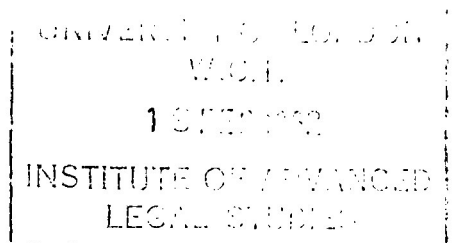


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29/1961
63610

IN THE PRIVY COUNCIL No. 25 of 1960

O N A P P E A L

FROM THE WEST AFRICAN COURT OF APPEAL
GOLD COAST SESSION

B E T W E E N :-

R.B. WUTA-OFEI Appellant

- and -

MABEL DANQUAH Respondent

CASE FOR THE RESPONDENT

RECORD

10 1. This is an appeal from an order, dated the 29th
November, 1956, of the West African Court of Appeal
(Coussey, P., Korsah, C.J. and Verity, Ag.J.A.) in
so far as it dismissed an appeal from a judgment,
dated the 2nd September, 1955, of the Supreme Court
of the Gold Coast (Van Lare, J.) awarding the
Respondent a declaration of title to certain land in
Accra, an order for possession of that land, mesne
profits and an injunction against further trespass
upon the land by the Appellant, his agents, tenants,
servants or licensees. The West African Court of
20 Appeal set aside the declaration of title, but
otherwise affirmed the judgment of the Supreme Court
of the Gold Coast.

p. 75
pp. 39-49

30 2. The proceedings were instituted by a Civil
summons issued by the Respondent in the Ga Native
Court 'B' on the 10th April, 1948. By that summons
the Respondent claimed a declaration of title to
a plot of land in Accra defined in the summons,
damages for trespass and an injunction restraining
the Defendant, his agents or servants from further
trespass upon the land. By an Order of the Supreme
Court of the Gold Coast made on the 31st December,
1952, the action was transferred from the Native
Court to the Supreme Court. By then the Osu Alata
Mantse had been joined as the second Defendant.

pp. 1-2
p. 3

RECORD

pp. 5-6

3. By her Statement of Claim, dated the 5th August, 1954, the Respondent pleaded that the land in question had been granted to her in accordance with native custom by the Stool of Osu in 1939, and the gift had been confirmed by an indenture of the 31st December, 1945. Early in 1948 the Appellant had trespassed upon the land and built thereon in disregard of warnings from the Respondent's Solicitor, and had continued the trespass ever since. The Appellant claimed to have obtained a grant of the land from the second Defendant, but the second Defendant had never had any title to the land. The Appellant and the second Defendant put in a Defence dated the 11th October, 1954. They alleged that the grant of 1939 had conferred no title upon the Appellant, because five years earlier the head of the Alata quarter of Osu had granted the land to the Appellant, and he had been in possession of it from that time. They alleged that the second Defendant, as Mantse of Osu Alata quarter, was the proper person to allot portions of Osu Stool land to members of that quarter, to which the Respondent belonged. They also alleged a custom, but they did not rely upon this in the West African Court of Appeal. 10 20

pp. 7-8

pp. 17-18

4. On the 21st June, 1955, in the course of the trial, the Appellant and the second Defendant were given leave to amend their Defence by adding to it a paragraph alleging that under the Accra Town (Lands) Ordinance, the Government had acquired an area of land including the land in question, in 1940; by indentures of the 6th February, 1948, the Government had undertaken to divest itself of that land, but up to the date of the amendment had not actually done so; the Respondent had accordingly had no title to the land at the date of the action. 30

5. The following are the relevant provisions of the Accra Town (Lands) Ordinance (Laws of the Gold Coast, 1951, cap.87):

"2. (1) The lands described and delineated in the indentures mentioned and described in the First and Second Schedules hereto which lands are also specified in the Third Schedule hereto shall, subject to the reservations described in the Fourth Schedule hereto, forthwith by virtue of this section become and be vested absolutely and indefeasibly in the Chief Secretary for the time being in trust for Her Majesty, free from 40

all competing rights, titles, interests, trusts, claims, liens, demands and restrictions of all kinds whatsoever.

(2) When in the opinion of the Governor there is no longer any need for any particular part of such lands to remain so vested in the Chief Secretary the Governor may by Order published in the Gazette direct that any particular part of such lands shall cease to be so vested either forthwith or from a date to be fixed by such Order, and thereupon such particular part of such lands shall be held and enjoyed as though the same had never been assured by indenture to the Governor of the Gold Coast or vested under the provisions of this Ordinance in the Chief Secretary for the time being in trust for Her Majesty.

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5.(1) Any person who claims that he had any right, title or interest to or in such lands or any part of them before they vested in the Chief Secretary under the provisions of section 2(1) shall lodge a claim in writing with the Commissioner of Lands within three months of the date of the notice mentioned in section 4.

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(4) No claim shall be entertained unless the same is made in accordance with the provisions of this section, and any right, title or interest in respect of which no claim has been made within three months of the date of the notice mentioned in section 4 shall be deemed to have determined.

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.....
10. Possession of the lands affected by this Ordinance may be obtained by the Chief Secretary in like manner as if a certificate of title thereto had been duly and lawfully issued under the Public Lands Ordinance.

The land in question was part of the lands which vested in the Chief Secretary by virtue of Section 2 of this Ordinance. By two Deeds of Release made between the Osu Stool and the Governor on the 6th February, 1948, the Government covenanted to make an Order under Section 2(2) of the Ordinance directing that certain parts of the lands acquired, including the land in question in these proceedings, should cease to be vested in the Colonial Secretary. There was no evidence that the Chief Secretary had ever taken possession of the land in question in these proceedings.

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6. The action was tried by Van Lare, J. on the 1st March and the 20th to the 24th June, 1955. In view of the concurrent findings made by the Supreme Court and the West African Court of Appeal, it is necessary only to set out certain parts of the evidence given by the Respondent and by one Lokko on her behalf.

p.10,11.4-14 (i) The Respondent said that a plot of Osu land had been granted to her in 1939, and the grant had been confirmed by a registered indenture of the 31st December, 1945. She had caused pillars, marked with her initials, to be placed on the four corners of the plot, and her mother had looked after it on her behalf. In 1948 she had seen that some blocks had been placed upon the site and had found that the Appellant was responsible. In spite of her complaints to him, the Appellant had continued his operations on the land and had completed the building while the action had been pending.

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p.11,1.36-
p.12,1.2 (ii) Lokko, a former senior building inspector of the Accra Town Council, said that for many years he had been entrusted by the Osu Stool with the demarcation of plots of land granted to subjects of the Stool. In 1939 he had demarcated the plot granted to the Respondent. There had been no sign of occupation of the plot by any other person at that time.

p.12,11.25-
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7. Van Lare, J. made the following findings, which were accepted by the West African Court of Appeal:

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p.41,11.26-
28 (i) He accepted the evidence of the Respondent and of Lokko.

p.41,11.28-
38 (ii) An oral grant of the land in question had been made by the Osu Stool to the Respondent in March 1939. That grant had been decisive, and by reason of it the Respondent became owner of the land and entitled to possession of it.

p.41,11.38-
41 (iii) The land had at that time been unoccupied and unalienated Osu Stool land.

p.41,11.41-
47 (iv) The land was nowhere near the Alata quarter, nor could it be described as outskirts land of that quarter.

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p.42,11.37-
40 (v) There had been no grant of the land by the Alata Stool to the Appellant, as the Appellant had alleged, in 1935.

- (vi) The Appellant had not received any grant of the land, nor had he had effective possession of it, before the date of an indenture made between him and the Chief of the Alata Stool on the 1st February, 1947, by which the Alata Stool purported to give him the land in question. That indenture had been null and void, because the Alata Stool had no title to the land to grant, and the land had previously been lawfully alienated by the Osu Stool to the Respondent. p.43,11.6-31
pp.95-98
- 10 8. Van Lare, J. delivered a reserved judgment on the 2nd September, 1955. He summarised the pleadings, and made the findings set out in paragraph 7 above. He then discussed and rejected the custom which the Respondent and the second Defendant had set up in their defence. He said that the Respondent had proceeded to build on the land in question in open defiance and contemptuous disregard of all warnings given to him. Dealing with the defence under the Accra Town (Lands) Ordinance, he said that by the time of the commencement of the action the Crown had covenanted to divest itself of its interest in the land in question, and he ought to look on that as done which ought to be done. He also held that, pursuant to the Deeds of the 6th February, 1948 and Section 2(2) of the Ordinance, the Respondent was the equitable owner entitled to beneficial enjoyment of the land, and also she was the legal owner as against the Appellant and the second Defendant of the reversion expectant upon the termination by the Crown of its legal ownership. He accordingly made a declaration of the Respondent's title to the land, and also granted her an order for recovery of possession and an injunction in accordance with the summons and mesne profits from the date of the judgment. He allowed the Appellant three months from the date of the judgment to enter upon the land and remove whatever he might have put upon it, doing no greater damage than was reasonably necessary for that purpose. pp.39-49
pp.39-43
pp.43-47
p.47,11.13-17
p.47,1.18-
p.49,1.22
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- 30
- 40 9. The Respondent and the second Defendant appealed to the West African Court of Appeal by a Notice of Appeal dated the 15th November, 1955. Supplementary grounds of appeal were filed on the 17th October, 1956. The appeal was heard by Coussey, P., Korsah, C.J. and Verity, Ag.J.A. on the 13th, 14th and 15th November, 1956. p.48,11.23-36
p.48,11.37-40,
p.49,11.1-6
p.48,11.41-49
10. Judgment was given on the 29th November, 1956. Verity, Ag.J.A. (with whom the other members of the Court agreed) set out the issues, and said that he pp.67-74

RECORD

p.68, ll.31-42 agreed with the finding of Van Lare, J. that an oral grant of the land had been made to the Respondent in 1939 and no oral grant had been made to the Appellant in 1935. He also agreed with the finding that the land in question was not outskirts land of the Alata quarter. He then turned to the defence raised under the Accra Town (Lands) Ordinance. He held that the effect of Section 5 (4) of the Ordinance was not that the Respondent's rights in the land in question had determined absolutely, but only that, since she had made no claim under Section 5(1), her rights were deemed as between her and the Chief Secretary to have determined. Upon the making of a divesting order under Section 2(2), the rights of the Respondent would be revived. Since, however, her rights had not been revived either at the date of the Writ or at the date of the judgment of the Supreme Court, the learned Judge held that the Respondent was not entitled to a declaration of "title to ownership". The real issue, however, was, which of the parties was entitled to possession of the land in question at the time of the institution of the action. On the facts as found by Van Lare, J. on the evidence, the Respondent had been given an oral grant in 1939, and had entered into actual possession of the land by placing pillars thereon to demarcate the plot. In 1948 the Appellant had entered upon the land and dispossessed the Respondent. She had brought this action against the Appellant to recover possession, and the action was clearly maintainable. The Respondent had been in possession of the land for three years at the time of the Appellant's entry, even if it was to be assumed that she had not entered into possession until the making of the Indenture of 1945. The Chief Secretary could have ejected her, but against all the rest of the world she was entitled to maintain her position. It was clearly established that possession was good against all the world, except the person who could show a good title. The only person with a right to disturb the Respondent had been the Chief Secretary, who had not interfered. Her possession could not be disturbed at the mere will of the Appellant, who had had no lawful claim to the land. The learned Judge therefore concluded that the appeal ought to be allowed in so far as the Supreme Court had made a declaration of title, but otherwise ought to be dismissed.

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11. The Respondent respectfully submits that, on the facts concurrently found by the Supreme Court and the Court of Appeal, the Appellant never had any right or title to the land in question. His entry upon the land and erection of a building there in 1948 were wrongful. By these acts and by his subsequent occupation of the land the Appellant committed trespass actionable at the suit of the person in possession of the land.

10 12. The evidence showed that the Respondent was in possession of the land when the Appellant entered upon it. She had had pillars, marked with her initials, erected at the corners, and her mother was looking after the land on her behalf. The Chief Secretary may have had power to take possession of it under the Accra Town (Lands) Ordinance, but there was no evidence that he ever sought to exercise that power or did anything to disturb the Respondent's possession. The Respondent therefore submits
20 respectfully that she was in possession of the land at the time of the Appellant's wrongful entry and as against the Appellant has had the right to possession of it ever since; she is accordingly entitled to the relief given her by the Court of Appeal.

13. The Respondent respectfully submits that, in addition to her possession of the land, she had at the date of the institution of these proceedings (the 10th April, 1948) an equitable title to it under the Deeds of Release of the 6th February, 1948.
30 By those Deeds the Government was bound to give a direction under s.2(2) of the Accra Town (Lands) Ordinance affecting an area including the land in question. For the reasons given by Verity, Ag.J.A., the effect of such a direction upon the land in question would be to revive the legal title of the Respondent thereto.

14. The Respondent respectfully submits that the judgment of the West African Court of Appeal was right and ought to be affirmed, and this appeal
40 ought to be dismissed, for the following (amongst other)

R E A S O N S

1. BECAUSE the concurrent findings of fact shew that the Appellant never had any right to enter or build upon the land in question:
2. BECAUSE the Respondent was in possession of the

RECORD

said land when the Appellant entered upon it:

3. BECAUSE at all material times the Respondent has been entitled to possession of the said land as against the Appellant:
4. BECAUSE from the 6th February, 1948 onward the Respondent was the owner in equity of the said land:
5. BECAUSE of the other reasons given by the learned Judges of the West African Court of Appeal.

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J.G. Le Quesne.

IN THE PRIVY COUNCIL No.25 of 1960

O N A P P E A L

FROM THE WEST AFRICAN
COURT OF APPEAL
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WUTA-OFEI

- v -

DANQUAH

CASE FOR THE RESPONDENT

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