GH GB 41,1960

IN THE PRIVY COUNCIL No. 31 of 1958

ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL

UNIVERSITY OF LONDON
W.C.1.
- 7 FEB 1961
INSTITUTE OF ADVANCED
LEGAL STUDIES
59012

B E T W E E N

(Suit No. 7/1951)

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

A N D B E T W E E N

(Suit No. 11/1943)

TETTEY GBEKE representing
Atukpai (6th Defendant)
... ... Appellant

and

1. C.B. NETTEY (substituted
for C.O.Aryee) on behalf of
himself and the families of
Nii Aryee Deki,
2. KORTIE CLANHENE and
3. NEE NETTEY (Plaintiffs) Respondents

A N D B E T W E E N

(Suit No. 15/1943)

1. Tettry GBEKE II representing
the Atukpais and
2. COMFORD OKRAKU (Defendants)
... ... Appellants

and

MAMIE AFIYEA as Head and
Representative of the Okaikor
Churu Family of Gbese Quarter,
Accra (Plaintiff) Respondent

A N D B E T W E E N

(Suit No. 2/1944)

NII TETTEY GBEKE, Dsasetse of Atukpai, for himself and as representing the Stool and people of Atukpai (Plaintiff)
... ... Appellant

and

1. ERIC LUTTERODT,
2. QUARSHIE SOLOMON,
3. CONRAD LUTTERODT and
4. NUMO AYITEY COBBLAH (For Ga, Gbese and Korle Stools)
(Defendants) Respondents

A N D B E T W E E N

(Suit No. 7/1944)

NII TETTEY GBEKE for Atukpai Stool (13th Defendant) Appellant

and

NII ADOTEI AKUFO, present Head, substituted for Odoitso Odoi Kwao of Christiansborg, Acting Head of Nee Odoi Kwao Family of Christiansborg and Accra, on behalf of herself and as representing the members of the said Nee Odoi Kwao Family
(Plaintiff) ... Respondent

A N D B E T W E E N

(Suit No. 5/1949)

NII TETTEY GBEKE II, Atukpai Stool Dsasetse, for himself and as representing the Atukpai Stool of Gbese, Accra (Defendant)
... ... Appellant

and

1. A.A. ALLOTEY and
2. ERIC P. LUTTERODT for and on behalf of the Lutterodt family of Accra (Plaintiffs)
... ... Respondents

A N D B E T W E E N

(Suit No. 46/1950)

NII TETTEY GBEKE II on behalf of himself and as representative of all the principal members of the Atukpai Stool (Plaintiff) ... Appellant

and

1. D.A. OWUREDU and
2. R.O. AMMAH (Defendants) Respondents

A N D B E T W E E N

(Suit No. 39/1950)

NII TETTEY GBEKE II, Acting Mankralio of Atukpai (Defendant) Appellant

and

1. R.A. BANNERMAN and
2. NUMO AYITEY COBBLAH, Korle Priest, on behalf of the Ga, Gbese and Korle Stools (Plaintiffs) Respondents

(CONSOLIDATED APPEALS)

CASE FOR THE RESPONDENTS IN SUITS Nos. 7/1951, 15/1943, 2/1944, 5/1949 46/1950 and 39/1950

RECORD

1. This is an appeal in eight suits out of sixteen which were the subject of a judgment, dated the 4th March, 1955, of the West African Court of Appeal (Foster Sutton, P., Smith, C.J. and Coussey, J.A.). The sixteen suits which came before the West African Court of Appeal were themselves part of twenty-five consolidated suits tried together in the Supreme Court of the Gold Coast by Jackson J., who delivered his judgment on the 31st May, 1951. Of the suits which are

pp.293-311

pp.105-247

RECORD

the subject of this appeal, Jackson, J. gave judgment in No. 7/1951 for the first and second Respondents, in No.11/1943 for the Appellant, in No.15/1943 for the Respondent, in No.2/1944 for the Respondents, in No.7/1944 for the Appellant, in No.5/1949 for the Appellant, in No.46/1950 for the Respondents and in No.39/1950 for the Appellant. The Appellants appealed in all these suits, including those which they had won in the Supreme Court. The Court of Appeal dismissed the Appeals in all these eight suits.

2. The litigation out of which this appeal arises is thus described in the judgment of the Court of Appeal :

pp.297-298

> This is an appeal in sixteen out of twenty five Consolidated actions which were tried in the Land Court at Accra before Jackson, J., who delivered judgment on the 31st May, 1951, after a trial lasting about fifteen weeks. The evidence and the judgment are both voluminous but this Court is not unfamiliar with the issues of native customary law and native tenure involved.
>
> 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 claimed; in others, a declaration of title and recovery of possession.

3. Of the six suits now under appeal to which these Respondents are parties, Nos.5/1949 and 39/1950 are suits which the Appellant won in the Supreme Court. In spite of that, he appealed in these suits to the Court of Appeal, those appeals were dismissed, and he is now appealing again. The Respondents never appealed from the judgment of the

Supreme Court against them in these suits. In these circumstances it is not necessary to say more of these two suits in this Case.

4. The remaining four suits under appeal to which these Respondents are parties arose as follows :-

No.7/1951

This suit was brought by the Respondents in the tribunal of the Paramount Chief of the Ga State in 1941. In 1951 it reached the Land Court, and was remitted to the Ga Native Court for rehearing. It was then transferred to the Supreme Court. There were no pleadings. The claim was for damages for trespass, and an injunction to restrain trespass, to a piece of land granted, according to the Respondents, by the Korle Priest in 1908 to a man named Djani. Djani was succeeded by the third Respondent, who was his uncle, and the third Respondent sold the land in 1937 to the first and second Respondents. The Appellants contended that the land was part of the property of the Atukpai family, whom the second Appellant represented, and was granted by them to the first Appellant in 1938. pp.240-241

No.15/1943

This suit was begun in the tribunal of the Paramount Chief of the Ga State on the 3rd June, 1943. The original Plaintiff (for whom the Respondent was afterwards substituted) claimed a declaration of title to certain land, damages for trespass, and an injunction restraining interference with his right to the said land. He alleged that the land had been granted to one Okaikor Churu by the Gbese Stool about 1875, and had subsequently descended to Okaikor Churu's family. The Atukpai family had begun to trespass on the land in 1942, claiming that it belonged to them. The Appellants alleged that the land had been granted by the Ga Mantse to the Head of the Atukpai Stool for the use of the Atukpai people about 1827. p.6 pp.14-16 pp.17-19

No.2/1944

This suit was begun in the tribunal of the Paramount Chief of the Ga State on the 25th November, 1943. The Appellant claimed damages p.21

RECORD

for trespass to certain land and an injunction restraining the Respondents from
pp.24-25 entering that land. The Appellant alleged that the land was part of that which had been granted by the Ga Mantse for the use of the Atukpai people about 1827. The Atukpai people had granted a part of the land about 1890 to one William Lutterodt, and since December, 1942 the Appellant alleged that the Respondents had trespassed beyond the boundaries of the land thus granted into what he alleged to be Atukpai land. The Defendants claimed that their land had been granted to them by the Ga
pp.26-27 Stool and the Korle Priest, not by the Atukpai people.

No.46/1950

pp.38-39 This suit was begun in the Ga Native 'B' Court at Accra on the 26th September, 1949. The Appellant claimed damages for trespass to certain land and an injunction to restrain further commission of that trespass.

All these actions were eventually transferred to the Supreme Court of the Gold Coast and became part of the twenty-five consolidated actions tried by Jackson, J.

5. In all these four suits the Respondents claimed through the Ga and Gbese Stools and the Korle Priest. The Appellants in all four suits are the representative of the Atukpai family, Tettey Gbeke II, and grantees from him. The issue in these four suits, therefore, was whether the pieces of land to which they referred belonged to the Ga and Gbese Stools, of the lands of which Stools the Korle Priest was the traditional caretaker, or to the Atukpai family.

6. The twenty-five consolidated actions came before Jackson, J. in the Supreme Court of the Gold Coast on the 24th January, 1951. The trial continued from then until the 31st May, 1951. The learned Judge heard much evidence of the traditional history of the peoples concerned, the various dealings with the land, and the relevant provisions of native law and custom. In view of the findings of Jackson, J., and the Court of Appeal on the issues raised by the four suits under appeal to which these Respondents are parties, it is not necessary, in these Respondents'

respectful submission, to go into this evidence.

7. Jackson, J., delivered judgment on the 31st May, 1951. He first described the land with which the twenty-five suits before him were concerned. He then went on to deal with the history of the tribes inhabiting that land. The land around Accra was inhabited by the Ga tribe, and the Gbese Stool was a Stool subordinate to the Ga Stool. The land of the Ga family was originally controlled by the Korle Priest, but his power over the land gradually passed to the Ga Mantse, or King. pp.105-247 pp.113-116 pp.116-119

8. The learned Judge then went on to deal with the meaning and the sources of native customary law. He held that by native law land belonged to Stools or families rather than to individuals. Every subject of a Stool was entitled to farm where he wished upon unoccupied Stool land. Sustained occupation of Stool land might create a hereditable interest, and upon the death of the founder of farms or buildings upon it such land would become family property. Land not occupied either by building or by farming might be allotted by the Head of the Stool to members of the Stool by way of gift or by way of licence. Stool land could be sold only with the concurrence of the subjects of the Stool, to satisfy a Stool debt for which it was impossible to raise the money by any other means. pp.120-144 p.136 pp.126-143

9. Jackson, J., then discussed the claims of the various families which had been represented at the hearing before him. Among these claims was that of the Atukpai family, who claimed that a large area had been granted to them outright by the Ga Mantse and the Korle Priest about 1827. After considering all the evidence, the learned judge held that there had been no specific grant made to the Atukpai family in 1826 or at any other time, and the only rights in land occupied by any member of the Atukpai family were the same rights as were enjoyed by any other subject of the Gbese Stool. pp.166-194

10. The next part of the Judgment consisted of separate consideration of each of the twenty-five actions. In the four suits subject to this appeal to which the Respondents are parties, the learned Judge reached the following decision :

RECORD

No.7/1951

pp.240-244 The learned Judge accepted the evidence for the Respondents, and held that as between a person deriving title (however defective) and possession from the Korle Priest and a person depending upon a grant from the Atukpai family, who had no title at all, the title of the former must prevail. He awarded damages and an injunction to the first and second Respondents, but dismissed the claim of the third Respondent because he had failed to show that he had any interest in the land.

No.15/1943

pp.194-197 The learned Judge accepted the evidence given on behalf of the Respondent, rejected that given on behalf of the Appellants, and granted the Respondent an injunction and £100 damages for trespass.

No. 2/1944

pp.211-214 The learned Judge held that, in accordance with his general finding on the claim of the Atukpai family, no grant of land had been made to them as alleged in or about 1827. Individual members of that family, like other subjects of the Gbese Stool, had farmed on unappropriated land; but the Atukpai family as a family had no title to land, so neither the Community of Atukpai nor the Appekkant suing in a personal capacity could maintain an action in trespass. The Appellant's suit was accordingly dismissed.

No. 46/1950

The Atukpai family having failed to prove any title to the land, and no attempt having been made to establish a claim for any individual member of that family, the Appellant's suit was dismissed.

11. Tettey Gbeke and other parties to the
pp.255-259 consolidated actions claiming under him appealed to the West African Court of Appeal in sixteen of the twenty-five actions, including the eight which are now the subject of this appeal. The appeal was heard between the 2nd and the 6th
pp.293-311 December 1954, and the judgment of the Court was delivered on the 4th March, 1955.

RECORD

12. Having described the nature of the litigation, the findings of Jackson, J., about native law and the history of the land concerned, the learned Judges of the Court of Appeal discussed the character of the land tenure applicable. They held that at the times material to this appeal the existence of a Stool debt was not an essential condition for the valid sale of Stool land. In all other respects they agreed with the views expressed by Jackson, J., on the native law. They then said that Jackson, J., after a careful review of the evidence, had found that no grant such as had been alleged had been made to the Atukpai family in or about 1827. With this finding the learned Judges were in full agreement. They also agreed with Jackson, J., that individual persons of the Atukpai family who occupied parts of the land did so under their general right as subjects of the Gbese Stool. The Atukpai Stool could not make any effective grant of the fee simple in such land, because it was only individual members of the family who held usufructuary rights over the land which they occupied, like other subjects of the Gbese Stool. It followed that in certain of the suits before the Court of Appeal, including all the eight now subject to this appeal, the appeals should be dismissed. In dismissing them, the Court of Appeal observed that in some of them the Appellants had in fact been successful in the Supreme Court. The learned Judges then went on to discuss the claim of another family, which does not arise on this appeal. Finally, they considered whether the native customary law as to the alienation of Stool land should be disregarded as being repugnant to natural justice, equity or good conscience. Bearing in mind the community of vested interests of a Stool and its subjects in Stool land, they held that the Court ought not to exercise its equitable jurisdiction in order to implement the actions of persons who, without title, had purported to sell as a fee simple what was only a usufruct in land. The only rights in land of any member of the Atukpai family at the material time had been the rights enjoyed by any subject of the Gbese Stool, and the so-called Atukpai Stool had had no authority to convey any land or otherwise to deal with it.

pp.297-301

pp.301-305

p.303,ll. 12-43

pp.305-306

p.306,ll. 32-43

pp.308-310

p.310,ll 3-15

13. As regards suits nos. 5/1949 and 39/1950, the Respondents respectfully submit that the

appeals are entirely misconceived, because in those suits the Appellants have already succeeded. The Appellants were originally the defendants in those suits, both suits were dismissed in the Supreme Court, and none of the Respondents (originally the plaintiffs) appealed. The Appellants appealed to the Court of Appeal, and that Court pointed out that in these suits they

> 'were successful defendants in those favour the plaintiffs' actions were dismissed in the Court below'

14. In each of the four suits nos.15/1943, 2/1944, 46/1950 and 7/1951 the Appellants' case was based upon the alleged grant of land to their predecessor in title in 1827 for the use of the Atukpai people. Jackson, J. found upon the evidence that no such grant had ever been made, and the Court of Appeal expressed full agreement with this finding. On all other points in these four suits upon which a conflict of evidence arose, Jackson, J. accepted the evidence for the Respondents and rejected that for the Appellants, and the Court of Appeal agreed with his finding.

15. The Respondents respectfully submit that the judgments in these four suits were not affected by any issue of native law, except the finding that the Atukpai family as a family never had title to any of the land in dispute, individual members of that family having merely the same rights as any other subjects of the Gbese stool. This finding was made by Jackson, J., the Court of Appeal expressed full agreement with it, and, in the Respondents' respectful submission, it is right.

16. These Respondents respectfully submit that as regards suits nos. 15/1943, 2/1944, 5/1949, 39/1950, 46/1950 and 7/1951 the judgment of the West African Court of Appeal was right and ought to be affirmed, and this appeal ought to be dismissed, for the following (amongst other)

REASONS

1. Because in suits nos. 5/1949 and 39/1950 the judgment of the Supreme Court was in the Appellants' favour, and the Respondents did not appeal against it:

   As to suits nos.15/1943, 2/1944, 46/1950 and 7/1951

2. Because there are concurrent findings of of fact in favour of the Respondents:

3. Because the Respondents are entitled to succeed upon those concurrent findings:

4. Because, in so far as the judgments of the Courts below in these suits depend upon native law, the view of the native law taken by both the Supreme Court and the Court of Appeal is right:

10 5. Because there was sufficient evidence to support all the findings of fact of the trial judge, and the West African Court of Appeal was right in holding that these findings should not be disturbed:

6. Because of the other reasons contained in the judgments of the Courts below.

DINGLE FOOT

J. G. LE QUESNE

No. 31 of 1958

IN THE PRIVY COUNCIL

O N A P P E A L

FEOM THE WEST AFRICAN COURT OF APPEAL

B E T W E E N

1. H.E. GOLIGHTLY and
2. TETTEY GBEKE II Appellants

- and -

1. E.J. ASHRIFI,
2. A.E. NARH and
3. CHARLES PAPPOE ALLOTEY
... ... Respondents

(and connected Consolidated Appeal)

CASE FOR THE RESPONDENTS IN SUITS Nos. 7/1951, 15/1943, 2/1944, 5/1949, 46/1950 and 39/1950

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