Appeal No. 22 of 1957

Kwami Badu and others – – – – – – – *Appellants*

v.

Amba Amoabimaa, Queen Mother of the Ampiakoko Section of the Yego Family and another – – – – – *Respondents*

FROM

THE WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 26TH JULY, 1961

Present at the Hearing:

LORD DENNING.

LORD MORRIS OF BORTH-Y-GEST

MR. L. M. D. DE SILVA.

[*Delivered by* MR. L. M. D. DE SILVA]

The plaintiffs-respondents, who are the Queen-Mother of a section of a family (the Ampiakoko section of the Yego Family of Nyakrom) and a linguist instituted this action on behalf of the members of the said section against certain persons in the Agona Native Court "B" for a declaration that three parcels of land known as the Buafi, Otsinkorang and Busumpa lands had been founded or acquired by Ampiakoko their ancestor. They also asked for possession of these lands. The appellants consist of some of the original defendants, persons substituted in place of original defendants who had died and certain persons who were added as defendants on their application that this should be done.

The Agona Native Court entered judgment in favour of the respondents. On appeal this judgment was set aside and the action dismissed by the Land Court. On a further appeal the West African Court of Appeal reversed the judgment of the Land Court and restored the judgment of the Native Court. The appeal now under consideration is from the judgment of the West African Court of Appeal.

It is common ground that several generations ago the ancestors of the parties migrated as four or five distinct families (all of the Yego Clan) from different parts of Ashanti to Nyakrom which is within twenty-five miles of the sea coast. At Nyakrom they united to form one composite group which became known as the Yego Family of Apaa Quarters of Nyakrom. The four or five families became houses within the composite group. As a result of the union every member of each of the four or five houses had the right to farm freely on all the lands of the composite group so long as he did not trespass on land already cultivated by others.

The question debated before the Native Court is stated thus in the judgment of that Court:—

> "Now the question at issue is this: Were the lands in dispute i.e. Buafi, Otsinkorang and Bosumpa founded by Ampiakoko, the plaintiffs' ancestor or by Buasi, Otsinkorang, Abuenyi, the defendants ancestors and Ampiakoko?"

This appears to have been the substantial question raised in the Native Court. It was essentially a question of fact to be determined on evidence. It was as already stated answered in the plaintiffs' favour by the trial Court

which held that the lands had been founded by Ampiakoko "for his descendants" before the union with other families to form a composite group. Their Lordships agree with the Court of Appeal that there is no reason to disturb this view. This does not conclude the matter.

In 1949 disputes arose within the Yego Family of Apaa Quarters and one consequence of these disputes was that an action was instituted in the Agona Native Court "B" by one Kofi Donkor a member of the Ampiakoko House against one Kwesi Eduamoah a member of the Eduamoah House. In the course of the hearing a settlement was reached by which the houses agreed to sever the family ties which bound them into a composite group. There were representatives of other houses there. They were consulted and agreed. There was a special ceremony to mark the severence. The President of the Court asked each side to provide a live sheep and a bottle of rum. The sheep were slaughtered and the cutting of the tie ceremony was accomplished. An order of the Native Court was drawn up on 13th May, 1949, in these words:—

> "In view of the agreement arrived at by both parties as to separation of Family Ties, it is needless calling upon any other witnesses in this case nor asking the defendant to make his defence.
>
> "It is hereby ordered and directed, by consent of both parties, that the Family Ties hitherto existing between Kofi Donkor as representing the members of Ampiakoko section of Yego Family (Apaa Section) of Nyakrom and all his descendants of the one part, and Kwesi Eduamoah and with him Henry Saah, Kwami Badu and Kerami Otsinkorang as representing the other four houses of Yego family (Apaa Section) at Nyakrom and all their descendants of the other part, *Be separated* and the same are hereby separated, each party not having any further family dealing with the other.
>
> "The question of the Yego Family (Apaa Section) Stool of Nyakrom and all the properties attached thereto or belonging to the said Family shall be later settled amicably between the parties by Nana Kobina Botchey, Adontehene of Agona State, who shall see to the division of such properties and to the ownership of the Stool."

In the present case the Native Court expressed the view that under the consent order there had been a severance of family ties, and that on severance the ancestral property of the Ampiakoko section reverted to it for the sole use and occupation of its members. It did not say in express language that the latter was a consequence of the former but their Lordships have no doubt that that view was implicit in what it said. The Land Court found itself unable to accept the view of the Native Court. With regard to this the West African Court of Appeal said:—

> "The learned Judge (of the Land Court) expressed a view as a general proposition that the lands of a family stool cannot revert to one branch of a family. The Native Court, however, in the particular circumstances of the present case, held that on severance each house assumed title, to the exclusion of the other houses, of the lands acquired by its founder. That is a finding on the native custom applicable to the case."

It went on to say that the Land Court could not properly on the material before it have taken the contrary view. Their Lordships agree. There was no material upon which it could be said that the view of the Native Court upon this point of customary law was wrong.

It was urged for the appellant that in the absence of a term in the agreement (of the 13th May) to the effect that the ancestral properties were to revert to each house no such consequence followed. Their Lordships being of opinion as already stated, that under the relevant law applicable to the parties in the circumstances of this case the reversion of the ancestral properties followed as a matter of course they do not think any such term was necessary.

It was also urged that the amicable settlement referred to in the second paragraph of the order had not taken place and that in consequence the whole

of the order was ineffective in law. Their Lordships do not agree. On severance the ancestral lands at once reverted to the houses to which they originally belonged. That did not depend on any "amicable settlement". The only need for an amicable settlement was as to any property of the Yego Stool, which was not the ancestral property of any one of the houses, but was the property of the Stool which it itself had acquired whilst it was a composite Stool. No one house was entitled to that Stool property and a division had to be made.

It should be mentioned that both parties took the order twice before a magistrate for reasons which do not appear in the record of the proceedings in this case. It is not of much importance that they do not. On 13th August, 1949, Kwesi Eduamoah appealed to Mr. Wallis, who dismissed the appeal saying:—"The Parties need not comply with the Order. Arbitration is essentially voluntary. There is therefore nothing to apeal against". On 7th February, 1950, Kofi Donkor appealed to Mr. Ferguson, who said:— "No order by a court which this court could direct should be enforced has been brought to my notice". Their Lordships are of opinion that these proceedings before the magistrates did not affect the validity of the separation or its consequences in native customary law. Each house was entitled to its ancestral property. But it did mean that the position of the Stool property was unresolved.

It has been urged that the findings in a case (now under appeal) brought by one Kwami Badu and others against Kofi Donkor are a bar to the present proceedings. It is necessary to consider this argument.

Kofi Donkor was at one time the head of the Yego Family. On the 22nd November, 1950, a general meeting was held of the Yego Family and it was resolved that "Kofi Donkor be removed and he is this day removed from the position of Head of the Yego Family (Apaa Quarters) of Nyakrom". Kwami Badu was appointed head of the Family in his place. Kofi Donkor does not appear to have handed over the paraphernalia and other property of the Stool to his successor. On the 11th June, 1951, Kwami Badu and other heads of houses brought an action in the Native Court "B" at Swedri asking for the delivery of the Stool property against "Kofi Donkor (ex-head of Yego Family Apaa Quarters)". The action was not against him as representing the Ampiakoko section. On 5th July, 1953, the court gave judgment for the plaintiffs and ordered Kofi Donkor to deliver up the Stool with its paraphernalia and lands. That judgment only affected the Stool lands.

The order in that case made by the Native Court is as follows:—

> "Judgment in this case is therefore entered for plaintiffs for the said Stool with its paraphernalia and all the lands, with costs to be taxed.
>
> "Defendant is hereby ordered to deliver up possession and surrender all the properties mentioned hereunder to plaintiffs for the whole Apaa Yego Family, Nyakrom including defendant's section on or before the 19th day of July, 1952."

It will be observed that the Ampiakoko section of the Yego Family ("defendant's section") was one of the parties in whose favour order was made against Kofi Donkor and there is no order adverse to the Ampiakoko section.

The subject matter of the present proceedings, namely, the lands at Otsinkorang, Busumpa and Buafi are included in the order but in the circumstances mentioned this cannot prevent the Ampiakoko section from asserting that those lands are their ancestral lands. Moreover, Amba Amoabimaa the Queen-Mother of the Ampiakoko had applied to be joined as a party to the case but her application was rejected. She is a plaintiff in the present proceedings and it is not disputed that she rightly represents the Ampiakoko section. The action, as already stated, was against Kofi Donkor personally as ex-head of the Yego Family as a whole. Their Lordships are of opinion that the Ampiakoko section are not prevented by those proceedings from asserting the present claim.

It has been held by the Native Court that "consequent upon the breaking of the family tie" the heads of the appellants' sections of the Yego Family prevented the respondents "from having anything to do with their family lands of Kyekyegya". This finding was confirmed by the Court of Appeal. Both courts took the view that the appellants by this action regarded their ancestral lands as their sole property and that the respondents were equally entitled to regard their ancestral property as solely theirs. Their Lordships agree. Some evidence was pointed out to their Lordships that the action taken by the appellants was for reasons other than those mentioned but this evidence has not been accepted.

A point which found favour with the Land Court was that it was not established that the appellants were in possession of the lands in question and that therefore no order for possession should be made against them. Their Lordships do not think it is well-founded. The appellants undoubtedly claimed the right to go on the lands and farm them. If they are there an order is necessary to get them out. If they are not there it does them no harm.

For the reasons which they have given their Lordships will report to the President of Ghana that this appeal ought to be dismissed and that the appellants should be ordered to pay the costs of this appeal.

(83306) Wt. 8233/71 100 8/61 Hw.

In the Privy Council

KWAMI BADU AND OTHERS

v.

AMBA AMOABIMAA OF THE
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DELIVERED BY MR. DE SILVA

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