Privy Council Appeal No. 39 *of* 1935

C. M. Appeatu and others - - - - - *Appellants*

v.

Ohene Kojo Sintim - - - - - *Respondent*

FROM

THE WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 29TH JULY 1936

Present at the Hearing:

LORD BLANESBURGH.
LORD MAUGHAM.
LORD ROCHE.

[*Delivered by* LORD MAUGHAM.]

This is an appeal by the defendants against a judgment of the West African Court of Appeal, dated the 24th November, 1934, restoring a judgment, dated 9th August, 1933, of the Superior Native Tribunal of Akim Kotoku-Oda in the Central Province of the Gold Coast Colony, in favour of the respondent, and reversing the judgment of the Provincial Commissioner's Court (Central Province) of the Supreme Court of the Gold Coast Colony. The Provincial Commissioner had reversed the judgment of the Native Tribunal, and had given judgment in favour of the appellants in this appeal.

The action was commenced on the 3rd October, 1932, by the respondent, the Ohene Kojo Sintim for himself and on behalf of his subjects against C. M. Appeatu and W. E. Appeatu (appellants) and one Yaw Mensah (since deceased). The claim was made by the plaintiff as Ohene (or chief) of Mansu for himself and on behalf of his subjects and the Mansu Stool, and by it he sought an order setting aside the alleged sale in 1920 of a tract of land (called the " Kyeramase-Kohye lands ") to the defendants and an injunction restraining the defendants, their agents, servants, and workmen from interfering with the possession and occupation of the land by the plaintiff, his subjects, tenants, and workmen. The trial of the action occupied some eight days. The Native Tribunal consisted of some 26 native chiefs and others, of whom seven were " linguists." On the 9th August, 1933, the Tribunal delivered its findings which were in favour of the plaintiff and on the following day there was a formal order in these terms:—" the Tribunal orders that

the land which is the subject matter of this case reverts to the plaintiff's Stool and that the defendants and all people occupying the land on their behalf remove therefrom."

The appellants (who include Kate Gyakyiwah whose name was substituted for that of Yaw Mensah deceased) raised only one question on the appeal to His Majesty in Council, namely, the question whether the consent of the respondent and his Stool, that is, the Stool of Mansu, to the sale of the lands in question had not (contrary to the finding of the native Tribunal) been duly given. The respondent was in fact the Ohene of Mansu and the occupant of the Stool of Mansu at the time of the alleged sale, though he was destooled about a fortnight later, and was not reinstated on the Stool till the autumn of 1932. There was a subordinate Stool known as the Stool of Akroso, to which certain lands (including the Kyeramase-Kohye lands) were attached; but these lands remained, in a sense, lands belonging to the Stool of Mansu, and in certain events would revert for all purposes to that Stool. It is not in dispute and indeed was clearly admitted by the appellants that the consent or concurrence of the occupant for the time being of the paramount Stool of Mansu was an essential condition of the validity of a sale of the lands in question.

Apart from this question of consent and one or two allied matters, certain important facts are not in serious dispute. In 1920, one Kobina Ofori was the occupant of the subordinate Stool of Akroso. In circumstances to be mentioned later he undoubtedly contracted to sell the lands in question to C. M. Appeatu, W. E. Appeatu (appellants) and Yaw Mensah for the sum of £3,000. Their Lordships were informed that the lands amounted in area to between one and two square miles. The would-be purchasers were apparently speculators who were not possessed at the time of any large means. They paid the sum of £200 towards " cutting fees " and they paid some £350 a fortnight later to Kobina Ofori as Odikro of Akroso. They did not seek to obtain possession. They apparently paid altogether to Kobina Ofori sums amounting to £1,000, though this is not clearly proved. The matter seems then to have gone to sleep for at least ten years. No conveyance has ever been executed, and it is not suggested that any sum has ever been paid to or for the Stool of Mansu.

The respondent, in his evidence, denied having known of or consented to the sale and he supported this denial by certain Great Oaths of Akim Kotoku, the precise force of which was a matter on which the opinion of the Native Tribunal is more valuable than that of an appellate Court. He admitted that at the time in 1920, when he was on the Stool of Mansu, he was informed that two persons, named Peter Botwe and Kwa Baah, desired to purchase certain lands attached to the Akroso Stool (not the subject of dispute) and that he sent two messengers to assist the Odikro of Akroso to effect the sale; but he swore that he did not know the appellants and gave no consent to any sale to them, and did not know that such a sale was even proposed.

According to the appellant William Edward Appeatu, the principal witness on behalf of the defendants, they were informed at the time that the Odikro of Akroso wanted some people to buy some forest lands, and they met the Odikro and his Councillors at Akroso, and said they wanted to purchase lands to the value of £3,000. The Odikro and Councillors said " that they had no idea about sale of land, but from the sale they had made to Peter Botwe and Kwa Baah." They also said that the " cutting fee " for the labour would be the large sum of £900, and they claimed certain customary presents, including some bottles of gin, of which the whole was drunk. The defendants were told to wait, and they waited for about two weeks at Akroso. The Odikro then introduced them to some men who were stated to be the representatives of the respondent, who had come to assist him in selling the land, namely one Kwame Amanano (the respondent's brother) and four other persons. The appellants paid £200, part of the £900 payable for the cutting fee, and Kwame Amanano and another man performed the ceremony of cutting the " Guaha," a very important ceremony which, according to the evidence would have the result of transferring the property in the land to the purchasers, providing that the persons who performed the ceremony were properly authorised so to do on behalf of the Ohene of Mansu as well as the Odikro of Akroso. The appellants were, however, told by the Odikro to return after two weeks to pay part of the alienation money, namely part of the £3,000, and according to the witness, at the expiration of the fortnight the appellants did pay the sum of £350 to the Ofori of Akroso, and subsequently paid some other sums to him. Their Lordships pause to observe that the respondent on behalf of his Stool was interested in the purchase money, of which his Stool would be entitled to a share. The transaction of sale was a large one, and it is not easy to see that the respondent would have been justified in consenting on behalf of his Stool to transfer the property without some definite arrangement as to the payment of the Mansu share (one-third) of the purchase money, and some reason for thinking that it would be paid. If valuable land is transferred to speculators who cannot themselves provide the purchase money, the position plainly is that if the value appreciates they claim to enforce the sale and thus get the benefit of the increased value, whilst if it depreciates they do not complete; and a right of action against natives of no great substance is generally useless.

As already stated, the respondent strongly denied the suggestion that he had given any consent to the sale, or that he had received any sum whatever in connection with the land in dispute. Moreover, there has not been, at any time, any conveyance of the land, though such a conveyance was to be expected in connection with so large a sale, and (subject to what is stated later) there was no receipt obtained from the respondent or any other person connected with the Stool of Mansu nor indeed any other record of the sale

whatsoever. The respondent swore that if he had heard of the sale he would have refused his consent.

The plaintiff thought it necessary to call as his witness the principal representative (as alleged) of the respondent, namely, Kwame Amanano, and it may be said at once that he was a very unsatisfactory witness. He swore, however, that he never told the respondent anything about the sale of land to the appellants. On the other hand he performed the " Guaha " custom in respect of the land, though he said that he performed it on behalf of the Ofori of Akroso and not on behalf of the Stool of Mansu, since he had no instructions whatever from that Stool. It would not seem to be an unfair conjecture that the Odikro of Akroso and Amanano were joining together in 1920 to defeat the rights, if they could, of the Stool of Mansu, and their Lordships think that no great weight can be attached in the circumstances to the evidence of Amanano. No direct evidence was given by the defendants of the consent on behalf of the Stool of Mansu.

The appellants, however, relied on two subsequent episodes as sufficiently establishing that there had been, in the year 1920, authority given by the respondent to his representatives in the other two transactions to assent to the sale in question. These episodes may be referred to as: first, the Oaths case, and secondly, the visit to Accra. Unless the appellants can establish that an admission by the respondent, that he consented to the sale or gave authority to effect it, can properly be derived from the disputed facts involved in these two matters it is plain, as Mr. Asquith pointed out in his clear and succinct argument for the respondent, that the appellants must fail.

It is not altogether easy for the Board to appreciate the weight which should be given to the conflicting statements of the witnesses in relation to these two matters. In each case, however, the Native Tribunal, after a prolonged hearing, came to a conclusion adverse to the defendants and the learned Judges in the West African Court of Appeal found no difficulty in coming to the same conclusion. Their Lordships have carefully considered the whole of the evidence in relation to these two episodes and they have found themselves unable to differ from that conclusion. The decision of the Native Tribunal on a question of fact in a case where the circumstances are not very complex and where there is no reason to suppose that the tribunal is unduly swayed by a bias in favour of or a prejudice against either party, is necessarily entitled to considerable respect; and this is all the more so where native customs are involved, (as is the case in both the episodes above referred to) where the language used by the witnesses may involve meanings which it is difficult for the translator to render in English and where the weight to be attributed to the various statements and even the acts of the parties may depend in part on native habits and ideas. This consideration was plainly stated in the Court of Appeal; but it is not clear to their Lordships

that the Acting Commissioner in the Provincial Commissioner's Court gave sufficient weight to it; and he seems to have taken the mistaken view that, notwithstanding the absolute denial of consent by the respondent, the onus was upon him to prove and to establish the negative fact that he did not consent to the sale. In the opinion of the Board the decision of Acting Chief Justice Yates, and of Paul J. and Kingdon C.J. was correct. It should be added that the defendants' conduct is at least as much open to adverse criticism as that of the witness Amanano. In an action by them claiming the lands in question against Chief Yaw Darkwa and Kwasi Saakwa (to be referred to later) they tendered a forged receipt for £2,825 alleged to be signed (by mark) by Kobina Ofori and they endeavoured to prove it by calling a witness, one Aparkwa, a letter writer who was forced to admit that his evidence was false and to ask for mercy. It would seem, in view of this fact, that no great reliance can be placed on the honesty of the appellants C. M. Appeatu and W. E. Appeatu.

Before parting with the case their Lordships must express their regret that so much litigation has taken place between the natives concerned over the alleged contract of sale. Their attention was called to the action (already mentioned) by the appellants C. M. and W. E. Appeatu and Yaw Mensah against Chief Yaw Darkwa and Kwasi Saakwa relating to the same land commenced on the 15th May, 1930, to which, however, the Ohene of Mansu was not a party and by the result of which he was not bound. The decision of the Native Tribunal was reversed on appeal by the Acting Commissioner but there was not any finding as regards the consent to the sale on the part of the Stool of Mansu. There was a second action begun on the 23rd May, 1933, by the present respondent against the ex-Chief Kobina Ofori, perhaps a collusive action, in which the defendant Kobina Ofori admitted that in 1920 he made a wrongful alienation of the lands in question and submitted to a declaration to that effect. To that action the present appellants were not parties. Finally the present proceedings were commenced and have resulted in hearings before three tribunals besides that before the Board. There has not only been much conflict as to the facts but there seems also to be doubt as to the effect of the ceremony of Guaha in cases where the purchase money for lands has not been paid. The ceremony, as the law stands, does not require any permanent record whatever and it is evident that after the lapse of years it may be almost impossible to prove that the ceremony has been performed. In small cases where the purchase money is paid and possession is taken by the purchaser this leads to little trouble; but it seems to their Lordships to deserve consideration whether in cases of magnitude, and especially if all or some of the purchase money remains unpaid, a written contract should not be made essential in the interests of the natives and with a view of preventing useless litigation.

In the present case the appeal should be dismissed, with costs. The order of the Native Tribunal must, however, be varied. The present Odikro of Akroso is not a party to the proceedings and in his absence it cannot be right to declare that the lands in question revert to the Stool of Mansu. The order allowing the appeal should declare that the alleged sale of the lands mentioned in the claim was not binding on the plaintiff as Ohene of Mansu and the Mansu Stool, and there should be liberty to apply. Their Lordships will humbly advise His Majesty accordingly.

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In the Privy Council.

C. M. APPEATU AND OTHERS

v.

OHENE KOJO SINTIM

DELIVERED BY LORD MAUGHAM.

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