IN THE PRIVY COUNCIL No. 38 of 1960

ON APPEAL

FROM COURT OF APPEAL, GHANA

B E T W E E N:

NAJA DAVID, C.H. GHASSOUB and N.H. GHASSOUB trading in Partnership as Naja David Sawmill Company (Defendants)

NANA OSEI ASSIBEY III, representing the Stool of Kokofu (Co-defendant) Appellants

- and -

EDWARD KOTEY ANNAN SASRAKU substituted for Emmanuel Kotey Quao (deceased) as Head and Representative of a Family - Company of Teshie people claiming certain lands near Chempaw (Plaintiff) Respondent

---

RECORD OF PROCEEDINGS

A.L. BRYDEN & WILLIAMS,
53, Victoria Street,
London, S.W.1.
Solicitors and Agents
for the Appellants.

T.L. WILSON & CO.,
6, Westminster Palace
Gardens,
London, S.W.1.
Solicitors and Agents
for the Respondent.

IN THE PRIVY COUNCIL No. 38 of 1960

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FROM COURT OF APPEAL, GHANA

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RECORD OF PROCEEDINGS

INDEX OF REFERENCE

E X H I B I T S

LIST OF DOCUMENTS TRANSMITTED BUT NOT REPRODUCED

Description of Document	Date
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Court Notes for an interim injunction and ruling	6th March 1956
Court Notes for an interim injunction	23rd March 1956
Memorandum of Appearance filed on behalf of Defendants	1st March 1956
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IN THE COURT OF APPEAL	
Notice of Intention to Appeal to Privy Council	27th January 1959
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Affidavit in Support	28th January 1959
Court Notes granting Conditional Leave to appeal to Privy Council	3rd March 1959
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Affidavit in Support	7th May 1959

IN THE PRIVY COUNCIL No.38 of 1960

ON APPEAL

FROM COURT OF APPEAL, GHANA

B E T W E E N:

NAJA DAVID, C.H. GHASSOUB and N.H. GHASSOUB trading in Partnership as Naja David Sawmill Company (Defendants)

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- and -

EDWARD KOTEY ANNAN SASRAKU substituted for Emmanuel Kotey Quao (deceased) as Head and Representative of a Family - Company of Teshie people claiming certain lands near Chempaw (Plaintiff) Respondent

---

RECORD OF PROCEEDINGS

No. 1

SPECIALLY ENDORSED WRIT (AS AMENDED)

In the Supreme Court

No. 1

Specially Endorsed Writ (as amended), 23rd February 1956

Specially Endorsed Writ, Order 2, Rule 3

In the Supreme Court of the Gold Coast
Ashanti Judicial Division
Land Court
Kumasi.

No.LC.11/1956

Between -

2 EDWARD KOTEY ANNAN SASRAKU substituted for Emmanuel Kotey Quao (Deceased) AS HEAD AND REPRESENTATIVE OF A FAMILY-COMPANY OF TESHI PEOPLE CLAIMING CERTAIN LANDS NEAR CHEMPAW, PLAINTIFF

2 Substituted by Order of Court dated 17/10/57. (Itd). J.K.B. Crt. Clk. 17/10/57.

A n d

In the Supreme Court

No. 1

Specially Endorsed Writ (as amended), 23rd February 1956 - continued.

- NAJA DAVID TRADING AS NAJA DAVID SAWMILL COMPANY - Amended by Order of Court dated 11/3/57. (Itd). J.K.B. 11/3/57

x NAJA DAVID, C.H. GHASSOUB AND N.H. GHASSOUB TRADING IN PARTNERSHIP AS THE NAJA DAVID SAWMILL COMPANY, DEFENDANT x Amended by Order of Court dated 6/12/57 (Itd). J.K.B. 6/12/57.

@ NANA OSEI ASSIBEY III representing the stool of Kokofu, CO-DEFENDANT @ Joined by Order of Court dated 6/3/56. (Itd). I.B.K. Crt. Clk. 6/3/56.

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland, and of Our other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith, TO:

NAJA DAVID SAWMILL COMPANY LIMITED

of Kumasi.

WE COMMAND YOU, that within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of the aforesaid EMMANUEL KOTEY QUAO.

And take notice that in default of your so doing, the plaintiff may proceed therein and judgment may be given in your absence.

WITNESS: MARK WILSON, KNIGHT BACHELOR
CHIEF JUSTICE OF THE GOLD COAST
the 23rd day of February in the Year of Our Lord One thousand Nine hundred and fifty six.

The plaintiff's claim is for an injunction to prevent the defendant company from trespassing on the plaintiff's lands near Chempaw shown on the plan attached hereto.

@ The plaintiff claims against the co-defendant a declaration of his title to the ownership of the said land. @ Added by Order of Court dated 25/6/57. (Itd). J.K.B. Crt. Clk.

In the Supreme Court

No. 1

Specially Endorsed Writ (as amended), 23rd February 1956 - continued.

x Amended by Order of Court dated 26/6/57 (Itd). J.K.B. Crt. Clk.

x The plaintiff claims against the defendant-company and the co-defendant jointly and severally, (1) a declaration of his title to the ownership of the said land, and (2) an injunction.

Particulars of the plaintiff's claim are attached hereto.

THIS WRIT WAS issued by Harry Verney Alfred Franklin of P.O. Box 782, Accra, whose address for service is D 163/2 Brazil Lane, Accra, or Barclay's Bank, Kumasi, Solicitor for the said plaintiff who resides at Chempaw.

Indorsement to be made within 3 days after service.

This writ was served by me at Asokwa-Kumasi on the defendants Messrs. Naja David Sawmill per Mr. Gassoub on Tuesday the 28th day of February, 1956, at 11 a.m.

Indorsed the 28th day of February, 1956.

D.K. Ayeh
BAILIFF
28. 2. 56.

No. 2

Statement of Claim (as amended), 23rd February 1956

No. 2

STATEMENT OF CLAIM (AS AMENDED)

IN THE SUPREME COURT OF THE GOLD COAST
ASHANTI JUDICIAL DIVISION
LAND COURT
KUMASI.

Emmanuel Kotey Quao, Head and Representative of a family company of Teshi people claiming certain lands near Chempaw, Plaintiff

v:

Naja David Sawmill Company Limited, Defendant

x Nana Osei Assibey III, representing the Stool of Kokofu, Co-Defendant

x Joined by Order of Court dated 6/3/56.

Particulars of Claim

1. By native custom evidenced by documents

In the Supreme Court

No. 2

Statement of Claim (as amended),

23rd February 1956 - continued.

dated the 23rd day of December, 1927, 4th day of August, 1934, and 12th day of April, 1935, respectively certain lands shown in the map attached hereto were sold absolutely to the family company under the headship of the plaintiff by the Stool of Chempaw which sale was with the knowledge and consent of the Paramount Stool of Kokofu.

2. The Plaintiff has been in possession adverse to any Stool claims since the dates above-mentioned. The plaintiff has established sixteen villages on the said land. The plaintiff has cut and kept cut the boundaries of the said land as set out in the said map attached hereto. No Chempaw or Kokofu man has lived on the said land for twenty years or more.

3. On 6th February, 1956, the Defendant Company by its Agents and servants trespassed on the said land. When confronted by Atta Armah one of the plaintiff's family company and headman of the village nearest to the trespass, aged 67, who pointed out the boundary the defendant company's agent, an European believed to be named Bell assaulted the said Atta Armah with blows and kicks. The said Bell by force took the said Atta Armah to Juaso Police Station, and made charge against him that he was stopping the defendant company's operations. When the Police sent the said Atta Armah away the said Bell was instructed to return him to his home. The said Bell put down the said Armah four miles from his home to which he had to walk. He was admitted in the Oda hospital two days later with injuries to the abdomen and was discharged on 13th February.

4. The defendant company despite letters from the plaintiff's Solicitor continues to trespass on the said land and to cut trees in the vicinity of the said Armah's village. The said Armah has been unable to return to his village.

5. The plaintiff claims an injunction to prevent the defendant company from trespassing on the said lands.

@ Added by Order of Court dated 25/6/57. (Itd). J.K.B. Crt. Clk. 25.6.57

@ 6. The plaintiff claims against the defendant company and the co-defendant a declaration of his title to the ownership of the said land.

H.V.A. Franklin
SOLICITOR FOR PLAINTIFF.

To The Registrar,
Land Court, Kumasi
And to the Defendant Company herein, Kumasi.

In the Supreme Court

No. 3

Court Notes on Motion for Joinder, 6th March 1956

No. 3

COURT NOTES ON MOTION FOR JOINDER

Prempeh now moves for joinder of Nana Osei Assibey II was co-defendant representing the Stool of Kokofu.

Franklin - no objection.

Court: Motion allowed and application granted. Let applicant be joined and all necessary papers served on his Counsel, Mr. Prempeh.

(Sgd.) H.B. Benson,
J.
6.3.56.

No. 4

Co-defendant's Statement of Defence, 27th March 1956

No. 4

CO-DEFENDANT'S STATEMENT OF DEFENCE

IN THE SUPREME COURT OF THE GOLD COAST
ASHANTI JUDICIAL DIVISION
LAND COURT
KUMASI.

EMMANUEL KOTEY QUAO, Head and Representative of a family company of Teshi people claiming certain lands near Chempaw, PLAINTIFF

v:

NAJA DAVID SAWMILL COMPANY LIMITED, DEFENDANTS

A n d

NANA OSEI ASSIBEY III, Kokofuhene, as representing the Kokofu Stool, CO-DEFENDANT.

The Co-Defendant's Statement of Defence

1. The co-defendant says that the co-defendant is the Omanhene of Kokofu State and that the co-defendant's Stool has at all times been and is the Paramount owner of the whole of the Chempaw land - including the portion claimed by the plaintiff herein and that the Chempaw Stool is the caretaker

In the Supreme Court

No. 4

Co-defendant's Statement of Defence,

27th March 1956 - continued.

of the co-defendant's such Chempaw land.

2. In answer to the averments contained in paragraph 1 of the plaintiff's Statement of Claim, the co-defendant says that the co-defendant's Stool has never at any time sold any portion of his Chempaw land to the plaintiff herein.

3. In further answer to the averments contained in paragraph 1 of the plaintiff's Statement of Claim the co-defendant denies categorically that the co-defendant's Stool has any knowledge of the sale of any portion of his said Chempaw land to the plaintiff by the Chempaw Stool, and the co-defendant says further that the co-defendant's Stool has never empowered or authorised the Chempaw Stool to sell any portion of said Chempaw land to the plaintiff, and further that the said Chempaw Stool has no right to sell any portion of the co-defendant's said Chempaw land without the consent of the co-defendant's Stool.

4. In further answer to the averments contained in paragraph 1 of the plaintiff's statement of claim, the co-defendant says that since the co-defendant has never authorised or approved of the sale of any portion of his Chempaw land to the plaintiff, any such purported sale of the co-defendant's said land by the Chempaw Stool to the plaintiff herein - was and is invalid.

5. The co-defendant says that the existing custom prevailing in Ashanti and which also prevails at Kokofu is that Stool lands are not sold, and that no portion of the Kokofu Stool land has ever been sold by the Kokofu Stool to anyone.

6. In answer to the averments contained in paragraph 2 of the plaintiff's statement of claim, the co-defendant says that at all times material to this suit, the co-defendant's Stool has been and is the owner in possession of the whole of the Chempaw land - including the portion claimed by the plaintiff.

7. In further answer to the allegations contained in paragraph 2 of the plaintiff's statement of claim, the co-defendant says that the co-defendant's Stool became aware of the existence of the plaintiff on the land about six (6) years ago, and that the co-defendant immediately reported the

matter to the Otumfuo the Asantehene - whereby the Chempaw Chief and the plaintiff and his party were all summoned to appear before the Otumfuo in Council - where it was made clear to the plaintiff that since Stool lands in Ashanti were not sold, and since the co-defendant's Stool had not approved of any sale to the plaintiff, the plaintiff could only remain on the land as tenant at Will of the co-defendant's Stool.

8. The co-defendant says that consequent upon the order or pronouncement of the Otumfuo in Council on this matter, the plaintiff and his party went to the co-defendant at Kokofu - and there the plaintiff did acknowledge the co-defendant as the absolute owner in possession of the whole of the Chempaw land including the portion claimed by plaintiff, and the plaintiff then be sought the co-defendant to permit the plaintiff and his party to remain on the land subject to such terms that the co-defendant would impose on the plaintiff.

9. The co-defendant says that the co-defendant's Stool agreed to accept the plaintiff and his party as his tenants at Will on the land, and the terms that the co-defendant's Stool imposed were that the co-defendant's Stool should be entitled to a one-third (1/3) share of the annual proceeds of cocoa reaped on the land by the plaintiff every individual member of the plaintiff's party - which terms the plaintiff said he was going back to consider with all his people.

10. The co-defendant says that the plaintiff did not bring the co-defendant a reply, but that shortly afterwards upon the application of the plaintiff, a Commission of Enquiry was appointed, and the co-defendant as also the Asantehene's Representative were invited to give evidence before it as to whether Stool lands in Ashanti were sold or not.

11. The co-defendant says that the Commission of Enquiry did enquire into that matter and that its decision upon which the plaintiff has mainly relied in basing his claim is not published and co-defendant says that the plaintiff's action herein is premature.

12. The co-defendant will contend that neither

In the Supreme Court

No. 4

Co-defendant's Statement of Defence,

27th March 1956 - continued.

the plaintiff's writ nor his Statement of Claim discloses a cause of action against the defendant in that plaintiff claims no substantive remedy therein.

13. The co-defendant says that the plaintiff is not entitled to the relief sought or any relief.

14. Save as is hereinbefore expressly admitted the co-defendant denies each and every allegation of fact as if the same had been set out and traversed seriatim.

Dated at Aboadie Chambers this 27th day of March, 1956.

(Sgd.) Henry K. Prempeh
SOLICITOR FOR CO-DEFENDANT.

The Registrar,
Land Court,
Kumasi.

And copy to the plaintiff herein or His Solicitor, H.V.A. Franklin, Esq., D.163/2 Brazil Lane, Accra.

No. 5

Defendants' Statement of Defence,

29th March 1956

No. 5

DEFENDANTS' STATEMENT OF DEFENCE

IN THE SUPREME COURT OF THE GOLD COAST
ASHANTI JUDICIAL DIVISION
LAND COURT
KUMASI.

EMMANUEL KOTEY QUAO, Head and Representative of a family company of Teshie people claiming certain lands near Chempaw, PLAINTIFF

v:

NAJA DAVID SAWMILL COMPANY LIMITED DEFENDANTS

NANA OSEI ASSIBEY III, Kokofuhene as representing the Stool of Kokofu, CO-DEFENDANT.

The Defendants' Statement of Defence

1. The defendants are Timber Merchants and

they carry on business in Kumasi and elsewhere in Ashanti.

2. The defendants are not in a position to admit or deny the averments contained in paragraph 1 of the plaintiff's Statement of Claim, but the defendants will put the plaintiff to strict proof that the land which the plaintiff claims was sold to him with the knowledge and approval of the Co-defendant.

3. In further answer to the averments contained in paragraph 2 of the plaintiff's Statement of Claim, the defendants say that by agreement with the co-defendant dated the 30th October, 1953, the defendants were put in possession of the Chempaw land including the land in dispute by the co-defendant - for the purpose of felling timber trees on the said land.

4. In further answer to the averments contained in paragraph 2 of the plaintiff's Statement of Claim, the defendants say that the defendants have been in possession of the said Chempaw land for a period of two (2) years, and that to the knowledge of the plaintiff, the defendants have in furtherance of their business carried out extensive operations on the said land, i.e. the defendants have built a seven mile road and concrete bridges - the defendants have erected a bungalow and other temporary structures on the said land.

5. The defendants deny the averments of assault by the defendants' Agent as is contained in paragraph 3 of the plaintiff's statement of claim.

6. The defendants say that the plaintiff is not entitled to the relief sought by him or any relief at all.

7. Save as is hereinbefore expressly admitted, the defendants deny each and every allegation of fact contained in the Statement of Claim as if the same were set out and traversed seriatim.

Dated at Aboadie Chambers, Kumasi this 29th day of March, 1956.

(Sgd.) Henry K. Prempeh
SOLICITOR FOR DEFENDANTS.

In the Supreme Court

No. 5

Defendants' Statement of Defence,

29th March 1956 - continued.

The Registrar,
Land Court,
Kumasi.

And copy to the plaintiff herein or His Solicitor H.V.A. Franklin, Esqr., Barrister-at-Law, Accra.

No. 6

Reply to Defendants' Statement of Defence,

3rd May 1956

No. 6

REPLY TO DEFENDANTS' STATEMENT OF DEFENCE

IN THE SUPREME COURT OF THE GOLD COAST
ASHANTI JUDICIAL DIVISION
LAND COURT
KUMASI.

EMMANUEL KOTEY QUAO, Head and Representative of a family company of Teshie people claiming certain lands near Chempaw, PLAINTIFF

v:

NAJA DAVID SAWMILL COMPANY LIMITED, DEFENDANTS

A n d

NANA OSEI ASSIBEY III, Kokofuhene as representing the Stool of Kokofu, CO-DEFENDANT

Reply to the Defendants' Statement of Defence

1. Paragraph 1 of the Defendants' Statement of Defence is admitted.

2. Paragraphs 3 and 4 of the said Defence are denied in so far as the plaintiff's land is concerned. The plaintiff does not dispute that the defendant has been operating on Chempaw lands outside the plaintiff's land.

3. Save as hereinbefore expressly admitted the plaintiff denies every allegation of fact in the co-defendant's statement of defence contained.

Dated at Accra this 3rd day of May, 1956.

(Sgd.) H.V.A. Franklin,
SOLICITOR FOR PLAINTIFF.

The Registrar,
Land Court, Kumasi.

Henry Prempeh, Esqr.,
Solicitor for Defendant.

In the Supreme Court

No. 6

Reply to Defendants' Statement of Defence, 3rd May 1956 - continued.

No. 7

REPLY TO CO-DEFENDANT'S STATEMENT OF DEFENCE

No. 7

Reply to Co-defendant's Statement of Defence, 3rd May 1956

IN THE SUPREME COURT OF THE GOLD COAST
ASHANTI JUDICIAL DIVISION
LAND COURT
KUMASI.

EMMANUEL KOTEY QUAO, Head and Representative of a family company of Teshie people claiming certain lands near Chempaw, PLAINTIFF

v:

NAJA DAVID SAWMILL COMPANY LIMITED, DEFENDANTS

A n d

NANA OSEI ASSIBEY III, Kokofuhene as representing the Stool of Kokofu, CO-DEFENDANT

Reply to the Co-defendant's Statement of Defence

1. The plaintiff denies paragraph 5 of the Statement of Defence and says that native custom permits the sale of land at any rate in the part of Ashanti in which the land the subject of this action is situate.

2. The plaintiff denies that he has ever acknowledged the co-defendant as the absolute owner in possession of the plaintiff's land. There was a meeting at Kokofu between the co-defendant and the plaintiff but the meeting was inconclusive and has caused no change in the relations of the co-defendant and the plaintiff.

In the Supreme Court

No. 7

Reply to Co-defendant's Statement of Defence, 3rd May 1956 - continued.

3. The plaintiff denies that he applied for a Commission of Enquiry, and knows nothing of any decision of such Commission of Enquiry.

4. Save as hereinbefore expressly admitted the plaintiff denies every allegation of fact in the co-defendant's statement of Defence contained.

Dated at Accra this 3rd day of May, 1956.

(Sgd.) H.V.A. Franklin,
SOLICITOR FOR PLAINTIFF.

The Registrar,
Land Court, Kumasi.

Henry Prempeh, Esqr.,
Solicitor for co-defendant.

No. 8

Court Notes on Summons for Directions, 8th May 1956

No. 8

COURT NOTES ON SUMMONS FOR DIRECTIONS

In the Supreme Court of the Gold Coast, Ashanti. At the Land Court held at Kumasi on Tuesday the 8th day of May, 1956, before Benson, J.

L.C. 11/56.

Emm. Kotey Quao etc.

v:

Naja David Sawmill Co. Ltd.

and

Nana Osei Assibey III Co-defendant.

Franklin for Plaintiff.

Prempeh for Defendant & Co-defendant.

Summons for Directions.

Order: 1. Issues to be tried as on pleadings
2. Trial by Judge with one Assessor
3. Date of trial: 3rd & 4th July, 1956.

(Intd.) H. B. B.
J.
8.5.56.

No. 9

ORDER APPOINTING AN ASSESSOR

In the Supreme Court

No. 9

Order appointing an Assessor, 19th June 1957

In the Supreme Court of Ghana, Ashanti, at the Land Court held at Kumasi on Wednesday the 19th June, 1957, before Sarkodee-Adoo, J.

L.C. 11/56.

Emml. K. Quao, etc., Plaintiff

v:

1. Naja David etc., Defendant

2. Nana Osei Assibey III, Co-Defendant.

Court -

Parties present. Same appearance.

Order -

It appearing that on the 8th day of May, 1956, upon the hearing of the Summons for Directions before Benson, J., on the appearance of Mr.Franklin, Counsel for the plaintiff and Mr. Prempeh, Counsel for the defendant and the co-defendant, it was ordered, inter alia, that the trial to be by Judge with one Assessor in pursuance of the provisions of section 25(1)(b) of the Courts Ordinance (Cap.4) vide Mantse Dake II etc. v. Narter Nyabu and others, W.A.C.A. 3rd December, 1945, cyclostyled Judgments, AND WHEREAS notwithstanding the said Order the trial commenced and proceeded without the aid of an Assessor, both Counsel having neglected or failed to bring to my notice the said order at the commencement of the trial, I do hereby order the proceedings to be stayed and to be recommenced with the assistance of an Assessor, and do appoint Mr. H.E. Akyeampong of Kumasi as an Assessor for the trial accordingly.

Costs of the abortive proceedings up to and including the 7th day of June, 1957, to be costs in the cause to abide the ultimate result of the trial. Such costs to be taxed.

Hearing to recommence at 11.15 a.m. today.

(Sgd.) Sarkodee-Adoo,
JUDGE.

In the Supreme Court

No.10

Plaintiff's Opening, 19th June 1957

No.10

PLAINTIFF'S OPENING

19.6.57.

Mr. Franklin for the plaintiff.

Mr. C.F. Hayfron-Benjamin (with him Mr. Henry Prempeh) for the Defendant and the co-defendant.

Mr. Hanson Edmund Acheampong, Assessor, present.

Mr. Franklin opens -

In or about 1925 the plaintiff was a member of a syndicate which bought stool land from the Chempaw Stool, south of Juaso, the Chempaw Stool being a sub-stool to Kokofu. The occupant being an Odikro to the Paramount Stool of Kokofu. This sale was by the native custom of "Guaha" performed between the plaintiff and the representatives of the Stool of Chempaw and which sale was with the knowledge and consent of the Paramount Stool of Kokofu. The plaintiff's title depends upon this native custom of "Guaha" but the sale is evidenced by three documents in themselves valueless save and except as evidence of the performance of the native custom of "Guaha". There were in fact three pieces of land adjoining each other that was bought and considered as one land. The plaintiff and his company or syndicate had been in undisturbed possession of the land since approximately 1925. The boundaries have been kept cut all throughout and no Chempaw or Kokofu man has lived on the land since the purchase and none lives there now.

On 6th February, 1956, the defendant company (a Timber Firm) trespassed over the boundary and cut timber trees, and in consequence of the trespass this action was instituted against the said defendant company for an Injunction.

Court -

Further hearing adjourned to Tuesday, 25th June, 1957, at 10.15 a.m.

(Intd.) J. S. A.
J.

In the Supreme Court

No.11

Court Notes of Leave to amend Writ,

25th June 1957

No.11

COURT NOTES OF LEAVE TO AMEND WRIT

25th June, 1957.

Court -

Parties present. Same appearance. Assessor present.

Mr. Franklin (resumes):

I am asking leave at this stage to amend my writ and pleadings by adding a paragraph 6 to the Particulars of claim thus:

"The Plaintiff claims against the Defendant "Company and the Co-Defendant a declaration "of his title to the ownership of the said "land."

Mr. Benjamin -

We do not object but reserve the right to ask leave of the Court to amend our defence and also to file a counterclaim if so advised in due course.

Court -

Amendment granted as prayed.

Mr. Franklin -

In defence to the plaintiff's claim the defendant company pleaded "jus tertui" in the Kokofu Stool hence the joinder of the co-defendant.

Court -

Further hearing adjourned till tomorrow at 10 a.m.

(Intd.) J. S. A.

J.

In the Supreme Court

No.12

Notice of Amendment of Defence, 25th June 1957

No.12

NOTICE OF AMENDMENT OF DEFENCE

IN THE SUPREME COURT OF GHANA
ASHANTI JUDICIAL DIVISION
LAND COURT
KUMASI.

EMMANUEL KOTEY QUAO, Head and Representative of a family company of Teshi people claiming certain lands near Chempaw, PLAINTIFF

v:

NAJA DAVID SAWMILL COMPANY LTD., DEFENDANTS

A n d

NANA OSEI ASSIBEY III, Kokofuhene, as representing the Kokofu Stool, CO-DEFENDANT

NOTICE OF AMENDMENT OF DEFENCE OF THE DEFENDANTS HEREIN

PLEASE TAKE NOTICE that at the hearing of the above-named case, the Defendants will seek leave of the Court - having regard to the amended statement of claim - to amend their defence as follows:-

(a) The defendants were not aware until immediately before this action - that the plaintiff was in possession of this land.

(b) The defendants have never trespassed on the plaintiff's possessory title and consequently are not liable to be injuncted.

DATED AT KUMASI THIS 25TH DAY OF JUNE, 1957.

(Sgd.) C.F. Hayfron-Benjamin
SOLICITOR FOR DEFENDANTS.

The Registrar,
Land Court, Kumasi.

And copy to the plaintiff or his Solicitor,
H.V.A. Franklin, Esq., Barrister-at-Law.

No.13

In the Supreme Court

No.13

Notice of Amendment of Defence by Co-defendant, 25th June 1957

NOTICE OF AMENDMENT OF DEFENCE BY CO-DEFENDANT

IN THE SUPREME COURT OF GHANA
ASHANTI JUDICIAL DIVISION
LAND COURT
KUMASI

EMMANUEL KOTEY QUAO, Head and Representative of a family company of Teshi people claiming certain lands near Chempaw, PLAINTIFF

v:

NAJA DAVID SAWMILL COMPANY LTD., DEFENDANTS

A n d

NANA OSEI ASSIBEY III, Kokofuhene, as representing the Kokofu Stool, CO-DEFENDANT

NOTICE OF AMENDMENT OF DEFENCE OF THE CO-DEFENDANT HEREIN

PLEASE TAKE NOTICE that at the hearing of the above-named case the Co-Defendant will seek leave of the Court - having regard to the amended Statement of Claim - to amend his defence and to Counterclaim as follows:-

(a) The Co-Defendant counterclaims as against the plaintiff for a declaration of title to the piece or parcel of land the subject matter herein.

(b) The co-defendant counterclaims as against the plaintiff for recovery of possession of the piece or parcel of land the subject matter of dispute herein.

(c) The co-defendant counterclaims as against the plaintiff damages for trespass.

DATED AT KUMASI THIS 25TH DAY OF JUNE, 1957.

(Sgd.) C.F. Hayfron-Benjamin
SOLICITOR FOR CO-DEFENDANT.

The Registrar,
Land Court, Kumasi.

And copy to the plaintiff herein or His Solicitor H.V.A. Franklin, Esq., Barrister-at-Law, Kumasi.

In the Supreme Court

No.14

Court Notes amending Writ and Defence, 26th June 1957

No.14

COURT NOTES AMENDING WRIT AND DEFENCE

26th June, 1957.

Court -

Parties present. Same appearance. Assessor present.

Mr. Franklin -

By my amendment the plaintiff's claim in the writ and the particulars thereof and in the Statement of Claim should read:-

> "The plaintiff claims against the "defendant-company and the co-defendant "jointly and severally, (1) a declaration "of his title to the ownership of the "said land, and (2) an injunction."

Mr. Benjamin -

I seek leave to amend the defence in terms of the notice filed and also to counterclaim in terms of the notice filed.

Mr. Franklin -

No objection.

Court -

Leave granted as prayed.

Mr. Franklin -

The defence as amended does not in any way alter or vary the issues involved. The counterclaim is in effect a cross-action for the reliefs sought thereby.

In the Supreme Court

Plaintiff's Evidence

No.15

E.K.A. Sasraku, Examination

PLAINTIFF'S EVIDENCE

No.15

E.K.A. SASRAKU

1. EDWARD KOTEY ANNAN SASRAKU: sworn on Bible in Ga, states -

I am a Senior Member of a Family Company or Syndicate of land owners of Teshie people under the headship of Emmanuel Kotey Quao the plaintiff who is now old, infirm and ill. I have been authorised and deputed by him and the other members to give evidence on our joint behalves. In 1925, we bought three pieces of land from the Chempaw Stool then occupied by Nana Kwasi Botwe, Odikro of Chempaw. In all we bought three separate pieces of land adjoining one another. This is a plan of the said three pieces of land bought.

Note -

Plan tendered, not objected to, admitted and marked "A".

No.16

Kwadjo Budu, Examination

No.16

KWADJO BUDU

Mr. Franklin - I wish to interpose with another witness.

2. KWADJO BUDU, s.a.r.b. in Twi, states -

I am a farmer and live at Budukromo near Suhum. In or about 1919 I bought land at Obogu in Ashanti Akim. The cutting of "Guaha" ceremony was performed. The boundaries of the land so bought were inspected and demarcated. I paid £1000 for the land and had a receipt. This is the receipt.

Note -

Receipt tendered, not objected to, admitted and marked "B".

In the Supreme Court

Plaintiff's Evidence

No.16

Kwadjo Budu, Cross-Examination

Cross-examination by Mr. Benjamin -

When I purchased the land there was no Asantehene. The land I bought is not Kokofu Stool land nor did the Kokofuhene know anything about the transaction. I know that Obogu is now under the Asantehene. When I bought the land Kofi Mama, the Chief of Obogu, accompanied me to Kumasi and introduced me to the Asantehene. I had bought the land from Chief Kwame Appiah, the predecessor of Kofi Mama who succeeded him upon the former's destoolment. When I bought the land in or about 1919, Obogu was a separate and independent State with its own Omanhene. I am a native of Abiriw in Akuapem. I had been in Ashanti long before I bought the land. I did not seek legal advice on the transaction. I was not told that "Guaha" was unknown in Ashanti. The vendors requested me upon the purchase to perform the "Guaha" ceremony and I did so as evidence of an outright sale of the land to me.

Question -

Will you demonstrate the ceremony of "Guaha" which you performed?

Note -

Witness demonstrates the ceremony.

Witness (continues) -

The ceremony is performed on the land in the presence of witnesses (mine and the vendors) and a life-sheep is slaughtered to mark the completion of the ceremony. Among the vendor's witnesses were Akwasiwa whom the chief deputed to sell the land - he is dead; Kwadjo Kuma the nephew of Amoyaw; Teacher Aryettey a teacher who lived and taught at Obogu. Kwadjo Kuma was a native of Obogu, Ashanti Akim. Chief Kwame Appiah is dead. Among my witnesses were Yaw Asante, Kwadjo Koranteng of Abiriw who is dead, Kwame Dankwa. It is true that the ceremony of "Guaha" was performed at the bank of the River Prah which forms boundary with our land. It is not my fault that the performance of the ceremony was not mentioned in Exhibit "B". It is merely a receipt for the purchase price paid for the land. I had no conveyance for the land.

Since the purchase of the land I had been summoned before Otumfuo the Asantehene in Council. I was summoned before him sometime ago. I appeared alone before him. He sent his son Kwasi Panyin for me. Kwasi Panyin later made a survey of my land upon the instructions of the Asantehene. Kwasi Panyin alias Frederick did survey work and I was present and saw him do the work and sent the plan to the Asantehene but I was not given a copy.

The Asantehene sent for me again and I appeared before him. I did not see other land-purchasers there. He asked me whether the survey had been completed and I answered yes, and told him I had paid £80 out of the £300 demanded by Kwasi Panyin. It is not true that the Asantehene told me that as "Guaha" is unknown in Ashanti, my purchase is invalid. In my presence the Asantehene questioned Kwasi Panyin for asking for £300 when he was instructed to ask for £25, and he advised me not to pay any more money, and gave me £2.10.0.

On a third occasion at a meeting when I was accompanied by the Benkumhene of Akuapem to see the Asantehene, he then said land was not saleable outright in Ashanti but asked me to go back and stay on the land which he claimed was his. On this third occasion there were many land-purchasers present and were similarly instructed, and were requested to return later for terms and conditions on the land we occupy as purchasers. The Benkumhene was deputed by the Omanhene of Akwapim to interview the Asantehene on behalf of the Akwapim land-purchasers in Ashanti, whom the Asantehene had summoned before him. The Asantehene promised to send for us to enter into Agreements with him and did not tell us to go and enter into agreements with our respective land vendors. Baffour Akoto the Asantehene's linguist was present at all the three meetings with the Asantehene in Council.

Re-examination -

I have never paid any rental, tribute, or other ground or land tolls to the Asantehene or to anybody else.

The Asantehene never said anything about the purchase price of the land to me or to any of the land purchasers.

In the Supreme Court

Plaintiff's Evidence

No.16

Kwadjo Budu,

Re-examination - continued.

By Court -

I have four villages on the land. I am still in undisturbed possession of the land as owner by right of purchase. I, my family and relatives live there.

No.17

E.K. Odonkor,

Examination

No.17

EMMANUEL KUWORNU ODONKOR

3. EMMANUEL KUWORNU ODONKOR, sworn on Bible in Krobo, states -

I am a farmer and live at Otrokpe in Krobo. I have bought the interest of Kwesi Adjemang, Kwaku Tannor, and Kwadjo Donkor in land situate at Chempaw and I have a document on the transaction. This is the document.

No.18

Court Notes,

28th June 1957

No.18

COURT NOTES

Document tendered, objected to by Mr. Benjamin on the following grounds:

1. It is res inter alios acta in that it neither concerns the land in dispute nor does it relate or refer to the Kokofu Stool.

2. It is a document which needs attestation and as such the attesting witness is the proper person through whom it should be tendered.

3. It is not an "ancient" document, not being 40 years old and therefore not produceable as of right - it bears the date 31st July, 1930.

4. No "Guaha" is mentioned in the document.

5. The name of Kofi Adu, Omanhene of Kokofu appearing therein as a witness does not necessarily bind the Stool of Kokofu the co-defendant.

6. The attendance of the attesting witness is essential for the purposes of cross-examination to elicit the circumstances under which the said Omanhene of Kokofu Nana Kofi Adu became a witness.

Mr. Franklin -

1. The actual document may on the face of it appear irrelevant but the co-defendant has by his defence made it relevant to the issues to be tried. I refer to paragraph 5 of the co-defendant's statement of defence.

2. A conveyance does not require attestation: (Powell on evidence 10th Edition p.239 under the heading Private Documents less than 30 years which are required by law to be attested). A conveyance requires delivery alone not even signature which is only necessary where required by statute.

3. I refer to Phipson 8th Edition at page 514 under the heading "Ancient Documents". The object of tendering this document is the importance of the recital as to the sale on the 4th day of February, 1928 by native custom.

Court -

On the issues as appear on the pleadings I hold that this document is relevant and admissible.

Note -

Document admitted and marked "C".

Cross-examination -

None.

In the Supreme Court

Plaintiff's Evidence

No.19

Emmanuel Akorte Akor, Examination

2nd July, 1957.

No.19

EMMANUEL AKORTE AKOR

4. EMMANUEL AKORTE AKOR, sworn on Bible in English, states -

I am a bookseller and live at Larteh. I am the son of Adorh Kwadjo. He was Head of a company which bought land from the Bankame Stool in Ashanti Akim. I was present when the land was bought. We bought a hundred ropes of 24 fathoms to a rope at the agreed price of £6 a rope, and making in all £600. The land was purchased by the native custom of the cutting of "Guaha". The purchase price was paid by instalments. Upon payment of the whole amount a certificate was obtained by my father whom I have succeeded as his heir in accordance with native custom. This certificate came into my possession as such successor.

Note -

Certificate tendered, not objected to, admitted and marked "D".

Witness (continues) -

The vendor Kwabena Ahu always came to Larteh to collect the instalments of which £15 as appears in Exhibit "D" was the last payment. My people are not on the land now because after we had made six farms there the said vendor's successor demanded of us the adoption of the "Abusa system" which we refused, and thereafter our land was given to some Kwahua on the "Abusa system" and we were obliged to vacate the land.

Cross-Examination

Cross-examination by Mr. Benjamin -

The land was bought in 1927, and we were given a conveyance which is with the Forest Settlement Commissioner in connection with the Mirasa Hills Forest Reserve Enquiry. The cutting of "Guaha" is not mentioned in the receipt (Exhibit "D") which is merely for the balance of amount paid. Other receipts were given for the instalment-payments. Here are the other receipts.

Mr. Benjamin -

I do not want them in evidence.

Witness (continues) -

I maintain that the ceremony of the cutting of "Guaha" was performed and signified out-right sale to us. The "Abusa system" was suggested about 1942 or thereabouts. We did not claim back our purchase-money. The bargain for the land took place at Bankame on the land and not at Larteh.

No.20

ELIAS KWASI AYISI

5. ELIAS KWASI AYISI, sworn on Bible in Twi, states -

I am a farmer and live at Mangoase but I am a native of Larteh. I was the Head of a Company which bought land in Banso in Ashanti-Akim in April, 1925, by the native custom of the cutting of "Guaha" after the boundaries had been demarcated. We were given a document. This is the document.

Note -

Document tendered, objected to by Mr. Benjamin on the ground of irrelevancy.

Court -

Mr. Franklin not called upon.

Court -

I rule that on the issues as appear on the pleadings the document is relevant and admissible to show (1) That land is saleable in Ashanti; (2) That the sale could be outright; (3) That as far back as 1927 land was saleable outright in Ashanti.

Note -

Document admitted and marked "E1".

In the Supreme Court

Plaintiff's Evidence

No.20

Elias Kwasi Ayisi,

Examination - continued.

Witness (continues) -

I have in my hand the receipt dated 18th March, 1928, being for the full payment of the purchase price of £871.

Note -

Receipt tendered, objected to by Mr. Benjamin on the same ground as in Exhibit "E1".

Court -

Receipt admitted and marked "E2".

Witness (continues) -

We have villages on the land of which we are still in undisturbed possession as owners. Apart from the purchase price of £871 we have not paid any other money by way of tribute or tolls.

We natives do not normally insert the fact of the performance of the custom of "Guaha" in conveyances as it is native custom and the conveyance is foreign to us. Some do, but it is not regularly done. "Guaha" is usually referred to in Ashanti as "Tramma". Outright sale of land is known in Ashanti. A Royal in Ashanti, the father of Kwadjo Bonsu introduced us to the vendor. He is Kwame Ntahara and is alive at Krapa, and often visits his son Kwadjo Bonsu a Royal too, being the son of the late Queen Mother of Kumasi (Nana Ama Adusa). We did not seek legal advice when we bought the land.

The Otumfuo the Asantehene summoned me and my co-owners before him in Council. Baffuor Osei Akoto the Chief linguist was present - this was in 1936. The Asantehene told us lands were not saleable in Ashanti but advised us to go back and live on land which was surveyed by one Kufuor and later by one Prempeh. The present Asantehene summoned us. After the survey of our land the Asantehene sent for the Omanhene of Akwapim (Nana Kwame Fori) and told him that "henceforth no lands will be sold in Ashanti and that we who had already bought lands should go and occupy them".

Baffuor Akoto was the mouth piece at the meetings but he was not and still is not, the Chief

Linguist. He is now one of the Senior Linguists of the Asantchene.

At the first meeting when the Benkumhene of Akwapim came, the Asantehene per Baffuor Akoto said lands were not saleable outright in Ashanti but at the second meeting when the Omanhene Kwame Fori attended we were ordered to go back on our lands. We were told or advised to go into terms with our respective vendors.

Re-examination -

None.

By Court -

At the meetings the Ashantis said the name "Tramma" is the custom of delivery of Seisim as to the sale of real and personal property and not "Guaha" as we call it in the south, but it is the same custom of cutting of "Guaha".

In the Supreme Court

Plaintiff's Evidence

No. 20

Elias Kwasi Ayisi,

Examination - continued.

Re-examination

No. 21

DANIEL ANKRAH ATTRAMS

No. 21

Daniel Ankrah Attrams,

Examination

6. DANIEL ANKRAH ATTRAMS, sworn on Bible in English, states -

I am a teacher and live at Larteh, Akwapim. I am the son of the late Emmanuel Asare Attrams of Larteh (deceased). I am his heir and successor in accordance with Larteh native law and custom whereby the children succeed. My father was the Head of a company which bought land at Chempaw in Kokofu, Ashanti.

As heir and successor and it has come to my possession the document on the said land. This is the document dated the 7th of September, 1940.

Note -

Document tendered, objected to by Mr.Benjamin on the following grounds:

1. It is not referrable to the land in dispute and in consequence res inter alios acta.

In the Supreme Court

Plaintiff's Evidence

No.21

Daniel Ankrah Attrams,

Examination - continued.

2. The witness is neither an attesting witness nor any of the other witnesses to the document.

3. The document is only 17 years old and would not be admissible even if it were from proper custody.

Court -

Mr. Franklin not called upon.

Ruling -

On the issues as appear on the pleadings and having regard to the witness' capacity and his evidence, I hold that the document is relevant and admissible.

Court -

Document admitted and marked "F".

Cross-examination by Mr. Benjamin -

None.

No.22

Daniel Kwadjo Darbu,

Examination

No.22

DANIEL KWADJO DARBU

7. DANIEL KWADJO DARBU, sworn on Bible in English, states -

I am a Law Clerk and live at Kumasi. I have been a Law Clerk for about 20 years and had been in the employ of Mr. E.O. Asafu-Adjaye in Kumasi. On page 3 of Exhibit "F" my signature appears in two places as witness to the left thumb prints and marks of Chief Owusu Afriyea, Odikro of Kyempoh and Nana Kofi Adu, Kokofuhene. This document (conveyance) was drawn up by Mr. E.O. Asafu-Adjaye and executed in my presence.

Cross-Examination

Cross-examination by Mr. Benjamin -

Before 1940 Mr. Asafu-Adjaye practised in Kumasi and Accra. The document was so executed

by the said Kokofuhene Nana Kofi Adu at Kokofu in my presence. Mr. Asafu-Adjaye was for many years the Legal Adviser of the Asantehene.

Re-examination - None.

In the Supreme Court

Plaintiff's Evidence

No.22

Daniel Kwadjo Darbu,

Cross-Examination - continued.

No.23

COURT NOTES ON MOTION FOR SUBSTITUTION

No.23

Court Notes on Motion for Substitution,

17th October 1957

17th October, 1957.

Motion for an Order of substitution.

Mr. H.V.A. Franklin for the Applicant.

Mr. C.F. Hayfron-Benjamin for the Respondents.

Mr. Franklin -

We do not oppose.

Court -

Order granted as prayed.

Order -

Let Edward Kotey Sasraku be substituted for Emmanuel Kotey Quao, now deceased.

Court -

Let the case proceed.

Court -

Mr. Henry Edmund Acheampong, Assessor - present.

In the Supreme Court

Plaintiff's Evidence

No.24

Peter Alfred Affarwuah, Examination

No.24

PETER ALFRED AFFARWUAH

8. PETER ALFRED AFFARWUAH alias KWAME DAPPAH, sworn on Bible in Twi, states -

I am a native of Kokofu. I know Nana Kofi Adu the ex-Kokofuhene. I used to be his collector and gave receipts for monies paid to me. I collected these monies from people at Dwendwenase in collaboration with the Odikro of Dwendwenase who asisted me in the collection. The receipt shown me bears my signature. It is dated 28th March, 1944; these other eight (8) receipts dated 20th March, 26th May, 1944, 1st June, 1944, 15th August, 1944, 4th December, 1944, 8th December, 1944, 24th December, 1944 and 12th April, 1945 also bear my signature as Land Rate Collector.

Note -

Nine receipts tendered for identification and marked "1 - 9".

Cross-Examination

Cross-examination by Mr. Benjamin -

When I went to collect the monies I did so on the express instructions of Nana Kofi Adu, the Ex-Kokofuhene, who had told me that the occupiers had purchased the land. The Dwendwenase Odikro also confirmed the sale of the land. I was at Kokofu until 14 years ago when I migrated to Krofa in Ashanti Akim.

I collected monies from the natives of Dwendwenase and also from non natives or strangers such as Akuapems.

Re-examination

Re-examination -

These receipts are from a book and there are counterfoils. I filled in the receipts and gave them to the payers. I also filled in the counterfoils and took them back to Nana Kofi Adu, Ex-Kokofuhene.

No.25

EDWARD KOTEY ANNAN SASRAKU (RECALLED)

In the Supreme Court

Plaintiff's Evidence

No.25

Edward Kotey Annan Sasraku (Recalled), Examination

1st Witness - EDWARD KOTEY ANNAN SASRAKU, resumes -

About 30 years ago the Company or Syndicate of land owners of whom I am now their representative and head by virtue of the substitution bought land in Ashanti. We performed the ceremony of "Guaha" - the native ceremony of absolute sale.

Note -

Witness demonstrates the ceremony in open Court.

Witness (continues) -

Previous to the ceremony the boundaries of the land to be bought are demarcated - we walk round the boundaries with the vendors and/or his representatives. We bought three pieces of land and performed the said ceremony of "Guaha" and demarcated the boundaries in each case. In each case we took possession as owners by right of purchase by an outright sale to us. Since our purchase no Kokofu man has claimed the lands so bought from us. We paid the purchase price for the lands. We have never paid rents or tolls of any kind to the Kokofu Stool or anybody else. Subsequent to the sale by "Guaha" we were given conveyances on the land. The first is dated 23rd December, 1927; this is the conveyance and its enclosures.

Note -

Conveyance dated 23rd December, 1927 tendered, objected to, on the following grounds:

1. It is a document not between the witness (plaintiff) and the co-defendant as representing the Kokofu Stool.

2. It is a document which needs attestation or in default some other proof of the circumstances of its execution to connect the document with the particular land alleged to have been purchased.

3. The document does not mention the ceremony of "Guaha".

In the Supreme Court

Plaintiff's Evidence

No.25

Edward Kotey Annan Sasraku (Recalled),

Examination - continued.

4. Paragraph 1 of the Plaintiff's Particulars of Claim is not borne out by the document which is inadmissible on the grounds of irrelevancy.

By Court - (Mr. Franklin not called upon).

Ruling -

There is sufficient nexus for the admissibility of the document admitted and marked "G".

Witness (continues) -

I was present at the execution of Exhibit "G" and marked it on page three thereof.

On pages 2 and 3 thereof are the marks of linguist Kwasi Yeboa for Kofi Adu, Omanhene - Kokofu.

This conveyance dated 4th August, 1934, was handed to me by Emmanuel Kotey Quao and relates to the "Kumiso" land. I was present at the purchase of the land by "Guaha".

I was present when the conveyance on the third land "Pampansi" was executed. It was kept by Joseph Okoe Fio Sasraku who represented the Company at its execution and in the purchase of our lands. Upon his death it passed to Emmanuel Kotey Quao now dead and it is now in my possession.

18th October 1957.

1st Witness (EDWARD KOTEY ANNAN SASRAKU) resumes -

This is the conveyance of the "Pampasi" land.

Note -

Conveyance dated 12th April, 1935, tendered, not objected to, admitted and marked "H".

Witness (continues) -

In 1951, I received this letter from the Kokofuhene (co-defendant).

Note -

Letter dated 3rd November, 1951, tendered, not objected to, admitted and marked "J".

Witness (continues) -

This duplicated letter was received by Armah who is a member of our Syndicate or Company of land-owners. Upon the receipt of this letter, Ashie Okoe, Divine Justice, Nikoi Djanie and myself were deputed to interview the Kokofuhene on our joint behalves as owners of the Kyempo land. We went and saw the Kokofuhene (co-defendant). The Kokofuhene showed us a printed Agreement Form on "Abusa" System for execution but we declined to execute it as we had merely been sent for the interview: but at our request we were handed a copy for the information of our fellow land owners for their consideration and if we were all agreeable we shall execute it and return it to him. This is the copy given to us.

Note -

Copy of printed Agreement Form tendered, not objected to, admitted and marked "K".

Witness (continues) -

We refused to execute it and kept the said Agreement Form. Later we instructed our Solicitor who wrote to the defendants and received a reply thereto. This is a copy of our Solicitor's letter dated 26th January, 1956, and the reply thereto dated 28th January, 1956.

Note -

Both letters tendered, not objected to, admitted and marked "L1-2".

Witness (continues) -

This is a copy of our Solicitor's reply to Exhibit "L2".

Note -

Copy of letter dated 8th February, 1956, tendered, not objected to, admitted and marked "L3".

Witness (continues) -

This is a letter received by Mr. Milli our

In the Supreme Court

Plaintiff's Evidence

No.25

Edward Kotey Annan Sasraku (Recalled),

Examination - continued.

licensee whom we had granted permission to fell timber on our land.

Note -

Letter dated 8th February, 1956, from the defendants to Mr. Milli tendered, not objected to, admitted and marked "M".

Witness (continues) -

Our Solicitor received this letter dated 11th February, 1956, and the enclosures from the defendants.

Note -

Letter and the enclosures tendered, not objected, admitted and marked "N".

Witness (continues) -

This is a copy of a letter in reply to Exhibit "N".

Note -

Copy of letter dated 15th February, 1956, tendered, not objected to, admitted and marked "O".

Witness (continues) -

Upon our instructions this action was instituted.

19th November 1957.

1st Witness (EDWARD KOTEY ANNAN SASRAKU) resumes -

Cross-Examination

Cross-examination by Mr. Benjamin -

I still maintain that the sale was by "Guaha" and we later had conveyances which were prepared on the instructions of the vendors and if the due performance of the ceremony of "Guaha" was not recited in the conveyances I am not responsible for the omission as I was present at the ceremony of "Guaha" but not at the preparation of the conveyances. I have not been personally summoned before the Otumfuo the Asantehene in Council about

our lands nor do I know of any member of our company having been summoned.

In the Supreme Court

Plaintiff's Evidence

No.25

Edward Kotey Annan Sasraku (Recalled), Cross-Examination - continued.

Re-examination -

None.

Questions by Assessor -

None.

By Court -

Before my Company purchased our lands, I knew of non-Ashantis (Akuapems, Krobos and Gas) living on Ashanti lands and in possession as owners by right of purchase by "Guaha". Among them may be mentioned one E.A. Attrams of Larteh with whom we have a boundary in respect of the second land; one Korang of Mamfe; one Tetteh Amankwa of Kpone, Shai with whom we have a boundary in respect of the first land near the River Prah and many others.

No.26

ASHIE OKO

No.26

Ashie Oko, Examination

9th Witness: ASHIE OKO, s.a.r.b. in Ga, states -

I am a farmer and live at Chempong. I knew the late Jacob Oko Kotei, deceased, he was my father. He was the Head or Leader of a Company or Syndicate of land owners from Teshi, Accra, who bought land at Chempaw. The land was known and called "Kumesu" as it is situated on the banks of the River Kume. The land was bought outright by "Guaha". I was present at the performance of the ceremony. Later a conveyance was prepared and given to the Company as evidence of the sale. This document shown me is the conveyance in respect of the "Kumesi" land. I identify this conveyance by the two marks (Plan and Seal) on the back of the document. I also see a hole on the front page of the conveyance caused by the burnt seal on the conveyance and which burning came through the pages to the front page. I was present at the execution.

In the Supreme Court

Plaintiff's Evidence

No.26

Ashie Oko,

Examination - continued.

Note -

Conveyance dated 4th August, 1934, tendered, objected to by Mr. Benjamin on the grounds that:

1. The witness was not a party to the document.

2. His evidence that he was present at the execution is not sufficient ground or foundation for the tender or admission of the document through this witness.

Court - (Mr. Franklin not called upon).

Ruling -

I am of opinion that the witness's presence at the execution is amply borne out by his evidence of his personal knowledge of the transaction leading to the execution of the conveyance, and rule that the conveyance is admissible. The objection is overruled.

Note -

Conveyance admitted and marked "P".

Witness (continues) -

When we cut the "Guaha" or performed the ceremony of "Guaha" we went round the boundaries.

20th November, 1957.

sic

9th Witness KOTEY OKOE (resumes) -

Cross-Examination

Cross-examination by Mr. Benjamin -

I maintain that I was present when the "Guaha" ceremony was performed. Exhibit "P" confirmed the sale. I heard the conveyance read and interpreted but I was young and could not challenge the contents thereof if I had wanted to do so. My late father who was the Head or Leader of the Company could do so. To my knowledge no member of the Company has been summoned before the Asantehene in Council.

Re-examination -

Exhibit "P" relates to the identical land purchased by "Guaha".

Questions by Assessor --

I was present at the execution of Exhibit "P". Among those present was Owusu Afriyie (representative of the vendor), Agyekum (who pointed out the boundaries to us). They both touched pen and their marks were made thereon by one Sasraku the clerk of the Chempaw Stool.

21st November 1957.

No.27

ANTIRI DJAN

10. ANTIRI DJAN, s.a.r.b. in Ga, states -

I am a farmer and live at Babianiha Chempaw. My father was called Akwama Tagoe - he is dead. He was the Head of a Syndicate or Company of land owners who came from Accra, and bought land in Ashanti adjacent to the land in dispute. The land was bought by "Guaha". I was present. We walked round the boundaries before the ceremony was performed. The purchase price was paid and a document prepared to evidence the sale. The document was in my late father's possession until he died. I succeeded my father and I now produce the document from my custody as his successor; I was present when it was made.

Note -

Document tendered, objected to by Mr.Benjamin on the following grounds:-

1. This witness is neither a party, witness, nor an attesting witness to the document.

2. The evidence is not sufficient to connect the witness with the document.

Court - (Mr. Franklin not called upon).

In the Supreme Court

Plaintiff's Evidence

No.27

Antiri Djan, Examination - continued.

Ruling -

I am of opinion that the document is from proper custody and that satisfactory nexus has been established for its admission. Objection overruled.

Court -

Conveyance dated 1st February, 1937, admitted and marked "Q".

Witness (continues) -

It is true that I was present when the document was prepared.

Cross-Examination

Cross-examination by Mr. Benjamin -

When we bought the land by the ceremony of "Guaha" and paid the purchase price the document was prepared. We bought the land by "Guaha" and made part-payment about 30 years ago and when the balance was paid the document was prepared in my presence. I was a small boy carrying my father's travelling bag. I was only my father's carrier. I was not a party but my father was the Leader. To my knowledge none of the members of the Company had been summoned before the Asantehene in Council. Among them whom I know are Gyan Kwabena, Adu Kommey (both dead), E.T. Nortey, Markwei Colley and many others. The representatives of the vendors were Kojo Nuro, Kofi Ahulu, Kwame Tawiah, Tsum Barimah, Yaw Berfie, Kwabena Anane and many others who touched pen and their marks made thereto after the document had been read, interpreted and explained to them. They represented the vendors and executed the document as such.

Re-examination -

None.

Questions by the Assessor -

I don't know the Paramount Stool which the Chempaw Stool serves, and I don't know whether or not the Paramount Stool was a party to the sale.

No.28

CORNELIUS AKRONG TEYE

In the Supreme Court

Plaintiff's Evidence

No.28

Cornelius Akrong Teye, Examination

11. CORNELIUS AKRONG TEYE, after duly affirming to speak the truth in Ga, states -

I am a farmer and live at Tokwai Frasu, but I am a native of Kpone. I know Tetteh Amankwa who was a farmer and also from Kpone. He was the Head or Leader of our Company, who bought land in Ashanti. Our land is adjacent to the Sasraku land in question. Tetteh Ammankwa is dead and since his demise I have been elected the Head and representative of our Company. We bought our land by "Guaha" (as known in Akan language) and "Yi baafo" (as known in Ga). We bought our land from the Tokwai Stool. I was present at the performance of the ceremony of "Guaha". The purchase price was paid and we had an acknowledgment of the sale. This is the acknowledgment.

Note -

Acknowledgment dated 11th July, 1927, tendered, not objected to, admitted and marked "R".

Cross-examination by Mr. Benjamin -

Cross-Examination

Tokwai Stool serve the Bojisango Stool at the time of the purchase. I was not present at the execution of the document (Exhibit "R"). I produced this document from my custody as the new Leader of our Company now in possession thereof for myself and on behalf of our Company.

Re-examination -

None.

Questions by Assessor -

None.

22nd November, 1957.

No.29

MOSES TETTEY AHIA

No.29

Moses Tettey Ahia, Examination

12. MOSES TETTEY AHIA, s.o.b. in Twi, states -

I am a farmer and live at Adokwanta. I bought land in Ashanti for my Company. The custom of "Guaha"

In the Supreme Court

Plaintiff's Evidence

No.29

Moses Tettey Ahia,

Examination - continued.

was performed after the boundaries had been demarcated. We purchased the land from the Odikro of Dwendwenase-Stool land. The purchase price was paid by instalments. Some instalments were paid to Nana Kwaku Akomoah the Odikro of Dwendwenase whose Stool serves Kokofu. The balance of the instalments was paid to the Kokofu Stool now occupied by the co-defendant.

I know Affarwuah who collected the balance from us for the Kokofu Stool upon the instructions of the said Stool. We obtained receipts for the payments. This is one of the receipts we had from Affarwuah.

Note -

Receipt for £20 dated 26th May, 1944, already identified by Affarwuah, tendered, not objected to, admitted and marked "S".

Witness (continues) -

I also received these three letters from the Kokofuhene.

Note -

Letters dated 3rd July, 1937, 12th January, 1939, and 3rd April, 1941, tendered, not objected to, admitted and marked "T1" - "3".

Cross-Examination

Cross-examination by Mr. Prempeh -

I have heard that Chief Kofi Adu has been destooled. My Company has never been summoned before the Asantehene in Council.

Re-examination -

None.

Questions by Assessor -

I don't know why Nana Kofi Adu was destooled.

26th November, 1957.

No.30

James Clifford Odarno,

Examination

No.30

JAMES CLIFFORD ODARNO

13. JAMES CLIFFORD ODARNO, after duly affirming to speak the truth states -

In the Supreme Court

Plaintiff's Evidence

No.30

James Clifford Odarno,

Examination - continued.

I am a bookseller and live at Accra. I am the brother and successor of the late Danu Kofi of Larteh, Akwapim. He was the leader of a Company of farmers from Larteh who purchased land at Dwendwenase in the Kokofu State in Ashanti. I was present at the sale which was by the native custom of Guaha. The boundaries of the area were demarcated and the purchase price paid. This is the acknowledgment on the sale.

Note -

Acknowledgment dated 5th June, 1927, tendered, not objected to, admitted and marked "U".

Witness (continues) -

The sellers names therein are all native of Dwendwenase. In 1956 I received a letter from Nana Kokofuhene.

Note -

Letter dated 18th April, 1956, tendered, not objected to, admitted and marked "V".

Witness (continues) -

At no time did I or any member of our Company paid cocoa tribute to the Kokofu Stool or any other Stool before and after the receipt of Exhibit "V". Upon the receipt of this letter I and other members of my Company went to the Kokofuhene who requested us to enter into an agreement in respect of our land to pay 1/3 share of the proceeds from our cocoa to his Stool (Abusa system) but we refused as we are in possession of the land as absolute owners by right of purchase and not liable to tribute.

Cross-Examination

Cross-examination by Mr. Benjamin -

The Kokofuhene entreated us to execute a Tenancy Agreement with him in respect of our land but we refused to do so as we had bought the land by outright sale from his predecessor Nana Kofi Adu. We have never been summoned before the Asantehene in Council. I do not know Baffuor Akoto the Chief Linguist of the Asantehene. I have heard of him in politics and read about him in the papers.

Re-examination - None.

Questions by Assessor - None.

In the Supreme Court

Plaintiff's Evidence

No.31

Yaw Larbi, Examination

No.31

YAW LARBI

14. YAW LARBI, s.a.r.b. in Twi, states -

I am a farmer and live at Dwendwenase. I am the head or leader of a company of farmers who bought land by "Guaha" in Dwendwenase in Ashanti after the boundaries had been demarcated. We paid the purchase price by instalments and paid same in full. This is one of the receipts for the instalment-payments.

Note -

Receipt for £20 dated 28th March, 1944, from Affarwua, Land Collector, tendered, not objected to, admitted and marked "W".

Cross-Examination

Cross-examination by Mr. Benjamin -

The sale was by the native custom of "Guaha". I know the co-defendant (witness points at Nana Kokofuhene in Court). Upon the receipt of his letter I went to see him and he asked for a Tenancy Agreement on our land but I refused. I have never been summoned before the Asantehene in Council.

Re-examination -

None.

Questions by Assessor -

We bought the land from Nana Akumia, then Chief of Dwendwenase and Nana Kofi Adu was the Kokofuhene at the time. Nana Kofi Adu knew of the transaction and agreed to the sale of the land and even sent his Land Collector for some of the instalment-payments and we made other payments to him.

27th November, 1957.

No.32

Kweku Ayirebi, Examination

No.32

KWEKU AYIREBI

15. KWEKU AYIREBI, s.a.r.b. in Twi, states -

I am a farmer and live at Jadam. I am the Head of a Company which bought land in Ashanti. One piece of land from the Jadam Stool and another piece of land from the Ofoase Stool.

I was present at both purchases which were effected by the custom of "Guaha". The purchase monies were paid by instalments. This is one of the receipts from the Jadam land.

Note -

Receipt for £200 dated 15th December, 1927, tendered, objected to, by Mr. Prempeh on the ground that it relates to matters being "res inter alios acta".

Court - (Mr. Franklin not called upon).

Ruling -

I am of opinion that this document is admissible to show:-

1. That land is saleable in Ashanti.

2. That the custom of "Guaha" is performed in Ashanti and of general observance and of local acceptance.

Note -

Receipt admitted and marked "X1".

Witness (continues) -

This is one of the receipts of the Ofoase land.

Note -

Receipt dated 10th May, 1928, tendered, objected to, on the same ground as in Exhibit "X1".

Court -

Same ruling as in Exhibit "X1". Document admitted and marked "X2".

Cross-examination by Mr. Prempeh - Cross-Examination

I remember I was summoned before the Asantehene in Council but was told to go on my land after he had seen Nana Kwame Fori, Omanhene of Akwapim, but did not advise us to reclaim our monies from the vendors.

Re-examination - None.

Questions by Assessor - None.

In the Supreme Court

No.33

Court Notes, 5th December 1957

No.33

COURT NOTES

5th December, 1957.

Court -

Parties and Counsel present. Assessor present.

Assessor (Mr. Henry Edmund Acheampong) -

I am ill and unable to further assist the Court at this trial. My doctor has strongly advised me to rest and I am respectfully asking leave of the Court to be discharged forthwith.

Mr. Franklin -

In view of the fact that by a publication in the Gazette, the defendant Naja David trading as Naja David Sawmill Company has been prohibited from returning to Ghana it is absolutely necessary that this case should be proceeded with and determined with all possible speed.

Court -

I do grant the Assessor his prayer and he is discharged from further attendance.

Court -

In the exercise of the powers conferred upon me by Section 25 of the Courts Ordinance (Cap.4), particularly sub-section (2) thereof, I shall proceed with the hearing, the Assessor's absence notwithstanding.

Plaintiff's Evidence

No.34

Kwadjo Okoto, Examination

No.34

KWADJO OKOTO

16. KWADJO OKOTO, s.a.r.b. in Krobo, states -

I am a farmer and live at Odubi-Ashanti. I am the son of Tei Kwame. He is dead. I am his successor. He was a leader of a company that purchased land at Odubi. I was present at the sale which was by custom. The boundaries were

demarcated and the purchase price paid. I am the present leader of the company. This is the receipt for the purchase price paid.

In the Supreme Court

Plaintiff's Evidence

No.34

Kwadjo Okoto,

Examination - continued.

Note -

Receipt dated 12th December, 1924, tendered, not objected to, admitted and marked "Y".

Witness (continues) -

The custom performed is known as "Yibaapom" (cutting leaves) in Krobo and "Guaha" in Akan.

Cross-examination by Mr. Prempeh -

Cross-examination

We were once summoned before the Asantehene in Council about this land. Many other purchasers of land in Ashanti were summoned on other occasions. The Asantehene said land was not saleable in Ashanti but did not tell us to reclaim the purchase price.

Re-examination -

None.

No.35

No.35

KOMMEY TERKUTEY

Kommey Terkutey,

Examination

17. KOMMEY TERKUTEY, s.a.r.b. in Ningogbe, states -

I am a farmer and now live at Suhum. I represent a group of farmers who bought land from the Asankare Stool in Ashanti. I was present at the sale with my father (Kommey Terkutey) who was the original leader whom I succeeded since his death. A custom was performed at the sale. The custom is "Yibaapom" or "Guaha". The boundaries of the land were demarcated. The purchase price was paid and a receipt was obtained. This is the receipt.

Note -

Receipt dated 3rd December, 1936, tendered, not objected to, admitted and marked "Z".

In the Supreme Court

Plaintiff's Evidence

No.35

Kommey Terkutey,

Examination - continued.

Cross-Examination

Witness (continues) -

The receipt is in the name of Kwasi Twu who is a member of the Company and accompanied my father to purchase the land for the company.

Cross-examination by Mr. Prempeh -

Our company was summoned before the Asantehene in Council about the land and told us that land is not saleable in Ashanti but did not tell us to go for our money from the vendor. The Asantehene suggested our agreeing to be on the land under the Abusa system but we refused as we had purchased the land outright.

Re-Examination

Re-examination -

We have never paid any tribute or tolls under abusa system to any one before. But we were later driven away by Asankare people. It was the Asankare-hene who summoned us before the Asantehene in Council even though he and his elders were the vendors. We retained Mr. (now Mr. Justice) Boss-man who did nothing about our case and so we have now retained Mr. Franklin about our land.

No.36

Peter Armah,

Examination

No.36

PETER ARMAH

18. PETER ARMAH, s.o.b. in Ga, states -

I am a farmer and live on our land at Chempaw where I am the Headman of our village. I am from Teshie in the Ga State. My village (Armah's village) is in Exhibit "A". I am 67 years old. One morning in February, 1956, I was in my farm weeding when I heard the felling of trees very near us and not as far off as I and others had heard before. We keep the boundaries of our land cut. I and the others with me went to the scene of the felling of trees and saw a caterpillar had cut a swathe right through from Chempaw over our boundary into our land, and also saw a young man with an axe cutting a mahogany tree. I asked the

young man who had authorized him to come into our land to cut trees - he answered that he was a mere labourer and that I should enquire from his company's clerk whom we interviewed at the Company's Timber Dump. Before this incident there was only on a single occasion when a man called Dapaah also came into our land to cut trees but we drove him away. The Company's clerk informed us that the land had been leased to his employers (Defendant-Company) by the Chempaw Stool and the Kokofu Stool to operate there up to the Rivers Prah and Kumi. I then warned him against further trespass but he said he could not take my instructions as he takes instructions from his employers. I then interviewed the Company's European Representative Mr. Bel who had come to their dump. The clerk told him that I had complained of trespass into our land and he held my throat and brutally assualted me and I fell upon the ground. While on the ground he stamped on my belly with his shoes. When I tried to get up he kicked me from behind me and I fell face downwards. He picked me from the ground, dragged me on the ground, put me in his car and drove me to Juaso Police Station where he lodged a complaint with the Police. An officer came and removed me into the Station where I told the Inspector what had happened and also our ownership of the land. The European was told to take me back to the place he had taken me, but he took me to Obogu and left me there saying he would not take me any further. I had to walk for over 3½ hours from Obogu to my village arriving there about 1 o'clock a.m. As a result of the brutal assault I suffered pains and urinated blood. On the next day we went to see the Chempaw Chief but he was away from Chempaw. Later I went and lodged a complaint with the Ntronang Police and was sent to the hospital at Akim Oda where I was admitted and remained for a week but went there for medicine after my discharge.

In the Supreme Court

Plaintiff's Evidence

No.36

Peter Armah, Examination - continued.

Cross-examination by Mr. Benjamin -

Cross-Examination

We have documents evidencing the sale by "Guaha". They are Exhibits "G", "H" and "P". I do not know the co-defendant (Nana Kokofuhene) nor have I been summoned before him or the Asantehene in Council about the land. I have never been told that land in Ashanti is not saleable; nor has any member of our Company been so summoned or so told. The Company's Clerk was at their Timber

In the Supreme Court

Plaintiff's Evidence

No.36

Peter Armah,

Cross-Examination - continued.

Dump outside our land. My evidence of the assault is true. The Ntronang Police obtained a medical report of the assault. Our lawyer (Mr. Franklin) was instructed by my fellow farmers about the matter and he wrote to the defendant-company and the correspondence are in evidence (Exhibits "L2"-"3", "M", "N" and "O").

Re-examination -

None.

Mr. Franklin - 10

This is the Plaintiff's case.

Court -

Plaintiff's case closed.

No.37

Defendants' Opening,

6th December 1957

No.37

DEFENDANTS' OPENING

6th December, 1957.

In the Supreme Court of Ghana, Ashanti, at the Land Court held at Kumasi on Friday the 6th day of December, 1957, before Sarkodee-Adoo, J.

L.C.11/56 20

E.K. Annan Sasraku

v:

Naja David etc. & anor.

Court -

Parties and Counsel present.

Mr. Benjamin opens -

The case for the defendant is a total denial of the alleged trespass; for a period of about 2½ years preceding the alleged cause of action the defendant had been operating in an area of land 30 granted to the Company by the Kokofu Stool, erected structures, timber tents etc., on the land. The co-defendant as representing the Kokofu Stool not only pleads ownership but counterclaims for a

declaration of ownership in respect of the land claimed by the plaintiff; that the alleged transaction of sale to, and purchase by, the plaintiff by the caretaker of the Stool of Kokofu, that is to say the Odikro of Chempaw was without the knowledge and was and is not the approval of the Stool of Kokofu; a sale by the native custom of "Guaha" being unknown and unrecognised by the native customary law and usage of Ashanti, the alleged sale is ultra vires and otherwise invalid; in so far as the plaintiff relies, as a limb of support to his claim, on Deeds of Conveyances drafted in accordance with English procedure of drafting, their title is void ab initio by virtue of the Concessions Ordinance (Cap. 136); in any event, the claim for Injunction is misconceived.

In the Supreme Court

No. 37

Defendants' Opening,

6th December 1957 - continued.

DEFENDANTS' EVIDENCE

No. 38

WILLIAM ROBERT DAVIES

Defendants' Evidence

No. 38

William Robert Davies, Examination

1. WILLIAM ROBERT DAVIES, s.o.b. in English, states -

I am Manager of the Defendant-Company and live in Kumasi. To the best of my knowledge the Kokofu Stool granted "felling rights" to my Company on Chempaw land on 30th October, 1953, and operations were commenced immediately after the grant. Bungalows, bridges, culverts and other structures for our operations have been erected thereon. To the best of my knowledge and belief my Company has not committed trespass on any other person or persons' land. This is the counterpart of the Felling Agreement between my Company and the Kokofu Stool.

Note -

Document not stamped but admitted in evidence subject to Mr. Benjamin's undertaking to have same properly stamped.

Mr. Franklin -

I do not object to the admissibility of the document.

In the Supreme Court

Defendants' Evidence

No.38

William Robert Davies, Examination - continued.

Cross-Examination

Court -

Felling Agreement dated 30th October, 1953, admitted and marked "1".

Witness (continues) -

It has never come to my knowledge nor so far as I know any member of my Company that any one has been assaulted on the Chempaw land.

Cross-examination by Mr. Franklin -

I am aware that the action was originally instituted against Naja David Sawmill Company Ltd., and by consent of the parties and Counsel the name was altered to read Naja David Trading as Naja David Sawmill Company. I was in Court as representing my Company and I consented. The proper title should be Naja David and others trading as Naja David Sawmill Company. I do not know who the "others" are as I have not got access to my employers books but I can easily find out who the "others" are from the Managing Partner Mr. C.N. Ghassoub.

Court -

Further hearing adjourned till 2.45 p.m.

(Intd.) J.S-A.,
J.

2.45 p.m. Court resumes with Counsel and parties.

Witness (continues) -

Upon due investigation, I verily believe that the "others" are, Mr. C.H. Ghassoub, and Mr. N.H. Ghassoub.

Mr. Franklin -

I apply to have the title further amended to read as follows:-

"Naja David, C.H. Ghassoub and N.H. Ghassoub "Trading in partnership as the Naja David Sawmill "Company".

Mr. Benjamin -

The defendant and the co-defendant object to the amendment sought on the following grounds:-

1. The co-defendant purported to grant felling rights to the defendant.

Note -

At this juncture, Mr. Benjamin withdraws his objection.

Court -

Amendment granted as prayed.

Witness (continues) -

As far as I am aware my Company had not gone on the land the subject-matter of this dispute before 6th February, 1956.

Note -

Mr. Franklin reads to the witness Exhibit "L3" and other correspondence relating to the alleged trespass.

Witness (continues) -

I am fully aware that the subject-matter of this duspute is the land the plaintiff claim as delineated on the plan attached to Exhibit "L3".

Looking at Exhibit "A" (Plan of the land in dispute) I maintain that to the best of my knowledge and belief my Company did not enter upon that land before 6th December, 1956.

Re-examination - Re-Examination

My evidence is based on my personal knowledge and the best of my belief.

In the Supreme Court

Defendants' Evidence

No.39

Nana Osei Assibey III, Examination

7th December, 1957.

No.39

NANA OSEI ASSIBEY III

2. NANA OSEI ASSIBEY III, sworn on the Great Oath of Ashanti in Ashanti, states -

I am the Omanhene of Kokofu. I was enstolled in the year 1951. Chempaw is a division of my State. All Kokofu lands are attached to my Stool. The Odikro of Chempaw is a caretaker of Chempaw land for the Kokofu Stool. When I was installed in 1951, my elders told me that lands in Ashanti are not saleable. They further told me that my predecessor was destooled for selling Stool lands and that I should be careful.

I knew the late Emmanuel Kotey Quao the Leader of the plaintiff's "Company" and I do know the other members of the "Company". I had summoned them before me in respect of the land in dispute. I summoned the "Company" before me upon my installation to account to me for occupying my Stool land. Other occupiers or "Companies" were similarly summoned. The plaintiff's Company attended and told me that they bought the land by outright sale by "Guaha". I asked them to show me their conveyances on the land but they could not produce any. I then entreated them to enter into terms on Agreement with me but they refused and left. About four months later I was summoned before the Forest Reserve Settlement Commissioner sitting at Kumasi where I appeared and saw Mr. Franklin and his clients (the plaintiff's company).

Before the Commission was a representative of the Otumfuo the Asantehene - he was from the Asantehene's Lands Department, Kumasi. I gave evidence and so did the Asantehene's representative. The Commissioner then reserved his Findings for publication or delivery at a later date but up till now nothing has been done in the matter. When the plaintiff's Company met me at Kokofu they told me that they purchased the land from the Chempaw Stool with the knowledge and consent of the then Kokofuhene. My Chief linguist Yaw Bahia told them that land was and is not saleable and that was the ground for Nana Kofi Adu's destoolment when he was the Kokofuhene. I know of the ceremony of

"Guaha" but what is practised in Ashanti is "Trama" which applies to the sale of movable. I know the defendants. My Stool has entered into a Felling Agreement (Exhibit "1") with them. In pursuance of the said Agreement the defendants have constructed a road of nine miles from Obogu junction to Chempaw on the land granted to them. They have also erected buildings and structures thereon. To my knowledge the plaintiff's company never complained of the structure or construction of the road; in fact they used it when coming to Kumasi and Accra. The Odikro of Chempaw as caretaker of the Chempaw land has to consult the Kokofu Stool occupier (Omanhene) and the elders of the Stool in respect of the land before he collects any monies in respect of the land or in any way deals with it; that is to say, he must first seek the approval of the Omanhene of Kokofu and his elders before dealing with the Chempaw land. At the time of the sale of the land to the plaintiff's company by the Odikro of Chempaw and the Kokofu Stool I was at Kokofu. Upon my enstoolment I was told three pieces of land at Chempaw, Dwendwenase and Jimachie (or Dumachi) were sold to various people. I have precovered them all save the land in the possession of the plaintiff's company.

Cross-examination by Mr. Franklin -

Cross-Examination

I do not know Chempaw myself nor do I know the limits of the plaintiff's land in dispute; and as such I am not in a position to say whether or not the defendants' structures or any of them are or is on the land in dispute. The Writ of Summons in this case served on the defendants was never shown to me. Upon my joinder as co-defendant representing the Kokofu Stool I was served with copies of the Writ of Summons and the pleadings as well as all the documents in the case. Nana Kofi Adu was on the Kokofu Stool for over thirty years. I have not with me now a copy of the destoolment charges served on Nana Kofi Adu. I have subpoenaed the Chief Registrar of the Asanteman Council to produce a certified copy thereof.

My defence to this action is two-fold:-

1. That land is not saleable in Ashanti; and
2. The land in question was sold to the plaintiff's company by the Odikro of Chempaw without the knowledge and/or consent of the Omanhene of Kokofu,

In the Supreme Court

Defendants' Evidence

No.39

Nana Osei Assibey III,

Cross-Examination - continued.

Nana Kofi Adu. Of these the first defence that land is not saleable in Ashanti is more important.

Mr. Franklin -

I am going to quote you from a certified true copy of the proceedings before the Forest Reserve Settlement Commissioner you have already referred to, dated 31st August, 1954.

Witness (continues) -

Note - (Mr. Franklin reads to the witness his cross-examination of this witness before the Commission).

"Some of the sub-chiefs used to sell land to "people without my knowledge; if this is done I "will claim the land back".

Witness -

I said so under cross-examination by you. I agree that earlier I had said: "Land was not alienated to Dano Kofi, it was given to them to farm."

Question by Mr. Franklin -

Did you at any time say that land is not saleable in Ashanti?

Answer -

Yes; I said so - it was the whole purport of the Enquiry.

Q. I suggest to you that by your answers you merely complained that you were not aware of the sales - is that not so?

A. You did not ask me specifically whether land was saleable in Ashanti or not and that was the reason for not giving you a direct answer.

Q. Did you say that "a sub-stool cannot give away or "sell land either to a stranger or "Ashanti man without my permission" in answer to my question?

A. Yes; I said so.

Q. I suggest to you that you well all along concerned with not being consulted about the sales but not about the actual sales.

A. That is not so.

Q. Did you also say that "if I find that land "has been sold without my knowledge I claim "the land back and tell the purchaser to "claim his money back"?

A. Yes; I said so, because if the land is sold without my knowledge it is against our custom.

Court -

By consent of Counsel and the parties proceedings dated 31st August, 1954, admitted and marked "AA".

Witness (continues) -

I still say that before land could be sold by the Chempaw Odikro, being a caretaker merely he must first seek the approval of the Kokofu Stool and the elders.

I am fully aware that the Plaintiff's Company is in possession of the land in dispute to farm on it merely but not in possession thereof as owners by right of outright sale to them. The Chempaw Odikro informed the Kokofu Stool and the elders of the presence of the Plaintiff's Company on the land for farming purposes before they actually settled there. Nana Kofi Adu sent for them during his reign to come to terms during ten years of his reign but they refused; I too, had since my enstoolment sent for them during the past eight years but they refused to come to terms. The Chempaw Odikro collects customary drink from strangers like the plaintiff's company who come to farm on Chempaw land. Upon my enstoolment I was told that the plaintiff's company had provided the customary drink through the Odikro of Chempaw and like the other settlors or strangers have been paying tribute. I now say they (plaintiff's company) have never paid any tribute or rent. When I demanded tribute from the plaintiff's company, the demand resulted in the Enquiry and now these proceedings.

In the Supreme Court

Defendants' Evidence

No.39

Nana Osei Assibey III,

Cross-Examination - continued.

Note -

Mr. Franklin reads to the witness his (witness') letter dated 3rd November, 1951 (Exhibit "J") to Mr. Armah (19th witness and a member of the plaintiff's company).

Witness (continues) -

By the acquisition of rights by Mr. Armah I meant that I knew him to have farming rights merely but he said he had bought the land. I did not take action against him because of the Enquiry which was summoned at the instance of the plaintiff's Solicitor.

The present Odikro of Dwendwenase is Nana Akomeah who was destooled and re-instated. He is Nana Kwaku Akomeah. I don't know that he sold land to Moses Tettey Ahia (12th Witness for the Plaintiff). I had said that the Kokofuhene and other sub-chiefs had been destooled for selling Stool lands under Kokofu. Nana Kokofuhene Kofi Adu was not re-instated but Nana Kwaku Akomeah was re-instated when he confessed to his evil deeds.

Nana Kofi Adu was destooled in 1951 and I was enstooled about four months after. The Odikro of Chempaw was similarly destooled for selling Stool lands in collaboration with Nana Kofi Adu. He was Nana Owusu Afriyie - he was not re-instated. Kwasi Yebuah was a linguist to the Kokofu Stool. He was a native of Chempaw. Kofi Katawere was the Chief of the Chamber (Chamberlain) to the Kokofu Stool. Mr. J.W. Amporfo was a Stool Clerk or Assistant State Secretary.

It is not true that Nana Owusu Afriyie died on the Chempaw Stool.

Re-examination

Re-examination -

I was summoned before the Enquiry on the issue whether or no lands are saleable in Ashanti. There is an Akwamuhene, Krontihene, Jasehene, Ohemaa, Akyeamehene, Benkumhene, Nifahene, Oyokohene, Kyidomhene and Ankobeahene at Kokofu. The Chamberlain is not a Wing Chief at Kokofu. He is under the Jasuahene who is also under the Jasehene (or Gyasehene). The Chamberlain does not execute documents in matters affecting the Kokofu Stool.

There are about eight linguists to the Kokofu Stool and Kwasi Yebuah is the third in order of seniority. The distance between Kokofu town and Chempaw is over 40 miles.

In the Supreme Court

Defendants' Evidence

No. 39

Nana Osei Assibey III,

Re-examination - continued.

No. 40

JAMES WELLINGTON KWEKU APPIAH

No. 40

James Wellington Kweku Appiah,

Examination

3. JAMES WELLINGTON KWEKU APPIAH, s.o.b. in English, states -

I am the Chief Secretary to the Asanteman Council and live at Kumasi. I have been Chief Secretary since the Restoration of the Ashanti Confederacy in January, 1935. Before then I was Secretary of the Kumasi State Council. I became Secretary of the Kumasi State Council in 1927. I claim to know Ashanti native custom from my connection with Native Administration. As far as my knowledge goes land is not saleable in Ashanti. I have heard of the custom of "Guaha" but not in Ashanti. In Ashanti we have "tramma" which is the equivalent of "Guaha" in other Akan States. "Tramma" is the effective means or ceremony of sale outright in Ashanti of all properties. I know the Ex-Chief Kofi Adu of Kokofu. He is still alive. He was destooled in 1951. The original charges of 51 were sent to the Asantehene. The charges were dated 30th April, 1951, I have here with me the original charges. I am in charge of the archieves of the Asanteman Council. I produce the said original charges.

Note -

Charges tendered in evidence, not objected to, admitted and marked "2".

Witness (continues) -

Since receiving the subpoena duces tecum I have refreshed my memory in respect of the charges. Charges 35, 38, 39, 40 and 41 relate to sale of land.

In the Supreme Court

Defendants' Evidence

No.40

James Wellington Kweku Appiah,

Examination - continued.

Note -

Witness reads charges 35, 38, 39, 40 and 41.

Witness (continues) -

Upon receipt of charges by the Asanteman Council the parties are summoned before it for hearing. But in this case (Nana Kofi Adu's case) the Kokofu State Council was seised of the case and the accused (Nana Kofi Adu) refused to attend and was destooled in his absence. He appealed to the Chief Commissioner in his administrative capacity. I produce a certified true copy of the proceedings on appeal.

Note -

Proceedings tendered, not objected to, admitted and marked "3".

Witness (continues) -

His destoolment was confirmed and the present Kokofuhene was enstooled in August, 1951. He was recognised by the Asantehene and has since been a member of the Asanteman Council. I know a linguist named Baffuor Akoto. Many years ago there was a meeting before the Otumfuo the Asantehene in Council about the sale of lands in Ashanti. I think linguist Baffuor Akoto and other linguists were present. Under the State Councils (Ashanti) Ordinance, 1952, the Asanteman Council declares the native custom for the whole of Ashanti and the State Councils declare the native custom for the particular States subject to the approval of the Asanteman Council. So far as I can remember at the request of Government certain modifications have been made in respect of mortgages of cocoa farms. The proceedings of the meeting before the Asantehene in Council were recorded. Mr. I.K. Agyeman is in possession of the record of proceedings and other records of the Kumasi State Council.

Cross-Examination

Cross-examination by Mr. Franklin -

The Asanteman Council is charged with the duties of declaring or modifying the native custom of Ashanti under section 18 of the State Councils (Ashanti) Ordinance, 1952. So far as I know and

can remember there has never been any declaration before or after 1952 that lands are not saleable in Ashanti. Before lands became valuable in Ashanti there were gifts of land in Ashanti. The transfer of the whole interest in land is a common incident of native customary law but sometimes only Agricultural Rights are transferred. When I said land in Ashanti is not saleable that was the case when land had no value but it was a common practice to transfer the whole interest in land for services rendered subject to the share (if any) of the grantor in case of treasure trove and/or mineral rights in case of Stool lands.

Q. When native custom smiled upon the gift of land when it had no value, why should it frown upon the sale of land when it acquires value?

A. I cannot answer that question. It is said that a gift of land for past services may be revoked but it has never happened in actual practice nor has it ever been declared as native custom as such.

Note -

Mr. Franklin reads to the witness, Rattray on Ashanti 2nd Edition page 231, as to grants in fee simple of land by natives or Stool holders.

Witness (continues) -

I agree with what you have read.

Re-examination -

Personally I don't think a custom should be declared if it is established.

By Court (to witness) -

Q. Do you agree with Dr. Busia in his views expressed in his book, The position of the Chief in the Modern Political System of Ashanti at pages 43-44; 50, and 52 - 54?

Note -

Passages read in extenso to the witness.

In the Supreme Court

Defendants' Evidence

No.40

James Wellington Kweku Appiah,

Re-examination - continued.

Witness -

I agree with all what you have read. They are true. I recorded the speech of the Asantehene at the meeting of the Confederacy in 1941.

Q. That being so, that is, if the Asantehene has publicly declared that he had not claimed nor claims land in the other Divisions, can he in the Kumasi Council make a binding order or decision depriving purchasers of land in say the Kokofu Division of their absolute ownership thereof?

A. No. The Asantehene cannot claim or has he ever claimed to own land in the other divisions such as Kokofu.

The Asantehene in Council referred to in these proceedings refer to a meeting to investigate the sale of Kumasi lands and other specific lands outside Kumasi but attached directly to Kumasi as Kumasi lands.

9th December, 1957.

No.41

Baffuor Osei Akoto,

Examination

No.41

BAFFOUR OSEI AKOTO

4. BAFFUOR OSEI AKOTO, sworn on the Great Oath of Ashanti, in Twi, states -

I live in Kumasi and I am a linguist of the Asantehene. I have been a linguist for over 22 years. According to Ashanti custom land is not saleable from time immemorial. There was once a meeting between stranger-purchasers of land in Ashanti and the Otumfuo the Asantehene at the Ahenfie. Mr. J.W.K. Appiah took a record of the proceedings of the meeting. The Kokofuhene and his linguist also attended and later there was a meeting at the instance of the Kokofuhene who summoned alleged land purchasers of Kokofu land. The Kokofuhene I refer to is Nana Kofi Adu Ex-Kokofuhene.

Cross-Examination

Cross-examination by Mr. Franklin -

I have no knowledge of the purchases of land. I only got to know of them 1950 when reports

reached Nana Asantehene about the sale of Kumasi lands and lands attached to Kumasi but situated in Ashanti Akim.

Note -

Mr. Franklin reads to the witness Exhibit "C" (Conveyance dated 31st July, 1930), prepared by Mr. E.O. Asafu-Adjaye, Legal Adviser and Solicitor to the Golden Stool, and the Kumasi State.

Witness (continues) -

I am not aware of that document nor can I say that I disagree with the document.

Note -

Mr. Franklin reads Exhibit "F" (Conveyance dated 7th September, 1940) to the witness.

Witness (continues) -

I do not know anything of this document. I agree that Mr. E.O. Asafu-Adjaye was the lawyer for Kumasi Oman or State, and I admit he prepared documents on sale in Ashanti in 1930 and 1940. Lawyers don't know custom; all they know is the law they have studied. All I know and heard of in respect of sale in Ashanti were in connection with alleged sale of Kumasi lands and lands claimed to be Kumasi lands in Ashanti Akim in 1950. This incident excepted I know of no sale of land in Ashanti.

I do not know that any Enquiry had been held about alleged sale of lands in Ashanti. All I know is that the Asantehene sent Frederick Prempeh (surveyor), J.A. Opoku and C.K. Osei to Chempaw to see the extent of the land claimed by the plaintiff's company to have purchased and it was discovered that they purchased their land as far back as 1925 when there was no Asantehene. The late Nana Prempeh I became Kumasihene in 1926 after his arrival from Seychelles in 1924. A lot of sales of land in Ashanti took place from 1925 to 1950 but as it was no concern of mine I did not know or hear about the sales in the various divisions. The sales by unauthorised caretakers of the Kumasi lands in Ashanti Akim were dealt with, because any chief who serves the Kumasihene

In the Supreme Court

Defendants' Evidence

No.41

Baffuor Osei Akoto,

Cross-Examination - continued.

direct is caretaker of the land so attached to Kumasi. The purchasers of the alleged sale of such Kumasi lands admitted being in the wrong and approached the Akyempihene who interceded for them and were fined £9. 6. 0; but no other overt steps were taken to repudiate the sales, save and except that they were told that the lands were no longer theirs and a record was made of this decision depriving them of their lands. I cannot say nor do I remember whether the purchasers are still on their lands. I don't know where the lands are situated as I have never been there.

I admit I have been brought here by the co-defendant as an expert witness on native custom but I don't know anything about the sale of the land in dispute. I don't know if these purchasers have ever paid any tolls or tribute. However, I admit that even if there is such a custom that land is not saleable in Ashanti this custom has in fact been flouted for many years and no steps have been taken to declare the said custom.

Re-examination - None.

No.42

Court Notes, 10th December 1957

No.42

COURT NOTES

10th December, 1957.

Court -

Parties and Counsel present.

Mr. Benjamin -

This is the case for the defendants and the co-defendant.

Court -

Case for the defendants and co-defendant closed.

Mr. Benjamin addresses the Court -

Refers to paragraph 5 of the Particulars of

the plaintiff's claim. Damages not claimed. Claim is for an Injunction.

Refers to paragraph 1 thereof. Defence is a flat denial of the trespass alleged. Co-Defendant counterclaims for declaration of title to the ownership of the land in dispute.

The plaintiff's claim is in respect of land on the south. The evidence on the alleged trespass is vague and shadowy. The evidence is that of Armah an old illiterate man of about 67 years old. The two contesting parties (Plaintiff's Company and the Co-Defendant) own adjacent lands. Defence denies the existence and performance of the custom of Guaha in Ashanti.

"Guaha" is a ceremony to be performed by the vendor and the vendee. Land is not saleable in Ashanti. Native customary law like foreign law must be proved by expert witnesses.

Cites Ayemensah and others v. Wiaboe and others. 1921-25 Divisional Court Judgments at page 170. Reads page 172. Refers to page 15 of Redwar's Comments. Refers to section 18 of the State Councils (Ashanti) Ordinance, 1952.

Submits - Not necessary to declare that land is not saleable in Ashanti as sale of land is unknown in Ashanti. Cites Ohene Kojo Sintin v. C.M. Apeatu and others 2 W.A.C.A. 197.

11th December, 1957.

11th December 1957

Court -

Parties and Counsel present.

Mr. Benjamin (resumes) -

No amount of conveyances to the contrary can alter the position. Law is law and custom is custom. Refers to paragraphs 2 - 4 of the plaintiff's Particulars of Claim.

Submits -

The custom of "Guaha" alleged merged in the conveyances. Cites A.K. Bisson v. Chief Ntah Aithie 1926-29 Full Court Reports p.113.

In the Supreme Court

No.42

Court Notes, 11th December 1957 - continued.

Submits -

The conveyances embrace an area over and above 25 acres and as such are concessions but not having been filed and Certificate of Validity obtained in compliance with the Concessions Ordinance Cap. 136 are of no value and therefore of no effect whatsoever.

Submits -

The plaintiff is on the horns of a dilemma - if they claim by "Guaha" that custom has not been proved - if the plaintiff relies on the conveyances these douments are worthless.

Submits -

The plaintiff's claim has not been proved.

Mr. Franklin addresses the Court -

On 26th January, 1956, I sent a letter (Exhibit "L1") to the defendants warning them not to trespass. On 6th February, 1956, in spite of Exhibit "L1" the defendants crossed a cut line in the forest - the boundary of the line in dispute - this is admitted by the defendants' witness Mr. Davies. The main evidence of the trespass is given by the 18th witness for the plaintiff - Peter Armah - whose evidence could hardly be more precise. His evidence is corroborated by Exhibit "L3" and "O". The land in dispute had been adversely occupied by the plaintiff's company since 1925 in relation to the co-defendant's claim. No Kokofu man had been on the land since the plaintiff's company bought. Exhibits "G", "H" and "P" support the purchases as evidence of the transaction.

12th December 1957

12th December, 1957.

Mr. Franklin (resumes) -

The ceremony of "Guaha" is proved by Edward Kotey Annan Sasraku (Plaintiff) and the 9th witness (Oko) and their evidence is not met by the defence. The co-defendant's defence are twofold. But in 1954 he made no mention at the Enquiry that land is not saleable in Ashanti. Refers to Exhibit "AA" (Cross-examination by Mr. Franklin).

Exhibits "C", "F" and "S" make it abundantly clear that the knowledge of Omanhene Kofi Adu cannot be denied. The co-defendant produced Exhibits "2" and "3" to support his defence that Nana Kofi Adu was destooled for selling Stool lands but it is clear from Exhibit "3" that the charges were never gone into nor investigated.

On the facts and the circumstances of the sales the elders could not be held to be ignorant of the sales, because:

1. No tribute was ever paid.

2. Exhibit "J" (letter to Armah dated 3rd November, 1951 refers to Armah having "some rights."

Against the allegation that land is not saleable at Kokofu the plaintiff has produced and tendered in evidence documents - Exhibits "C", "F", "G", "H", "P", "Q", "S", "T1-3", "U", "V" and "W", quite apart from the oral evidence.

The evidence of Mr. Appiah and Baffuor Akoto is suspect because of their connection with the Kumasi hierarchy which clearly since 1950 has discountenanced sale of lands in Ashanti.

There is in evidence concrete sale of lands in Ashanti by eight Stools under the Kumasihene: Exhibits "B" (Obugu Stool), "D" (Bankame Stool), "E1" and "2" (Bansu Stool), "R" (Tokwai Stool), "X1" (Ofoase Stool), "X2" (Jadam Stool), "Y" (Odubi Stool) and "Z" (Asankare Stool).

Submits -

Native customary law changes very rapidly. Refers to Redwar page 80 (Codjoe v. Kwatchey 2 W.A.C.A. 371 at page 378); Korkuah v. Yansah W.A.C.A. Judgments cyclostyled 22/5 - 20/6/50; Golightly v. Ashrifi 14 W.A.C.A. 676 at pages 680-681.

Customs of the sale of land is referred to by Sarbah at page 85 where he calls it tramma (or trimma) and by Dr. Danquah on Akan Laws and Customs pages 216 - 219 as "Guaha"; Pogucki in his latest paper on Land Tenure in Ghana volume 6 pages 6, 7, 18 and 26 refers to the custom of

In the Supreme Court

No.42

Court Notes, 12th December 1957 - continued.

sale in the various Ghana languages. That custom must have spread into Ashanti about 1924 because:

1. The sales referred to in this case are from 1924 upwards.

2. Rattray on Ashanti, 2nd Edition page 231 clearly indicates that in 1923 outright sales of land were known in Ashanti.

3. The two documents (Exhibits "C" in 1930 and "F" in 1940) prepared by Mr. (now His Excellency) Asafu-Adjaye, then Solicitor to the Kumasi State.

Baffuor Osei Akoto said nothing was known of these sales until 1950. But even then up till now there have been no overt steps to avoid the sales as held in Agyako v. Zok and ors. 10 W.A.C.A., 277. In spite of the fact that practically the whole lands in Ashanti Akim not being Kumasi lands had been alienated there has been no declaration of the modification of the native custom or the native custom of sale in Ashanti.

The case of Ayemensah v. Wiaboe and others, 1921-25 Division Court Judgments, page 170 is not followed. I maintain it is indeed not followed and in support I refer to Korsah Commission on Native Courts page 16.

Refers to section 87 of the Courts Ordinance (Cap.4) in further support that it was never intended that only customs existing before 24th July, 1874 are enforceable: (Section 83 of the Courts Ordinance, Cap.4), as was specifically stated in the case of English Law.

Native custom is flexible and must necessarily change with the times.

Court -

Judgment reserved until Tuesday, 17th December, 1957, at 11.30 a.m.

J. S-A.,
J.

No.43

J U D G M E N T

In the Supreme Court

No.43.

Judgment,

17th December 1957

In the Supreme Court of Ghana, Ashanti. At the Land Court held at Kumasi on Tuesday the 17th day of December, 1957, before Sarkodee-Adoo, J.

L.C.11/56

Edward Kotey Annan Sasraku substituted for Emmanuel Kotey Quao (Deceased) as Head and Representative of a Family-Company of Teshie people claiming certain lands near Chempaw .. .. Plaintiff

vs:

Naja David, C.H. Ghassoub and N.H. Ghassoub Trading in Partnership as Naja David Sawmill Company Defendants

Nana Osei Assibey III, representing the Stool of Kokofu Co-Defendant

JUDGMENT:

The Plaintiff as Head and Representative of a family - company or syndicate of land-owners being farmers of Teshie, in the Ga State claims an Injunction to prevent the Defendants, Naja David, C.H. Ghassoub and N.H. Ghassoub Trading in Partnership as the Naja David Sawmill Company from trespassing on certain three pieces of land (hereinafter referred to as the land) which the Plaintiff avers are in their possession as owners thereof by right of absolute sale to, and purchase by them, from the Stool of Chempaw with the knowledge and consent of the Paramount Stool of Kokofu.

The Defendants having set up the "jus tertii" and thereby alleging a paramount title in the Paramount Stool of Kokofu, Nana Osei Assibey III, the occupant thereof joined as Co-Defendant representing the Stool of Kokofu.

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Judgment, 17th December 1957 - continued.

During the hearing of the Action the said Head and Representative died and the present Plaintiff was substituted accordingly.

Shortly put, the Plaintiff's case is that a group of farmers in Teshie, in the Ga State joined together to purchase land from the Chempaw Stool which serves the Paramount Stool of Kokofu to which it is subordinate, and that the purchase of the land was by "Guaha", and that this Native custom was subsequently evidenced by documents which have been tendered and admitted in evidence; that these documents (Exhibits "G", "H" and "P") are by themselves void as Concessions under the Concessions Ordinance (Cap. 136) but are merely relevant in consideration of their evidential value in relation to, and in support of, the transaction by native custom.

Such a group of farmers is called a "Company", and will be so referred to hereinafter.

The Defendants were represented by their Manager Mr. William Robert Davies who gave evidence and tendered a Felling Agreement (Exhibit "1") which I shall refer to later; but that excepted, the Defendants took little part in the case and did not go beyond entering appearance and filing the Defence: relying on the Co-Defendant to fight out the case with the Plaintiff.

Such native "Companies" while not uncommon must be considered a modern development: only coming into existence after sales of land to strangers to a district became normal and frequent. Invariably after a purchase of land has been completed the land is shared out among the members of the "Company" save and except the members belong to the same family when it is the practice to develop the land by communal farming. The position of members of the "Company" after partition is that if one of the members title is challenged all come forward to support him: (Yode Kwao v. Kwasi Cokor, 1 W.A.C.A. 162). That Judgment recognises that one member may be a leader and purchase in his own name for all the members, and refers to such groups as "Companies" or Syndicates. The leader of the "Company" could not act except with the authority (express or implied) and consent of the whole "Company".

In this case in order to arrive at a conclusion whether the Plaintiff is entitled to an Injunction to restrain the Defendants and the Co-Defendant from interfering with the land, I must first decide whether or no the land is the property of the "Company" so that the Defendants and the Co-Defendant are wrong in interfering with the land; in other words, the power of the Court to grant relief in this case by way of Injunction is contingent on the success of the Plaintiff's claim for a declaration of title of ownership of the land.

On the Pleadings the issues are as follows:-

1. Whether or no according to Ashanti custom land is saleable in Ashanti generally and in particular in different states (or Divisions) and at any rate in the part of Ashanti in which the land the subject of this Action is situated.

2. Whether or no the "Company" has legitimately purchased the land from the Stool of Chempaw.

3. Whether or no the purchase was with the knowledge and consent of the Paramount Stool of Kokofu.

4. Whether or no the native custom of "Guaha" is performed and recognised in Ashanti.

5. Whether or no the native custom of "Guaha" was performed at the sale.

6. Whether or no there has been an Agreement between the Plaintiff and the Co-Defendant whereby their relations as to the ownership of the land has changed.

7. Whether or no in or about 1950, the Otumfuo the Asantehene in Council made a binding order or decision depriving the "Company" and all other purchasers of land in Ashanti of their absolute ownership thereof.

8. Whether or no the Otumfuo the Asantehene claimed or now claims the lands in the different states (or Divisions) in Ashanti.

9. Whether or no this Action is maintainable.

In the Supreme Court

No.43

Judgment, 17th December 1957 - continued.

Publications on Native Land-Tenure deserve due consideration.

There is a school of thought that, under Native Law Stool-land cannot be the subject of absolute ownership. This view owes its emergence from the various conceptions as to the definition of a "Stool", particularly by the Courts.

As to Land-Tenure in Ashanti, it was the general belief in ancient times that the land belongs to the ancestors.

In Rattray on Ashanti, 2nd Edition at pages 231-232, the Author states:

"It has been stated that the Ashanti looked "upon his or her land - for women could own land "quite apart from men - as their greatest wordly "asset; the proof of this belief may be readily "seen in an examination of the reasons which led "to the commonest and possibly the only original "form of alienation of land.

"Grants in fee simple to a tribesman or often "even to a stranger (e.g. to a Fanti) were, in "later times and before the advent of the Euro- "pean, constantly made with the full consent of all "the interested parties, a fraction of the tribal "or family or stool land only being involved. "This grant was not made for any monetary "consideration; no purchase-money was asked for "or paid, all that was necessary was a small "offering of rum to the spirits, who were told "of the transaction, when the plot became the "property of the new-comer and his heirs. The "valuable consideration that the owner looked for, "and in the past freely received, was the 'services' "already described. The grantor was thus enriched "by the acquisition of a new family household who "would serve him and fight for him when called "upon.

"The grantee became to all intents and pur- "poses owner of the land, but should he or his "heir deny the title of the grantor to the rever- "sion, or set himself up as independent of the "obligations he was expected to render, then the "title to the land would immediately revert to "the grantor. A grant of land in fee simple "was made in the presence of the parties interested

"and their witnesses. The words of limitation are "important 'Me de asase yi kye wo,' 'I take this "land and I present you.' It may seem to us at "this present day an extraordinary thing that an "Ashanti, who looks with such deep aversion on the "sale of his land even in return for a substantial "sum of money, should in the past have been ready "and willing to encourage strangers to take up "their above on his land and granted to them what "was to all intent a fee simple for a consideration "which at first sight may seem to us as inconsider-"able. If we consider the matter, however, we will "see that nowhere did the genius of this people "show itself more markedly than in their land laws. "By this generous encouragement of settlers, and "strangers, all of whom became attached to the "clan or stool which had given them settlements, "the followers of a chief were increased in number "and his wealth also thereby indirectly increased. "The grant in fee simple, as we have seen, was in "return for certain definite services, the most "onerous of which was undoubtedly the obligation "to fight for the grantor. Such a grant possibly "was not looked upon in the light of alienation at "all. The grantor had more land than he or his "family could possibly use, by giving a small "portion to 'A and his heirs' he possibly did not "feel he was losing the land at all, he was only "gaining other subjects who swelled his retinue. "The reversion, in case the grantee died without "heirs, was to himself; and if the grantee ever "repudiated the obligation he had undertaken, the "land automatically reverted to the grantor. Such "an alienation, complete as we are now inclined "to think it to be, was very different from "handing over land for a valuable consideration, "the acceptance of which gave the purchaser com-"plete control over his purchase and complete "freedom any form of services to the vendor."

Professor Busia in his book THE POSITION OF THE CHIEF IN THE MODERN POLITICAL SYSTEM OF ASHANTI at pages 43 to 44 writes:

"This idea that the land belonged to the "ancestors made the Ashanti unwilling to sell his "land. There was always the dread that the "ancestors would summon him to account for such "conduct.

In the Supreme Court

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Judgment, 17th December 1957 - continued.

"The belief that the land belonged to the "ancestors and that they had passed it on to the "living for their use was of political signifi- "cance. As the land belonged to the ancestors it "was a link between them and their living des- "cendants. In Ashanti the object which symbolized "the unity of the ancestors and their descendants "was the stool which the chief occupied. In any "Ashanti village the inquirer was informed, 'The "land belongs to the 'stool'' or 'The land belongs "to the chief'. Further investigation revealed "that both expressions meant the same thing: 'The "land belongs to the ancestors.'"

At page 50 of the same book he quotes one of his informants with reference to the basic traditional rules of land-tenure in Mampong as follows:

"'The people of Mpenem, for example, came "from Ekuansa and begged for land from us. We "gave them land where the Girls' School now stands. "Then they removed from there, and went to the "Chief of Nintin who gave them at Mpenem. We "used to collect first-fruits: rice, yam and oil "from them annually.

"The plantains and cocoayans you plant are "yours. The land is the chief's. You cannot "sell the land. You may mortgage your kola. Only "the stool can sell land. In the old days every- "one who lived on your land was your subject, and "so he accompanied you and fought in your wars. "Because, when he came to settle on your land, he "became your kinsman. When a stranger buys land, "he buys the surface; that is, the right to use it. "Every year the chief claims money from him, if "he had cocoa. If he has no cocoa, he provides "a sheep for the stool'".

At pages 52 to 54 he writes:

"When the Ashanti Union was formed, the "Asantehene also secured certain rights. The "land in every Ashanti Division continued to "belong to the stool of that Division, and no "change was made in the existing cluster of rights "of chief, lineage, and individual in the use of "land. But the chiefs incurred certain obligations "to the Asantehene. The historical development of "the Union throws some light on the position.

"The traditional histories of Kumasi, Mampong, "Asumegya, Juaben and Aduaben indicate a segment- "ary society with autonomous groups bound by ties "of clanship. An impetus to a closer social "solidarity was provided by the existence of the "enemy State of Denkyira. According to their own "tradition it was the desire to break away from "Denkyira that brought the separate groups "together in a Union, which was soon strengthened "by the addition of Bekwai, Kokofu, and Nsuta, "all of which had ties of kinship with Kumasi.

"The present Asantehene, Nana Sir Agyeman "Prempeh II, gives the etymology of the word "'Asante' as follows: when the King of Denkyira "heard of the Union of the five nations under "Osei Tutu, he said he was certain that it has "been formed for the purpose of making war on him "(osa-nti; Osa-war; nti-because of). So he called "the members of the Union Sa-nti-fo. This etymo- "logy is interesting as indicating that the "Ashantis have always thought of themselves as war- "like, and of Ashanti national unity as connected "with war. Traditional history supports the view "that the aim of Osei Tutu and his successors was "not the acquisition of land, but the formation "of a strong army. Membership in the Union did "not affect the land rights of the chiefs of the "various Divisions.

"There were Divisions like Techiman, Nkrorans "Dormaa, and Jaman which became part of the Union "through conquest. But even in these Divisions "the rights of the chiefs over their land remained "the same after, as before the conquest. The "chiefs were required to pay a war indemnity and "they also incurred the obligation to military "service.

"When the Asantehene defeated Juaben after "its rebellion under Asafu-Adjaye in 1879, he did "not confiscate the lands of the Juaben Stool and "bestow them upon a henchman of his own choice. "Yaw Sapon, the heir to the Juaben Stool, was "captured during the war and taken to Kumasi. "After the war, the Asantehene returned all the "prisoners of war to Yaw Sapon and sent him back "to rule in Juaben, thus keeping the stool in "the same lineage.

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Judgment, 17th December 1957 - continued.

"There was, however, a distinction between "the lands of the Divisional Chiefs (abirempon) "and the lands of the elders and captains "(Asafohene) of the Kumasi Division. The rights "of the Asantehene over lands in the Kumasi "Division were the same as the rights exercised "by the Divisional chiefs in their own Division. "But over the lands of the Divisional chiefs the "Asantehene exercised no rights. The present "Asantehene at a meeting of the Confederacy "Council in 1941 said a propose of a measure to "appoint a committee to hear appeals in land "cases then under discussion: 'I would repeat "that in introducing this measure I do not "intend to interfere with the right of any chief "to his land. You all know that custom does not "permit me to litigate with any chief for any "land.'

"Although they retained possession of their "lands, the Divisional chiefs incurred obligations "to the Asantehene. They were obliged to attend "the periodic Odwera ceremonies held in Kumasi, "and they brought gifts of food and meat to the "Asantehene on these occasions. They accepted "limitations on their judicial powers, and death "sentences were authorised by the Asantehene only.

"In pursuance of the main objective of the "Union every Divisional chief vowed military "service. On his installation a Divisional chief "went to Kumasi to take the oath of allegiance "to the Asantehene. A newly enstooled chief "usually waited until he went to Kumasi for the "Odwera ceremony before he took the oath of "allegiance. This information was given me in "Wenchi, and I afterwards discovered that it "confirmed information that had been given to "Rattray who wrote: 'At this gathering (i.e. "Odwera) of all the heads of the great territorial "divisions, the oath of allegiance was taken by "any one who had not already done so, and problems "of State were discussed.'"

From Professor Busia's book and other books and publications on Ashanti, it is clear that during the Ashanti Union of the Union of Ashanti States prior to 1900, and after the Ashanti Confederacy of the Union as restored by Government in 1935, the Divisional Chiefs retained their rights over their lands, although in 1935 a new

situation arose when the different States (or Divisions) combined under the Chief of Kumasi, who became Asantehene.

His Excellency, the Governor Sir Shenton Thomas in his despatch dated 1st March, 1934 to the Right Honourable Sir Philip Cunliffe-Lister, Colonial Secretary, on the matter of the Restoration of the Ashanti Confederacy, said, inter alia:

"The Kumasehene has informed me that he does "not wish to interfere with the domestic affairs "of the various divisions and, so long as he has "his own Court, especially for the purpose of "hearing Appeals, and is in a position to arbi- "trate in inter-divisional disputes, he will be "quite happy. The late Mr. Newlands wrote of "the present Kumasehene that he is an educated "and enlightened man. It is scarcely a year "ago since he was elected and installed but he "has already given proof of a rare capacity in "conducting his multifarious duties and I am "confident that by his moderation and common "sense he will make a worthy holder of what will "be the greatest office filled by a native in "the Gold Coast."

Appendix 15 to this despatch is a letter from Nana Kofi Eddu, Omanhene of Kokofu, which as a matter of interest I reproduce hereunder:

Omanhene's Office,
Kokofu,
E.P., Ashanti,
Gold Coast, W.A.,
14th August, 1933.

No.160/33.

Ashanti Confederacy.

My Good Friend,

I have the honour to acknowledge with thanks the receipt of your letters Nos. 431 and 589/Case Conf. 13/1932 dated 16th May, 1933 and 25th July, 1933, respectively, and to briefly acquaint you, that a mass meeting was convened again by me and the Elders of the Divisional Council of Kokofu, after your visit to this place and explained the points to us on the above subject, and arrived at the conclusion, after careful consideration, that,

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there is no alteration in the previous communications sent you, in regard to my view and concurrence of my Elders in Council, who also, had conjunctively appended their names and marks, hereunder in confirmation of the suggested restoration of the Ashanti Confederation, which, we hope will not, in any way go against the laid down principles of English Law.

Yours Good Friend,

his
Nana Kofi Eddu x
mark

We concur.

Their

Nana Effuah Fremah, Queen-mother of Kokofu x
Chief Kweku Edu Bobi II, Krontihene of Kokofu x
Chief Kwaku Abodeh, Akomuhene of Kokofu x
Chief Kwami Bin, Gyasehene of Kokofu x
Chief Ano Kwodwo, Wekuhene of Kokofu x
Chief Kweku Datandoh, Benkumhene of Kokofu x
Chief Kwesi Nsiah, Twafuhene of Kokofu x
Chief Kweku Attim, Akyeamehene of Kokofu x

marks

Writer & Witness to marks:
J.E. Dofah,
Oman Secretary.

To His Worship
The District Commissioner,
Bekwai.

The Akan Group of Tribal States are the Twi, Ashanti and Fanti Tribes of the Gold Coast and Ashanti (now the Southern and Ashanti Regions of Ghana), who speak the Akan Language of which the principal dialects are Fanti and Twi.

Dr. Danquah in his book - AKAN LAWS AND CUSTOMS under the Heading - The Theory of Alienation at pages 212 to 213 writes:

"Tradition has it that absolute alienation of "land was until recent times not generally prac- "tised by the Akan people. Alienation or transfer "of land as between family and family, tribe and "tribe, or even between State and State, was "certainly common, but sale of land for private "or non-communal purposes was foreign to the

"people. At any rate the short-sighted and reck-
"less manner in which lands are disposed of to-
"day, as if they were so many pieces of common
"cowries to be had for the asking, cannot pretend
"to have any historical evidence in support of the
"practice. In those ancient days land was held
"in every high respect and esteem, and this for
"the simple reason that tribal or stool lands were
"judged to be as sacred as the stool itself.
"Every piece of land was under a stool and there-
"fore regarded as falling under the guardianship
"of ancestral spirits (Asamanfo). On the whole,
"it seems safe to say that the conception on land
"ownership was part of the general religious
"scheme, for the many ramifications of ancestral
"worship could scarcely have left land - the most
"valuable of all material possessions - free and
"unprotected within the category of things
"sanctified in religion. An absolute sale of
"land by an Akan was therefore not simply a
"question of alienating realty; notoriously, it
"was a case of selling a spiritual heritage for
"a mess of pottage, a veritable betrayal of
"ancestral trust, an undoing of the hope of pos-
"terity.

"To-day, however, all this is changed. Money
"is cheap, but not cheaper than land, for although
"a piece of land which would have sold for one
"predwan (£8) fifty years ago would today be
"cheerfully bought for 12 predwans, the esteem for
"land as land, the sentiment for the sacred trust
"of ancestry, and the necessity for tribal hege-
"mony in the reality of a common heritage of land
"- all these have been sacrificed for the glaring
"prize of modern gold. Undoubtedly modern gold
"is something, but it has not that characteristic
"something which makes brave men brave enough to
"span the seas to the Antipodes. To sell one's
"heritable land with no prospect of investing the
"money in other real estate is like killing the
"goose for its golden eggs.

"Mr. Sarbah tells us in his Fanti Customary
"Laws that 'land was about the last thing which
"became the subject of an out-and-out sale.
"Owners of land were as reluctant and unwilling
"to part with their land and inheritance as was
"Ephron, the Hittite, to sell a burying-place to
"Abraham, as recorded in Holy Writ. Rather than
"sell his land, the Fanti prefers to grant leave

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"to another, a friend or alien, to cultivate or "dwell upon it for an indefinite time, thus "reserving unto himself the reversion and the "right to resume possession whenever he pleases.

"Things have changed since Sarbah wrote "these words, and the Akans are not less anxious "to sell lands than to lease them"

Mr. Pogucki in his latest Paper on Land Tenure in Ghana, (Vol. VI) states:

"The concept of ownership of land in customary "law is linked with religious elements of wor- "ship of the Earth, perceived as a female force "representing fertility. But this religious "aspect, once very much in the foreground, tends "to become less visible and is being replaced "steadily by an utilitarian approach. Therefore "rights to land have become distinct and, with "the growth of a money economy, of value.

"There are bodies politic which are kinship "groups peculiar to customary law and regarded as "juridical persons, which can hold land. These "are clans and families. The latter are of the "extended type and of various span. Indeed, "kinship based on the system of clanship or of "extended family groups forms the basic pattern "of land-owning or land-holding in Ghana. There "is no evidence to show that groups other than "linked by kinship ties, for instance heterogen- "eous village communities, own or hold land. "The public at large is however entitled to the "benefit of enjoying rights, such as grazing, "hunting, fishing etc., in accordance with and "subject to local customary rules, which may vary "dependent upon the area and in connection with "economic value of the right to be enjoyed.

"These groups are represented in their deal- "ings in land by their patriarchial heads, who may, "or may not hold also officers of political chiefs "and who in many instances particularly in the "Northern Region, may have also priestly functions "connected with the worship of the Earth or with "religious representation of their groups. In "certain areas, however, a custom prevails, which "requires strangers, particularly those of non- "African origin, to negotiate with the land-owners "through the political chief.

"But an 'occupant of a stool' that is a head of "a kinship group or a political chief cannot "deal in land as a single person otherwise than "in his personal capacity, and in no case is a "head of a group qua head, or a chief qua chief "empowered to alienate land otherwise than in a "representative capacity and with the consent of "the appropriate elders of the true owners. The "fact that a chief qua chief supported by his "elders has an administrative or jurisdictional "interest over an area does not carry per se the "implication of ownership of land, and therefore "does not imply automatically rights of control "and disposal of land. There are instances "when consent of a chief qua chief may be "required, but a dealing made by the true "owners is not void ab initio for lack of such "consent, although it may become voidable at "his instance. In Ashanti chiefs are empowered "by statute to grant concessions, although it "may be required that the head of the local "clan segment or family (asafohene, abusuatiri) "joints in his capacity of land-owner or of "presentative of the land-owners: (U.A.C. vs. "Apaw and ors., 3 W.A.C.A. 114; In re Conces- "sion Enquiry No.2170 (Sekondi), W.A.C.A. 104/ "1948; Safo vs. Yensu and ors., 7 W.A.C.A. 167 "Someni vs. Abuaboni and ors., W.A.C.A. 9/1947; "Asamankese Arbitration, Div. Court, 1926-29 "220; Kwesi Agyako vs. Zok and others, 10 W.A.C.A. "277 a Kumasi case.

In Kwasi Agyako vs. Nazir Zok and ors., (supra), it was held that a Lease of land within the Kumasi Division made without the consent of the Kumasihene is not void ab initio but is voidable at the instance of the Kumasihene (nor at the instance of the lessor), and that the original Lease not having been voided, still subsists and prima facie entitles the Plaintiff to possession of the land in dispute.

I have considered the case of Ayemensah and ors., vs. Wiaboe and ors., reported in Divisional Court Judgments 1921-25, page 170 and I am of opinion that the ratio decidendi in that case is unacceptable: not only does it contravene the provisions of sections 83 and 87 of the Courts Ordinance (Cap.4), but there is no authority for the proposition that only native customs existing before 24th July, 1874, are enforceable.

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"Transactions in land known to customary law "may be of various kind. Sales are frequent "of what amounts to the equivalent of a free- "hold. Recent research shows that they are "not necessarily a late influx of ideas "foreign to customary concepts, but that land "was sold at least as early as in the early "nineteenth century. The fact that in some "areas customary sales are not made in the "result of absence of demand or of lack of "willingness, by landowners, and not a mani- "festation of a prohibition. Sales are in "many cases performed by customary procedure "(Guaha, twa gwan, zigba yibaapom, skikpong "yibafo, ahatutu anyigba dzi etc.) which "embodies religious ritual. Whilst details "of procedure may differ, the basic element "of a severance of the land from the seller "or his group in favour of the purchaser is "always present. In any case land is not "extra commercium, although places or objects "religious worship such as, for instance, "sacred groves may be excluded from a transfer".

I am in entire agreement with these expositions; my research has yielded the same findings and conclusions.

The general principles of Native Customary Law are based on reason and good sense, and necessarily change with the dictates and natural/ or logical consequences of the times.

In the case of H.E. Golightly and ors., vs. E.J. Ashrifi and ors., 14 W.A.C.A. 676 at p.680, Foster-Sutton, P., in the course of his Judgment said.

In Amodu Tijani v. Secretary, Southern Nigeria, the Privy Council set out the opinion of Tayner, C.J., in a Report on Land Tenure in West Africa as substantially the true one, namely:-

"The next fact which it is important to bear in mind in order to understand the native land law is that the notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village or the family, never to the individual. All the members of the community, village or family have an equal right to the land but in every case the chief or headman of

the community or head of the family, has charge of the land, and in loose mode of speech is sometimes called the owner. He is to some extent in the position of a trustee, and as such holds the land for the use of the community or family. He had control of it, and any member who wants a piece of it to cultivate or build a house upon, goes to him for it. But the land so given still remains the property of the community or family. He cannot make an important disposition of the land without consulting the elders of the community or family, and their consent must in all cases be given before a grant can be made to a stranger. This is a pure native custom along the whole length of this coast, and wherever we find, as in Lagos, individual owners, this is again due to the introduction of English ideas.."

About six years later, in Summonu v. Disu Raphael the Privy Council in re-affirming the above passage, observed, "Their Lordships are aware that it is possible by special conveyancing to confer title on individual in West Africa, but it is a practice which is not to be presumed to have been applied, and the presumption is strongly against it. Prima facie the title is the usufructuary title of the family, and whoever may be in possession of the legal title holds it with that qualification."

The learned trial Judge held that Stool lands cannot be sold outright except in satisfaction of a Stool debt. While it is right to say that he had evidence to that effect before him, that finding appears to us to be far too sweeping to be upheld. Reference to the works of Redwar and Casely Hayford shows that outright alienation of land, although originally unthought of, has for many years past come to be recognised by native usage.. There are, further, the obiter dicta of Osborne, C.J., in a Lagos case of 1909, D.W. Lewis vs. Bankole where on a question by native customary law a family house could be let or sold he observes, "According to the Lagos Chiefs, the present custom is that it can be let with the consent of all branches of the family but cannot be sold. The idea of alienation of land was undoubtedly foreign to native ideas in olden days, but has crept in as the result of contact with European notions and deeds in English form are now in common use". And Webber, J., observed

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twenty-one years later in Brimah Balogun and others v. Saka Chief Oshodi, "The Chief characteristic feature of native law is its flexibility - one incident of land tenure after another disappears as the times change - but the most important incident of tenure which has crept in and became firmly established as a rule of native law is alienation of land". In our opinion the existence of a Stool debt was not at the times material to this inquiry a necessary preliminary condition to the sale of Stool land.

The case of Amah Korkuah vs. Kwame Yamoah, W.A.C.A. 22/5-22/6/50 Written Judgments at page 27 is in point and I set it out hereunder in extenso:

BLACKALL, P.: The Court has been much assisted in this case by the able arguments of Mr. Benjamin and Mr. Akufo-Addo. The appeal turns on question of native tenure and native customary law. It is eminently a case in which the observations of the Privy Council in Nthah v: Bennieh 2 W.A.C.A. p.3 namely that "decisions of native tribunals on such matters which are peculiarly within their knowledge should not be disturbed without very clear proof that they are wrong."

The question here is whether the respondent had an interest in a certain house. Mr. Benjamin referred us to Redwar comments on Gold Coast Ordinances at page 80 in which it is stated that exclusive ownership was still rare. But the learned author went on to say that it would probably increase as time went on, and Kingdon, C.J., in Codjoe & ors. v. Kwatchey & ors. 2 W.A.C.A. At page 378 observed that "the presumption in favour of all property being family property is not nearly so strong today as it was when Redwar was writing in 1909." Fifteen years have elapsed since Sir Donald Kingdon's observations and the trend towards individual ownership has progressed further in the same direction since then. I am unable to agree with Mr. Benjamin that the fact that the learned Chief Justice was a party to the decision in Tsetsewa v. Acquah & or. 7 W.A.C.A. p.216 should be taken as an indication that he receded from his previous statement.

Reliance was also placed on the last mentioned case by the appellant in support of his contention that the Native Courts were wrong in holding that the land was not family property. The head note in that case is -

"The evidence adduced on behalf of defen-
"dants was not sufficient to rebut the
"strong presumption in favour of family
"property which is the rule among Fanti-
"speaking people."

But in the present case the Native Courts evidently did consider that the evidence was strong enough to rebut it and it appears to me that there are no grounds to cause this Court to hold they were wrong. On the contrary, I think there are good reasons for saying they were right. The appellant throughout the proceedings in the Court below based his claim on that of an individual owner. As Mr. Akufo-Addo remarked, he stated this with some vehemence in his appeal from the Asantehene's Court, and I cannot accept Mr. Benjamin's ingenious suggestion that he was a simple unsophisticated man who did not quite know what he was saying when he asserted that the building was not family property. If we look at his evidence in the Native Court it was perfectly clear that he was claiming it for himself. It was only when the appeal came to this Court that he is put forward by his counsel as a benevolent head of the family.

It was further argued for the appellant that even if this Court were to hold that the respondent was a joint owner the appellant should succeed so far as the claim related to the injunction, as one was not issued. For my own part I think when one is dealing with a Native Court proceedings where there are no pleadings one must not be too technical. We should look at the decision as a whole and looking at it that way it is clear that what the Native Court did was to hold that the respondent had a joint interest in the property and ought not to be evicted and they were doing their best to see that this would not occur.

I think therefore that the appeal should be dismissed but that the order should be that the judgment of the Court below is affirmed subject to the variation that the declaration should be that the property is jointly owned by the respondent and the appellant as equitable co-owners and that the appellant holds it in trust for the two.

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SMITH, Ag. C.J.: I agree. I would only like to add a few words on the subject of the presumption, that property is owned by communities among Fanti speaking people as described in Sarbah and Redwar.

I agree with the observations of the learned President that though this presumption exists, generally it shows a tendency to weaken. But whatever may be the general situation about this presumption I am of opinion that no such presumption exists in respect of Kumasi lands.

Sometime in the early nineteen hundreds the whole of Kumasi was vested in the Crown and the Crown exercised the power of granting out leases in English legal form to the inhabitants thereof. In 1943, by virtue of Ordinance No.17 of 1943 the Crown subject to certain exceptions which do not concern us, transferred its reversionary rights over the Kumasi lands to the Asantehene who was empowered to grant new leases and renew old leases in similar form to the ones originally granted by the Crown. Section 22 of that Ordinance went on to provide that "No lease, transfer, devolution, mortgage whether legal or equitable, assignment, underlease or surrender of land vested in the Asantehene under the provisions of this Ordinance, shall be of effect until the same is registered by the Commissioner of Lands." The presumption is therefore that the person who is registered as the lessee of the land is the owner thereof on terms governed by English law. Anyone who wishes to show that the registered owner is not the real owner has to prove that fact. For that reason the whole basis of Mr. Benjamin's argument with regard to the land being communally owned, however valid for other parts of the country, does not exist in respect of Kumasi lands.

I agree that the appeal should be dismissed.

LEWEY, J.A.: I also agree.

"As the law is administered by able and
"experienced men, who know too much to
"sacrifice good sense to a syllogism it
"will be found that, when ancient rules
"maintain themselves, new reasons more
"fitted to the times have been found for
"them, and that they gradually received a
"new content, and at last a new form, from

"the grounds to which they have been "transplanted" - HOLMES.

This assertion is well supported by historical facts which explain the phenomenon.

"The customs, beliefs or needs of a primitive "time establish a rule or a formula. In the course "of centuries the custom belief or necessity dis- "appears but the rule remains. The reason which "gave rise to the rule has been forgotten, and "ingenious minds set themselves to enquire how it "is to be accounted for.

"Some ground of policy is thought of, which "seems to explain it and to reconcile it with the "present state of things, and the rule adapts "itself to the new reasons which have been found "for it, and enters on a new career. The old "form receive a new content, and in time even the "form modifies itself to fit the meaning which "it has received." - HOLMES.

At all material times prior to the introduction of the Native Jurisdiction Ordinances, Judicial Assessors sitting with Local Chiefs to hear and determine disputes among natives gave to the Customary Law the flexibility necessary to meet new circumstances and to satisfy the rising standard of justice.

"Consuetudo debt esse certa; nam incerta pro nulla habentur".

A custom is a rule generally observed in a particular locality which displaces within that locality the ordinary legal principle applicable to the rest or some parts of the country. For a Court to enforce a custom the provisions of such local rule must be proved.

On the evidence it is clear that as to purchase of land the important thing is the cutting of "Guaha" the customary way of giving "livery of seisin" which is evidence that the sale is both complete and valid. It is in fact a sine qua non in the system of Absolute Alienation of Land, and where it is not observed the sale is considered null and void, as that native custom is proof of a legitimate purchase of land. The paying of "Tramma" or "earnest-money" is the equivalent

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custom as evidence that a contract had been concluded.

Among the Documents produced by the Plaintiff in support of his case are Conveyances reciting the custom of "Guaha" prepared by Mr. E.O. Asafu-Adjaye (now His Excellency the High Commissioner of Ghana to the Court of St. James, London). His Clerk Mr.Darbu gave evidence and I set out his evidence in extenso:

"Daniel Kwadjo Darbu: S.O.B. in English, states: "I am a Law Clerk and live at Kumasi. I have "been a Law Clerk for about 20 years, and had "been in the employ of Mr. E.O. Asafu-Adjaye in "Kumasi. On page 3 of Exhibit "F" my signature "appears in two places as witness to the left- "thumb prints and marks of Chief Owusu Afriyea, "Odikro of Kyempoh and Nana Kofi Adu, Kokofuhene. "This document (Conveyance) was drawn up by Mr. "E.O. Asafu-Adjaye and executed in my presence.

Cross-examination by Mr. Benjamin:

"Before 1940 Mr. Asafu-Adjaye practiced in "Kumasi and Accra. The Document was so "executed by the said Kokofuhene Nana Kofi "Adu at Kokofu in my presence. Mr. Asafu-Adjaye "was for many years the Legal Adviser of the "Asantehene."

I accept this evidence and am of opinion that it is inconceivable to suggest that Mr. Asafu-Adjaye, who during this period of the sale was the legal adviser of the Asantehene the occupant of the "GOLDEN STOOL" would recite the performance of the custom of "Guaha" if that rule had not been performed and generally observed in Ashanti and of local recognition as such.

Other such Conveyances are Exhibits "C" (Copy of Conveyance made the 31st day of July, 1930, between the Stool of Kyempoh and Kwesie Adjamang, Kwaku Tannor and Kwadjo Donkor all of Koforidua in the New Juaben Settlement as Purchasers). "H" (Conveyance made the 12th day of April, 1935, between the Stool of Kyempoh and Joseph Oko Sasraku's Company of Teshie, Accra as Purchasers) and "Q" (Copy of Conveyance made the 1st day of February, 1937, between the Stool of Kyempoh and Akramah Tagoe's Company of Gbese, Accra as Purchasers).

Exhibit "F" prepared by Mr. Asafu-Adjaye and referred to in the evidence of Mr. Darbu supra was made the 7th day of September, 1940, between the Stool of Kyempoh as Vendors of the first part, the Kokofu Stool as the Confirming Party of the second part and Attram's Company of Larteh, Akwapim, as Purchasers of the third part. It is significant to observe that Exhibit "F" recites the sale as by the Vendors' Predecessor Chief Kwasi Botwe of Kyempoh on the 2nd day of February, 1925 by the native custom of "Guaha".

As hereinbefore stated the Defendants relied on an Agreement with the Co-Defendant dated 30th October, 1953, whereby the Defendants were put in possession of Chempaw land (but there is no indication whether or not it includes the land in dispute) for the purpose of felling timber trees on the land, but by paragraph 5 of the Statement of Defence as amended does not specifically deny the trespass alleged by the Plaintiff save the denial of trespass on the Plaintiff's possessory title.

The so-called Felling Agreement (Exhibit "1") is of a nature so hybrid and incomplete that in my opinion it could not be enforced under English Law. There are no safe-guards nor are there delineations and/or limitations of the area of the land purported to have been granted by the Kokofu Stool (Co-Defendant) to the Defendants (a Partnership Firm of non-natives). There is no Plan attached to the Document, and the so-called Felling Agreement may in the circumstances be described as "carte-blanche charter" to fell Timber on Chempaw Land. However, this Document is immaterial to, and does not in any way affect, the question of the alleged trespass for which no Damages are claimed.

The main Defence is that of the Co-Defendant's Statement of Defence and for the purpose of convenience I set out hereunder in extenso:-

"1. The Co-Defendant says that the Co-Defendant is
" the Omanhene of Kokofu State, and that the
" Co-Defendant's Stool has at times been and is
" the paramount owner of the whole of the Chempaw
" land - including the portion claimed by the
" Plaintiff herein, and that the Chempaw Stool
" is the caretaker of the Co-Defendant's such
" Chempaw land.

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"2. In answer to the averments contained in paragraph 1 of the Plaintiff's Statement of Claim, the Co-Defendant says that the Co-Defendant's Stool has never at any time sold any portion of his Chempaw land to the Plaintiff herein.

"3. In further answer to the averments contained in paragraph 1 of the Plaintiff's Statement of Claim the Co-Defendant denies categorically that the Co-Defendant's Stool has any knowledge of the sale of any portion of his said Chempaw land to the Plaintiff by the Chempaw Stool, and the Co-Defendant says further that the Co-Defendant's Stool has never empowered or authorised the Chempaw Stool to sell any portion of said Chempaw land to the Plaintiff, and further that the said Chempaw Stool has no right to sell any portion of the Co-Defendant's Stool.

"4. In further answer to the averments contained in paragraph 1 of the Plaintiff's Statement of Claim, the Co-Defendant says that since the Co-Defendant has never authorised or approved of the sale of any portion of his Chempaw land to the Plaintiff, any such purported sale of the Co-Defendant's said land by the Chempaw Stool to the Plaintiff herein was and is invalid.

"5. The Co-Defendant says that the existing custom prevailing in Ashanti and which also prevails at Kokofu is that Stool Lands are not sold, and that no portion of the Kokofu Stool land has ever been sold by the Kokofu Stool to anyone.

"6. In answer to the averments contained in paragraph 2 of the Plaintiff's Statement of Claim the Co-Defendant says that at all times material to this suit, the Co-Defendant's Stool has been and is the Owner in possession of the whole of the Chempaw land - including the portion claimed by the Plaintiff.

"7. In further answer to the allegations contained in paragraph 2 of the Plaintiff's Statement of Claim, the Co-Defendant says that the Co-Defendant's Stool became aware of the existence of the Plaintiff on the land about six (6) years ago, and that the Co-Defendant

" immediately reported the matter to the
" Otumfuo the Asantehene - whereby the Chempaw
" Chief and the Plaintiff and his party were
" all summoned to appear before the Otumfuo in
" Council - where it was made clear to the
" Plaintiff that since Stool lands in Ashanti
" were not sold and since the Co-Defendant's
" Stool had not approved of any sale to the
" Plaintiff, the Plaintiff could only remain
" on the land as a tenant at Will of the Co-
" Defendant's Stool.

"8. The Co-Defendant says that consequent upon
" the order or pronouncement of the Otumfuo in
" Council on this matter, the Plaintiff and his
" party went to the Co-Defendant at Kokofu -
" and there the Plaintiff did acknowledge
" the Co-Defendant as the absolute owner
" in possession of the whole of the Chempaw
" land including the portion claimed by Plain-
" tiff, and the Plaintiff then besought the Co-
" Defendant to permit the Plaintiff and his
" party to remain on the land subject to such
" terms that the Co-Defendant would impose on
" the Plaintiff.

"9. The Co-Defendant says that the Co-Defendant's
" Stool agreed to accept the Plaintiff and his
" party as his tenants at Will on the land, and
" the terms that the Co-Defendant's Stool
" imposed were that the Co-Defendant's Stool
" should be entitled to a one-third (1/3) share
" of the annual proceeds of cocoa reaped on
" the land by the Plaintiff every individual
" member of the Plaintiff's party - which terms
" the Plaintiff said he was going back to con-
" sider with all his people.

"10. The Co-Defendant says that the Plaintiff did
" not bring the Co-Defendant a reply, but that
" shortly afterwards upon the application of the
" Plaintiff, a Commission of Enquiry was appoin-
" ted, and the Co-Defendant as also the Asante-
" hene's Representative were invited to give
" evidence before it as to whether Stool lands
" in Ashanti were sold or not.

"11. The Co-Defendant says that the Commission of
" Enquiry did enquire into that matter and that
" its decision upon which the Plaintiff has
" mainly relied in basing his claim is not

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" published and Co-Defendant says that the
" Plaintiff's action herein is premature.

"12.The Co-Defendant will contend that neither
" the Plaintiff's writ nor his Statement of
" Claim discloses a cause of action against the
" Defendant in that Plaintiff claims no sub-
" stantive remedy therein.

"13.The Co-Defendant says that the Plaintiff is
" not entitled to the relief sought or any
" relief.

"14.Save as is hereinbefore expressly admitted
" the Co-Defendant denies each and every al-
" legation of fact as if the same had been set
" out and traversed seriatim".

The motive which actuated the Co-Defendant in seeking refuge under the "GOLDEN STOOL" is discernible from his introduction of "Otumfuo Nana Asantehene in Council" in relation to sales of Kokofu lands to strangers, and his feverish attempts to induce these strangers to enter into Tenancy Agreements with the Kokofu Stool under the Abusa System as overwhelmingly concluded by the evidence (oral and documentary). Such attempts not only depict unsavoury try-on, but from the evidence constitute concerted determination of a Stool occupant to regain Stool Lands lawfully sold by his Predecessor to strangers, in order to acquire further use or tents therefrom.
To entertain or in any way encourage such a practice would not only be a travesty of the Administration of Justice, properly so called, but also a perpetual slur on Chieftaincy, particularly in Ashanti in relation to transactions and dealings with non-Ashanti natives from Southern Ghana.

The averments contained in paragraphs 7 - 10 inclusive of the Co-Defendant's Statement of Defence are negatived and wholly demolished by:-

(1) The Co-Defendant's evidence at the Trial wherein he admitted that the Plaintiff's Company had been and still are in possession of the land in dispute to the knowledge of the Kokofu Stool and the Elders both before the after his enstoolment, and that such knowledge was acquired before the Plaintiff's Company settled on the land.

(2) The Co-Defendant's evidence under cross-examination by Mr. Franklin (Plaintiff's Counsel) before the Enquiry (Exhibit "AA") which was held according to him to ascertain whether or no land is saleable in Ashanti as pleaded in paragraph 10 of his Statement of Defence, and set out hereunder in extenso:

XX BY MR. FRANKLIN: "Yes I claim to own land "in the West of the Reserve under my sub-"stool Jwenjeasi, and also land in the East "of the Reserve under my sub-stool Chempaw "and I claim to own land under my Sub-Stool "Mirasa. Mirasa is between Jwenjeasi and "Chempaw. I have no dispute with Tokwai or "Kumasi but have boundary with Tokwai. Tokwai "has boundary with all my three Sub-Stools "i.e. Chempaw, Mirasa and Jwenjeasi. One of "the principal boundaries is the River Debi. "The land North of the River Debi is claimed "by Jwenjeasi, Mirasa, Ofuase, Bankame, Banso. "Land was not alienated to Dano Kofi it was "given to them to farm. Some of the Sub-"chiefs used to sell land to people without "my knowledge. If this is done I will claim "the land back. I have no knowledge of land "being given to Tetteh Ahia. I would rather "let my Sub-Chiefs reply to questions of sale "alienations as I have no knowledge of any "such transactions. A Sub-Stool cannot give "away or sell land either to a stranger or "Ashanti man without my permission. If I "find this out I claim the land back or tell "the purchaser to refund any money paid. "I have done this before. I have many "agreements with strangers for farming. When "these agreements are made drink money is "paid and a yearly Abusa also paid. The "farms are usually for cocoa or ground crops. "I cannot say if I know Dano Kofi or not at "present; the same applies to Tetteh Ahia, "also to Amofa & Co., I would like to consult "my agreements register."

(3) The evidence of Mr. J.W.K. Appiah Chief Clerk of the Asanteman Council and Archivist of the Asantehene that the Meeting of the Asantehene in Council was the Kumasi Divisional Council to consider sales of Kumasi Lands in Ashanti Akim and not to enquire into sales of Kokofu Lands and that

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Judgment, 17th December 1957 - continued.

as the Asantehene had never claimed nor claims land in Kokofu or in Divisions without lands claimed to be Kumasi Lands, the Asantehene could not by an order or decision deprive the Plaintiff's Company and all other purchasers of land in Ashanti of their absolute ownership thereof.

It should be observed however, that :-

(a) this witness adherred to the sweeping but unsupported statement that land is not saleable in Ashanti even though there is no such declaration as required by law;

(b) he was in entire agreement with the passages from Professor Busia's Book read to him and referred to supra, and also the passages from Rattray on Ashanti 2nd Edition similarly read to him and referred to supra.

(4) The evidence of Baffuor Osei Akoto who in substance supported the Plaintiff's case and further maintained that the meeting of the Otumfuo the Asantehene in Council in 1950 was the Kumasi Divisional Council at the Ahenfie to enquire into alleged sales of lands in Ashanti Akim claimed to be Kumasi lands, and that a Record was taken of the proceedings but no such proceedings were produced.

Exhibit "2" contained the Charges alleged to have been preferred against Nana Kofi Adu, Omanhene of Kokofu and stress was laid on charges 35, 38, 39, 40 and 41, that he sold Stool-Lands.

Charge 35 is that he sold land at Chempaw without the knowledge and consent of his Elders, and the money was not sent to the Treasury.

Charge 38 states that he sold a portion of land without the consent of the Oman.

Charge 39 states that he sold a portion of land without the knowledge and consent of the Oman.

Charge 40 states that he sold a portion of

land without the knowledge and consent of the Elders.

Charge 41 states that he sold a portion of land without the knowledge and consent of his Elders.

These charges speak for themselves as to the motive and intention of the Complainants vis-a-vis non-payment into the Treasury and their knowledge and/or consent in each particular sale. The Chief did not appear to answer the charges and was declared destooled "in absentia".

On Appeal before the Chief Commissioner of Ashanti, he confirmed the destoolment on the ground that he did not attend the Council's call (Exhibit "3").

On the question of the Assault and the alleged Trespass I accept the evidence of Peter Armah (18th witness for the Plaintiff) in its entirety. Quite apart from his evidence standing unchallenged, I regard him as a truthful witness. From his evidence I am satisfied that trespass was committed as alleged in the vicinity of the said Armah's village as shown on Exhibit "A" (Plan of the Land in dispute) tendered and not objected to.

There is no claim for Damages and the brutal assault upon this witness by one Bel an employee of the Defendants is not relevant to the issues and I am in no way influenced thereby.

Exhibit "J", a letter from the Co-Defendant to this witness throws considerable light on the issues and its importance cannot be over-emphasized and it is set out hereunder in extenso:

No.274/05/1949:

KOKOFUHENE'S OFFICE,
KOKOFU, ASHANTI.
3 NOVEMBER, 1951.

Sir/Sirs,

KYEMPO LAND:

It has been brought to my notice that you have acquired some rights over some portion/portions of Kyempo Stool land. As the sole ownership

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Judgment,

17th December 1957 - continued.

of the Kyempo Stool land is vested in the Paramount Stool of Kokofu and as the Occupant of the said Stool, I have the honour most respectfully request that you report at my office on 3rd December, 1951, at 9.30 a.m.

2. As the general discussion of this request will be based on the question of the above subject (Kyempo Stool Land), I have to impress upon you the advisability of bringing with you all documents in your possession, relative to the Kyempo Stool lands.

I am,

(Sgd.) Osei Assibey III
KOKOFUHENE.

Mr. Armah,
Kyempo-Subenso,
c/o Nana Kyempohene,
Kyempo.

OY.

The Co-Defendant's version is garbled and on the settled rule of law that the Plaintiff must succeed on the strength of his own case in a claim of this nature and not on the weakness of the Defence, I am satisfied that the Plaintiff has satisfactorily discharged the onus of proof which lies on him.

I was not impressed by the Co-Defendant, and I have no hesitation that not only was he not telling the truth as to the facts, but has also not stated the true principles of native customary law on Land-Tenure applicable to this case. He has taken refuge under the allegation: land is not saleable in Ashanti - a statement far too sweeping and in no way supported by the facts and the circumstances of this case.

The evidence (oral and documentary) is overwhelmingly in support of the Plaintiff's contention that land is saleable in Ashanti, particularly in the Divisions or States where the Asantehene does not claim lands qua Kumasi lands.

On the evidence I am satisfied that where a sale is without the requisite knowledge, consent or approval it is not void ab initio but voidable.

I am satisfied by the preponderance of evidence before me that the Plaintiff is entitled to the reliefs sought in his Writ of Summons and in his Pleadings as amended.

In the result, I find that the Plaintiff's Company is in possession of the said land as owners thereof by right of purchase under an absolute sale by "Guaha" from the Stool of Chempaw with the knowledge and consent of the Paramount Stool of the Kokofu State: and there will be the declaration of Title and also an Order for an Injunction for the Plaintiff against the Defendants and the Co-Defendant jointly and severally as claimed.

The Co-Defendant's Counterclaims as per his Notice of Amendment of his Defence and Counterclaim for (a) A Declaration of Title to the piece or parcel of land the subject-matter herein; (b) Recovery of possession of the piece or parcel of land the subject-matter of the dispute herein; and (c) Damages for Trespass are dismissed and Judgment entered for the Plaintiff.

The Plaintiff is entitled to his costs against the Defendants and the Co-Defendant jointly and severally: Counsel's Brief Fee is assessed at 2,000 guineas: other costs to be taxed.

The Plaintiff will also have his costs of the abortive proceedings in pursuance of my Order bearing date the 19th day of June, 1957.

(Sgd.) J. Sarkodee-Adoo,

Judge.

In the Court of Appeal

No.44

Notice and Grounds of Appeal, 19th December 1957

No.44

NOTICE AND GROUNDS OF APPEAL

IN THE COURT OF APPEAL - GHANA
ACCRA

EDWARD KOTEY ANNAN SASRAKU Substituted for Emmanuel Kotey Quao (Deceased) as Head and Representative of a family Company of Teshie people claiming certain lands near Chempaw. PLAINTIFF-RESPONDENT

versus

NAJA DAVID, C.H. GHASSOUB and N.H. GHASSOUB trading in Partnership as Naja David Sawmill Company DEFENDANTS-APPELLANTS

NANA OSEI ASSIBEY III - Representing the Stool of Kokofu. CO-DEFENDANT-APPELLANT

NOTICE OF APPEAL

TAKE NOTICE that the Defendants-Appellants and the Co-Defendant-Appellant herein being dissatisfied with the whole Judgment of the Land Court Kumasi - presided over by His Lordship Justice J. Sarkodee Adoo dated the 17th day of December 1957 - as stated in paragraph 2 - doth hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4. And the Appellants further state that the names and addresses of the persons directly affected by the appeal are those set out in paragraph 5.

2. The whole Judgment of the Land Court - Kumasi.

3. GROUNDS OF APPEAL:

1. Judgment against the weight of Evidence.

2. Because the Plaintiffs-Respondents herein were unable to discharge the onus of

proving that the alleged sale of the lands subject matter of dispute was with the knowledge consent and/or approval of the Stool of Kokofu State.

3. Because it was not proved by the Plaintiffs-Respondents herein that the ceremony of Guaha is a Custom obtaining in the Ashanti Kingdom.

4. Because the performance of the Guaha Custom in this case was not proved; especially as it is denied by the Defendants and the Co-Defendants-Appellants.

5. Because no trespass was proved; in particular the spot of the trespass was not specifically indicated nor proved.

6. Because the Learned Judge being bound by precedent was wrong in dissenting from the decision in the case Aye Mensah & others versus Wiaboe & others which was brought to his notice.

7. Because the Brief Fee of 2,000 guineas awarded to the Plaintiffs-Respondents' Counsel is excessive in the circumstances.

8. Because the quotation from unrecognised Authors are legally irrelevant to the point for decision in the case.

9. Because the Learned Trial Judge without specifically rejecting the evidence of Mr. Appiah and Baffuor Akoto rejected them and failed to give effect to them in his Judgment.

10. Because Plaintiffs-Respondents herein failed to prove that lands are saleable in Ashanti.

4. The Defendants-Appellants and the Co-Defendant-Appellant seek that the whole Judgment of the Land Court be reversed in their favour.

5. The persons directly affected by the appeal are:-

In the Court of Appeal

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Notice and Grounds of Appeal, 13th December 1957 - continued.

Edward Kotey Annan Sasraku, of Teshie & ors.

DATED AT KUMASI THIS 19TH DAY OF DECEMBER 1957.

(Sgd.) C.F.H. Benjamin

SOLICITOR FOR DEFENDANTS-APPELLANTS & THE CO-DEFENDANT-APPELLANT.

THE REGISTRAR,
COURT OF APPEAL,
KUMASI.

AND COPY TO:
EDWARD KOTEY ANNAN SASRAKU,
OF TESHIE,

OR THEIR SOLICITOR
H.V.A. FRANKLIN, ESQ.,
ACCRA.

No.45

Court Notes, 18th December 1958

No.45

COURT NOTES

18th December, 1958.

In the Court of Appeal, Thursday the 18th day of December, 1958.

Cor: van Lare, Ag. C.J., Granville Sharp, J.A. and Ollennu, J.

Civil Appeal
No.46/58.

Naja David Sawmill Company & anor.
(Defendants-Appellants)

v:

Edward Kotey Annan Sasraku etc.
(Plaintiff-Respondent).

Mr. Hayfron-Benjamin with him Prempeh for Appellants.

Mr. Franklin for Respondent.

Hayfron-Benjamin: Refers to the judgment pp.67-95
Grounds of appeal pp.96-98

Argues ground 2: Onus of proof not discharged by plaintiff.
Refers to p.3 - Statement of Claim, para.1 to p.5 - Statement of Co-Deft. para. 1

Land in dispute is confined to Exh. G.H. & P - see judgment p.68 line 12

Condeded that there is no dispute as to the land in dispute.

Refers to Exb. G. p.119 - Submits conveyance does not show that the Kokofu Stool conveyed. Therefore no evidence that the overlord, real owner, conveyed to the plaintiff.

Cites Sintim vs. Apeatu 2 W.A.C.A.197 - Sale of land by Sub-chief must be with consent of his overlord.

Submits that in this case no evidence that the overlord's consent or knowledge was obtained. Therefore onus on plaintiff not discharged.

Ollennu, J.: draws attention to p.53 lines 18 - 22 and points to page 121 linguist of Omanhene's signature as witness to the document Exh. G.

Hayfron-Benjamin: Refers to p.53 line 43.

Ground 6: Judge wrong in dissenting from decision in Aye Mensah vs. Wiaboe & ors. Divisional Court 21 - 25 p.170 and applies his own: refers to the judgment p.79 lines 43 - 45.

Together with 6, argues grounds 1 & 10: Submits that

(1) the plaintiff failed to lead evidence to establish the custom of outright sale of land in Ashanti:

(2) That the thousand or more instances of sale of land in Ashanti does not amount to an established custom of sale of land in Ashanti:

(3) Learned Judge though not necessarily bound by Aye Mensah v. Wiaboe was wrong in rejecting that decision.

On the contrary the evidence of dignitaries of Appiah and Baffuor Akoto shows that land is not saleable in Ashanti:

In the Court of Appeal

No.45

Court Notes, 18th December 1958 - continued.

Plaintiff relied on sale by native custom - plaintiff must prove such sale - Such evidence lacking in this case.

Trial Judge says Exh. G.H.P. worthless because they offend against Concession Ordinance.

Submits that there is even no proof of sale according to Native Custom.

Ground 8: Unrecognized authorities unnecessarily quoted. Judge gave absolute declaration of title Judge wrong.

Ground 7: Costs Excessive - abortive trial - no fault of parties, Court judge multched in Costs. Fantastic.

Franklin: Judge right in declaring plaintiff entitled to absolute title. Refers to evidence of Appiah p.59 line 3.

Refers to Exb. G. 119.

Leave it to the Court as to what interest the transaction was intended to be passed in view of the evidence of the extra doc. p.123. We say our interest is in accordance with Native Custom.

Whether absolute title or possessory title is with the Court to decide. Our conveyances Exh. G.H. & P is against the Concession Ordinance and void.

On Costs: Several adjournments. There was no assessor - Judge's fault.

Costs of Abortive trial - Have not in fact been taxed.

On costs of 2,000 guineas: Court of Appeal has right to interfere with costs. Has Judge exercised his discretion judicially?

Matter extreme importance to others. Case large enough but simply put by Counsel. Costs punitive. Judge quite right in the exercise of his discretion.

Prempeh: 14 hearing dates were due to judge taking the case as from 12 noon for only an hour or so.

C. A. V.

(Sgd.) W.B. van Lare,
Ag. C.J.

No.46

J U D G M E N T

In the Court of Appeal

No.46.

Judgment,

12th January 1959

IN THE COURT OF APPEAL
ACCRA, GHANA

Coram: van Lare, Ag. C.J.
Granville Sharp, J.A.
Ollennu, J.

Civil Appeal
No.46/58

12th January, 1959

Naja David, C.H. Ghassoub and N.H. Ghassoub Trading in partnership as Naja David Sawmill Company, Defendants-Appellants

Nana Osei Assibey III, representing the Stool of Kokofu, Co-Defendant-Appellant

v:

Edward Kotey Annan Sasraku substituted for Emmanuel Kotey Quao (deceased) as Head and representative of a Family-Company of Teshie people claiming certain lands near Chempaw, Plaintiff-Respondent

JUDGMENT:

GRANVILLE SHARP, J.A.: The claim in this action was for a declaration of title to and ownership of land and for an injunction to restrain the defendants from trespassing on the said land.

The plaintiff as representative of a family company of Teshie people based his title to the land upon three documents dated 23rd December 1957, 4th August 1934 and 12th April 1935 respectively by which he claimed that the said land was sold to him absolutely in three parcels by the Stool of Chempaw. The co-defendant in the

In the Court of Appeal

No.46

Judgment,

12th January 1959 - continued.

suit, representing the Stool of Kokofu bore the whole burden of the defence, the defendant Sawmill Company simply relying on the protection of a felling agreement granted to them by the Kokofu Stool and dated 30th October, 1953.

The co-defendant did not admit that the land was sold as alleged by the plaintiff and contended further (a) that land is not alienable by sale in Ashanti and (b) that if there had been any sale by the Chempaw Stool it was a sale made without the knowledge or consent of the Paramount Stool, the co-defendant, and was therefore invalid.

The co-defendant further, by amendment of his pleading counterclaimed for a declaration of title to the land in dispute; for recovery of possession as against the plaintiff and for damages for trespass as against the plaintiff.

Both the claim and the counterclaim therefore contended for absolute ownership of the land subject matter of the action.

It was not disputed that the co-defendant was the Paramount Stool served by the Chempaw Stool, and the Chempaw Stool did not appear to dispute the sales set up by the plaintiff.

There was no dispute either as to the identity of the land in question and Counsel for the co-defendant admitted that the lands described in the several documents produced by the plaintiff constituted in fact the whole of the land for which the rival claims were set up in the action.

At the trial the plaintiff admitted that these documents in themselves could not, in the light of the Concessions Ordinance, be relied upon as constituting valid documents of title, but contended that they had important evidentiary value as being confirmatory of the earlier customary sales to which they referred at which, in each case, the custom of 'Guaha' had been performed. The family company represented by the plaintiff was a Ga family, and would seem to have wished, 'Ex abundanti cautela', that the Ga custom should be observed, even in Ashanti.

In the course of the hearing before the Land

Court the issues became narrowed. It could not be questioned on the evidence that the three purported sales relied upon by the plaintiff had in fact taken place and it was not seriously disputed that 'Guaha' had been performed on each occasion. The evidence upon these matters was all one way. There remained only the issues as to whether land in Ashanti was alienable by sale and if so, whether the sales here in question were carried out without the knowledge and consent of the co-defendant the Paramount Stool over the vendor Stool, the Chempaw.

The learned Judge at the Land Court resolved both these questions favourably to the plaintiff. He therefore dismissed the counterclaim and entered judgment for the plaintiff granting him a declaration of title to ownership of the land and an injunction as prayed. He awarded no damages for trespass, but in his award of costs fixed Counsel's fee at Two thousand (2,000) guineas.

From the judgment so given the co-defendant has appealed to this Court. He has appealed also against the award of costs.

I will deal first with this latter aspect of the appeal.

The general order by which the learned Judge directed that the plaintiff should have the taxed costs of the action against the defendant and co-defendant jointly and severally could not in ordinary circumstances be disturbed by this Court, but the learned Judge in this case went further. He concluded his judgment with the following direction:

> "The plaintiff will also have his costs "of the abortive proceedings in pursuance "of my order bearing date the 19th day of "June 1957."

The order referred to was as follows:-

> "It appearing that on the 8th day of May, "1956, upon the hearing of the Summons for "Directions before Benson, J., on the ap- "pearance of Mr. Franklin, Counsel for the "plaintiff and Mr. Prempeh, Counsel for the "defendant and the co-defendant, it was

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Judgment, 12th January 1959 - continued.

"ordered, inter alia, that the trial to be "by Judge with one Assessor in pursuance of "the provisions of section 25(1)(b) of the "Courts Ordinance (Cap.4) vide Mantse Dake "II etc. v: Narter Nyabu and others W.A.C.A., "3rd December, 1945. cyclostyled Judgments. "AND WHEREAS notwithstanding the said Order "the trial commenced and proceeded without "the aid of an Assessor, both Counsel having "neglected or failed to bring to my notice "the said order at the commencement of the "trial, I do hereby order the proceedings "to be stayed and to be recommenced with the "assistance of an Assessor, and do appoint "Mr. H.E. Akyeampong of Kumasi as an Assessor "for the trial accordingly.

"Costs of the abortive proceedings up to and "including the 7th day of June, 1957, to be "costs in the cause to abide the ultimate "result of the trial. Such costs to be "taxed.

"Re-hearing to commence at 11.15 a.m. today."

We were informed by Counsel both for the appellant and for the respondent that during the first three days of the hearing they were not conscious that Benson, J. had on the 8th May, 1956, directed that the trial should be with an Assessor. It seems to be the case that the learned Judge did not read out the order which he was making although he set it out upon the record. Learned Counsel for the plaintiff had raised an objection to the appointment of any Assessor, and in the circumstances was left under the erroneous impression that his objection had prevailed. Indeed both Counsel were under that impression. No one was in any way to be blamed and certainly it was not the fault of the co-defendant and defendant any more than of the plaintiff. I find it difficult in these circumstances to understand why the co-defendant and defendant should be burdened with the whole of the costs of the abortive hearing. In fact on the 5th December 1957, the Assessor became ill, and the learned Judge discharged him and continued the trial without him over six hearing days which seems to indicate that it could from the outset have been so heard. Taking all these matters into consideration I would discharge this

part of the learned Judge's order as to costs and direct that each party do bear his own costs of the abortive hearing; that is to say up to the 19th June 1957.

As to Counsel's fee fixed by the learned Judge at 2,000 guineas I would hold that this is manifestly excessive, and out of all proportion to the general level of fees allowed by the Courts in the country, and I cannot find myself able to revise the first impression view that I formed upon the matter by any of the arguments adduced by learned Counsel, either on the ground that the case was of far reaching importance or because it happened that the plaintiff engaged Counsel who lives and practices in Accra and who had therefore to make frequent journeys to Kumasi where the trial was held. I would substantially reduce this fee.

Passing now to the legal substance of the appeal I would say first that the Notice of Appeal seems to me to be somewhat supercharged with reasons set up to support the view that the learned Judge was wrong in his decision and in his reasoning. There are no less than ten grounds of appeal, but learned Counsel did not find it necessary to argue all of them because it is reasonably clear that they are, taken as a whole, variations upon three main themes: (a) that the sales by custom of 'guaha' were not proved and (b) that it was not proved that the sales were made with the knowledge and consent of the Paramount Stool, the co-defendant, and (c) that sale of land in Ashanti is not possible under native custom.

I cannot accept any of these contentions.

The learned Judge made exhaustive research into the question whether land in Ashanti is capable of alienation by sale, much of which research it is true entered channels which could not be expected to lead very far in a Court of Law. He did however consider the opinions of learned writers whose views are authoritative and found there what is supported by the evidence on the record, that over the past quarter of a century and more the impact of western ideas of land holding upon what was at one time a rigid system of native customary law had led to a

In the Court of Appeal

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Judgment, 12th January 1959 - continued.

relaxation of these ancient laws, so that it is not uncommon, though it is not usual, to find land being sold in parts of the country, including Ashanti, where in former days such a transaction would not have been sanctioned by native customary law.

The evidence given by the co-defendant and his main supporting witness goes a very long way in itself to support this view. The co-defendant admitted to having expressed the view that: "A "sub-stool cannot give away or sell any land either "to a stranger or Ashanti man without my permission." He said further "I still say that before land "could be sold by the Chempaw Odikro, being a care- "taker merely he must first seek the approval of "the Kokofu Stool and the elders."

References were made by him to other cases in which chiefs and sub-chiefs had sold land and whose only offence would appear to have been that they did it without consulting the elders.

One of the co-defendant's witnesses, one Appiah, the Chief Secretary to the Asanteman Council, said "I have heard of the custom of "'Guaha', but not in Ashanti. In Ashanti we have "'Tramma' which is the equivalent of 'Guaha' in "other Akan States. 'Tramma' is the effective "mears or ceremony of sale outright in Ashanti of "all properties." In cross-examination he went further.

This is a part of his evidence: "So far as "I know and can remember there has never been any "declaration before or after 1952" (i.e. since the date of the State Councils (Ashanti) Ordinance 1952) "that lands are not saleable in "Ashanti. Before lands became valuable in Ashanti "there was gifts of land in Ashanti. The transfer "of the whole interest in land is a common incident "of native customary law, but sometimes only agri- "cultural rights are transferred. When I said "land in Ashanti is not saleable that was the case "when land had no value but it was a common prac- "tice to transfer the whole interest in land for "services rendered subject to the share (if any) of "the grantor in case of treasure trove and for "mineral rights in case of Stool lands."

It is clear to my mind that the co-defendant

really had no faith at all in the contention that land was not saleable in Ashanti. His real defence was that the land was sold without the knowledge or consent of his Stool although he said in evidence "My defence in this action is "two fold (1) that land is not saleable in Ashanti "and (2) the land in question was sold to the "plaintiff's company without the knowledge and/or "consent of the Omanhene of Kokofu, Nana Kofi Adu. "Of these the first defence that land is not sale- "able in Ashanti is more important." Neither his evidence nor that of his supporting witness, Appiah, can be said to uphold this latter contention. Indeed it traverses the whole of it, and in my view the learned Judge was perfectly right in holding as he did on this part of the case. There was a mass of evidence led by the plaintiff in support of such a finding to which I need not refer.

Mr. Hayfron-Benjamin for the appellant referred to the case of Aye Mensah & others versus Wiaboe & others (Selected Judgments of the Divisional Court 1921-1925 p.170) a case by which, so he argued, the learned Judge was bound. The learned Judge was not, in my view in any way bound by a decision of a Court of equal and concurrent jurisdiction with his own, and even if he were bound by it, this Court is not, and I would find it impossible to uphold the principle that appears to be enunciated in the case, and for which learned Counsel invited our support, that no evolutionary change in native customary law since 1874 can be recognised in these courts, and that only those elements of that law which subsisted before the date mentioned can be administered by the Judges in Ghana. Stagnation of the law in a fast developing state should be regarded with abhorrence.

As I have already said there was strong evidence that 'Guaha' was at the time of these sales recognised in Ashanti though generally it is referred to there as 'Tramma'. The documents produced by the plaintiff referred to the customary law, and it is legitimate to draw the inference from this that what is referred to is 'Guaha' or 'Tramma'.

The question then arises, whether the transactions evidenced by the documents were carried

In the Court of Appeal

No.46

Judgment, 12th January 1959 - continued.

out with the knowledge and/or consent of the Omanhene of Kokofu, at that time Kofi Adu.

There was evidence that the Omanhene had in fact assented to other sales of lands in the locality and it was proved that certain destoolment charges against him to which he made no answer, included complaints in respect of such sales. Two important facts emerged in the course of the evidence. In relation to the first and the third sales, the documents are witnessed by the Linguist to the Omanhene of Kokofu which signature is binding on the Omanhene, and it would be unlikely that he could have been in ignorance of the intervening sale, though no signature affecting him appears on the relevant document. The three sales were of contiguous parcels of land comprising in all an area of some eight (8) square miles.

These portions had, at the date of the objection raised by the later occupant of the Stool, been occupied by the plaintiff family company for periods varying between 20 and 30 years. The whole area had been clearly demarcated and the boundary cuts and marks had, it appears, been meticulously kept and cleared. Even if it could not be said, as I hold it could, that on this evidence the learned Judge was correct in finding knowledge and consent on the part of the Kokofu Stool, the facts clearly constitute proof of such laches and acquiescence on the part of the Stool as would render it inequitable to interfere with the plaintiff in occupancy of the land, and still less so if it should be in the interest of the Sawmill Company whose felling agreement is in the most general terms and would seem to grant them 'carte blanche' to wander over the whole length and breadth of the Kokofu Stool lands and fell wherever they encountered fellable timber, this to the extent of thousands of trees.

The learned Judge, rightly in my opinion, summed up his view of the co-defendant's conduct in the following words: "Such attempts . . . . "from the evidence, constitute concerted deter- "mination of a Stool occupant to regain Stool "lands lawfully sold by his predecessor to stran- "gers, in order to acquire further use or rents "therefrom." He said, and I respectfully agree with him that to encourage such a manoeuvre would

"constitute . . . a travesty of the administration "of justice."

I agree with the learned Judge in his finding that the plaintiff proved his case that the land was sold to his family with the knowledge and consent of the Kokofu Stool occupant and his elders. Even if I were to disagree I would hold that the co-defendant is estopped by laches amounting to acquiescence.

It remains to be considered what estate was transferred by the "sales" of which the documents are evidence. The plaintiff as I have said earlier conceded that no title could pass by the documents themselves. They cannot operate as validated concessions because they sin against the Concessions Ordinance in two respects (a) the area involved exceeds 25 acres and (b) no certificate of validity exists; no enquiry having been sought or held. They are however evidence of the facts stated in them, that the land was sold according to native custom. It therefore follows in my opinion that such estate passed as would usually pass on such a sale, as between natives, of Stool lands. This is not an unqualified ownership or right to the land, but a possessory right to occupy the land and enjoy the usufruct thereof; in other words the usual native tenure. The price paid by the plaintiff can be looked upon as payment of tribute partly in advance, and that further tribute was payable was recognised by the parties in a document dated 23rd December 1927 which reads as follows:-

"THIS AGREEMENT made the 23rd day of December "1927 that we the undersigned have agreed that "if any Gold Manganese or Ore will be found "out in the said land from Hill or Hills by "any Miner or Miners the Profit or Profits "thereof will be divided into three equal "parts.

"That two-thirds of the said profit or profits "will go into the hands of the Purchasers "aforesaid and one-third thereof should go "into the hands of the Vendors aforesaid "being friends to the said Purchasers.

"In witness whereof we have hereunto set our "hands this 23rd day of December 1927."

In the Court of Appeal

No.46

Judgment, 12th January 1959 - continued.

By this document the allodial right of the real owner was recognised and so long as this is so, and the plaintiff family does not become extinct, or desert the land, they are entitled to remain on the land and have the same protection as if they were in fact the owners. This must in my view be taken to be what the learned Judge of the Land Court meant when he pronounced "a declaration of title to the piece or parcel "of land the subject matter herein." The Order for possession followed naturally upon the finding of trespass, which was fully justified by the evidence.

In the result, apart from revising the Order for costs made by the learned Judge in the respects I have indicated, I would dismiss this appeal. For 2,000 guineas Counsel's fee I would substitute 500 (five hundred) guineas, having already dealt with the costs of the abortive hearing.

(Sgd.) G. Granville Sharp, J.A.

VAN LARE, Ag. C.J.:

I agree. (Sgd.) W.B. van Lare, Ag. C.J.

OLLENNU, J.:

I also agree. (Sgd.) N.A. Ollennu, J.

Hayfron-Benjamin (with him Prempeh) for the appellants.

Franklin for the respondent.

No.47

Order, 12th January 1959

No.47

ORDER

12th January, 1959.

In the Court of Appeal, Monday the 12th day of January 1959.

Cor: van Lare, Ag. C.J., Granville Sharp, J.A. and Ollennu, J.

Civil Appeal
46/58

In the Court of Appeal

No.47

Order,

12th January 1959 - continued.

Naja David Sawmill Company etc. & anr.
(Defts-Appellants)

v:

Edward Kotey Annan Sasraku etc.
(Pltff-Respondent)

Written judgment delivered.

Read by Granville Sharp, J.A.

Final Order:

Subject to the variations as indicated in the judgment just read the appeal is dismissed with costs fixed at £38.15.6d.

It is ordered that the difference of 1500 guineas representing the Counsel's cost of 2,000 guineas allowed by the trial judge and the sum of 500 guineas allowed by this Court if paid shall be refunded.

(Sgd.) W.B. van Lare,
Ag. C.J.

No.48

NOTICE OF MOTION FOR FINAL LEAVE TO APPEAL TO PRIVY COUNCIL

No.48

Notice of Motion for Final Leave to appeal to Privy Council,

27th April 1959

IN THE COURT OF APPEAL
ACCRA - GHANA

Naja David, C.H. Ghassoub and N.H. Ghassoub - Trading in partnership as Naja David Sawmill Company — Defendants-Appellants

Nana Osei Assibey III, Representing the Stool of Kokofu — Co-Defendant-Appellant

versus

Edward Kotey Annan Sasraku substituted for Emmanuel Kotey Quao (deceased) as Head and Representative of a Family-Company of Teshie people claiming certain lands near Chempaw. — Plaintiff-Respondent

In the Court of Appeal

No.48

Notice of Motion for Final Leave to appeal to Privy Council,

27th April 1959 - continued.

APPLICATION FOR FINAL LEAVE TO APPEAL

PLEASE TAKE NOTICE that this Honourable Court will be moved by HENRY KWASI PREMPEH Counsel for and on behalf of the Defendants-Appellants and the Co-Defendant-Appellant herein for an Order granting Final Leave to appeal from the Judgment of the Court of Appeal - Accra - Ghana - delivered herein on or about the 12th day of January, 1959, to Her Majesty's Judicial Committee of the Privy Council - England And for such further or other Order or Orders as to this Honourable Court may seem meet to grant in the premises.

COURT to be moved on Monday the 25th day of May 1959 at 9 o'clock in the forenoon or so soon thereafter as Counsel herein can be heard.

DATED AT ABOADIE CHAMBERS KUMASI THIS 27TH DAY OF APRIL 1959.

(Sgd.) Henry Prempeh

joint SOLICITOR WITH C.F. HAYFRON-BENJAMIN FOR THE DEFENDANTS-APPLTS AND CO-DEFENDANT-APPELLANT HEREIN.

The Registrar,
Court of Appeal,
Accra - Ghana.

And Copy to the above-named Edward Kotey Annan Sasraku substituted for Emmanuel Kotey Quao (Deceased) as Head and Representative of a Family-Company of Teshie people or Their Solicitor H.V.A. Franklin, Esq.,
Accra.

No.49

In the Court of Appeal

No.49

Court Notes granting Final Leave to appeal to Privy Council, 25th May 1959

COURT NOTES GRANTING FINAL LEAVE TO APPEAL TO PRIVY COUNCIL

25th May, 1959.

In the Court of Appeal, Monday the 25th day of May, 1959.

Cor: van Lare, J.A. as C.J., Granville Sharp, J.A. and Acolatse, J.

Civil Motion
No.30/59

Naja David Sawmill Company - Defts/Appellants

v:

Edward Kotey Annan Sasraku - Pltff/Respondent

Motion on Notice by Counsel for and on behalf of Defts/Appellants for an order granting Final Leave to appeal from the judgment of the Court of Appeal, Accra, Ghana, delivered herein on or about the 12th day of January, 1959, to Her Majesty's Judicial Committee of the Privy Council, England.

Mr. Hayfron Benjamin for Applicants

No appearance for the Respondent.

By Court: Upon hearing learned Counsel on the motion and having read the affidavit filed in Support of the motion we grant the application as prayed.

(Sgd.) W.B. van Lare,
J.A. as C.J.

Plaintiff's Exhibits

"Y"

Receipt by Chief Kofi Atwereh of Odubi for £162, 12th December 1924

E X H I B I T S

"Y" - RECEIPT BY CHIEF KOFI ATWEREH OF ODUBI FOR £162

Received from Mr. Tei Kwame of Sra Abokobi in the Krobo District of the Gold Coast Colony the sum of £162.0.0 (One hundred and sixty-two pounds) being full payment for a parcel of land situate and lying at Kwesi Dan-Nyame at Odubi bought by the said Mr. Tei Kwame from me.

Dated at Juaso 12th December, 1924.

signature over 3d. Stamps

Chief Kofi Atwereh ?
of Odubi

Witnesses both parties

	their
Ossei Kwadjo	x
Linguist	x
Kwame Anto	x
Martsu	x
Tete Kwaku	x
signed J.C. Nunguah	x
	marks

Writer and witness to marks and signature

(Sgd.) ? Addo
Lic. No. ?
fee paid 2/-

"E1" - RECEIPT BY QUEEN MOTHER, SUB-CHIEFS, ELDERS AND COUNCILLORS BY CHIEF OF BANSO FOR £501

"E1"

Receipt by Queen Mother, Sub-Chiefs, Elders and Councillors of Chief of Banso for £501, 29th April 1927

Copy 2533/46

This Witnesseth that we the undersigned have this day the 29th day of April in the year of Our Lord Nineteen hundred and twenty seven by order of Chief Kwaku Kyei of Banso in Ashanti Akim District in the Gold Coast Colony, West Africa and

Plaintiff's Exhibits

"E1"

Receipt by Queen Mother, Sub-Chiefs, Elders and Councillors of Chief of Banso for £501, 29th April 1927 - continued.

by the virtue invested in us as Queen mother Krontihene, Gyasehene, Ankobeahene, Elders and Councillors of the above mentioned Chief of Banso, received from Elias Kwesi Ayisi and Company all of Larte in Akwapim District in the aforesaid Colony each the sum of £501.0.0 Five hundred and one pounds sterling being part-payment of the amount of £871.0.0 (Eight hundred and seventy one pounds) the value of the forest land acquired from us by the said Elias Kwesi Ayisi and Company of the above mentioned town and colony known and called Mmerewasan Banso stool land which said forest land is situated and lying at Banso in aforesaid District and Colony and measures 120 native land-measure-ropes of about 144 English feet more or less and bounded by remaining land of Banso stool, and in the West by remaining land of Banso stool, and measure 120 native land-measure-ropes, by the lands of Jeke and Obobi and their Company lands and measures 80 native measure ropes in the North, and in the South by remaining land of Banso stool and measures 80 native measure-ropes more or less, each measure-rope of 144 English feet costing £6.10.0 (six pounds ten shillings) each.

The whole piece or parcel of land above described measures 120 native measure-ropes of about 144 English feet at the most important parts (asase no ase ne niti) and the other two sides of the land-measure-ropes of about 144 English feet. All arrangements and prices of measure-ropes were made by Chief Kweku Kyei, himself personally, we only measure the land for Elias Kwesi Ayisi and Company and receive the part-payment in the Chief's name and by his order.

The balance of £370.0.0 (Three hundred and seventy pounds) shall be paid in full by Elias Kwesi Ayisi and Company in six calendar months time from date hereof, whereupon legal certificate of purchase shall be signed by us for Elias Kwesi Ayisi and Company.

Witness:-

Our				Our	
Kweku	x	Thompson	Queen mother Ams	x	Aromaa
Kwesi	x	Koi	Kontihene Yaw	x	Barima
Kwame	x	Ntahera	Gyasehene Kofi	x	Asumeng
Kwesi	x	Nkongua	Ankobeahene Yaw	x	Kumi
marks				marks	

(Sgd.) E. Awuah Ayisi

Plaintiff's Exhibits

"E1"

Receipt by Queen Mother, Sub-Chiefs, Elders and Councillors of Chief of Banso for £501, 29th April 1927 - continued.

I declare that the contents of this document was read and explained in Twi language by me to the above mentioned parties which they seemed to have carefully understood before making their signatures and marks.

£501.0.0.
1st April 1927

Dated at Banso
the 29th day of April 1927

T.O. Reynolds
Stool Clerk
Banso.

In accordance with section 18 of Cap. 179 I certify that in the Commissioners of Stamps this Instrument is chargeable with a duty of eight pounds fifteen shillings and a penalty with interest of £7.15.

? ? ?
Commissioner of Stamps.

Commissioner of Stamps Office
Accra. 18.7.1946.

"U" - ACKNOWLEDGMENT OF SALE OF LAND AT DWINDWINASI BY KWAMI SAFU AND ORS.

"U"

Acknowledgment of sale of land at Dwindwinasi by Kwami Safu and ors., 5th June 1927

5-6-27 Dwindwinasi

Danu Kofi Native of Larteh has bought a land from Chief Kwami Ampimah which has the length of 100 ropes at River Oden.
Secondly started from Kyirikurah equal to 30 ropes. Thirdly passes under a hill (Yaw Sefe) which is 100 ropes. Fourthly started from Asamansu equal to 30 ropes ended.

Sellers:-
(Sgd.) Kwami Safu
" Kwami Yamua
" Akunmia

Witness:-
Kobina Gyabin
Kwami Abrokwa
Abuagyi
Kwadwo Obu
Kofi Numo.

(Sgd.) James Adumaku,
Witness.

"R" - ACKNOWLEDGMENT OF SALE OF LAND AT KOKOBENG AND TOKWAI BY OPANIN KWASI KORRI AND ORS.

Plaintiff's Exhibits

"R"

Acknowledgment of Sale of land at Kokobeng and Tokwai by Opanin Kwasi Korri and ors.,

11th July 1927

Copy

Document No.2893/40.

Stamp Duty: £7.

In consideration of the fact that, We Messrs. Opanin Kwasi Korri of Tokwai and Opanin Wasi Asamoah of Bojdisango have on this 11th day of July 1927, We are collectively and severally do hereby sold our piece or parcel of land which measured by four equally squares 100 x 100 length and 100 x 100 Breadth lying in the midst of Kokobeng and Tokwai near or edge of River Pra to Messrs. Tetteh Amankwa, Christian Cannon and Linguist Cobina Sarketey all of Pome for a sum of (£700.0.0) Seven hundred pounds. It has been arranged and fixed that All those mines, minerals and mineral substances, and precious stones in upon and under the said piece or parcel of land, and Timbers and others trees and all forest rights and any Rivers on it for the Sellers, But not the Purchasers, It has been also agreed and consented that, If any mines mineral and mineral and Timbers realise on the said piece or parcel of land sold to them or Purchasers should have to divided into (3) three equally parts amongst them and (1) one-third should be given to the said Purchasers, which then remains a balance of (2) two third for the Sellers, those sold the said piece or parcel of the land to the Purchasers. River Pra belongs to the said Sellers, It is not among of the said piece or parcel of the land sold.

Witnesses their marks:

Their

Chief Owusu Gyakari Ohene of Bodjisango x

Opanin Kojo Kwateng Omanhene's Bearer x

Tailor Yaw Donkor x

Kwasi Tabbon x

Opanin Kwaku Attah x

marks

Sellers:

Messrs. Opanin Kwasi Korri

Opanin Kwasi Assmoah

Purchasers:

Messrs. Tetteh Amankwa

Christain Cannon

Linguist Cobina Sarketey

Amount: £700

2s.6d postage stamp

11th July, 1927

Writer and Witness to mark:

(Sgd.) S.M. Basare Poku,

N.T.C.Lic.No.576.

fee £20.

Plaintiff's Exhibits

"R"

Acknowledgment of Sale of land at Kokobeng and Tokwai by Opanin Kwasi Korri and ors.,

11th July 1927 - continued.

This Receipt prepared in the presence of Chief Owusu Gyakari and his Elders and Omanhene's Bearer at Bodjisango on the 11th day of July 1957.

IN ACCORDANCE WITH SECTION 18 OF CAP.154 I CERTIFY THAT IN THE OPINION OF THE COMMISSIONERS OF STAMPS THIS INSTRUMENT IS CHARGEABLE WITH A DUTY OF SEVEN POUNDS.

Penalty of £9.11.1 has been collected on Accra Receipt No. 7420 of 13.7.40.

COMMISSIONER OF STAMPS OFFICE
ACCRA, 13.7.1940.

(Sgd.) E. Laryea Adjei L.S.
COMMISSIONER OF STAMPS

Penalty	£5. 0. 0
Interest	4.11. 1
	£9.11. 1

Ead.

"X1" - RECEIPT BY KWASI TOKU AND ORS. FOR £200.

"X1"

Receipt by Kwasi Toku and ors. for £200,

15th December 1927

I have received from Messrs. Kwaku Yerebi, Kwao Appenteng and Adu Kwaku the sum of £200. 0. 0 Two hundred pounds sterling being part payment of the land which we sold to them at Gyademwa.

Signed Kwasi Toku his x mark

Witness to marks

	their marks
Atta Kweku	x
Kwaku Damtey	x
Kwadjo Botwe	x
Kwame Labi	x

for Kwabena Antu
Kwasi Toku

9d Gold Coast Stamps with 15th Dec. 1927 written over.

Writer & Witness
Joshua Kwaku Sackey - free of charge
Dated at Ntabea this 15th day of Dec. 1927.

"G" - DEED OF CONVEYANCE, (1) CHIEF KWASI BOTWE and (2) JOSEPH OKO SASRAKU AND OTHERS

Plaintiff's Exhibits

"G"

Deed of Conveyance, (1) Chief Kwasi Botwe and (2) Joseph Oko Sasraku and others,

23rd December 1927

THIS INDENTURE made the 23rd day of December in the year of Our Lord One thousand nine hundred and twenty-seven BETWEEN CHIEF KWASI BOTWE in the Ashanti-Akem District in the Western Province of the Gold Coast Colony with the consent and concurrence of his Principal Councillors and Elders for themselves and as representing the Stool of Kyempoh and all other persons whose consent and concurrence are necessary and essential in dealing with stool trible or family property in respect of the land to be hereinafter conveyed and according to Native Customary Law of the Gold Coast Colony aforesaid (hereinafter called the VENDOR) of the one part and JOSEPH OKO SASRAKU KEFAS KOTEY NMASHIE DAVID BUABA DJASEKWEI ASHALEY ISAAC AMONG KWAO EDWARD KOTEY ANNAN SASRAKU & ROBERT AMON SASRAKU all of Teshie but temporarily residing at Pampansu in the Akim District of the Gold Coast Colony aforesaid (hereinafter called the PURCHASERS) of the other part WITNESSETH that in consideration of the sum of FOUR HUNDRED POUNDS (£400) on or before the execution of these presents by the Purchasers paid to the Vendor the receipt whereof the Vendor doth hereby acknowledge the Vendor as Beneficial Owner hereby conveys unto the Purchasers ALL AND SINGULAR the hereditaments described in the Schedule at the foot hereof and delineated in the Plan attached hereto and therein coloured TOGETHER WITH ALL fixtures privileges easements and appurtenances whatsoever to the same belonging or with the same heretofore demised or enjoyed or reputed or known as Parcel thereof or appurtenant thereto And all the estate right title interest claim and demand of the Vendor in to or out of the said hereditaments TO HOLD the same unto and to the use of the Purchasers and their heirs fore-ever AND IT IS HEREBY AGREED AND DECLARED between the said parties as follows :-

(a) That the use of the term "As Beneficial Owner" herein shall import all the covenants for title precisely as if Section 7 of the English Conveyancing Act 44 and 45 Victoria Chapter 41 .... were in full force and effect in this Colony.

Plaintiff's Exhibits

"G"

Deed of Conveyance, (1) Chief Kwasi Botwe and (2) Joseph Oko Sasraku and others,

23rd December 1927 - continued.

(b) That to the intent that all the rights interests privileges and obligations herein created or intended so to be shall ... have full force and effect the terms "Vendor" and "Purchasers" herein shall wherever the context so requires include their heirs executors administrators and assigns or any of them.

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first above written:-

SCHEDULE ABOVE REFERRED TO

ALL THAT PIECE OR PARCEL OF LAND situate lying and being at Kyempoh Prasu in the Ashanti-Akim District in the Province of the Colony ... aforesaid and bounded on the North by Pampanse Hill measuring Eleven thousand eight hundred and eight feet (11808') more or less on the South by Bosumprah measuring Eleven thousand eight hundred and eight feet (11808') more or less on the East by Jacob Oko Kotei's property measuring Eleven thousand eight hundred and eight feet (11808') more or less and on the West by River Ablesu and measuring Eleven thousand eight hundred and eight feet (11808') more or less or howsoever otherwise the same may be known bounded or described.

SIGNED SEALED AND DELIVERED by the within-named Chief Kwasi Botwe for and on behalf of himself his Elders and Councillors after the foregoing Indenture had been read over interpreted and explained to him in the Twi Language by D.M.Sasraku when he seemed perfectly to understand the same before making his mark hereto in the presence:

Chief Kwasi Botwe his x mark

Their

Kofi Ahulu x
John Nketia x
A.A. Kwasi Adjekum x
W.O. Mensah x
Kofi Nkromah x
Laryea Adjei x
Kwadjo Kwradu x

Linguist Kwasi Yeboah x
for Kofi Adu marks
Omanhene-Kokofu

Witness to marks
(Sgd.) D.M. Sasraku
?

Signed Sealed and Delivered by the within-named Joseph Oko Sasraku Kofas Kotey Nmashie David Buaba Djase-kwei Ashaley Isaac Among Kwao Edward Kotey Annan Sasraku and Robert Among Sasraku after the foregoing Indenture had been read over interpreted and explained to them in the Ga Language by D.M. Sasraku when they seemed perfectly to understand the same before making their marks hereto in the presence:

Their
Joseph Oko Sasraku x
Kefas Kotey Nmashi x
David Buaba Sasraku x
Djase Kwesi Ashaley x
Isaac Among Kwao x
Edward Kotey Annan Sasraku x
marks

? Sasraku
R.A. Sasraku

Their
Kofi Ahulu x
John Nketiah x
W.O. Mensah x
A.A. Kwesi Adjeskum x
Learyea Adjei x
Kofi Nkromah x
Kwadjo Kuradu x
Linguist Kwasi Yeboah x
for Kofi Adu x
Omanhene-Kokofu marks

Witness to marks.
(Sgd.) D.M. Sasraku

On the 9th day of May 1952 at 9.15 o'clock in the forenoon this Instrument was proved before me by the Oath of the within-named Laryea Adjei to have been duly executed by the within-named Chief Kwasi Botwe.

GIVEN UNDER MY HAND AND SEAL.

(Sgd.) ? ? ?
Registrar, Divisional Court.

This is the Instrument marked "A" referred to in the Oath of Laryea Adjei sworn before this 9th day of May, 1952.

(Sgd.) ? ? ?
Registrar Divisional Court.

Plaintiff's Exhibits

"G"

Deed of Conveyance, (1) Chief Kwasi Botwe and (2) Joseph Oko Sasraku and others,

23rd December 1927 - continued.

Plan of Land showing the property of Joseph Oko Sasraku and others situate at Chempaw in the Banka State of Ashanti-Akim District of Ashanti.

ALL THAT PIECE of Land containing an area of two thousand three hundred and six decimal nine three (2306.93) acres or three decimal six one (3.61) square miles at Chempaw in the Banka State of Ashanti-Akim District of Ashanti the boundary whereof commencing at the confluence of an unnamed stream with the River Pra which point is Lat. 6° 21' 08"N long. 1° 06' 45"W follows the eastern edge of the unnamed stream up stream to a point approximately three hundred (300) feet north of a pillar marked F.R.B.P. 24 on the Mirasa Hills Forest Reserve and measuring Eleven thousand Eight hundred and eight (11808) feet thence follows a cut line to a point on the Pampansi Hill and measuring Eleven thousand and eight (11808) feet thence follows a cut line to a point on the River Pra and measuring Eleven thousand eight hundred (11808) feet thence follows the Northern edge of the aforesaid River Pra to the point of commencement and measuring Eleven thousand Eight hundred and eight (11808) feet.

GOLD COAST G R B 26871

Station Accra

24.12.1927

£4. -. -

Received from Joseph Oko Sasraku the sum of Four pounds stamp duty on deed No.4464.

(Sgd.) ? ?

Cashier

Treasury-Acc.

Plaintiff's Exhibits

"G"

Deed of Conveyance, (1) Chief Kwasi Botwe and (2) Joseph Oko Sasraku and others,

23rd December 1927 - continued.

THIS AGREEMENT made the 23rd day of December 1927 that we the undersigned have agreed that if any Gold Manganese or Ore will be found out in the said land from Hill or Hills by any Miner or Miners the Profit or Profits thereof will be divided into three equal parts.

That two-thirds of the said profit or profits will go into the hands of the Purchasers aforesaid and one-third thereof should go into the hands of the Vendors aforesaid being friends to the said Purchasers.

In witness whereof we have hereunto set our hands this 23rd day of December 1927.

Purchasers:-		Vendors:-	
	Their		Their
Joseph Oko Sasraku	x	Chief Kwasi Botwe	x
Kafas Kotey Nmashi	x		
David Buaba Sasraku	x	A.A. Kwasi Adjekum	x
Tettɛh K. Laryea	x		
Djasekwa Asharley	x	Kofi Nkromah	x
Isaac Among Kwao	x		
E.K. Annan Sasraku	x	Kwadjo Kuradu	
Robert Among Sasraku	x	Linguist Kwasi Yeboah	x
	marks		marks

Witnesses:-

	Their
Kofi Ahulu	x
John Nketiah	x
Laryea Adjei	x
W.O. Mensah	x
Kodjo Darku	x
Jonas Tsum	x
Kweku Asrifi	x
Kweku Nkasah	x
Kofi Krah	x
	marks

Witness to marks:-
(Sgd.) ? Sasraku.

Plaintiff's Exhibits

"G"

Deed of Conveyance, (1) Chief Kwasi Botwe and (2) Joseph Oko Sasraku and others,

23rd December 1927 - continued.

RECEIVED from Joseph Oko Sasraku and other of Teshie Accra the sum of (£25) twenty-five pounds being an amount of fee charged by me for a paper prepared as deed of Conveyance towards a piece or parcel of land sold to them and paid knowing before all the presents as below.

Kwesi Yeboah (Linguist) His x mark

Signed for Linguist Nana Kofi Addu His x mark

Omanhene of Kokofu (Ashanti)
Chief Kwasi Botwe his x mark

Witness:-

Albert A. Kwesi Adjekum Their x
Kofi Addo x marks

Witness & Writer to marks
(Sgd.) ? Sasraku
Lcd. No. 366.

Known before all these presents We Messrs. Akwesi Korley and Kwamin-Wuo of Ntronam on Akyem District have received from Mr. Joseph Oko Sasraku of Teshie Accra District the sum of Eleven pounds ten shillings being cost of two cocoa farms made and sold to him with consent of all our heirs, assigns and administrators.

We as the owners of the said farms say and swear as follows. That the said value or amount has fully been paid to us without a balance of penny, whereof the presents hereunder bear for witnesses with their marks.

Witness

Kofi Charles Their x
Yaw Tatchie x
Kweku Ketewah x marks

Akwesi Korley Their x
Kwamin-Wuo x marks

Emm. Kotey O. Sasraku
Writer & Witness to marks.
(Sgd.) ? Sasraku.

Plaintiff's Exhibits

"G"

Deed of Conveyance, (1) Chief Kwasi Botwe and (2) Joseph Oko Sasraku and others,

23rd December 1927 - continued.

I the undersigned namely Chief Kwesi Botwe and anothers of Chempo have this day received from Joseph Oko Sasraku of Accra now residing at Panpanso cash the sum of four hundred pounds (£400. 0. 0) which amount is payable against a plot of land bought on a credit. The said Oko Sasraku is entitle to enjoy the land from years to years.

Dated at Chempo 8th Feb. 1926.

The Sellers	Witness
Chief Kwesi Botwe	(Sgd.) ? ?
Kwesi Yebuah for Kofi Adu Omanhene of Kokofu	Albert Sowe
	Tetteh Laryea
	? Sasraku
	? ? ?

Witness:

	Their
Kofi Nkroma	x
Kwesi Agyekum	x
Kobina Twum	x
Kwesi Nuro	x
E.D. Owari	x
Kobina Tawia	x
Kobina Anane	x
	marks

Writer Sahurateng
Free of charge.

Received from Atta Sasraku from Accra now residing at Ashanti Kyempoh, Cash the sum fourteen pounds £14. 0. 0 being as a land purchase from Chief Kwasie Botwe. In full settlement.

Dated at Kyempoh 16th May, 1926.

Chief Kwasie Botwe	His x mark

Witness to mark.

	His
Kwasie Agyekum	x
	mark

Writer & witness
Obed. E. Jackson
Free of charge.

Plaintiff's Exhibits

"G"

Deed of Conveyance, (1) Chief Kwasi Botwe and (2) Joseph Oko Sasraku and others,

23rd December 1927 - continued.

TEMPORAL

Receipt from J.O. Sasraku the sum of four pounds £4 being payment on account of a plot of land near River Pra the balance of which remained eleven pounds £11 dated at Chempo 12th Feb. 1926.

Kwasi Agyekum
S.A. Kwateng
Kwasi Nuro.

"E2" - RECEIPT BY CHIEF KWEKU KYEI AND ELDERS FOR PURCHASE PRICE OF LAND AT IMBRAWASA

"E2"

Receipt by Chief Kweku Kyei and Elders for purchase price of land at Imbrawasa,

18th March 1928

COPY 1602/52

B £871. 0. 0.

I Kweku Kyei of Banso Ashanti Akim District, I sold a land to Elias Kwasie Ayisi of Larteh in Akwapim District. And the land is some of Imbrawasa, But the cost of the land is (£871.0.0) Eight hundred and seventy one pounds paid in full settlement of the account.

Dated at Banso a.a. 18th March 1928

(Sgd.) Chief Kweku Kyei — His x

Yaw Bremba — Their x
Yaw Kumi — x
Kofie Jutte — x
Kofie Asuming — x
Kwasi Ayie — x
marks

Witnesses to their marks

Kwamin Ayiribi x
Kwamin Intraha x

Writer O.M.E. Jackson
F.O.C.
Chief Kweku Kyei
£871. 0. 0.
18th March 1928.

Plaintiff's Exhibits

"X2"

Receipt by Kofi Mensah and anor. for £300,

10th May 1928

"X2" - RECEIPT BY KOFI MENSAH AND ANOR. FOR £300.

We have received the sum of £300. 0. 0. three hundred pounds sterling being part payment of the land we sold to Kwaku Yerebi and his company at Ofoasi.

Their

Signed Kofi Mensah x
and
Kwasie Yentumi x
marks

for Omanhene Kwadjo Adjei
6d Gold Coast Stamps
over which is written £300. 0. 0
10.5.1928.

Witnesses to marks:-
(Sgd.) R. H. Ormon
Kwame Pepra his x marks
Writer & Witness
Joshue Kwaku Sackey
Dated at Ntabea this 10th day of May 1928.

"C"

Deed of Conveyance, (1) Chief Owus Afriyie and (2) Kwesi Adjemang and others,

31st July 1930

"C" - DEED OF CONVEYANCE, (1) CHIEF OWUS AFRIYIE AND (2) KWESI ADJEMANG AND OTHERS

COPY 3365/30

STAMPED:- £2.5/-

THIS INDENTURE made the 31st day of July One thousand Nine hundred and thirty (1930) BETWEEN sic CHIEF OWUS AFRIYIE of Kyempoh in the Asante Akim District of the Gold Coast Colony with the consent and concurrence of his elders and councillors which assent and concurrence is testified by some of such elders and councillors joining in the execution of these presents (hereinafter called the VENDORS) of the one part and KWESIE ADJEMANG, KWAKU TANNOR and KWADJO DONKOR all of KORORIDUA in the New Juaben Settlement in the Eastern Province of the Colony aforesaid (hereinafter called the PURCHASERS) of the other part

Plaintiff's Exhibits

"C"

Deed of Conveyance, (1) Chief Owus Afriyie and (2) Kwesi Adjemang and others,

31st July 1930 - continued.

WHEREAS the Vendors are well seized and otherwise entitled to the hereditaments and premises intended to be hereby granted and conveyed and the inheritance thereof in fee simple in possession free from incumbrances AND WHEREAS the Vendors sold to the Purchasers on the 4th day of February, 1928 by Native Custom for the sum of three hundred and twelve pounds (£312) AND WHEREAS the Purchasers have now perpetuated in writing and have approached the Vendors for a Deed of Conveyance and the Vendors have agreed to execute a Conveyance to perpetuate the said sale:

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of three hundred and twelve pounds (£312) already paid by the Purchasers to the Vendors before the execution of these presents (the receipt whereof the Vendors do hereby acknowledge and from the same do hereby release the Purchasers) the Vendors do hereby grant and convey unto the Purchasers their heirs and assigns ALL THAT PIECE OR PARCEL OF LAND situate lying and being at KYEMPOH RIVER MUANOR in the Asante Akim District in the Province of the Colony aforesaid and bounded on the NORTH by the property of E.A. Attrams and Co. and measuring forty-eight (48) ropes more or less on the SOUTH by the property of Abraham Antwi and measuring forty-eight (48) ropes more or less on the EAST BY the property of Kyempoh in the direction River Muanor and measuring forty-eight (48) ropes more or less and on the WEST by the property of Banso and measuring forty-eight (48) ropes more or less (one rope being equal to twenty-four (24) fathoms) or howsoever otherwise the same may be bounded known described or distinguished TOGETHER with all plantations forest watercourse fixtures rights easements privileges advantages and appurtenances thereto belonging and all the estate right title interest claim and demand whatsoever of the Vendors in to and upon the said premises and every part thereof TO HAVE AND TO HOLD the hereditaments and premises hereby granted or expressed so to be unto and to the use of the Purchasers their heirs executors and assigns forever AND the Vendors do hereby for themselves their heirs executors and assigns covenant with the Purchasers their heirs executors and assigns that notwithstanding any act deed or thing by the Vendors done or executed or knowingly suffered to the contrary they the Vendors now have good right

Plaintiff's Exhibits

"C"

Deed of Conveyance, (1) Chief Owus Afriyie and (2) Kwesi Adjemang and others,

31st July 1930 - continued.

and title to grant the hereditaments and premises hereby granted or expressed so to be unto and to the use of the Purchasers their heirs and assigns in manner aforesaid and that the Purchasers their heirs and assigns shall and may at all times hereafter peacefully and quietly possess occupy and enjoy the hereditaments and premises and receive the profits and rents thereof without any lawful eviction interruption claim or demand whatsoever from or by the Vendors or any person or persons lawfully or equitably claiming from under or in trust for them AND THAT free from all incumbrances whatsoever made or suffered by the Vendors or any person or persons lawfully or equitably claiming as aforesaid AND further that the Vendors and all persons having or lawfully or equitably claiming any estate in the said hereditaments and premises or any of them or any part thereof from under or in trust for them the Vendors shall and may from time to time and at all times at the request and cost of the Purchasers their heirs and assigns do and execute or cause to be done and executed all such acts and things whatsoever for further and more perfectly assuring the said hereditaments and premises and every part thereof unto and to the use of the Purchasers their heirs and assigns in manner aforesaid as shall and may be reasonably required PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED between the parties aforesaid that in the event of any diamonds gold amethyst or other minerals or precious stones being found in the land hereby conveyed or intended so to be the Vendors will be entitled to one-third (1/3) share of all such minerals so found and the Purchasers to two-thirds (2/3) share.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and marks and seals the day and years first above written.

SIGNED MARKED AND SEALED AND DELIVERED by the within-named CHIEF OWUSU AFRIYIE and some of his elders and councillors, they having signed by marks and consequence of being unable to sign their names, after this document had been read over and interpreted to them in the Twi language

(Marked) Their

Chief Owus Afriyie x
" Kofi Nkromah x
" Kofi Ahulu x
" Kwesi Nuru x
" Kwabena Tsum x
" Kofi Frempong x
" Kwadso Derfor x
" Kofi Ado x

marks

Plaintiff's Exhibits

"C"

Deed of Conveyance, (1) Chief Owus Afriyie and (2) Kwesi Adjemang and others,

31st July 1930 - continued.

by David Mati Sasraku when they seemed perfectly to understand the same before making their marks in the presence of:-

Their

Kofi Ahuly (Mankrado) x
Kofi Frempong (Linguist) x
Kofi Addo I (Linguist) x
Kofi Addu (Omanhene of Kokofu) Asante x

marks

Their

SIGNED MARKED SEALED and DELIVERED by the said KWESIE ADJEMANG, KWAKU TANNOR, and KWADJO DONKOR: they having signed by marks in consequence of being unable to sign their names after this document had been read over and interpreted to them in the TWI language by DAVID M. SASRAKU when they seemed perfectly to understand the same before making their marks in the presence of:-

(Marked) Kwesi Adjemang x
" Kwaku Tannor x
" Kwadjo Donkor x

marks

Licd Letter Writer No. 7682

(Sgd.) ? ? ?

19/8/30.

IN ACCORDANCE WITH SECTION 18 OF CAP. 154 I CERTIFY THAT IN THE OPINION OF THE COMMISSIONER OF STAMPS THIS INSTRUMENT IS CHARGEABLE WITH A DUTY OF THREE POUNDS FIVE SHILLINGS.

(SIGNED) ? ? ?

COMMISSIONER OF STAMPS.

COMMISSIONER OF STAMPS OFFICE,
ACCRA, 1st SEPTEMBER, 1930.

"P" - DEED OF CONVEYANCE, (1) CHIEF OWUSU AFRIYIE AND OTHERS AND (2) JACOB OKO KOTEI AND OTHERS

Plaintiff's Exhibits

"P"

Deed of Conveyance, (1) Chief Owusu Afriyie and others and (2) Jacob Oko Kotei and others,

4th August 1934

THIS INDENTURE made the 4th day of August One thousand nine hundred and thirty four (1934) BETWEEN CHIEF OWUSU AFRIYIE of Kyempoh with the consent and concurrence of KOFI NKROMAH KODSO DARKO JONAS TSUM ALBERT AMANIE KWEKU ASSRIFI KOFI ADDO (Linguist) KWEKU NKANSAH KOFI KRAH KWABLA ANANI ABLAH KWABLA KWABINA NSIAH ABINA ASSIAMAH ABINA AMUAKUAH AKUA AWO AKOSIAH ABINAWAH DINA AKUAH & BOBA AMANIE all of Kyempoh in the Asanti Akyem District in the Western Province of Ashanti West Africa the Principal Elders and Councillors of the Stool of Kyempoh whose consent and concurrence are necessary and essential to the valid alienation of the Stool land of the Stool of Kyempoh (hereinafter collectively called the VENDORS which expression where the context so admits shall include their respective successors and Assigns) of the one part and Jacob Oko Kotei Emmanuel Kotey Kwao Among Nathan Okaidjah Sackey Ashaley Afutu & Adjintse Okaidjah all of Teshie in Accra District in the Eastern Province of the Gold Coast Colony (hereinafter called the PURCHASERS which expression where the context so admits shall include their respective heirs executors administrators and Assigns) of the other part WHEREAS the VENDORS are the absolute owners and seised in fee simple in possession free from incumbrances of the hereditaments and premises hereinafter described and intended to be hereby granted And WHEREAS the VENDORS have agreed with the PURCHASERS for the absolute sale to the PURCHASERS for the sum of Three hundred and fifty seven pounds (£357) of the hereditament and premises hereby granted and in fee simple in possession free from incumbrances
And WHEREAS the PURCHASERS bought and paid the said sum of Three hundred and fifty seven pounds (£357) for the said hereditaments and premises on the 28th day of February 1927 during the life time of Chief Kwesi Botwe Deceased to the said Chief Kwesi Botwe Deceased and the VENDORS and Conveyance of the said hereditaments and premises according to Native Custom was given by the said Chief Kwesi Botwe and his Councillors and Elders to the PURCHASERS who have been in possession since the 28th day of February 1927 and these presents are intended to be in confirmation of the said con-

Plaintiff's Exhibits

"P"

Deed of Conveyance, (1) Chief Owusu Afriyie and others and (2) Jacob Oko Kotei and others,

4th August 1934 - continued.

veyance and the right of the PURCHASERS to the said hereditaments and premises NOW THIS INDENTURE WITNESSETH that in pursuance of the recited Agreement and in consideration of the sum of Three hundred and fifty seven pounds (£357) paid by the PURCHASERS to the VENDORS (the receipt whereof the VENDORS do hereby acknowledge) They the VENDORS as absolute owners do hereby grant and convey unto the PURCHASERS ALL THAT PIECE OR PARCEL OF LAND situate lying and being at Kyempoh Praso in the Ashanti Akyem District aforesaid and bounded on the North by River Adebesu measuring Ten thousand three hundred and sixty eight feet (10,368' - 0") more or less on the South by River Bosomprah measuring Ten thousand three hundred and sixty eight feet (10,368' - 0") more or less on the East by River Kumi measuring Ten Thousand three hundred and sixty eight feet (10,368' - 0") more or less and on the West by Robert Among Sasraku's property measuring Ten thousand three hundred and sixty eight feet (10,368' - 0") more or less which said piece or parcel of land is more particularly delineated and described on the rough plan drawn at the foot of these presents and Edged Red TOGETHER with all rights ways liberties easements advantages and appurtenances whatsoever to the said hereditaments and premises belonging or in anywise appertaining or usually held occupied or enjoyed therewith or reputed or belonging thereto and all the estate right title interest claim and demand whatsoever of the VENDORS in to and upon the said hereditaments and premises and every part thereof TO HAVE AND TO HOLD the same UNTO AND TO THE USE OF THE PURCHASERS their respective heirs executors administrators and Assigns for ever and the VENDORS for themselves their successors and Assigns do hereby covenant with the PURCHASERS that notwithstanding any act or thing by the VENDORS done executed or knowingly suffered to be done to the contrary they the VENDORS now have good title right and full power to grant and convey the freehold hereditaments and premises hereinbefore expressed to be hereby conveyed UNTO AND TO THE USE OF THE PURCHASERS free from incumbrances and in manner aforesaid and that the PURCHASERS shall and may at all times hereafter peaceably and quietly enter possess and enjoy the said hereditaments and premises without any lawful eviction interruption claim and demand whatsoever by the Vendors or any person or persons

Plaintiff's Exhibits

"P"

Deed of Conveyance, (1) Chief Owusu Afriyie and others and (2) Jacob Oko Kotei and others,

4th August 1934 - continued.

lawfully or equitably claiming any estate or interest in the said hereditaments and premises or any of them or any part thereof from under or in trust for him that the VENDORS their successors and Assigns will keep effectually indemnified the PURCHASERS their respective heirs executors administrators and Assigns against all estate incumbrances claims and demands created occasioned or made by them the VENDORS or any person or persons claiming or to claim through or in trust for him them or any of them and they the VENDORS shall and will at all times hereafter at the request and at the cost of the PURCHASERS do and execute and cause to be done or executed all such acts and things whatsoever for further and more perfectly assuring the said hereditaments and premises and every part thereof UNTO AND TO THE USE OF THE PURCHASERS in manner aforesaid as shall be reasonably required PROVIDED ALWAYS AND IT IS HEREBY AGREED that in the event of any Gold Diamond Manganese or any precious Mineral or any Ore or Minerals of any kind being discovered in or within the hereditaments and premises herein contained the VENDORS shall join with the PURCHASERS as Grantors in granting prospecting licenses option leases mining leases Concessions thereof to any person or persons corporation or corporations and the rents profits Royalties and benefits to accrue there from shall be divided into three equal parts One-third thereof shall be for the VENDORS and the remaining Two-third shall be for the PURCHASERS IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written

		Their
SIGNED SEALED and DELIVERED by the said CHIEF OWUSU AFRIYIE KWEKU NKROMAH KODSO DARKO JONAS TSUM ALBERT AMANIE KWEKU ASSRIFI KOFI ADDO (Linguist) KWEKU NKANSAH KOFI KRAH KWABLA ANANI ABLAH KWABLA KWABINA NSIAH ABINA ASSIAMAH ABINA AMUAKUAH AKUAH AWO AKOSIAH ABINAWA DINA AKUAH & BOBA AMANIE after the foregoing had	Chief Owusu Afriyie	x
	Kofi Nkromah	x
	Kwadso Darko	x
	Jonas Tsum	x
	Albert Amanie	x
	Kweku Assrifi	x
	Kofi Addo (Linguist)	x
	Kweku Nkansah	x
	Kofi Krah	x
	Kwabla Anane	x
	Abla Kwabla	x
	Kwabina Nsiah	x
	Abina Assiamah	x
	Abina Amuakuah	x

Plaintiff's Exhibits

"P"

Deed of Conveyance, (1) Chief Owusu Afriyie and others and (2) Jacob Oko Kotei and others,

4th August 1934 - continued.

been read over and interpreted to them in the Twi language by ? ? Sasraku when they seemed perfectly to understand the same before making their marks or signing their names hereto in the presence of:-

Akrah Awo x
Akosua Abinawa x
Dina Akuah x
Boba Amanie x
marks

SIGNED SEALED and DELIVERED by the said JACOB OKC KOTEI EMMANUEL KOTEY KWAO AMONG NATHAN OKAIDJAH SACKEY ASHALEY AFUTU ADJINTSE OKAIDJAH after the foregoing had been read over and interpreted to them in the Ga language by ? ? Sasraku when they seemed perfectly to understand the same befcre making their marks or signing their names hereto in the presence of:

Their
Jacob Oko Kotei x
Emmanuel Kotey Kwao x
Among x
Nathan Okaidjah Sackey x
Ashaley Afutu x
Adjintse Okaidjah x
marks

Interpreter & Witness to marks.

(Sgd.) ? ? Sasraku

Kyempoh
4/8/34.

This is the Instrument marked "A" referred to in the Oath of Emml. Kotey Kwao Sworn before me this 5th day of January, 1935.

(Sgd.) C.O. Bullis
DISTRICT COMMISSIONER.

Plaintiff's Exhibits

"P"

Deed of Conveyance, (1) Chief Owusu Afriyie and others and (2) Jacob Oko Kotei and others,

4th August 1934 - continued.

IN THE SUPREME COURT OF THE GOLD COAST COLONY

EASTERN PROVINCE

AFFIDAVIT OF EXECUTION OF INSTRUMENT BY CHIEF OWUSU AFRIYIE KOFI NKROMAH KODSO DARKO JONAS TSUM ALBERT AMANIE KWAKU ASSRIFI KOFI ADDO (Linguist) KWEKU NKANSAH KOFI KRAH KWABLA ANANI ABLAH KWABLA KWABINA NSIAH ABINA ASSIAMAH ABINA AMUAKUAH AKUAH AWO AKOSIAH ABINAWAH DINA AKUAH & BOBA AMANIE

I, Emml. Kotey Kwao of Teshie make Oath and say as follows:-

1. That on the 4th day of August 1934 I saw Chief Owusu Afriyie Kofi Nkromah Kodso Darko Jonas Tsum Albert Amanie Kweku Assrifi Kofi Addo (Linguist) Kweku Nkansah Kofi Krah Kwabla Anani Ablah Kwabla Kwabina Nsiah Abina Assiamah Abina Amuakuah Akuah Awo Akosiah Abinawa Dina Akuah and Boba Amanie all of Kyempoh Asanti Akyem District duly execute the Instrument now produce to me and marked "A" and the said Chief Owusu Afriyie Kofi Nkromah Kodso Darko Jonas Tsum Albert Amanie Kweku Asarifi Kofi Addo (linguist) Kweku Nkansah Kofi Krah Kwabla Anani Ablah Kwabla Kwabina Nsiah Abina Assiamah Abina Amuakuah Akuah Awo Akosiah Abinawah Dina Akua & Boba Amanie cannot read and write and the said Instrument was read over and interpreted to them by me at the time of its execution and that they appeared to understand its provisions before making their marks thereto.

Sworn at Accra this 5th day of January 1935 after the foregoing had been read and interpreted to him by A.T. Glover and he seemed to understand the same before affixing his mark thereto:-

Emml. Kotey Kwao his x mark

Before Me

(Sgd.) C.O. Bulles

DISTRICT COMMISSIONER.

Plaintiff's Exhibits

"P"

Deed of Conveyance, (1) Chief Owusu Afriyie and others and (2) Jacob Oko Kotei and others,

4th August 1934 - continued.

Temporary

Received from Mr. Emmanuel Kotey from Accra cash the sum of three hundred fifty seven pounds £357. being full settlement of the land purchased from Chief Kwasie Botwi of Ashanti District Kyempoh.

Dated at Ashanti District Kyempoh this 24th day of February, 1927.

Kwasie Botwi his x mark

Witness to their marks.

Their

Kwasie Agyakum x
J.E. Jackson x
Linguist Kofi Addo x
Kweku Assrifi x
marks

Writer & Witness to mark.

(Sgd.) J.E. Jackson.

"D" - CERTIFICATE BY CHIEF KWABENA ABU FOR BALANCE PAYMENT OF PURCHASE PRICE OF LAND AT BANKAMI

"D"

Certificate by Chief Kwabena Abu for balance payment of purchase price of land at Bankami,

2nd February 1935

Copy

This is to certify that I the undersigned KWABENA ABU, Chief of BANKAMI in the District of ASHANTI AKIM have this day received from MR. AKORH KWADJO of ABEGYEDE, LARTEH-AHENEASE in the AKWAPIM DISTRICT, head of a Company with whom he purchased from me and my Elders a piece of forest land situate and lying between ASAFU and DOME at BANKAMI, ASHANTI AKIM aforesaid the sum of FIFTEEN POUNDS (£15) being balance in full of the purchase price of the said piece of land sold by me and my Elders to the said AKORH KWADJO and Company for a sum of SIX HUNDRED POUNDS (£600) out of which amount FIVE HUNDRED AND EIGHTY POUNDS (£585) has been already received by me, expenses also having been already borne by the said AKORH KWADJO AND COMPANY.

Dated at LARTEH this 2nd day of February 1935.

Chief Kwabena Abu x his mark
Linguist Atta Kwadjo x his mark

Witnesses:-

	Their
Akrong Adjei	x
Kwaku Amoah	x
Kwaku Adjei	x
Kwabena Diaw	x
	marks

(Sgd.) P.W. Adjei
" J.T. Poku

Witness to marks & signatures:

(Sgd.) N. Wilson Parry.

Donated 8/-

Plaintiff's Exhibits

"D"

Certificate by Chief Kwabena Abu for balance payment of purchase price of land at Bankami,

2nd February 1935 - continued.

"H" - DEED OF CONVEYANCE, (1) CHIEF OWUSU AFRIYIE AND (2) JOSEPH OKO SASRAKU'S CO.

"H"

Deed of Conveyance, (1) Chief Owusu Afriyie and (2) Joseph Oko Sasraku's Co.,

12th April 1935

THIS INDENTURE made this 12th day of April in the year of Our Lord One thousand nine hundred and thirty-five BETWEEN CHIEF OWUSU AFRIYIE of Kyempoh in the Ashanti Akim District on behalf of himself and as representing the Councillors Elders Linguists and people of Kyempoh (hereinafter called the VENDOR which expression shall where the context so admits include his heirs and Successors) of the one part AND JOSEPH OKO SASRAKU'S COMPANY of Teshie, Accra in the Accra District of the Gold Coast Colony ... (hereinafter called the PURCHASER which expression shall where the context so admits include his heirs personal representatives and assigns of each) of the other part WHEREAS the Vendor as Chief of Kyempoh aforesaid was seised in possession in fee simple free from all incumbrances as absolute owner of the hereditaments and premises hereinafter expressed to be hereby conveyed and did with the consent and concurrence of the principal Councillors elders Captains and Linguist whose consent and concurrence is hereby essential to native customary law necessary for the valid grant of Stool communal land and whose consent and concurrent is signified by their testifying hereto under the title and description of concurring witnesses

Plaintiff's Exhibits

"H"

Deed of Conveyance, (1) Chief Owusu Afriyie and (2) Joseph Oko Sasraku's Co.,

12th April 1935 - continued.

agree with the Purchaser for the absolute sale to him of the said hereditaments and premises at the price of THREE HUNDRED AND FIFTY FOUR POUNDS (£354) AND WHEREAS the Vendor with the concurrence aforesaid did in fact sell and convey the said hereditaments and premises by the Native Custom of Tramah or Guaha to the Purchaser of the aforesaid price of Three hundred and fifty four pounds which was duly paid and accepted AND WHEREAS the Vendor hath at the further request of the Purchaser agreed to the further evidence the said sale and conveyance by document NOW THIS INDENTURE WITNESSETH that in Consideration of the sum of Three hundred and fifty four pounds by Purchaser paid to the Vendor on the sale by native method as aforesaid (the receipt whereof the Vendor doth hereby acknowledge) the Vendor doth hereby grant and convey unto the Purchaser All that piece or parcel of land situate lying and being at Kyempoh in the Ashanti Akim District aforesaid and bounded on the North by the property of Abraham Antwi measuring 59 ropes - Eight thousand four hundred and ninety six feet (8496') more or less on the South by the property of Joseph Oko Sasraku and Company as Pampamse-Hill measuring 59 ropes - Eight thousand four hundred and ninety-six feet (8496) more or less on the East by the properties of Jacob Oko Kotei and Company and Henry Dawson Korang measuring 59 ropes - Eight thousand four hundred and ninety-six feet (8496') more or less and on the West by the properties of Kotey Ga and Company; Kyempoh people and Akromah Tagoe and Company and measuring 59 ropes - Eight thousand four hundred and ninety-six feet (8496') more or less or howsoever the said premises may be known bounded or described rope used for measuring being twenty-four (24) fathoms long together with the said hereditaments and premises and all right easements and appurtenances whatsoever to the said hereditaments and premises appertaining or are held therewith or reputed to belong thereto and all the right title interest claim and demand of the Vendor in to or out of and upon the said hereditaments and premises to Hold the same unto and to the use of the Purchaser forever and the Vendor doth hereby convenant with the Purchaser that he the Vendor hath not at any time heretofore done omitted or suffered anything whereby or by means whereof the hereditaments and premises expressed to be hereby conveyed or any part thereof are is or may be incumbered

or affected in any manner whatsoever or whereby he the Vendor is prevented from assuring the said hereditaments and premises in manner aforesaid and that notwithstanding anything by him the Vendor done omitted or suffered he the Vendor now hath good right to grant and convey the said hereditaments and premises in manner aforesaid and that the Vendor and all persons claiming under or in trust for him will at all time execute and do all further acts and deeds for further and better assuring the said hereditaments and premises unto and to the use of the Purchaser as may be reasonably required.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals the day and year first above written -

Signed Sealed and Delivered by the within-named Chief Owusu Afriyie after the foregoing Indenture had been read over interpreted and explained to him in the Twi language by D.M.Sasraku when he seemed perfectly to understand the same before making his mark hereto in the presence of:- Chief Owusu Afriyie his x mark

Witnesses:-

	Their		Their
Kofi Nkromah	x	Kwaku Amankwa	x
Kwasi Nuro	x	Adjua Konsiwa (Queen)	x
Kofi Twum Barimah	x		
Kofi Ahunu	x	Kwadjo Ben	x
Kofi Frempong (Lig.)	x	Atta Kwaku	x
Kwabina Tawia	x		marks
	marks	(Sgd.) ? ?	

Signed Sealed and Delivered by the within-named Joseph Oko Sasraku after the foregoing Indenture had been read over Interpreted and explained to him in the Ga language by D.M.Sasraku when he seemed perfectly to understand the same before signing his name hereto in the presence of:- Joseph O. Sasraku Company his x mark

Plaintiff's Exhibits

"H"

Deed of Conveyance, (1) Chief Owusu Afriyie and (2) Joseph Oko Sasraku's Co.,

12th April 1935 - continued.

Witness:-

	Their		
Nathan N. Tetteiffio	x	(Sgd.) ? ?	Sasraku
Tetteh K. Laryea	x	(Sgd.) ? ?	Sasraku
Kefa Kotey Ngimashie	x		
Emmanuel Kotei Sasraku	x		
Emmanuel K. Ngmashie	x		
	marks		

Received from the within-named Joseph Oko Sasraku & Company the Purchasers herein the sum of Three hundred and fifty-four pounds (£354) the purchase price of the within Conveyance.

Within-Vendor:-

Chief Owusu Afriyie his x mark

On the 13th day of May 1952 at 1.50 o'clock in the afternoon this Instrument was proved before me by the Oath of within-named Robert Amon Sasraku to have been duly executed by the within-named Chief Owusu Afriyie.

(Sgd.) ? ? ?

Registrar of Deeds.

Plan of Land Showing the property of Joseph Oko Sasraku and others situate at Chempaw in the Bank State of Ashanti-Akim District of Ashanti.

All that piece of land containing an Area of One thousand and sixty two decimal four nought (1062.40) acres or one decimal six six (1.66) square miles at Chempaw in the Bank State of Ashanti-Akim District of Ashanti the boundary whereof commencing at a point Lat. 6° 22' 34"N Long. 1° 06' 54"W on the Pampansi Hill follows a cut line on north Westerly direction and measuring eight thousand four hundred and ninety-six (8496) feet to appoint approximately seven hundred feet north-west of pillar marked F.R.B.P.15 on Mirasa Hills Forest Reserve thence follows a cut line to a point and measuring Eight thousand four hundred and ninety-six (8496) feet and thence follows a cut line to a point on the Pampansi Hill and measuring Eight thousand four

Plaintiff's Exhibits

"H"

Deed of Conveyance, (1) Chief Owusu Afriyie and (2) Joseph Oko Sasraku's Co.,

12th April 1935 - continued.

hundred and ninety six (8496) feet and thence follows a cut line the said cut line being the Northern boundary of No.1 Land belonging to Joseph Oko Sasraku and others and measuring Eight thousand four hundred and ninety six (8496) feet to the point of commencement.

£134. 8. 2.

Received from Joseph Oko Sasraku of Teshie - Accra the sum of One hundred and thirty-four pounds eight shillings and two pence being full payment for a piece or parcel of land purchased by him from me and my subjects as the marks under.

Dated at Kyempoh as follows:-

Owusu Afriyie his x mark.

Witnesses:-

Their

Kofi Nkromah x
Kofi Ahulu x
Kofi Frempong x
John Nketiah x
Kwabla Ananie x
marks

£35. 7. 9.

Received from Joseph Oko Sasraku of Accra the sum of thirty-five pounds seven shillings and nine pence (£35. 7. 9) being expenses made and paid for having the Deed of Conveyance or (Document) from the Chief Owusu Afriyie of Kyempoh.

Dated at Kyempoh village 29th March 1935.

Chief Owusu Afriyie his x mark

Lic'd. Writer
for the said Chief
(Sgd.) ? Sasraku
29. 3. 35.
Kyempoh.

Plaintiff's Exhibits

"H"

Deed of Conveyance, (1) Chief Owusu Afriyie and (2) Joseph Oko Sasraku's Co.,

12th April 1935 - continued.

Witness:

		Their
Kofi Nkromah	Nathan Nah Teteyfio	x x
Kwesi Nruh	Tetteh K. Laryea	x x
Yaw Num Beremah	Cafas Kotey Ngmashi	x x
Kofi Frempong	Emm.Kotei Oko Sasraku	x x
Kweku Amankwa	Emml.E.K. Ngmeshir	x x
Kwabla Amakwah		x
Kodjo Beng		x
Kofi Ahulu		x
Kwabla Tawiah		x
		marks

Temporary receipt

Received from Atta Sasraku cash the sum of one hundred and seventy (£170), being payment on account for the land purchased from the undersigned.

(Sgd.) Chief Kwasie Agyekum his x mark

Witnesses to their marks.

Kofie Nkroma x
Kofie Addoo x
Kofie Ahum x

marks.

J.E. Jackson Writer & Witness to marks.

Temporary

I the undersigned do hereby received from Mr. D.M. Sasraku on behalf of Mr. Joseph O. Sasraku the sum of £34. -. -. Thirty-four pounds being part payment of land purchased from me.

Per Kofie Frempong his x mark

Chief Owusu Afriyie his x mark

Writer:-

(Sgd.) ? ? Sasraku

Witness:-

Tetteh K. Laryea his x mark

Plaintiff's Exhibits

"H"

Deed of Conveyance, (1) Chief Owusu Afriyie and (2) Joseph Oko Sasraku's Co.,

12th April 1935 - continued.

£35. 7. 9.

Received from Joseph Oko Sasraku of Accra the sum of thirty-five pounds seven shillings and nine pence (£35. 7. 9) being expenses made and paid for having the Deed of Conveyance or Document from the Chief Owusu Afriyie of Kyempoh.

Dated at Kyempoh village 29th March 1935.

Chief Owusu Afriyie his x mark

Lic'd. Writer
for the said Chief
(Sgd.) ? ? ?

Witness,

Kofi Nkromah, Yaw Trum Beremah, Kwasi Nuro
Kofi Frempong, Kweku Amankwa, Kwabla Anakwa
Kwadjo Ben, Kofi Ahulu, Kwabla Tawiah
Nath. Nah. Tetteyfio, J.W. Adei, Tetteh K. Laryea
Cafas Kotey ?? Emm. Kotei, Q.K. Sasraku
Emm. E.K. Ngmush.

Temporal

Received from D.M. Sasraku by J.O.Sasraku of Accra Pampamso the sum of forty-four pounds (£44) being part payment on A/c owe to me by Chief Owusu Afriyie of Kyempoh.

Dated at Kyempoh as below.

Chief Owusu Afriyie his x mark

Witness:-

Kofi Frempong Their x
Kofi Addo x
marks.

Plaintiff's Exhibits

"Z"

Receipt by the Odikro of Asankare for £100,

3rd December 1936

"Z" - RECEIPT BY ODIKRO OF ASANKARE FOR £100

Temporal Receipt

"A"

I the undermarked Kofi Ata Gyebi Odikro of Asankare in Ashanti Akyem District have received from Kwasi Twu of Asiade Hjianwe cash the sum of One hundred being costs of land sales measuring twenty square chains at £5. 0. 0. five pounds a chain.

This receipt cancels the former receipt of the £60. 0. 0 sixty pounds given to him since a year ago.

Dated at Asankare this 3rd December, 1936.

Recipients Odikro of Asankare

Kofi Ata Gyebi x his mark

L.T.P.

Witnesses their

Akosua Dede x Queen-mother of Asankare
Kwame Asante x
Kwami Antwi x

marks

Witness to mark

signed W.D. Owusu
Lic. No. 11350/36 ad.
F.O.C.

This is the exhibit marked "A" referred to in the Oath of Kommey Terkutey sworn before me this day of March, 1947.

COMMISSIONER FOR OATHS.

"Q" - DEED OF CONVEYANCE, (1) CHIEF AFRIYIE OF KYEMPOH AND (2) NKRAMAH TAGOE AND ORS.

Plaintiff's Exhibits

"Q"

Deed of Conveyance, (1) Chief Afriyie of Kyempoh and (2) Nkramah Tagoe and ors., 1st February 1937

GOLD COAST STAMPS £2.10.0 964/37.

THIS INDENTURE made the 1st day of February One thousand nine hundred and thirty-seven BETWEEN CHIEF AFRIYIE of KYEMPOH in the Ashanti-Akim District on behalf of himself and as representing the Councillors, Elders, Linguist and people of Kyempoh (hereinafter called the Vendor which expression where the context so admits shall include his heirs and successors) of the one part and NKRAMAH TAGOE, ADUKOMEY, DJAN KWABLAH, E.A. ADDUMUAH and E.E. SASRAKU MENSAH ANOM, J.T. NORTEY, KWEI KWAME AND MARQUAYE KORLEY all of Accra in the Gold Coast (hereinafter called the Purchasers which expression where the context so admits shall include their heirs personal representatives and assigns) of the other part WHEREAS the Vendor as Chief of Kyempoh aforesaid is seized in fee simple free from incumbrances of hereditaments and premises hereinafter expressed to be hereby conveyed and did with the consent and concurrence of the principal councillors elders captains and linguists whose consent and concurrence is by native custom necessary for the valid grant of stool and communal land and whose consent and concurrence is signified by their testifying hereto under the title and description of consecurring Witnesses, agree with the Purchasers for the absolute sale to them of the said hereditaments and premises at the price of Two hundred and thirty-seven pounds eighteen shillings and nine pence (237. 18. 9) AND WHEREAS the Vendors with the concurrence aforesaid did in fact sell and convey the said hereditaments and premises by the Native Custom of "Trama" or "Guaha" to the Purchasers on the 13th day of February, 1928 at the price of Two hundred and thirty-seven pounds eighteen shillings and nine pence (£237.18.9) as aforesaid duly paid and accepted AND WHEREAS the Vendor hath at the request of the Purchasers agreed to further evidence the said sale and conveyance by document NOW THIS INDENTURE WITNESSETH that in consideration of the said Two hundred and thirty-seven pounds eighteen shillings and nine pence (£237. 18. 9) by the Purchasers

Plaintiff's Exhibits

"Q"

Deed of Conveyance, (1) Chief Afriyie of Kyempoh and (2) Nkramah Tagoe and ors., 1st February 1937 - continued.

paid to the Vendor on the sale by Native method as aforesaid (the receipt whereof the Vendor doth hereby acknowledge) the Vendor doth hereby grant and convey unto the Purchasers ALL that piece or parcel of land situate lying and being at Kyempoh Ablesu in the Ashanti-Akim District aforesaid bounded on the North by the property of Kyempoh measuring 35 ropes six fathoms more or less on the South by the property of J.O. Sasraku & Company measuring 35 ropes 6 fathoms more or less on the East by property of J.C. Sasraku & Company measuring 35 ropes 6 fathoms more or less and on the West by the property of Kokobeng near River Ablesu and River Okuonpiah measuring 35 ropes 6 fathoms more or less or howsoever the said premises may be known bounded or described rope used for measuring being 24 fathoms long together with the said hereditaments and premises appertaining or are held there with or reputed to belong thereto and all the right title and interest of the Vendor in to and upon the said hereditaments and premises TO HOLD the same unto and to the use of the Purchasers FOR EVER and the Vendor hath at any time heretofore done omitted or suffered anything whereby or by means whereof the hereditaments and premises expressed to be hereby conveyed or any part thereof are is or may be incumbered or affected in any manner whatsoever or whereby he the Vendor is prevented from assuring the said hereditaments and premises in manner aforesaid and that notwithstanding anything by him the Vendor done omitted or suffered he the Vendor now hath good right to grant and convey the said hereditaments and premises in the manner aforesaid and that he the Vendor and all persons claiming under or in trust for him will at all times execute and do all further acts and things for further and better assuring the said hereditaments and premises UNTO and to the use of the PURCHASERS and may be reasonably required IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written

SIGNED MARKED SEALED AND DELIVERED by the said CHIEF OWUSU AFRIYIE the VENDOR after the foregoing had been read over interpreted and explained to him in the Twi language) Chief Owusu Afriyie his x mark Odikro of Kyempoh

Plaintiff's Exhibits

"Q"

Deed of Conveyance, (1) Chief Afriyie of Kyempoh and (2) Nkramah Tagoe and ors., 1st February 1937 - continued.

by David M. Sasraku when he seemed perfectly to understand the same before putting his mark thereto in the presence of:-

Their

Kofi Frempong, Kwaku Asrifi, Kwabena Mensah, Kwabina Ananie, Tsum Berimah — Kofi Nkromah, Kofi Ahuly, Kofi Addo, Kwabina Tsum Kwesi Nuru, Kwadzo Derfuor, Yaw Berfi, Kwesi Tawiah — x marks

SIGNED MARKED by the concurring witnesses after the foregoing had been read over and interpreted and explained to them in the Twi language by David M. Sasraku when they seemed perfectly to understand the same before putting their marks hereunder.

Their

Kofi Nkromah, Kofi Ahulu, Kofi Addo, Kofi Frempong Kweku Asrifi, Kwabena Mensah, Kwabina Tsum, Kwesi Nubi Kwabina Ananie, Kwadzo Derfuor, Yaw Berfi, Tsum Berimah Kwami Tawiah — x marks

SIGNED MARKED AND DELIVERED after the foregoing had been read over interpreted and explained to the Purchasers Akramah Tagoe, Adukomey, Djan Kwablah, Mensah Anom, J.T. Nortey, Kwei Kwame, Marquaye Korley E.A. Addumuah and E.K. Sasraku in the Ga language by David M. Sasraku when they seemed perfectly to understand the same before making their marks thereto in the presence of:-

Their

Akramah Tagoe x
Adukomey x
Djan Kwablah x
Mensah Anom x
J.T. Nortey x
Kwei Kwame x
E.K. Sasraku x
Marquaye Korley x
E.A. Addumuah x

marks

(Sgd.) David M. Sasraku
Chief Clerk for the said Chief Owusu Afriyie, Odikro of Kyempoh.

(Sgd.) Adu Quamminah
Witness to marks.

Plaintiff's Exhibits

"Q"

Deed of Conveyance, (1) Chief Afriyie of Kyempoh and (2) Nkramah Tagoe and ors., 1st February 1937 - continued.

IN ACCORDANCE WITH SECTION 18 OF CAP. 154 I CERTIFY THAT THE OPINION OF THE COMMISSIONERS OF STAMPS THIS
IS CHARGEABLE WITH A DUTY OF TWO POUNDS TEN SHILLINGS.

COMMISSIONER OF STAMPS OFFICE
ACCRA, 19th February, 1937.

(Sgd.) ? ?

COMMISSIONER OF STAMPS.

"T1" - LETTER, NANA KOKOFUHENE TO MOSES TETTEH

"T1"

Letter, Nana Kokofuhene to Moses Tetteh, 3rd July 1937

Kokofuhene's Office,
New Asafu, Kumasi.
3rd July, 1937.

Dear Sir,

I have the honour to inform you that at the receipt of this my letter, kindly let me see you at Kokofu and of this very month without any failure, for some matter.

I hope you will not fail to come at the appointed time.

I beg to remain,
Yours lovingly,

his
Nana Kofi Adu x
KOKOFUHENE mark

Witness to mark.
(Sgd.) J.A. Mensah
Akwamu Stool, Clerk,
New Asafu, Kumasi,
Ashanti, Gratis.

"T2" - LETTER, NANA KOKOFUHENE TO MOSES TETTEH

Plaintiff's Exhibits

"T2"

Letter, Nana Kokofuhene to Moses Tetteh,

12th January 1939

No. 10/39
Kokofuhene's Office,
Kokofu, Ashanti.
12th January, 1939.

My Dear Moses Tetteh,

I beg to remind you that at the end of this month will be exactly the time you had fixed me and my Elders for settlement of your account on behalf of the land, and I hope and trust that you will not fail to do as promised, for which I shall be very much obliged.

With my best compliments.

I am,
Sincerely Yours,
Nana Kofi Adu
Kokofuhene

his
x
mark

W/to Mark:
???
Regr.

To Moses Tetteh,
Ado-Nkwanta,
via Kikurantumi.

"F" - DEED OF CONVEYANCE, (1) CHIEF OWUSU AFRIYEA (2) NANA KOFI ADU AND (3) EMMANUEL ASARE ATTRAMS AND OTHERS

"F"

Deed of Conveyance, (1) Chief Owusu Afriyea (2) Nana Kofi Adu and (3) Emmanuel Asare Attrams and others,

7th September 1940

GOLD COAST STAMP DUTIES - £4.15.0.

THIS INDENTURE made the 7th day of September in the year of our Lord One thousand nine hundred and forty (1940) BETWEEN CHIEF OWUSU AFRIYEA Odikro of Kyempoh in the Asante-Akim District of Ashanti on behalf of himself and as representing the principal elders and people of the stool of Kyempoh aforesaid (hereinafter called the VENDOR

Plaintiff's Exhibits

"F"

Deed of Conveyance, (1) Chief Owusu Afriyea (2) Nana Kofi Adu and (3) Emmanuel Asare Attrams and others,

7th September 1940 - continued.

which expression shall where the context so requires or admits include his heirs and successors of the first part NANA KOFI ADU Omanhene of Kokofu in Ashanti (hereinafter called the 'Confirming Party') of the second part and EMMANUEL ASARE ATTRAMS EMMANUEL SAMUEL ASIEDU-OFEI DANIEL PARDI EMMANUEL KWAME TETE and SAMUEL OBENG all of Larte in the Benkum Division of Akwapim of the Gold Coast Colony (hereinafter called the PURCHASERS which expression shall where the context so requires or admits include their heirs personal representatives and assigns) of the third part WHEREAS the VENDOR'S predecessor in title CHIEF KWASI BOTWE of Kyempoh aforesaid was up to the 2nd day of February in the year of Our Lord One Thousand nine hundred and twenty-five (1925) seised in fee simple free from incumbrances of the hereditaments and premises hereinafter expressed to be hereby conveyed AND DID with the consent and concurrence of his Principal Councillors and Elders whose consent and concurrence is by native custom necessary for the valid grant of stool and communal land AGREE with the PURCHASERS for the absolute sale to them of the said hereditaments and premises at the price of four hundred and seventy-one pounds seventeen shillings and sixpence (£471.17.6d) AND WHEREAS the VENDOR'S said predecessor with the concurrence of his principal Councillors and elders aforesaid did in fact sell and convey and deliver possession of the said hereditaments and premises by the native custom of "TRAMA" or "GUAHA" to the PURCHASERS on the 2nd day of February 1925 at the price of four hundred and seventy-one pounds seventeen shillings and six pence (£471.17.6d) which was duly paid and accepted (the receipt whereof the VENDOR hereby acknowledges and from the same doth hereby release the PURCHASERS) AND WHEREAS it is necessary by native custom of Ashanti to have the confirmation of the said sale by the VENDOR'S superior Chief who is Nana Kofi Adu Omanhene of Kokofu hereinafter referred to as the "Confirming Party" AND WHEREAS the VENDOR and the Confirming Party have at the further request of the PURCHASERS AGREED to effectuate the said sale and conveyance in writing NOW THIS INDENTURE WITNESSETH that in consideration of the said sum of four hundred and seventy-one pounds seventeen shillings and six pence (£471. 17. 6d) by the PURCHASER paid to the VENDOR'S predecessors CHIEF KWASI BOTWE (now deceased) on the sale by native method as aforesaid and in further consideration of the sum of

Plaintiff's Exhibits

"F"

Deed of Conveyance, (1) Chief Owusu Afriyea (2) Nana Kofi Adu and (3) Emmanuel Asare Attrams and others,

7th September 1940 - continued.

twenty-five pounds (£25) paid by the PURCHASERS to the Confirming party immediately before the execution hereof (the receipt whereof the Confirming Party hereby acknowledges) the VENDOR with the consent of the Confirming Party and or of their respective councillors and elders do hereby grant and convey unto the PURCHASERS jointly ALL THAT PIECE or PARCEL of land situate lying and being at Kyempoh-Subeng in the Asante-Akim District as aforesaid comprising an area of 2246.40 acres and bounded on the North by River Komeh and measuring seventy (70) Ropes more or less on the South by the property of Abraham Antwi measuring seventy (70) Ropes more or less on the East by the landed property of Chief Kwasi Botwe the predecessor of the present Odikro of Kyempoh measuring sixty-two (62) Ropes more or less and on the West by River Subeng and measuring eighty-three (83) Ropes more or less AND also ALL THAT piece or parcel of land situate lying and being at Dubi Main Road comprising an area of 428.41 acres and bounded on the North by River Komeh measuring thirty-one ropes more or less on the South by the property of Chief Kwasi Botwe the predecessor of the present Odikro of Kyempoh measuring fourteen (14) ropes more or less on the East by River Awuro measuring fifty-nine (59) Ropes more or less and on the West by the property belonging to Chief Kwasi Botwe the predecessor of the present Odikro of Kyempoh and measuring forty (40) ropes more or less or howsoever otherwise the said premises may be bounded known or described (Rope used for measuring being twenty-four fathoms long) TOGETHER with the houses and outhouses erected or now in the course of erection on the said hereditaments and premises TOGETHER also with all plantations farms forests trees waters watercourses ways paths fences hedges ditches commons and all rights fixtures easements liberties privileges and appurtenances whatsoever to the said hereditaments and premises appertaining or are held therewith or reputed to belong thereto and all the rights title and interest or the VENDOR in to out of and upon the said hereditaments and premises TO HOLD the same unto and to the use of PURCHASERS for ever AND the VENDOR hereby COVENANT with the PURCHASERS that he the VENDOR or his predecessors hath not at any time heretofore done omitted or suffered anything whereby or by means whereof the hereditaments and premises expressed to be hereby

Plaintiff's Exhibits

"F"

Deed of Conveyance, (1) Chief Owusu Afriyea (2) Nana Kofi Adu and (3) Emmanuel Asare Attrams and others,

7th September 1940 - continued.

conveyed or any part thereof are is or may be incumbered or affected in any manner whatsoever or whereby he the VENDOR is prevented from or using the said hereditaments and in manner aforesaid AND that notwithstanding anything by him the VENDOR or his said predecessor done omitted or suffered he the VENDOR now hath good right to grant and convey the said hereditaments and premises in manner aforesaid AND that the VENDOR and all other persons claiming under or in trust for him will at all times execute and do all further acts and deeds for further and better assuring the said hereditaments and premises unto and to the use of the PURCHASERS as may be reasonably required PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED between the parties hereto that in the event of any minerals being discovered on the aforesaid lands hereby conveyed such minerals or any profits accuring or money payable in respect of such minerals shall be divided into three parts in the following proportions that is to say one-third (1/3) to the Confirming Party one-third (1/3) to the VENDOR and the remaining one-third (1/3) to the PURCHASERS

sic

IN THE WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

MARKED SEALED AND DELIVERED by the said CHIEF OWUSU AFRIYEA Odikro of Kyempoh (Vendor) on behalf of his principal Elders and people after the foregoing had been duly read over and interpreted to him in the Twi language by Akotey Hanson of Kyempoh when he seemed perfectly to understand the same before making his mark and affixing his left thumb print hereto in the presence of:-

Chief Owusu Afriyea Odikro of Kyempo L.T.P.

His x mark

(Sgd.) D.K. Darbu

Their

1. Kwabena Kunto (Kyeame) x L.T.P. No.1

2. Kofi Ahonu (Krontihene) x L.T.P. No.2

3. Kwasi Nduro (Abusua Panin) x L.T.P. No.3

4. Atta Kwaku (Gyasihene) x L.T.P. No.4

marks

Plaintiff's Exhibits

"F"

Deed of Conveyance, (1) Chief Owusu Afriyea (2) Nana Kofi Adu and (3) Emmanuel Asare Attrams and others,

7th September 1940 - continued.

MARKED SEALED AND DELIVERED by the said NANA KOFI ADU-KOKOFUHENE (Confirming Party) after the foregoing had been duly read over and interpreted to him in the Twi language by John William Amporful of Kokofu when he seemed perfectly to understand the same before making his mark and affixing his left thumb print hereto in the presence of:-

Nana Kofi Adu Kokofuhene L.T.P.

Their

Okyeame Kwasi Yebrah x

Chief Kofi Katawire x

marks

J.W. Amporful
Stool Clerk

D.K. Darbu
Law Clerk, Kumasi.

SIGNED MARKED SEALED AND DELIVERED by the within named EMMANUEL ASARE ATTRAMS EMMANUEL SAMUEL ASIEDU-OFEI DANIEL PARDI EMMANUEL KWAME TETE and SAMUEL OBENG (PURCHASERS) after the foregoing had been duly read over and interpreted to DANIEL PARDI and SAMUEL OBENG in the Twi language by Samuel Jonathan Asamoah when they seemed perfectly to understand the same before making their marks and affixing their left thumb prints hereto in the presence of:-

E.A. Attrams L.S.

E. Samuel Asiedu Ofei L.S.

Emml. Kwame Tete L.S.

Daniel Pardi his x mark L.S.

Samuel Obeng L.S.

Plaintiff's Exhibits

"F"

Deed of Conveyance, (1) Chief Owusu Afriyea (2) Nana Kofi Adu and (3) Emmanuel Asare Attrams and others,

7th September 1940 - continued.

RECEIVED the within-named sum of twenty-five pounds (£25) mentioned in the foregoing Deed of Conveyance.

Nana Kofi Adu His x mark

GOLD COAST
2D
POSTAGE
STAMP

Witness to Marks & Thumb Prints.

(Sgd.) J.W. Amporful
Stool Clerk
Kokofu.

Their
Okyeame Kwasi Yebrah x
Chief Kofi Katewire x
marks

D.K. Darbu
Law Clerk, Kumasi.

I, DANIEL KOJO DARBU of Kumasi, Law Clerk, make Oath and say that on the 7th day of September, 1940, I saw CHIEF OWUSU AFRIYEA Odikro of Kyempoh duly execute the Instrument now produced to me and marked "A" and that the said CHIEF OWUSU AFRIYEA cannot read and write but that the said Instrument was read over interpreted and explained to him in the Twi language by Akotey Hanson of Kyempoh and that he seemed perfectly to understand its provisions.

SWORN by the above deponent at Kumasi this 10th day of September 1940 Before me:-) (Sgd.) D.K. Darbu

(Sgd.) B. Crosby Davis
Registrar, Divisional Court,
Kumasi.

On the 10th day of September 1940 at 9.32 o'clock in forenoon this Instrument was proved before me by the Oath of the within-named DANIEL KOJO DARBU to have been duly executed by the within-named CHIEF OWUSU AFRIYEA Odikro of Kyempoh.

GIVEN UNDER MY HAND AND OFFICIAL SEAL.

(Sgd.) B. Crosby Davis
Registrar, Divisional Court, Kumasi.

This is the Instrument marked "A" referred to in the Oath of Daniel Kojo Darbu sworn before me this 10th day of September, 1940.

(Sgd.) B. Crosby Davis
Registrar, Divisional Court, Kumasi.

"T3" - LETTER, NANA KOKOFUHENE TO MOSES TETTEH

Plaintiff's Exhibits

"T3"

Letter, Nana Kokofuhene to Moses Tetteh,

3rd April 1941

No.38/41
Kokofuhene's Office,
Kokofu, Ashanti.
3rd April, 1941.

Moses Tetteh,
Adonkwanta.

Sir,

I have directed the Odikro of Dwendwenase to receive from you in full balance of your account respecting the land bought by you as the time fixed by you for payment has already been elapsed.

Trusting you will not fail to make payment as demanded herein.

Faithfully Yours,

Nana Kofi Adu
Kokofuhene

his
x
mark

W/to mark:-
(Sgd.) ? ? ?
Regr.

"W" - RECEIPT BY LAND COLLECTOR AFFARWUAH FOR £20

"W"

Receipt by Land Collector Affarwuah for £20,

28th March 1944

No. 3 28th March 1944.

Received from Yaw Larbi of Akwapim Larteh now at Dwendwenasi in Kokofu Division the sum of Twenty pounds being part payment of a portion land bought from Nana Kokofuhene.

2d Stamp bearing date
28. 3. 44.

(Sgd.) ? Affarwuah
Land Collector.

Plaintiff's Exhibits

"S"

Receipt by Land Collector for £28.17.0, 24th December 1944

"S" - RECEIPT BY LAND COLLECTOR FOR £28.17.0

No.16 24th December, 1944

Received from Moses Tete of Akuapim now at Dwendwenase the sum of twenty-eight pounds seventeen shillings being the part payment of a portion of land at Dwendwenase.

(Sgd.) ? ? Affarwuah,
Land Collector

£28.17. 0.

Defendants' Exhibits

"2"

Charges preferred against Kokofuhene, 30th April 1951

"2" - CHARGES PREFERRED AGAINST KOKOFUHENE

KOKOFU, ASHANTI.
3rd May, 1951.

OTUMFUO,
THE ASANTEHENE,
KUMASI, MANHYIA.

OTUMFUO,

RE SUPPLEMENTARY CHARGE NO.51

We the undermarked and signed have the honour most respectfully beg to withdraw the word presented in the charge No.51 and insert or substitute the word cared for by Dadiasihene, about some years ago, and it has been now given to the real owner Dwumakyihene.

Kwabina Adu Bobi III
Krontihene

Kwadwo Asamoa II
Akwamuhene

Kwaku Owusu Ansah
Kyidomhene
for other elders

J.W. Opoku
for youngmen.

W&W to signature & marks.
(Sgd.) ? ?
Lice. No. 29809/51/BKI.
Namp. Street, Bekwai.
Fee 1/- 6/- copies.

Copies to D.C. B.K.I.
KOKOFUHENE, Kokofu
C.C.A. Kumasi.

Defendants' Exhibits

"2"

Charges preferred against Kokofuhene,

30th April 1951 - continued.

CHARGES PREFERRED AGAINST NANA KOKOFUHENE FOR HIS DESTOOLMENT BY THE ELDERS AND YOUNGMEN OF KOKOFU STATE.

KOKOFU,
30th April 1951.

OTUMFUO, ASANTEHENE,
KUMASI, MANHYIA.

OTUMFUO,

We the undermarked and signed for and on behalf of the Kokofu State, have the honour most respectfully beg to submit the following charges against Nana Kokofuhene for your information and necessary action.

1. That Nana Kokofuhene after the death of one of the Stool servants by name Kofi Kyei (deceased) did present as a gift, his cocoa farm to his own sister, by name Akua Manu; whereas the deceased's gun and one compounds house had been given to the Stool.

2. That deceased Busumbru who was a servant attached to the Stool left legacy of one cocoa farm which has been confiscated by him for his personal use.

3. That one of the Stool servants (deceased) cocoa farm cared for by one Kwabena Kwadum had also been confiscated by him for his personal use.

4. That one hundred pounds (£100) two sheep plus two bottles gin were collected by him from the elders of Akyiase in respect of Kwabena Donkor's enstoolment, with reason that he was to be

Defendants' Exhibits

"2"

Charges preferred against Kokofuhene,

30th April 1951 - continued.

exempted from paying Stool levy and National fund to Kokofu Division without sending it to the State Treasury.

5. That one hundred pounds (£100) was collected by him from one Brimah Lagos (Diamond prospector) per one Atta Kofi in order to operate his concession on Kokofu Stool land. This amount was never deposited with the State Treasury.

6. That a tribute of two hundred and eight pounds thirteen shillings (£208.13.0) was collected by him for the year 1950/51 cocoa season from respective farms at Krom-Ajuafo and Obu. These tributes had been previously collected by him for his personal use, during the past years without the knowledge and consent of the State. This amount was never sent to the Treasury.

7. That having voted certain amount of money for the development for Kokofu town, he further collected 30/- from one hundred and eighteen (118) houses respectively for the same scheme was also made use of by him.

8. That one hundred and two pounds (£102) was voted for K.A.T. Amankwah as scholarship to U.K. for further studies of two years, during the last estimate session it was discovered that the money had been withdrawn and made use of by him.

9. That certain unauthorised levy was imposed on every N.T. man living within Kokofu Division at 2/- per man for the purpose of building a new Zongo for them in Kokofu town. This amount was used personally by him.

10. That Ankaase people approached him for better water supply but he told them that they do not deserve for a good water supply in their village. He further emphased that he could have come for their existing drinking water if it would be possible for him to adopt system of using their own water.

11. That according to the Asanteman Council, the desolution fee of marriage for a paramount Chief is eight pounds £8 (Preguam) but Nana claimed from one Kojo Dente, the Odikro of Abu, an amount of forty pounds (£40) instead. He further claimed thirty pounds (£30) with intent to buy a

maid servant to the wife at the instance of the marriage contract.

Defendants' Exhibits

"2"

Charges preferred against Kokofuhene, 30th April 1951 - continued.

12. That Nana Kokofuhene gave his gun to the late Kwabena Amoah of Sibodie to hunt for him. During the course of hunting an accident occurred, resulting the death of one Bukari Moshie. The owner of the gun (Kokofuhene) collected ten pounds (£10) from the victim with a view to approach the police for his release; but the purpose was not done, and as a result Kwabena Amoah was convicted to a sentence of three months H.L. After his release, he demanded for the ten pounds from Kokofuhene, but he never refunded.

13. That Kokofuhene collected forty pounds (£40) from Kwame Duah (de'd) to buy his cocoa farm in payment of his debt incurred by the said Duah, Kwame Antwi the nephew and successor to the deceased, approached the Ohene for redemption of the said farm but he was asked to pay the amount in double (£80) other than that the farm would never be restored to him. Before approaching Nana the cocoa farm had been in his possession for a period of twenty years.

14. That Omanhene took fourteen pounds (£14) and two bottles Jamaica Rum from one Kwasi Adea of Aduam before he could recommend him to the Authorities concerned as a fit person to hold D.B. Shot Gun.

15. That a Stool servant by name late Asamoa Kwasi, bought one cocoa farm during his lifetime from the late Yaw Donkor then alive, for an amount of twenty five pounds (£25). After the death of both Asamoa Kwasi and Yaw Donkor, Kwasi Kaabi being the successor of Yaw Donkor redeemed and paid the amount involved to Kokofuhene under a petition submitted to the District Commissioner Bekwai. Kwasi Feh, the successor of the late Asamoa Kwasi also went and demanded this amount and cocoa from Kokofuhene but he refused to give either the money or the farm to him.

16. That Afua Tuaa, Krontihene's wife was stripped naked, her shame cloth was loosed and tired around her head, a rope around her waist, and was escorted by late Kwaku Serfuo by the order of Kokofuhene. She was forced to squat, to expose her private parts to the seeing of the

Defendants' Exhibits

"2"

Charges preferred against Kokofuhene,

30th April 1951 - continued.

public and was eventually tired to a tree without shade to suffer from the stroke of the sun; and as a result, died twenty days after for presenting bread and corned beef to Kokofuhene's wife who had then been carnally known by one Yaw Biramah.

17. That Nana collected an amount of five hundred pounds (£500) being cocoa tribute from the land of Omanso at Yapesa and made use of it without sending it to Treasury.

18. That according to Native Law and Custom a man who steals, has sexual connections in the bush and practises witchcraft should not be allowed to occupy any Stool; but the Omanhene's own son by name Opoku Forfie who had committed such forbidden offences had been installed by Nana as a chief.

19. That eighty iron sheets, three doors and eight windows the property of S.D.A. Mission at Kokofu had been unlawfully confiscated by him without assigning any reason.

20. That an amount of forty five pounds (£45) was collected by the Kokofuhene from Kwaku Yamoah, Odikro of Papase, for having renovated a denuded cocoa farm made by a certain man from Juaben who is dead for the past twenty (20) years ago. Nana further claimed the said farm from Kwaku Yamoah. This amount was not sent to Treasury.

21. That an amount of fifty pounds (£50) plus two bottles gin were collected by Nana from Kutuah and his people for failing to pay annual tribute to him; whereas Kutuah and his people had been paying Stool levies as citizens to the Stool. This amount was never sent to the Treasury.

22. That the people of Anunso were forced by Nana to pay the sum of sixty pounds (£60) for failing to report to him the construction of a motor road from Anunso to Achiase. He further stopped them to continue the construction.

23. That Nana collected an amount of seventy pounds (£70) from the people of Amansin and Kwaninyaw to interceed for them in a cocoa tribute which was being collected by the Asechere Stool, to exempt them from slaughtering the annual sheep to the Asechere Stool; but the purpose

was not done as promised and it was not refunded.

24. That Nana collected an amount of eight pounds (£8) from Amansin and Kwaninyaw people to interview the Asechorehene to allow them to brush freely on his Stool land without taxation, but he did not do so and the money was not refunded.

25. That anamount of four pounds sixteen shillings (£4.16.0d) was collected by Nana from Kwasi Yadie and Kojo Mensah of Amansin to make necessary recommendations relevant to the signing of respective Permits to purchase D.B. shot guns.

26. That Nana collected and amount of two pounds seven shillings (£2.7.0d) respectively from thirty one (31) gods in the State as donations in respect of the National Funeral Celebrated at Kumasi.

sic

27. That Nana collected an amount of five pounds (£5) from Kwabena Ata of Adomano as a drink ere he signed his permit for S.B. Shot Gun.

28. That Yaw Duro of Kurase was forced by Nana to pay the sum of twenty five pounds (£25) for not calling the attention of the Odikro of Kurase to inspect the drying of his cocoa beans before they were sold. This amount was not sent to the Treasury.

29. That Nana collected an amount of twenty five pounds (£25) from Opanin Yaw Anane representing Aduam, with intent to help the subjects of Aduam to litigate about a land dispute between Abodom and Aduam. Nana having failed to help a debt of one thousand five hundred was incurred by them. He further received the sum of sixteen pounds (£16) when he was asked to accompany them to Kumasi in the same affair.

30. That Nana collected an amount of thirty seven pounds (£37) from eight of his subjects who were residing at Anomako as fishermen for failing to supply the usual Lake fishes (Apatre) to him. This amount was not sent to Treasury. He further caused the desertion of the village and as a result some of the eight people have fled to Akim.

31. That Nana has sold outright the old State Car at the cost of sixty pounds (£60) without the knowledge and consent of his elders. This amount was not sent to the Treasury.

Defendants' Exhibits

"2"

Charges preferred against Kokofuhene, 30th April 1951 - continued.

32. That Nana has presented as a gift to his own sister by name Akua Manu a certain portion of land cared for by the late Kofi Kyei from which the said Akua Manu had been collecting tributes for her self without sending them to the Stool.

33. That Nana has presented as a gift to his grandson by name Osei Kojo, one compound house, the property of the late Kofi Kyei. An amount of four pounds thirteen shillings (£4.13. 0d) was collected by him from the said grandson as fee for the presentation without the knowledge and consent of his elders.

34. That one Kofi Nyina purchased with permit one S.B. gun at thirty pounds (£30) and as being true subject, he went to show the gun to Nana; but without any reason Nana has confiscated the gun without refunding the cost of it to him.

35. That Nana has sold a portion of land lying at Achampo to one Attram for the sum of four hundred and seventy pounds (£470) without the knowledge and consent of his elders and the money was not sent to the Treasury.

36. That Nana has presented as a gift to his niece by name Nyieseh a house built in the name of Kokofu State at Kumasi without the knowledge and consent of his elders.

37. That Nana collected the sum of sixty pounds (£60) to help destool the Odikro of Anyinase.

38. That the Ohene has sold a portion of land to one Kwatey Kwao for the sum of four hundred pounds (£400) without the consent of the Oman.

39. That Nana has sold a portion of land to one Ata Sesereku for the sum of three hundred pounds (£300) without the knowledge and consent of the Oman.

40. That Nana has sold a portion of land to one Kuran a Native of Akwapim for the sum of three hundred and sixty pounds (£360) without the knowledge and consent of the elders.

41. That Nana has sold a portion of land to one Tano of Kofoniodua for the sum of four hundred pounds (£400) without the knowledge and consent of his elders.

Defendants' Exhibits

"2"

Charges preferred against Kokofuhene, 30th April 1951 - continued.

42. That Nana collected the sum of thirty pounds (£30) from the people of Yapesa, Kokoben and Apantubuom to assist them in getting Senior School in their Area but the purpose was not done and the money was never refunded.

43. That Nana did collect the sum of four pounds four shillings (£4. 4/-) to see the Agricultural officer to stop cutting out their cocoa trees but the purpose was done and the money was not refunded.

44. That Nana collected the sum of sixteen pounds (£16) from the Odikro of Duasi for having sent some fish to him per N.T. man instead a Native.

45. That Nana collected the sum of twenty pounds (£20) from the people of Duasi after they have rendered an apology through him to Nana Asantehene for having fished in the Lake when it had been forbidden. This money was used personally by him for the help he rendered in their case.

46. That Nana collected from the family of late Fremah the sum of five pounds (£5) at Dabaa for failing to bury the dead of Fremah at Kokofu; when he Nana had already two bottles Whisky and two sheep allowing them to bury the dead at Duasi.

47. That during the death of Kwasi Yentumi Nana's own son who was killed by fetish Kwaku Fri, the celebration of his funeral was accordingly performed; but when Osei Yaw one of the royals was killed by the same fetish, Nana refused to celebrate his funeral for the reason that he had been filled by a fetish.

48. That Nana collected from the people of Anunso the sum of sixty pounds (£60) to exempt them from paying annual tributes. This money was never sent to the treasury.

49. That if a subject offends constitutionally and is brought up before the Ohene and is asked to slaughter sheep, Nana takes the costs of the sheep and substitutes his own sheep. This sheep would not be killed to wash away the customary offence committed but rather keeps it for reselling to respective offenders who would be brought up again before him.

Defendants' Exhibits

"2"

Charges preferred against Kokofuhene,

30th April 1951 - continued.

50. That Nana told his elders before signing the document of presentation by the same elders that his sister Akua Manu did give certain amount to the late Kofi Kyei to make a farm at Frebeye. Before such farm was made the late Kyei was having two farms already and these were concealed from his elders. These two farms have been added to the farm described in the document of presentation to the said Akua Manu. This amounts to persuasion or deception to his elders.

That in view of the above charges we the undermarked and signed beg to bring to your notice that we cannot serve Nana Kofi Adu the Omanhene of Kokofu anymore.

We have the honour to be,
Otumfuo,
Your most obedient servants,

(Sgd.) Kwabina Adu Bobi III
Krontihene

(Sgd.) Kwadwo Asamoa II
Akwamuhene

(Sgd.) Kwaku Wusu Ansah
Kyidomhene

W & W to marks & signatures:
(Sgd.) ? ?
Lic.No.29809/51/BKI
Namp.Street,
Bekwai.
Fee charges
10/- 6 copies.

Yaw Boahyia
Akyeamihene

Kwasi Feh his x mark.

Kwabena Adu their x
Kwaku Black x marks

(Sgd.) J.W. Opoku
for Youngmen

Kwadwo Feh Their
Gyasihene x

Kwaku Adae
Ankobiahene x

marks

COPIES TO:-
C.C.A. Kumasi
D.C., BKI.
KOKOFUHENE, KOKOFU

51. That Nana Kokofuhene collected from some Akwapim people an amount eight hundred and ninety pounds (£890) against their occupation on a land at Dumaakyi which was formerly presented to Dadissihene about some years ago, and it has been now taken or given to the Odikro of Dwumaskyi. This amount was not sent to the Treasury.

"3" - NOTES OF DISMISSAL OF KOKOFUHENE'S APPEAL TO THE CHIEF COMMISSIONER AGAINST DESTOOLMENT

Defendants' Exhibits

"3"

Notes of dismissal of Kokofuhene's Appeal to the Chief Commissioner against destoolment, 13th July 1951

13. 7. 51.

Appeal before His Honour William Hugh Beeton, Chief Commissioner of Ashanti, in his administrative capacity, on the 13th day of July, 1951.

Kwabina Adu Bobi & ors. - Respondents

v.

Nana Kofi Adu, Kokofuhene - Appellant

Kwabina Adu Bobi III, Krontihene, represents the complainants.

This is an appeal from a decision of the Kokofu Divisional Council, dated 17th May 1951, destooling Nana Kofi Adu.

Grounds of appeal have been filed by appellant & served on the respondents.

* * * * *

By Chief Commissioner.

The respondent has made it clear, in the record of the Council below and in his submissions this morning that the reason for the Council deposing the appellant was that he did not attend the Council's call. The appellant has filed many grounds of appeal but none answers this point, except that he explains he was waiting for a reply by the Ag. Chief Commissioner to a letter. A reply to that letter was given appellant on May 16th, and by the 17th when the destooling took place, that excuse no longer held good. It is well known that refusal to obey a reasonable call by his people justifies the people in deposing their Chief; the call must be reasonable, and in this case it was so. The appellant's main ground of appeal is that his accisers were his judges - that is, that the complainants formed the Divisional Council. A Chief in Ashanti is answerable to his Council, and this ground of appeal is applicable to all destoolments; it is not a valid one in customary matters such as this. I therefore think that the Council's action was correct and that the destoolment was lawful. I think that the appellant is entitled to his allowance as a Chief,

Defendants' Exhibits

"3"

Notes of dismissal of Kokofuhene's Appeal to the Chief Commissioner against destoolment, 13th July 1951 - continued.

at the current rate of £40 a month, until to-day's date. And I think that the appellant should arrange to hand over the Stool property within one week to whoever is entitled to its custody; failure to arrange this would justify the respondents in taking action in accordance with the Stool Property Protection Ordinance.

The appeal is dismissed. No order as to costs.

(Ind.) W. H. B.
13.7.51.

Plaintiff's Exhibits

"J"

"J" - LETTER, NANA OSEI ASSIBEY III TO MR. ARMAH

Letter, Nana Osei Assibey III to Mr. Armah, 3rd November 1951

No.274/05/1949: KOKOFUHENE'S OFFICE
KOKOFU, ASHANTI.
3 NOVEMBER, 1951.

Sir/Sirs,

KYEMPO LAND:

It has been brought to my notice that you have acquired some rights over some portion/ portions of Kyempo Stool land. As the sole ownership of the Kyempo Stool land is vested in the Paramount Stool of Kokofu and as the Occupant of the said Stool, I have the honour most respectfully request that you report at my office on 3rd December, 1951, at 9.30 a.m.

2. As the general discussion of this request will be based on the question of the above subject (Kyempo Stool land), I have to impress upon you the advisability of bringing with you all documents in your possession, relative to the Kyempo Stool Lands.

I am,
(Sgd.) Osei Assibey III
KOKOFUHENE.

Mr. Armah,
Kyempo-Subenso,
C/o Nana Kyempohene,
Kyempo.

"1" - AGREEMENT, (1) NANA OSEI ASSIBEY III AND HIS ELDERS (2) MESSRS. NAJA DAVID SAWMILL CO.

Defendants' Exhibits

"1"

Agreement, (1) Nana Osei Assibey III and his Elders (2) Messrs. Naja David Sawmill Co., 30th October 1953

THIS INDENTURE made this 30th day of October, in the year of our Lord One thousand nine hundred and fifty-three (1953) BETWEEN Nana Osei Assibey III, Kokofuhene, Kokofuhenaa Nana Afua Frema, Kobina Adu Boh. Krontihene, Bafuo Kwabina Appiah, Gyokohene, Owusu Ansah Kyidomhene, Kwadwo Ofeh Gyasehene, Opanin Kymah, Bankumhene, Opanin Yaw Brahyia Akyeamehene, Nana Kwadwo Dwamena Kyempohene, all representing the Kokofuhene State (hereinafter referred to as the "GRANTORS") which expression shall where the context so admits include their executors administrators successors according to Native customary law and Assigns, of the first part, and Messrs. NAJA DAVID SAWMILL COMPANY of Kumasi acting by their representative Mr. C.H. GHASSOUB also of Kumasi (hereinafter referred to as the "GRANTEES") of the second part. IT IS AGREED AS FOLLOWS:-

1. That in consideration of the GRANTEES constructing a motorable road with bridges and culverts from Obogu Junction to the village of KYEMPOH with a period of Two (2) Years, the GRANTORS the owners of the KYEMPOH LAND shall allow the GRANTEES to cut down ONE THOUSAND (1000) TREES of species shown on "Schedule A" as far as possible and to the amount of FOUR THOUSAND POUNDS (£4000).

2. Further, the GRANTEES shall be allowed to cut down Two THOUSAND (2000) TREES of species, indicated on Schedule "B" at the prices therein stated, provided (a) An amount of ONE THOUSAND POUNDS (£1000) is deposited with the Kokofu Local Council in consideration of the said TWO THOUSAND (2000) TREES allowed. (b) A royalty of TWENTY FIVE POUNDS (£25) is paid. (c) The GRANTEES construct of road before cutting down the said TWO THOUSAND (2000) TREES. (d) That the said THREE THOUSAND (3000) TREES shall be removed within FOUR (4) YEARS from the date of the execution of this Agreement (e) And that further advances of ONE THOUSAND POUNDS (£1000) each shall be given when trees to value of the said amount of ONE THOUSAND POUNDS (£1000) are cut.

Defendants' Exhibits

"1"

Agreement, (1) Nana Osei Assibey III and his Elders (2) Messrs. Naja David Sawmill Co., 30th October 1953 - continued.

3. That the GRANTEES shall forward each month TWO (2) copies of "Returns" of all trees cut and removed during the month stating the species and certified to be correct, to the Clerk of the Kokofu Local Council and the State Secretary of Kokofu.

4. That failure to send an accurate statement and to comply with paragraph 3 above shall be deemed a breach of contract.

5. That the GRANTORS shall not assign or in any way transfer or mortgage the said KYEMPOH LAND to any other person or persons for the purpose of cutting timber; otherwise the GRANTORS shall held responsible in a Court of Law.

6. That the GRANTEES shall not be liable for payment in respect of any defective trees provided, it is proved that the defect arose through circumstances beyond the control of the GRANTEES and due to no fault of their own.

7. That the GRANTEES shall be liable for the payment of all damaged cocoa trees at the rate of THREE SHILLINGS (3/-) for "DEARING" TREE, TWO SHILLINGS AND SIX PENCE (2/6) for non-bearing but mature trees, and TWO SHILLINGS (2/-) for immature trees. provided the damage resulted from the operating of the GRANTEES damaged foodstuff shall be paid for within one month in a manner agreeable between the GRANTEES AND THE FARMER CONCERNED in the presence of the Kokofuhene.

8. That the GRANTEES shall pay fair and regular wages or salaries to their labourers or employees in respect of this transaction.

9. That after the expiration of the said FOUR (4) YEARS, the GRANTEES shall have the option for a further period agreeable to the GRANTORS AND THE GRANTEES and at the prices agreed between them.

10. That should any dispute arise between the GRANTORS AND THE GRANTEES, the matter shall be referred to the Government Agent Bekwai for his ruling.

IN WITNESS WHEREOF BOTH PARTIES HAVE HEREUNTO SET

THEIR HANDS AND MARKS THIS 30TH DAY OF OCTOBER, 1953.

SIGNED SEALED AND DELIVERED by the said 1st party after the foregoing had been read over interpreted and explained to them in the Twi language by ? ? of Kokofu and they seemed perfectly to understand the same before making their marks and affixing their left thumb print hereto in the presence of:- (Sgd.) Osei Assibey III Kokofuhene.

Afua Frema Kokofuhemaa her x mark

Kwabina Adu Bobi III Krontihene

Kwaku Wusu Ansah Kyidomhene

Kwabina Appiah Gyokohene his x mark

Kwadwo Ofeh Gyashene his x mark

Kwaku Gyimah Benkumhene his x mark

Opanin Kwame Gyan Akyeamehene

Owusu Ansah Kyempohene his x mark

Concurred

J. O. ? ? Chairman Kokofu Local Council

(Sgd.) ? ? Government Agent Bekwai.

SIGNED SEALED AND DELIVERED by the said GRANTEES for and on behalf of the Naja David Sawmill Company after the foregoing had been read by them in the presence of:-

(Sgd.) ? ?

For and on behalf of the Messrs. David Sawmill Company.

Defendants' Exhibits

"1"

Agreement, (1) Nana Osei Assibey III and his Elders (2) Messrs. Naja David Sawmill Co., 30th October 1953 - continued.

SCHEDULE "A"

180	Mahogany	trees @	105/-	£945. 0. 0
50	Avodire	" "	50/-	125. 0. 0
50	Baku	" "	75/-	187.10. 0
175	Sapele	" "	75/-	656. 5. 0
175	Edinam	" "	70/-	612.10. 0
280	Utile	" "	70/-	700. 0. 0
50	Offram	" "	40/-	100. 0. 0
100	Emere	" "	55/-	275. 0. 0
50	Quarea	" "	50/-	125. 0. 0
50	Mansonia	" "	40/-	100. 0. 0
80	Wawa	" "	60/-	240. 0. 0
				£4066. 5. 0

SCHEDULE "B"

200	Avodire
100	Baku
300	Sapele
100	Edinam
300	Utile
400	Mahogany
550	Offram
150	Emeri
100	Dahoma
50	Quarea
50	Mansonia
200	Wawa
2000	

The 2000 trees to be of species as shown on Schedule "B" as far as it is possible. Any specie not available can be made up of other species.

"AA" - PROCEEDINGS OF THE MIRASA HILLS ENQUIRY (WITH LETTER FROM THE RESERVE SETTLEMENT COMMISSIONER)

Plaintiff's Exhibits

"AA".

Proceedings of the Mirasa Hills Enquiry (with letter from the Reserve Settlement Commissioner), 31st August 1954

No. 0014/126.

Reserve Settlement Commissioner's Office
P.O. Box 273,
Cape Coast.

8th November, 1956.

Dear Sir,

PROPOSED MIRASA FOREST RESERVE.

With reference to our conversation in my office the other day I send herewith a certified copy of the proceedings taken to date on the Mirasa Hills Enquiry. The cost of these is 13/6d which please send in due course.

I have the honour to be,
Sir,
Your obedient Servant,

(Sgd.) P.M. Riley

RESERVE SETTLEMENT COMMISSIONER.

H.V.A. Franklin, Esqr.,
Barrister-at-Law,
P.O. Box 782,
Accra.

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31 - 8 - 54 IN THE COURSE OF THE RESERVE SETTLEMENT COMMISSIONER OF THE GOLD COAST, HELD AT KUMASI STATE COUNCIL'S HALL MANHYIA AT KUMASI ON TUESDAY THE 31ST DAY OF AUGUST, 1954, BEFORE HIS WORSHIP PETER MILES RILEY, RESERVE SETTLEMENT COMMISSIONER.

IN THE MATTER OF PROPOSED MIRASA HILLS FOREST RESERVE.

PRESENT:-

1. G.B. Kyeiagyen, Representing the Asantihene.
2. Nana Obin Diawo II, Bankamehene

Plaintiff's Exhibits

"AA"

Proceedings of the Mirasa Hills Enquiry (with letter from the Reserve Settlement Commissioner), 31st August 1954 - continued.

3.	Ofuasehene	Teafum Ameyaw II
4.	Tokwaihene	Nana Kweku Darkwa
5.	Kokobinhene	Nana Kweku Badu
6.	Jwejweasehene	Represented by Kofi Nemo
7.	Bansohene	Nana Kojo Yamoah
8.	Adansehene	Nana Abu Bonsra II
9.	Bodweasangohene	Barima Yaw Ahinkora
10.	Champawhene	Regent Akwesi Nduro
11.	Mirasa	Nana Adjeihene Fraten
12.	Kokofu	Nana Osei Essiben II

Mr. H.V.A. Franklin Barrister-at-Law representing 1. E.K. Ayisi & Coy. 2. Amofa & Coy., 3. Tetteh Ahia & Coy., 4. Dano Kofi & Coy., 5. T.A. Sekyi & Coy., 6. Date Kwadwo & Coy., 7. Tetteh Amankwa & Coy., 8. Kotey Ga. 9. Tetteh Kwame. 10. Akor Kwadwo.

Also claimants themselves.

The Court explained the reasons for the Reserve and stresses that ownership of land does not pass.

1ST WITNESS: Dennistoun Campbell Duff Ag. Conservator of Forests, sworn on bible. My name is Dennistoun Duff Ag. Conservator of Forest in charge Ashanti. I represent the Forestry Department at this Enquiry. Notices under Sec.32(2) of the Forest Ordinance Cap.63 now Cap.122 were served as follows; on the Odikros of Bankame, and Twenpeasi on 7th May, 1936, on the Omanhene of Kokofu on 26th May 1936 on the Bodwesangohene on 30th April, 1937 on the Asantihene on 28th June, 1937 and on the Rgents of the Adansi through the Krontihene on 6th July, 1937. These Notices gave the Native Authorities six months in which to constitute the Reserve under Rules made under the Native Authority Ordinance 1935. Rules No.8 of 1937 were signed by the Kokofuhene on 20th July 1937 and are published on page 783 of the Gold Coast Gazette 1937.

Rules No.2 of 1938 were signed by the Adansihene on 18th August, 1938 and are published on page 1086 of the Gold Coast Gazette 1938. No other Native Authority passed Rules.

Plaintiff's Exhibits

"AA"

Proceedings of the Mirasa Hills Enquiry (with letter from the Reserve Settlement Commissioner), 31st August 1954 - continued.

On page 451 of Government Gazette No.48 of 13th May, 1950 is published Notice No.872 dated 3rd May, 1950 under Sec. 5(1) of Cap.122 stating the Governor's intention to constitute the Mirasa Hills Forest Reserve giving his reasons and appointing under Sec. 5(1)(c) the Assistant District Commissioner Juaso as Reserve Settlement Commissioner. On page 1239 of Government Gazette No.79 of 28th November, 1953 is published Notice No.2409 dated 16th November, 1953 under Sec.5(1) of Cap.122 cancelling Notice No.872 which was published in Gazette No.48 of 1950 and replacing it by a Notice stating the Governor's intention to constitute the Mirasa Hills Forest Reserve giving his reasons and appointing under Sec.5(1)(c) Mr. Arthur Philip Pullen O.B.E., as Reserve Settlement Commissioner.

On page 461 of Government Gazette No.24 of 10th April, 1954 is published Notice No.218 under Sec.5(2) of Cap.122 appointing Mr. Peter Myles Riley to act in succession to Mr. A.P. Pullen as Reserve Settlement Commissioner in respect of the proposed Mirasa Hills Forest Reserve.

Notice under Sec.7 of Cap.122 was served by Mr. A.P. Pullen on 12th December, 1953, I tender in evidence Gold Coast Survey Field Sheet No.92 seale 1:62,500 on which are shown in purple the boundaries of the proposed Mirasa Hills Forest Reserve. This shown the position of the Reserve in relation to the surrounding country.

Exhibit 'A' accepted

I also tender in evidence a plan on a seale 1:12,500 showing the boundaries of the proposed Mirasa Hills Forest Reserve. This is a tracing of a plan prepared by the Forestry Department and on it are shown the boundaries of 4 blocks of farms demarcated by this Department and the boundaries of 8 alleged alienations surveyed by this Department. The area of the proposed Reserve is approximately 26.00 square miles. The farmed area is approximately 0.04 square miles, leaving a nett area of Forest of approximately 25.96 square miles. It is situated partly in the Kumasi and partly in the Bekwai Districts of Ashanti. As far as I know there are no concessions or concession enquiries in the area.

Exhibit 'B' accepted

BY COURT: At this point objection is raised by a number of people that Mr. Williams, Inperpreter

Plaintiff's Exhibits

"AA"

Proceedings of the Mirasa Hills Enquiry (with letter from the Reserve Settlement Commissioner),

31st August 1954 - continued.

and Registrar, was interpreting in Twi and that most people understood Ashanti better. Mr. R.B. Otchere the Secretary of the Kumasi State Council came forward and offered to interpret. No one in court objected and Mr. Otchere was sworn in.

XX BY: Abu Bonsra II Adansihene. I was referring to the Ashanti and Bekwai Political Districts. As far as I know Kumasi, Kokofu and possibly Adansi are the Paramount Stools owning land in the Reserve.

2ND WITNESS: James Cudjoe Otoo sworn on bible. I am Bailiff attached to the Magistrate's Court, Juaso Ashanti Akim and produce my affidavit of service to show that I posted copies of Notices at Obogo Local Authority Court, and one at Kokobin Native Court at Tokwai on 21st June, 1954 and 8th July, 1954. I also produce an affidavit by Emmanuel Lawrence Bartels Registrar Magistrate's Court, Juaso which states that a Notice under Sec. 7 Cap.122 was read out and interpreted in the Magistrate's Court, Juaso on 7th August, 1954. I identify Mr. Bartel's signature.

3RD WITNESS: Nana Osei Asseiben II. Omanhene of Kokofu, swearing according to custom. I have Stool land in the Reserve and some of this is in dispute. The Chief of Mirasa is under me also the Champaw Stool and that of Jwenjeasi. The Banso Stool of Kumasi has a land dispute with Mirasa in the Reserve. The dispute is now before the High Court in Kumasi, no judgment has been given, but a survey has been ordered.
There is also a dispute between Ofuase in Kumasi and Jwenjeasi. The case was heard in the Asantihene's Court B: and won by Offuase the decision was reversed on appeal in Ashantihene's Court A and is now before the High Court Kumasi, having been sent back for re-trial by West African Court of Appeal.

XX BY MR. FRANKLIN: Yes I claim to own land in the West of the Reserve under my sub-Stool Jwenjeasi, and also land in the East of the Reserve under my Sub-Stool Champaw and I claim to own land under my Sub-Stool Mirasa. Mirasa is between Jwenjeasi and Chempaw. I have no dispute with Tokwai or Kumasi but have boundary with Tokwai. Tokwai has boundary with all my three Sub-Stools i.e. Chempaw, Mirasa, and Jwenjeasi. One of the

principal boundaries is the River Debi. The land North of the River Debi is claimed by Jwenjeasi, Mirasa, Ofuase, Bankame, Banso. Land was not alienated to Dano Kofi it was given to them to farm. Some of the Sub-Chiefs used to sell land to people without my knowledge. If this is done I will claim the land back. I have no knowledge of land been given to Tetteh Ahia. I would rather let my Sub-Chiefs reply to questions of sale or alienations as I have no knowledge of any such transactions. A Sub-Stool cannot give away or sell land either to a Stranger or Ashanti man without my permission. If I find this out I claim the land back or tell the purchaser to refund any money paid. I have done this before. I have many agreements with strangers for farming. When these Agreements are made drink money is paid and a yearly Abusa also paid. The farms are usually for cocoa or ground crops. I cannot say if I know Dano Kofi or not at present; the same applies to Tetteh Ahia, also to Amofa & Coy., I would like to consult my agreements register.

BY COURT: The drink money is divided among the elders of the Stool who own land. I get nothing if it is not my Stool land. The same applies to Abusa. As regards the Revenue accruing from the sale of Minerals or timber the whole amount is deposited with Treasury and eventually paid out in salaries.

Yes I have had cases of money being refunded by the Vendor for sale of land. In the case of Chief Ampaw of Dymakyi who sold land to Afum and other strangers of Akwapim; I ordered the Chief to refund the sale cost of £600. The strangers were allowed to remain and farm under agreement. The Chief refused to refund and the case is before a Court. I have only been on the Stool 3 years.

XX BY MR. FRANKLIN: Prior to the formation of a Treasury I would take all revenue and divide as I saw fit in consultation with my elders.

4TH WITNESS: Gabriel Brantuo Kyeiagyan. Sworn on bible. I represent the Ashantihene. Part of the Golden Stool land is inside the proposed Mirasa Hills Reserve. I do not know whether or not there are Stool boundary disputes in the Reserve but I do know land sale, and alienation

Plaintiff's Exhibits

"AA"

Proceedings of the Mirasa Hills Enquiry (with letter from the Reserve Settlement Commissioner),

31st August 1954 - continued.

custom. In Ashanti all lands within Kumasi State are leasehold. No sale of land whatever is permitted in Kumasi State whether to strangers or local men. I remember in 1950 it came to the notice of Kumasi State Council that certain lands in the Ashanti Akim area within the Kumasi State had been alienated to certain people without the knowledge of the Ashantihene and representatives of certain people were deputed to go into the matter but it has not yet been quite settled as the Committee is drawing up farm agreement the people who sold the land apologised to the Ashantihene.

XX BY COURT: Any revenue resulting from the disposal of minerals or land or produce goes to the Treasury from where it is divided out.

XX BY MR. FRANKLIN: Yes the Ashantihene's office takes control of all land in the Kumasi State and no land can be disposed of without the Ashantihene's consent. In the old days the Golden Stool disposed of all lands within the Stool area and had to be a party to all such transaction. I know Kumeso but do not know of any concessions given by Kumeso or of concession No.74 Ashanti given by Kumeso and Oboku. I did not know it received C.V. 35 or No.75 Ashanti called Youngs No.1 Ashanti which received C.V. 37 or No.76 Youngs Ashanti No.2 which received C.V. 38. I can cite several cases of concessions being granted without the consent of the Golden Stool but these were all irregular and in such cases certain disciplinary action was taken when land was alienated without the approval of the Golden Stool. In the cases just quoted I do not quite know what happened but will find out.

Adjourned until 8.30 on 1/9/54.

Re-opened 9 a.m. 1/9/54.

Present as yesterday.

5TH WITNESS: Yaw Owuso Ansah sworn according to Religeous sic. belief. I am representing Chempaw of Kokofu. Chempaw has no land dispute with any one in the Reserve.

6TH WITNESS: Nana Ajeihene Fraten sworn on bible. sic. I am the Chief of Mirasa. I have a land dispute with the Banso Stool of Kumasi and it is, as

previously stated, before the High Court Kumasi on appeal from the Ashantihene's Court A1.

I am also disputing land in the Reserve with Ofuase in the Kumasi Division. I wish to try and settle this out of Court with Ofuasi as soon as Banso and Mirasa have finished their case. There is no other dispute.

7TH WITNESS: Kofi Keno sworn on bible. I represent Jwenjeasi Sub-Stool of Kokofu. I have a dispute between my sub-Stool and Ofuase and Bankame. Bankame and Ofuase are co-plaintiffs and Jwenjeasi and Kokofu co-defendants.
The case is still in the High Court.
There is no other land dispute in the Reserve.

XX BY MR. FRANKLIN: We have no agreed boundary between ourselves and Banso.

8TH WITNESS: Nana Obin Diawo II Bankamehene sworn according to Religious belief. I represent Bankame Sub-Stool of Kumasi. I agree with the 7th witness that I am joined as Co-Plaintiff with Ofuase against Jwenjeasi and Kokofu in the High Court. We have no other land dispute in the Reserve.

XX BY MR. DUFF: We have no dispute with Banso or Ofuase.

9TH WITNESS: Kwadwo Enin sworn on bible. I represent Banso Sub-Stool of Kumasi. I agree that we have a land case with the Mirasa Stool of Kokofu, but am not aware that it is now before the High Court on appeal as we won in the Ashantihene's Court. We have no other dispute in the Reserve and none with Jwenjeasi and we have no boundary with them or with Bankame with whom we farm in common.

10TH WITNESS: Kweku Darkwa sworn according to Religious belief. I am the regent of Tokwai in the Kumasi State. We have a dispute with the Bodwesango Sub-Stool of Adansi. It started in the Ashantihene's Court "B". I won. The loser then took a fresh action in the Ashantihene's Court. I did not attend and lost by default. I appealed against that decision in the Ashantihene Court "A" and the case is still pending there; this was about 13 years ago. When I found the case in Ashantihene's Court "A" was delayed I took

Plaintiff's Exhibits

"AA"

Proceedings of the Mirasa Hills Enquiry (with letter from the Reserve Settlement Commissioner), 31st August 1954 - continued.

action in the High Court Kumasi this was about 5 months ago. The case had been put down for trial. I have no other land dispute and know my boundaries in the Reserve.

XX BY MR. DUFF: Kokobin land is under me. I have boundary with Chempaw Kokofu Stool in the North and also boundary with Ofuase and Bankame which is a river called Debi. I have also boundary with Mirasa which is also Debi River.

XX BY 6TH WITNESS: I don't remember saying I had boundary at a river called Atubo. 10

NOTE BY COURT: It depends on the result of the action with High Court between Banso and Mirasa as whether or not Mirasa and Kokobin have dispute. If Mirasa win there will probably be no dispute.

11TH WITNESS: Nana Kweku Badu sworn on bible. I am the Kokobin Chief in the Kumasi Division. I have land in the Reserve but it belongs to Tokwai and I am a Caretaker. The land is that which 10th witness has in dispute with Bodwesango in Adansi. 20 No other part of the land is in dispute and I know my boundaries.

12TH WITNESS: Teafum Amanyaw II. Sworn on bible. I represent the Ofuase Sub-Stool in the Kumasi Division. I agree with the 7th witness that Ofuase and Bankame are joined as co-plaintiff against Jwenjeasi and Kokofu in the High Court Kumasi. I have no other land dispute apart from one with Mirasa which I am prepared to try and settle out of Court. I have boundaries with 30 Bankame and Tokwai in the Reserve. The boundary with Tokwai is the Debi River. I have no dispute with Bankame.

13TH WITNESS: Barima Ahinkora II sworn according to Religious belief. I represent the Adansihene. I have a land dispute over land in the Reserve with Tokwai Sub-Stool of Kumasi Division as stated by the 10th witness; it is down for hearing in the High Court this month. I have no other dispute in the Reserve. I have boundary with Ofuase, 40 Bankame in the North.

XX BY MR. DUFF: Yes I have boundary with Chempaw and Mirasa in the Reserve and am claiming all the land described by the Tokwai Chief to be in dispute with Bodwesango; it comprises all the land

South of the River Debi and this is all Adansi land. Mr. Franklin personally puts forward claims of the following alienation holders as shown approximately in Exhibit "B".

1. E.K. Avisi & Coy., and Amofa & Coy., Kwesi Agyeman all joined.
2. Tetteh Ahia & Coy.
3. Danu Kofi & Coy.
4. T.A. Sokyi & Coy.
5. Date Kwadwo & Coy.
6. Totteh Amankwa & Coy.
7. Kotey Ga.
8. Tetteh Kwame, Akor Kwadwo & Coy.

BY COURT: It is now apparent that a large part of the Reserve is subject to land disputes in various stages of settlement. These disputes are as follows:-

1. Banso Stool of Kumasi
   vs.
   Mirasa Stool of Kokofu

Before the High Court Kumasi on appeal. The survey has been completed and a hearing date is awaited.

2. Ofuase Stool of Kumasi
   vs.
   Jwenjeasi Stool of Kokofu

On appeal to the High Court from the Asantehene's Court "A".

The Bankame Stool of Kumasi has been joined as Co-Plaintiff with Ofuase and the Kokofu Stool as Co-Defendant with Jwenjeasi.

3. Tokwai Stool of Kumasi
   vs.
   Bodwesango Stool of Adansi.

The case is at present in the High Court and is down for hearing in September.

In addition to the above the Mirasa Stool of Kokofu are disputing an area in the Reserve with the Ofuase Stool. This has not yet come to any

Plaintiff's Exhibits

"AA"

Proceedings of the Mirasa Hills Enquiry (with letter from the Reserve Settlement Commissioner), 31st August 1954 - continued.

Court as the parties are awaiting a decision in the Banso vs. Mirasa dispute. Both claimants stated in Court that they were prepared to try and settle the matter out of Court. In view of the above the Enquiry is adjourned sine die.

(Sgd.) P.M. Riley

Reserve Settlement Commissioner,
1/9/54.

"L1" - LETTER, H.V.A. FRANKLIN TO NAJA DAVID SAWMILLS LTD.

"L1"

Letter, H.V.A. Franklin to Naja David Sawmills Ltd., 26th January 1956

26th January 1956.

Messrs. Naja David Sawmills Limited,
P.O. Box 196,
Kumasi, Ashanti.

Dear Sirs,

My clients Messrs. J.O. Sasraku, J.O. Kotei and Sasraku and Sons have come to me in order that I may warn you not to fell on their land set out on the accompanying plan, this land having been bought from the Stool of Chempaw many years ago. I should also warn you that you may shortly be receiving another letter from me, conveying a similar warning in respect of other lands alienated by the Chempaw to the north of the boundary shown in the plan.

You must realise therefore that if you come far south of the village of Chempaw you are in peril all the time.

Yours faithfully,

(Intd.) HWAF.

enc:
HVAW/GBKA.

"L2" - LETTER, NAJA DAVID SAWMILL CO. TO H.V.A. FRANKLIN

Plaintiff's Exhibits

"L2"

Letter, Naja David Sawmill Co. to H.V.A. Franklin, 28th January 1956

NAJA DAVID SAWMILL CO.
Exporters of Logs-Lumber
Gold Coast.

P.O. Box 196,
Kumasi,
Gold Coast,
B.W.A.

H.V.A. Franklin, Esq.,
Solicitor,
P.O. Box 782,
A c c r a.

Dear Sir,

We have to acknowledge your letter of the 26th instant regarding Chempaw land. In your letter you state that we should not fell on your clients' land set out on "the enclosed plan". Unfortunately there was no such plan enclosed with your letter, and until we receive same we are not in a position to give you an adequate reply.

We would further mention that our agreement on Chempaw lands is to our knowledge quite authentic, and we also have our plan showing demarcation of land.

However, we should be glad if you would forward your plan as soon as possible.

Yours faithfully,
for NAJA DAVID SAWMILL CO.

(Sgd.) W. Hacking,
General Manager.

Plaintiff's Exhibits

"M"

Letter, Naja David Sawmill Co. to Mr. Milli, 8th February 1956

"M" - LETTER, NAJA DAVID SAWMILL CO. TO MR. MILLI

NAJA DAVID SAWMILL CO.

P.O. Box 196,
Kumasi,
Gold Coast,
B.W.A.

Mr. Milli. 8th February, 1956.

Dear Sir,

It has been reported that you are causing serious interference with our logging operations at Kyempo, and have actually stopped all work on two occasions. Take notice that such interference will not be tolerated under any circumstances and we are now consulting the Police and our Solicitors regarding claiming damages against you for loss of production and inconvenience. This action is being taken in co-operation with the Kokofuhene, the owner of the land.

Yours faithfully,
for Naja David Sawmill Co.
(Sgd.) W. Hacking
General Manager.

c.c. Police Dept., Juaso.
Forestry Dept., Juaso.
D.C. Bekwai
Kokofuhene.

"L3" - LETTER, H.V.A. FRANKLIN TO NAJA DAVID SAWMILLS LTD.

"L3"

Letter, H.V.A. Franklin to Naja David Sawmills Ltd., 8th February 1956

8th February, 1956.

Messrs. Naja David Sawmills Limited.,
P.O. Box 196,
Kumasi.

Dear Sirs,

I regret that my last letter on the subject of timber in the Kyempaw area was posted to you

Plaintiff's Exhibits

"L3"

Letter, H.V.A. Franklin to Naja David Sawmills Ltd., 8th February 1956 - continued.

without the inclusion of the map I referred to. I now enclose Field Sheet No.92 with the areas in which I am immediately interested marked in red. As I informed you, further land to the north will also be affected but the boundaries of this I cannot give you as yet. I merely warn you again that so far as I can make out nearly all Kyempaw land has been alienated.

My clients tell me that in fact you have already trespassed on the land. I would not have blamed you if your representative has been reasonable in the circumstances. But you knew from my letter that disputed land was adjacent to you and yet your representative, when confronted with my clients' caretaker on the land who informed him that he was trespassing and showed him the boundary, yet assaulted my clients' representative, took him to the Police Station at Juaso by force, made a charge against him and when told by the Police to return my clients' representative to the place from which he had been taken, took him only half way and left him many miles to walk. These events, I am informed, took place on the 6th February. I cannot say yet about the events of this day. You will be liable for the acts of your servant and I do not know as yet what attitude my clients will take. I have informed them that I know of you as reasonable people and that they should not be hasty in attributing to you responsibility for high handed and possibly unauthorised acts of your servant. My immediate concern is to see that you stop felling. I hereby warn you to do so within the area shown in red on the map. And not to truck touch any further the trees that you have felled and marked.

Clearly this matter must either be decided between you and me or fought out in the Court. I hereby inform you that my clients claim all the land edged red by grants by native custom dated the 4th of August, 1934, 12th of April 1935 and 23rd of December 1927, evidenced by writing. The form of action would be one of trespass against you. If you agree to cease cutting immediately we can discuss the matter at some leisure or institute a more or less friendly action but if cutting continues then my instructions are to take action immediately and apply for an injunction.

Plaintiff's Exhibits

"L3"

Letter, H.V.A. Franklin to Naja David Sawmills Ltd., 8th February 1956 - continued.

I hope I shall not have to do this since the matter is one which ought to be settled reasonably. Will you be good enoguh to give me an immediate answer so that I shall know what course to take.

Yours faithfully,

HVAF/GBKA.

"N" - LETTER, NAJA DAVID SAWMILL CO. TO H.V.A. FRANKLIN

"N"

Letter, Naja David Sawmill Co. to H.V.A. Franklin, 11th February 1956

NAJA DAVID SAWMILL CO.
Exporters of Logs-Lumber
Gold Coast.

P.O. Box 196
Kumasi,
Gold Coast,
B.W.A.

11th February, 1956.

H.V.A. Franklin, Esq.,
Solicitor,
P.O. Box 782,
A c c r a.

Dear Sir,

We have for acknowledgement your registered letter of the 8th instant, enclosing Field Sheet No. 92, and in reply would advise you as follows.

1. With reference to events on the 6th February, we suggest you obtain more details re alleged assault. From our point of view we cannot possibly understand who gave your representative authority to stop our tractors and all work on our operation for two days. We shall certainly take this matter up more seriously at a later date as there will be the question of damages for loss of production, obstruction, etc., to be dealt with.

Plaintiff's Exhibits

"N"

Letter, Naja David Sawmill Co. to H.V.A. Franklin, 11th February 1956 - continued.

2. On receipt of your previous letter we could not take any action as you did not enclose the map, but before you could remedy this matter your representative took the law in his own hands and stopped all our production - a very high-handed attitude indeed, particularly as he displayed fire-arms to force his views.

3. We consider that this question of land is between your clients and the Kokofuhene. Our Agreement is drawn up by a Solicitor and has been recorded by the Forestry and the D.C., Bekwai.

4. The Kokofuhene has, of course, been advised of these events, and enclose herewith copy of his reply.

5. We suggest your clients and the Kokofuhene meet at a very early date for discussion, and if your remarks re friendly action contained in your letter are sincere, we feel that this is the only course to adopt, particularly in view of the Kokofuhene's letter.

6. We shall take very strong view on any further interference with our operations as our map obtained from the Kokofuhene when the Agreement was signed shows that we are in order.

7. The Kokofuhene's representatives will be at Kyempo on Monday next, the 13th instant.

8. Please do not lose sight of the fact that according to the map which accompanied our Agreement your clients are the trespassers on our land.

Yours faithfully,
for NAJA DAVID SAWMILL CO.
(Sgd.) W. Hacking,
General Manager.

Encl.

Plaintiff's Exhibits

"O"

Letter, H.V.A. Franklin to Naja David Sawmill Co.,

15th February 1956

"O" - LETTER, H.V.A. FRANKLIN TO NAJA DAVID SAWMILL CO.

Messrs. Naja David Sawmill Company,
P.O. Box 196,
Kumasi-Ashanti.

Dear Sirs,

I have to acknowledge your letter of the 11th of February 1956 and am glad to know that you are now aware of the land claimed by my clients.

I should like you to take this letter immediately to your legal adviser, because it seems to me that you are under a fundamental misapprehension of the situation. In law whenever there is a dispute as to land, a distinction is made between the man in possession of the land and the man not in possession of the land, whatever may be the eventual rights as to ownership. Now in this case, there is apparently a dispute as to ownership. I say that I have bought the land. The Kokofuhene presumably says that I have not bought the land. Whatever may be the outcome of this question, there can be no doubt that my clients are in fact settled on the land to the exclusion of any Kokofu people and have a cut boundary which was violated by your representative upon the occasion of the assault on the old Headman of my clients' village nearest to the boundary.

I still am not sure of the facts in this case. I tried to see the old man in Oda hospital on Monday the 13th but he had been discharged that day. I gathered from the hospital attendant that he had been admitted with some kind of injuries to his belly which resulted in the passing of blood said to have been due to kicks. Incidentally I do not quite understand the reference in your paragraphs 1 and 2 to my representative stopping your work. First my representative did not stop your work. Upon your trespass (and I ask you to ascertain from your legal adviser that this word is being used correctly) the old man referred to above made his protest and was subject to assault. On a later occasion my representative went with my clients to Kyempaw where a meeting took place, but this has nothing to do with the trespass complained of. Your letter is the first

Plaintiff's Exhibits

"O"

Letter, H.V.A. Franklin to Naja David Sawmill Co., 15th February 1956 - continued.

occasion on which I have heard mention of fire-arms. The legal position is quite clear. There is no question of us interrupting your operations. You are free to continue your operations outside the boundaries shown on the map I sent you (although I repeat my friendly warning to you that in my opinion you will probably be called to account for all operations at any distance to the south of Kyempaw, for to my belief practically the whole of Kyempaw land has been alienated); but as soon as you passed boundaries shown in the map and also cut on the ground you committed a trespass. Your legal adviser will tell you that your proper course is not to try to exercise force since this will only inflate damages against you. Your proper course is to take action for recovery of possession and a declaration of title. I shall be pleased to accept a writ to this effect. If you do not issue such a writ I can serve you with a writ of trespass, but I am warning you that the proper people to take action are yourselves and if you thrust the necessity upon me your conduct must result in greater damages than would otherwise be the case.

I do not anticipate that you will really doubt my statement that my clients are in possession as against Chempaw and Kokofu. If you really wish to test this statement you may enquire from the Chief of Ntronang which is an Akim town on the Colony side of the River Pra and adjacent to the land in question. He will bear witness to you that my clients have been in possession for 20 and more years. In my opinion the obvious course in this matter is for your legal adviser and myself to get into touch immediately.

Yours faithfully,

(Sgd.) H.V.A. Franklin

Copy to the Inspector of Police, Juaso, who is hereby notified that as regards the land in question my clients are in possession and who will be asked to intervene if any attempt is made to trespass by force.

Plaintiff's Exhibits

"V"

Letter, Acting Secretary of Kokofu State Council to Odanu Kofi and others,

18th April 1956

"V" - LETTER, ACTING SECRETARY OF KOKOFU STATE COUNCIL TO ODANU KOFI AND OTHERS

Ref. No.133/22/KSC/55

STATE SECRETARY'S OFFICE,
KOKOFU STATE COUNCIL,
KOKOFU/ASHANTI.
18th April, 1956.

Sir,

DWINDWINASE STRANGER - FARMERS:

By the instruction of Nana Kokofuhene you are requested to reach Kokofu on the 30th day of April, 1956 which is Monday at 9.30 a.m. to meet the Finance & Staff Committee to discuss with you your yearly Cocoa Tribute.

2. Expecting you earnestly at the appointed time and date.

I have the honour to be,
Sir,
Yours obedient servant,

(Sgd.) ? ?
AG: STATE SECRETARY.

To: Odanu Kofi, 2. Kwasi Badu,
3. Oboubi Kofi, 4. Amofah
5. Yaw Darbi, 6. Ahyiah.

All of Dwindwinase.

"K" - AGREEMENT FORM

"K"

Agreement Form,

(Undated)

THIS AGREEMENT made the ..... day of ..... 195 ... between ..... of .... in the Bekwai District acting for and on behalf of the Stool of ..... which is witnessed by the execution of this Agreement by some of his Elders whose consent and concurrence are necessary for the validity of this Agreement (hereinafter called the Landlord which expression shall where the context so admits or

Plaintiff's Exhibits

"K"

Agreement Form, (Undated) - continued.

requires include his successors in Office) of the first part ..... of ..... (hereinafter called the "Tenant" which expression shall where the context so admits or requires include his heirs successors executors administrators and assigns) of the second part and (Otumfuo), the (Kokofuhene) represented by ..... of ..... appointed by him for the purpose of this Agreement (hereinafter called the "Confirming Party" which expression shall where the context so admits or requires include his heirs and successors in Office) of the third part WITNESSED as follows:

1. IN CONSIDERATION of the Tenant possessing a cocoa farm on the Landlord's Stool land at a place known and called ..... the boundaries of which are on the North by ..... on the South by ..... on the East by ..... and on the West by ..... at the request of the Landlord the Tenant has approached and hereby covenants with the Landlord to observe and perform the following conditions.

(a) To pay unto the Landlord annually the sum of £ : s. : d. as tribute and shall become due on the 1st day of ..... every year and if it shall be in arrears for ..... the Landlord reserves the right to terminate the Agreement and re-enter the land after a notice requiring such payment has been given to the Tenant and default has been made.

(b) Not to extend the said farm beyond the area allotted to him/her by the Landlord or his representative nor plough a separate area for farming purposes without the consent of the Landlord.

(c) Not to prospect or cause to be prospected the area so allotted to him/her or any portion thereof for gold or precious stones or any mineral and that any treasure trove which shall be discovered on the land so allotted to him/her or any part thereof by him his agents or servants shall be brought before the Landlord who shall bring same before Otumfuo Asantehene who shall cause same to be divided in the manner sanctioned by Native Customary Law.

(d) Not to have control on or access to Kola

Plaintiff's Exhibits

"K"

Agreement Form, (Undated) - continued.

trees, palm trees and funtumia trees growing on the land so allotted to him/her and except with the consent of the Landlord any Kola nuts collected or any palm trees felled and tapped for palm wine for sale the Landlord shall be entitled to his Customary share of any proceeds realised by the Tenant his/her agents or servants. In the case of rubber except for the duration of the War and subject to the rules passed by the Ashanti Confederacy Council it shall be treated as the prewar days. All timbers such as Odum trees Mahogany etc. standing on the said land shall always remain the exclusive property of the Landlord.

(e) To give to the Landlord the hind-leg of any game killed on the said land by him/her agents or representatives.

2. The Tenant covenants with the Landlord not to allow or permit any other person to cultivate or own any portion of the land allotted to him/her without first obtaining the consent of the Landlord who shall impose such terms as he shall think necessary.

3. The Tenant shall have the right to sell mortgage pledge assign or transfer his or her farm with the consent of Landlord in writing but in the case of outright sale the Landlord shall be entitled to one-third share of the proceeds of the sale and any such Purchaser shall observe and perform the conditions herein contained.

4. In the event of the Landlord granting to any person for mining or concession purposes an area of his Stool land which shall comprise the one allotted to the Tenant the Tenant shall have the right to claim from such person any damage which shall be done to his farm.

5. The Landlord covenants with the Tenant that if any time it shall appear that the cocoa trees planted in the farm are dead the Tenant shall approach the Landlord who shall cause same to be inspected and if satisfied he shall cause the tribute to be reduced accordingly.

6. The Landlord further covenants with the Tenant that this agreement is subject to renewal upon such terms and conditions as shall be considered fit and necessary.

Plaintiff's Exhibits

"K"

Agreement Form, (Undated) - continued.

7. The Tenant hereby covenants with the Landlord that he will live peacefully with him and obey his lawful orders and instructions and any dispute arising between them shall be submitted to a third party for amicable settlement.

8. The Tenant further covenants with the Landlord to observe and perform the provisions of this Agreement and that any breach on the part of the Tenant shall terminate this Agreement and the Landlord shall have the right to re-enter the land.

IN WITNESS WHEREOF THE PARTIES have hereunto set their hands the day and year first above written:

Signed marked sealed and delivered by the within-named Tenant after the foregoing had been read over and interpreted and explained to him or her in Twi language by .... AND he or she perfectly seemed to understand the same before touching pen and his or her mark made hereto in the presence of:-

.....
KOKOFUHENE

Signed marked sealed and delivered by the within-named Tenant after the foregoing had been read over and interpreted and explained in the Twi language by ..... and he or she seemed to perfectly understand the same before touching pen and his or her mark made hereto in the presence of:-

1. George Mensah
2. Kwaku Busumprah

Their x x marks.

Plaintiff's Exhibits

"K"

Agreement Form,

(Undated) - continued.

Signed marked sealed and delivered by the within-named Confirming Party after the foregoing had been read over and interpreted and explained to him/her in the Twi language by ..... and he or she seemed to perfectly understand the same before touching pen and his or her mark made hereto in presence of:-

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"B"

Stereotype Receipt.

STEREOTYPE RECEIPT (Forwarded in original)