coast

p.111, 1.24

33. On the 27th July 1950, Suit No. 39 of 1950, the last of the present suits, was instituted in the Tribunal of the Paramount Chief of the Ga State by the Respondents R.A. Bannerman and Numo Ayiteh Cobblah, as Plaintiffs, against the Appellant Nii Tettey Gbeke II, as Defendant, claiming a declaration of title to the land in suit and was subsequently transferred to the Supreme Court of the Gold Coast.

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34. The Respondents in all the eight suits the subject of this appeal derived their title to their respective portion of the Kokomlemle lands through the Korle Priest.

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p.43, 1.41

35. In the course of the hearing of the twenty five suits the Trial Court by Orders dated the 2nd January, 1951, the 30th March, 1951, and the 4th April, 1951, consolidated the suits and heard them all as one consolidated action.

p.67, 1.13

p.43

36. The hearing of the consolidated action commenced on the 2nd January, 1951.

37. The Korle Priest led evidence oral and documentary substantially the same as the evidence led by him in the previous suit including the evidence of his principal witness John Nyan Plange in the previous suit.

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p.669
Ex. "4"

38. The Appellant led evidence oral and documentary substantially the same as the evidence led by him in the previous suit, save for Exhibit "4" dated the 1st May, 1945, whereby the Gbese Mantse acknowledges the Appellant's ownership of the Kokomlemle lands. As stated in paragraph 6 herein the Gbese Mantse does not support the claim of the Korle Priest to the ownership of the Kokomlemle lands.

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39. The Ga Mantse denied the claim of the Korle Priest to the ownership of the Kokomlemle lands and gave evidence on behalf of the Appellant acknowledging the claim of the Appellant to the ownership of the Kokomlemle lands.

Record
p.57

10 40. The learned Judge considered the disputes in the twenty five suits relating to the Kokomlemle lands and the lands outside the Kokomlemle lands as a series of land disputes involving the rights of various parties to the particular parcel of land to which the claim was laid.

p.105

41. Evidence in support of the claims made by the Korle Priest was heard first. The learned Judge then heard evidence in support of the claims made by the Appellants, and the other families, who were the parties to the twenty five suits.

20 Examination of the parties to the various suits shows that the parties mentioned by the learned Judge in the various groups of suits sometimes appear as Plaintiffs and the same parties appear as Defendants. The learned Judge treated all the parties as Plaintiffs.

The learned Judge heard the twenty five suits in this manner. The parties whose claims had already been heard in one group of suits were given leave to adduce further evidence in subsequent groups of suits.

30 The learned Judge heard the evidence of six linguists called by him as Court witnesses, and then continued the hearing of further groups of suits.

pp.69-99

42. The learned Judge after considering the authorities on the native customary law and native tenure in West Africa held that Stool land can never be sold outright except to satisfy a Stool debt.

p.120, 1.2 to
p.144, 1.37

40 As stated in paragraph 10 herein the Court of Appeal disagreed with the Trial Court and held that an outright alienation of Stool land is valid and that its validity "has for many years past come to be recognised by native usage", and that the decision of the Trial Court "appears to us to be far too sweeping to be upheld".

Record

In accordance with the said finding of native customary law and native tenure in West Africa the learned Judge held that the position of the Korle Priest is that of owner of the Kokomlemle lands jointly with the Ga Mantse and the Gbese Mantse and that the prior consent of all three entities is necessary to an outright alienation of the Kokomlemle lands.

- p.105 43. The Trial Court delivered Judgment on the 31st May, 1951. The Judgment in the consolidated action dealt with each of the twenty five suits separately in order of hearing. 10
- pp.210-240 Of the eight suits, the subject of this appeal, the Plaintiff's claim was dismissed in six suits, being Suits No. 11 of 1943, No. 2 of 1944, No. 7 of 1944, No. 5 of 1949, No. 39 of 1950 and No. 46 of 1950.
- p.244, 1.21 In Suit No. 7 of 1951 the claim of the Plaintiffs E.J. Ashrifi and A.E. Harh were granted as prayed for, but the claim of the Plaintiff Charles Pappoe Allotey was dismissed. 20
- p.196, 1.33 In Suit No. 15 of 1943 the Plaintiff's claim was granted as prayed for.
44. The learned Judge considers the authorities as to native customary law and native tenure in West Africa in paragraphs 33 to 86. Paragraph 182 sets out his conclusions thus -
- p.192, 1.20 to p.193, 1.14. "(i) That the Korle Priest as the "caretaker" of these Stool lands may make grants of land to members of the Stool for specific purposes e.g. to build for the purpose of residence or trade. 30
- (j) That right cannot be exercised in derogation of a subject's right to farm i.e. it can only be exercised on land deemed to be unappropriated, and that may be, as has been seen, either land not farmed at all, or land that has been farmed and then abandoned.
- (k) That before any member of the Gbese Stool and of which the Atukpai Family are members, may deal with land otherwise reference must first be made either to the 40

Gbese Manche, or in some cases to the Gbese Manche and Ga Manche, e.g. mortgagee of land by customary law (known as pledges) made to a stranger to the Stool would require the consent of the Gbese Manche, leases in similar circumstances would require the same authority.

10 (1) Sales of land outright or mortgages of land in English form, carrying with it the right of sale in certain eventualities can never be made unless first the prior consent is obtained both of the Gbese Manche and of the Ga Manche.

(m) Such sales can never be approved unless it is first ascertained that:

(a) a Stool debt is in existence

(b) that its existence was due to no fault of the individual

20 (c) that the principal members of the family whose lands are involved have consented."

45. Paragraphs 118 and 119 consider the previous suit, No. 12 of 1943. p.157, 1.29 to p.158, 1.6

46. Paragraph 136 considers the evidence relating to the claim of the Nii Aryee Deki family p.165, 11.30 to 39.

Paragraphs 109 to 112 consider the evidence relating to the claim of the Odoi Kwao family. p.154, 1.15 to p.155, 1.41

Paragraphs 127 to consider the evidence relating to the claim of the Lutterodt family. p.161, 1.21 to p.165, 1.24

30 Paragraph 184(d) considers the evidence relating to the claim of the Okaikor Churu family. p.195, 1.9 to p.196, 1.11

30 The evidence relating to the Korle Priest's claim to ownership is considered in paragraphs 88 to 90 and the evidence relating to the Appellant's claim to ownership is considered in paragraphs 139 to 182.. p.145, 1.20 to p.146, 1.32. p.166, 1.17 to p.194, 1.6

40 47. Paragraph 184 considers the claim of the Respondent in Suit No. 15 of 1943 granting the Respondent, as Plaintiff, a declaration of title and £100 as damages for trespass, and an injunction. pp.194 to 197. p.196, 1.33 p.197, 1.7

Paragraph 189 considers the claim of the pp.207 to 210.

preliminary condition to the sale of Stool land;

Record

(2) that if the grant is to a stranger or if the land is eventually conveyed or transferred to a stranger who owes no personal allegiance to the Stool, he holds the land without any restriction and without a reversion to the Stool; and

p.304, 1.5

(3) that the prior consent of the three entities, Ga, Gbese and Korle, is necessary to an outright alienation of the land of the Kokomlemle lands.

p.304, 1.44

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51. As stated in paragraphs 8, 9 and 10 herein the Appellants accept the decision of the Court of Appeal as to native customary law and native tenure in West Africa and do not attack the Judgment of the Court of Appeal on these issues; and the sole question for determination in this appeal is, as stated by the Court of Appeal, "What is the position of the Korle Priest?"

p.302, 1.5

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The Appellants' attack to the Judgment of the Court of Appeal is as to that sole issue.

52. The Court of Appeal considered the claims of the groups or communities who claim title to portions of the land and the right to transfer the title outright to others of the parties in the several suits which were consolidated for trial but separated for judgment, and consider the claim of the Appellant as the first group.

p.305, 1.21

The Court of Appeal stated their conclusion as follows:-

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"It seems to us that the Atukpais, being an apparently coherent unit, have taken advantage of the dissension between the Ga and Gbese Manches and the Korle Priest over the control of these stool lands, but this course of conduct by the Atukpais is completely unwarranted and was not left so unchallenged as to justify us in reversing the findings on this important aspect of the case. As the learned Judge observed 'the mere fact that the Atukpais had persistently sold plots of land whilst its ownership was in issue lends no additional weight to the Atukpai's case.'"

p.306, 1.20

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Record

After considering the evidence oral and documentary the Court of Appeal expressed its conclusion in the passage following:-

p.304, 1.42

"On a careful consideration of all the evidence we consider that the Korle We or Stool are co-owners with the Ga and Gbese Stools. It is therefore a correct finding and one supported by the evidence that the prior consent of the three entities, Ga, Gbese and Korle is necessary to an outright alienation of the lands in dispute.

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Whilst therefore we are unable to agree with the learned Trial Judge that native custom and usage prohibits a sale of stool land except under the necessity of a pressing stool liability, such as debt, we are in agreement with him that in the cases before the Court such sale can only be effected with the prior concurrence of the three entities Ga, Gbese and Korle who jointly own the land and that publicity is necessary in such transactions, the publicity being a safeguard provided by native customary usage against the clandestine disposal of land without the knowledge of the necessary parties".

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53. It is respectfully submitted that in considering the nature of the present consolidated action as an enquiry into conflicting claims for declaration of title over Kokomlemle lands the Courts below have misconceived the true nature of the case put forward by the Korle Priest.

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It is respectfully submitted that the Courts below have misconceived the true nature of the previous suit brought by the Korle Priest against the Appellant asserting his claim of ownership of the Kokomlemle lands and the present consolidated action brought by the Korle Priest and others deriving title through him as owner of the Kokomlemle lands against the Appellant and others deriving title through the Appellant.

It is respectfully submitted that the Courts below have erred in law in regarding the differences between the two Chiefs, the Ga Mantse and the Gbese Mantse, and the Korle Priest as one of dissension only, and in not appreciating that the differences between the two Chiefs and the Korle Priest go to

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the root of the claim asserted by the Korle Priest that his position is not that of caretaker but that of owner of the Kokomlemle lands, an assertion which the two chiefs have never supported.

Record

10 54. It is respectfully submitted that the Courts below have erred in law in the construction of the voluminous documentary evidence which refutes the finding that sale of the Kokomlemle lands "can only be effected with the prior concurrence of the three entities Ga, Gbese and Korle who jointly own the land and that publicity is necessary in such transactions".

20 55. In the result the Court of Appeal dismissed the appeals preferred by the Appellants including the eight appeals the subject of the present appeal; and allowed in part the appeal preferred by Nii Adotei Akufo the Respondent in Suit No. 7 of 1944 by varying the Judgment of the Trial Court to this extent that the family represented by Nii Adotei Akufo are declared the owners by absolute grant of part of the area of their claim up to the eastern bank of the Mamobi Djor or watercourse, and otherwise affirmed the Judgment of the Trial Court.

p.306, 1.32

30 56. The Appellants being dissatisfied with the said Judgment of the West African Court of Appeal dated the 4th March, 1955, obtained leave to appeal therefrom to Her Majesty's Judicial Committee of the Privy Council by Order dated the 23rd April, 1956, in the eight suits the subject of the present appeal.

p.316

57. On the 1st October, 1958, the Registrar of the Ghana Court of Appeal gave his Certificate pursuant to Section 17 of the Ghana (Appeal to Privy Council) Order in Council 1957 (Rule 11 of the Rules of the Judicial Committee) certifying that the Respondents shown in the title to the present appeal "have received due notice of the admission of the appeal and of the transmission of the Record to England."

40 By his letter dated the 3rd July, 1959, the Registrar of the Ghana Court of Appeal stated that the Respondents shown as "Respondents to the Privy Council" in the title of the Record of Proceedings transmitted to England are the Respondents before the Privy Council.

Record

58. The Appellants humbly submit that this appeal be allowed and the Judgment of the West African Court of Appeal dated the 4th March, 1955, be set aside and the Judgment of the Supreme Court of the Gold Coast dated the 31st May, 1951, be set aside and this appeal be allowed and the Korle Priest be made to bear the Appellants' costs throughout, for the following

R E A S O N

BECAUSE the Judgment in the previous suit before the Supreme Court of the Gold Coast (Suit No. 12 of 1943) operates as res judicata or as an estoppel in this consolidated action relating to the Kokomlemle lands inasmuch as

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- (a) the Korle Priest went to trial in the previous suit on the sole issue of his claim to be the owner of the Kokomlemle lands;
- (b) on that sole issue the Korle Priest led oral and documentary evidence including the evidence of his principal witness John Nyan Plange who is also his principal witness in the present suits;
- (c) that sole issue was necessary for the adjudication of the claim by the Korle Priest to be the owner of the Kokomlemle lands;
- (d) that sole issue was adjudicated upon finally in the previous suit against the Korle Priest;
- (e) on the issue of his choice the Korle Priest failed; and
- (f) by that failure he must abide.

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Alternatively -

Record

BECAUSE as correctly held by the Court of Appeal the finding of the Trial Court that by native customary law and native tenure in West Africa Stool land can never be sold outright except to satisfy a Stool debt is erroneous and such error of law vitiated the finding based on the oral evidence that the position of the Korle Priest is that of owner of the Kokomlemle lands jointly with the Ga Mantse and the Gbese Mantse so that the prior consent of all three entities is necessary to an outright alienation of the Kokomlemle lands.

S. P. KHAMBATTA.

C. F. HAYFRON-BENJAMIN.

IN THE PRIVY COUNCIL

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

B E T W E E N :

1. H.E. GOLIGHTLY and
2. TETTEY GBEKE II
(Defendants) Appellants

- and -

1. E.J. ASHRIFI
2. A.E. NARH and
3. CHARLES PAPPOE ALLOTEY
(Plaintiffs) Respondents

and connected Appeals (Consolidated)

CASE FOR THE APPELLANTS

W.W. BOX & CO.,
28, Great James Street,
Bedford Row,
London, W.C.1.

Solicitors for the Appellants.