IN THE PRIVY COUNCIL No.22 of 1957

ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL

BETWEEN:

(1) KWAMI BADU,
(2) KWESI AYIAH,
(3) KWESI TEKYI,
(4) KWESI EDUAMOAH, (since deceased)
(5) KWAMI OTSINKORANG, (since deceased)
(6) KWAKU ESSEL, (since deceased)

all of Nyakrom
(Defendants)

(1) V.K. NINSON and
(2) G.N. HAYFORD,

all of Nyakrom
(Co. Defendants) Appellants

- and -

(1) AMBA AMOABIMAA, Queen Mother of the Ampiakoko section of the Yego family, and
(2) KOFI BOYE, the Family Linguist of the said Family, on behalf of themselves and as representing the other members of the said Family of Apaa Quarters, Nyakrom
(Plaintiffs) Respondents

CASE FOR THE RESPONDENTS

RECORD

1. This is an appeal from a judgment, dated the 3rd April, 1956, of the West African Court of Appeal (Coussey, P., Korsah, J.A. and Ames, Ag.J.A.) allowing an appeal from a judgment, dated the 22nd October, 1954, of the Supreme Court of the Gold Coast (Acolatse, J.) allowing an appeal from a judgment, dated the 18th June, pp.103-109 pp.84-90 pp.72-76

1954, of the Agona Native Court 'B' ordering that the Respondents should recover possession of certain lands known as Otsinkorang, Busumpa and Obuafi (hereinafter called "the said lands"). The West African Court of Appeal restored the judgment of the Native Court.

pp.1-2 2. The Respondents instituted proceedings in the Agona Native Court 'B' on the 15th September, 1953, against the first six Appellants. In these proceedings the Respondents claimed a declaration that the said lands were acquired or founded by Ampiakoko, their ancestor, and not by the ancestors of the Appellants.

pp.2-4 3. On the 15th September, 1953 the seventh and eighth Appellants applied to the Native Court to be joined as co-Defendants. The Respondents did not oppose this application, and an order joining the seventh and eighth Appellants was made by the Native Court on the 9th October, 1953. On the

pp.9-10 12th April, 1954 the Native Court gave leave to the Respondents to amend their claim by adding to it a claim for recovery of possession of the said lands.

4. The action was tried in the Native Court on various days between the 2nd February and the 18th June, 1954. Evidence was given for the Respondents showing that all parties belonged to what had formerly been the joint Yego family of Nyakrom. This family had consisted of four sections, each of which owned certain lands. At a certain period in the past the four sections had all settled together, and each section had allowed members of the other sections to settle on its land. In consequence of this arrangement, the Respondents had allowed the Appellants to live on the said land, and the Appellants had allowed the Respondents to farm certain ancestral lands of the Appellants called Kyekyegya. Subsequently, trouble had arisen between the Respondents' section and the Appellants' section. On the 13th May, 1949, in an action between one Kofi Donkor representing the Respondents' section of the family and the fourth Appellant and others representing the Appellants'

pp.148-149 section, the Agona Native Court 'B' had made a consent order that the family ties between the two sections

> "be separated and the same are hereby separated, each party not having any further family dealing with the other".

Subsequently the heads of the Appellants' section had brought proceedings by which they had ejected the Respondents' section from the Kyekyegya lands. p.11, ll. 36-43

5. The order of the Native Court of the 13th May, 1949, ordering the separation of the family ties, also contained an order that the division of the Yego family property should be settled by the Adontenhene of Agona. The judgment of the 13th August, 1949 had been the subject of an appeal to the Magistrate's Court at Winneba, and part of the Magistrate's judgment was produced in evidence. He had dismissed the appeal, and in doing so had said the following: p.149 pp.149-150

> ".... the order made does not divide a family, it merely declares what was already known to both sides and makes the way clear by referring to arbitration the settlement of a family suit. The parties need not comply with the order. Arbitration is essentially voluntary. There is therefor nothing to appeal against".

6. In the Native Court the Appellants called evidence to show that the said lands were acquired and founded jointly by their ancestors and the ancestors of the Respondents, and formed joint property of the whole Yego family.

7. The Native Court gave judgment on the 18th June, 1954. Having summarised the history of the family and the contentions of the parties, they said that the question at issue was whether the said lands were founded by Ampiakoko, the Respondents' ancestor, or by him and the Appellants' ancestors jointly. They referred to both the oral and the documentary evidence which had been given. They said that the Yego family, though consisting of four houses, had for some time been one, but by the judgment of the 13th May, 1949 they had separated themselves by observing the native custom of cutting the family tie. As far as the ownership of the said lands was concerned, the Court rejected the Appellants' evidence. They held that the said lands belonged to the Respondents, and gave judgment for the Respondents, as Ampiakoko's descendants, for recovery of possession of the said lands. pp.72-76 p.74,ll.18-22 pp.74-75 p.74,ll.32-38 p.76,ll.9-15

8. The Appellants appealed to the Supreme Court

p.77 of the Gold Coast. Their grounds of appeal, dated the 26th June, 1954, alleged that the judgment of the Native Court was against the weight of the evidence and contrary to principles of native customary law. On the 30th August, 1954 they filed
p.78 additional grounds of appeal, contending that the separation of the family ties had been contrary to native law and custom, certain documents had been wrongly admitted in evidence, and the proceedings ought to have been stayed pending the decision of another suit between the same parties concerning the said lands. They also raised a procedural point about the joinder of the seventh and eighth Appellants, which was subsequently dropped in the West African Court of Appeal.

9. The appeal was heard in the Supreme Court on the 15th, 18th, 25th and 30th September, 1954, by
pp.84-90 Acolatse, J.. The learned Judge delivered his
pp.84-87 judgment on the 22nd October, 1954. He summarised the grounds of the proceedings, dealt with the procedural point on the joinder of the seventh and
p.87,l.18- eighth Appellants, and held that that point failed.
p.88,l.23 He then said that the Respondents' action had been brought as a result of the judgment of the 13th May, 1949 separating the family ties. The learned Judge said that it seemed to him that the Magistrate's decision of the 13th August, 1949 held that the judgment of the 13th May, 1949 had been ultra vires. It appeared to him, he said, that the judgment of the 13th May, 1949 could not stand against anyone who had not been a party to that action, and it could not be said that the parties to the present proceedings had agreed to the severance of the family ties. He held that the
p.88,l.24 - Native Court had been wrong in holding that the
p.89,l.10 direct descendants of Ampiakoko were alone entitled to the said lands. The sections of the joint Yego family had for a very long time had common ownership of the said lands, and the learned Judge felt unable to say that such land could then revort to one branch of the family alleged to be the direct descendants of the founder of the land. He allowed the appeal on this ground, but went on to hold
pp.89-90 that the proceedings had been premature, because in his view the same issues had been raised in an earlier action in which an appeal was then pending
p.90,ll.21- before the West African Court of Appeal. He
30 concluded that, whatever other remedy might be available to the Respondents thereafter, the appeal of the Appellants should succeed and the action be

dismissed, though that did not mean that either the title or the possession of the said lands was vested in the Appellants as against the Respondents.

10. The Respondents appealed to the West African Court of Appeal, by a Notice of Appeal dated the 27th October, 1954. They put forward the following grounds of appeal: pp.91-92

(1) The decision of the Native Court had been based essentially on issues of fact and native customary law, on which the Supreme Court ought not to have interfered.

(2) The learned Judge had misinterpreted the Magistrate's judgment of the 13th August, 1949, for it was only the part of the judgment of the 13th May, 1949 dealing with arbitration which the Magistrate had held to be inoperative.

(3) In holding that no one branch of the Yego family could claim ownership of any of the lands, the learned Judge had overlooked the history of the family as stated before the Native Court.

(4) Neither the parties nor the issues in the other pending proceedings to which the learned Judge had referred were the same as those in these proceedings.

11. The appeal was heard on the 21st, 22nd, 23rd and 24th February, 1956, and judgment was given on the 3rd April, 1956. Coussey, P. gave the first judgment. Having summarised the course of the proceedings, he held that Acolatse, J's finding that there had been no severance of the family tie was in direct conflict with the consent order of the 13th May, 1949. The eviction of members of the Respondents' section from lands acquired by the Appellants' ancestors was consistent with severance of the family tie, but would have been inexplicable if the sections had still formed the composite group enjoying their lands in common. The Native Court had held in the particular circumstances of the case that on severance of the family tie each section had exclusive title to the lands acquired by its founder. The learned President thought that Acolatse, J. could not pp.103-109 p.106,ll.30-47 p.106,l.48-p.107,l.48

p.108,ll.1-30

properly have been satisfied that this finding of the Native Court was wrong. Accordingly, he ought not to have interfered with it. The Appellants had argued that a number of exhibits, mostly transcripts of evidence given in other proceedings between 1910 and 1935, had been improperly admitted by the Native Court. There were no strict rules of evidence in a Native Court, where earlier statements of the Defendants or members of their families touching the question of lands in dispute would be regarded as most material. The Appellants had also argued that the said lands remained the property of the Stool, because Ampiakoko, if he had acquired them, was the occupant of the Stool when he did so. The Native Court, however, had rejected this contention, and had found on the evidence that Ampiakoko founded the lands for his descendants. As to the other pending proceedings to which Acolatse, J. had referred, the learned President held that they were irrelevant to these proceedings. He saw no reason for disagreement with the judgment of the Native Court, which was expert in native custom, and concluded that the appeal should be allowed and the judgment of the Native Court restored. Korsah, J.A. and Ames, Ag.J.A. concurred in this judgment.

p.108,ll.31-47

p.108,l.48-p.109,l.12

p.109,ll.13-23

12. The Respondents respectfully submit that the said lands were founded and acquired by their ancestor, Ampiakoko, for his descendants. This fact has been concurrently found by the Native Court and the Court of Appeal. (In the Supreme Court, Acolatse, J. did not make any different finding on this point, but the view he took made it unnecessary for him to consider the point at all). Accordingly, the Appellants, in the Respondents' respectful submission, ought not to be allowed to challenge it now. Alternatively, the Respondents submit that the findings of fact made by the Native Court and the Court of Appeal were right, and abundantly supported by the evidence.

13. The said lands having been thus founded and acquired by Ampiakoko, the Respondents respectfully submit that on the separation of the family ties their section of the family had exclusive title to the lands. The effect of the consent order of the Native Court of the 13th May, 1949 was to separate the family ties, and the terms of that order show that it was made between parties representing the

Appellants' and the Respondents' sections of the Yego family. The Magistrate's judgment of the 13th August, 1949 did not affect this separation, and the Respondents respectfully submit that Acolatse, J. was mistaken in his view of that judgment. The consequence of the separation was, as the Native Court held, that the Respondents' section of the family was exclusively entitled to the lands originally founded and acquired by Ampiakoko.

14. As to the other points upon which the Appellants relied in the Court of Appeal, the Respondents respectfully submit that all the documentary evidence upon which the Native Court relied was rightly admitted according to the rules and practice of that Court. The Court of Appeal, in the Respondents' respectful submission, was right in holding that the other proceedings to which Acolatse, J. referred were irrelevant to the present case.

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

R E A S O N S

1. BECAUSE there are concurrent findings of fact in the Respondents' favour:

2. BECAUSE the said lands were founded and acquired by Ampiakoko alone for his descendants:

3. BECAUSE the family ties between the Appellants' and the Respondents' sections of the Yego family were separated by the order of the 13th May, 1949, and the Respondents' section is exclusively entitled to the said lands:

4. BECAUSE all the evidence upon which the Agono Native Court 'B' relied was properly admitted:

5. BECAUSE the judgment of Acolatse, J. was wrong:

6. BECAUSE of the reasons given by the Agona

Native Court 'B' and Coussey, P..

PHINEAS QUASS

J.G. LE QUESNE

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- and -

(1) AMBA AMOABIMAA, Queen Mother of the Ampiakoko section of the Yego family and
(2) KOFI BOYE, the Family Linguist of the said Family, on behalf of themselves and as representing the other members of the said Family of Apaa Quarters, Nyakrom
(Plaintiffs) Respondents

CASE FOR THE RESPONDENTS

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