Privy Council Appeal No. 20 *of* 1950

Wudanu Kwasi, Acting Chief of Atipradaa and another - - - - - - - - - - *Appellants*

v.

Nana Osei Twum, Ohene of Bukuruwa, (substituted for Yaw Nkansah II, Dsasehene of Bukuruwa-Kwahu) and another - - - - - - - - *Respondents*

FROM

THE WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 17TH NOVEMBER, 1953

Present at the Hearing:

LORD OAKSEY
SIR LIONEL LEACH
MR. L. M. D. DE SILVA

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

This is an appeal from a judgment of the West African Court of Appeal dated the 1st March, 1948, which affirmed a judgment of the Supreme Court of the Gold Coast dated the 2nd May, 1947, in favour of the respondents.

The action was instituted by the respondents for a declaration of title to land and for an injunction on the 13th March, 1940, in the Kwahu State Tribunal. It arose out of a dispute concerning title to a tract of land between certain Kwahu Chiefs and certain Wusuta Chiefs. The case was transferred to the Lands Division of the Supreme Court of the Gold Coast by an order of the Commissioner of the Eastern Province dated the 21st March, 1942. In the Supreme Court various parties were added or substituted for existing parties in order *inter alia* that the real contestants of the questions that had arisen for investigation might be brought into Court and bound by its order.

The attempt so to bring them in did not completely succeed because an order made on the 29th September, 1946, that certain parties be added was rescinded by consent on the 24th February, 1947, owing to difficulties encountered in serving notice. This however does not affect the views expressed by their Lordships in the following paragraphs.

The description of the land claimed as it appeared in the papers filed in the Kwahu State Tribunal and in the original pleadings in the Supreme Court was amended in the latter Court on the 17th April, 1947, as the result of an application which had been made earlier but the date of which does not appear. The amendment was made at the instance of the appellants without objection by the respondents. It fixed the Western boundary of the land claimed with a definiteness greater than had been achieved in the Kwahu State Tribunal and for the Northern Boundary

substituted the River Obosom for the River Faa. The Eastern and Southern boundaries were not altered. A plan (exhibit A) was prepared by a surveyor for the purposes of the case on an order of Court. It was stated by the appellants that they (the appellants) claimed only a part of the land claimed by the respondents. The land claimed by the appellants has not been delineated on the plan (exhibit A) or on any other plan. But this fact has not led to any difficulty in understanding the judgments of the Courts in Africa. Further no difficulty can arise in giving effect to those judgments because those Courts have arrived at the conclusion, which their Lordships accept for reasons hereinafter stated, that the appellants are not entitled to any portion of the land claimed by the respondents.

Although the amendment referred to in the previous paragraph was not objected to before the Trial Judge or before the Court of Appeal, it has been contended before their Lordships that it was made without jurisdiction and that it has vitiated the proceedings. It is admitted that the amendment is one which could properly have been made in the Kwahu State Tribunal but it is argued that once the transfer was made the Supreme Court had not the power to do even that which the Native Tribunal might have done. This view in their Lordships' opinion is erroneous.

By reason of the provisions of section 17 of the Courts Ordinance (ch. iv. Laws of the Gold Coast) the Supreme Court could not have exercised jurisdiction over the matter which was pending before the Kwahu State Tribunal. But under section 75 of the Native Administration (Colony) Ordinance (ch. 76 of the Laws of the Gold Coast) the Provincial Commissioner under stated conditions could " by order stop the hearing of any civil or criminal cause, matter or question commenced or brought " before the Kwahu State Tribunal and " direct that such cause, matter or question shall be enquired or, tried, and determined in the Divisional Court," which by virtue of recent legislation has become the Lands Division of the Supreme Court. By an order of the 21st March, 1942, the Provincial Commissioner transferred the case to the Lands Division of the Supreme Court. It is admitted that the order of the Provincial Commissioner was properly made and that the case was validly transferred. It is argued, however, that the scope of a " cause, matter or question " transferred becomes so rigidly fixed in the process of transfer that the Supreme Court had no jurisdiction to make the amendments which it has made.

The power to amend pleadings possessed by the Supreme Court is necessary to enable it to deal effectively with the matters that come before it. Any limitation of such powers would be so unusual that, if it was ever found necessary to impose one in a special case, the legislature would normally use express words of limitation. In the relevant statute law applicable to a transfer their Lordships are unable to find words that can be said to impose a limitation even by implication.

In their Lordships' opinion once a valid transfer is made by the Provincial Commissioner to the Supreme Court its power to amend pleadings remains uncurtailed by the transfer. Its jurisdiction is full and unfettered. In *Ababio* v. *Ackumpong* (6 West African Court of Appeal Cases, p. 173), Graham Paul C.J. said:—

> " The Divisional Court can and must deal with any transferred case in every respect as if it were a case originally brought before it by its own writ of summons."

Their Lordships respectfully agree.

It is convenient at this point to refer to an award made by a Travelling Commissioner in the year 1903 in arbitration proceedings in a dispute between Kwahu Chiefs and Wusuta Chiefs concerning much of the land which is the subject matter of this action. What the Trial Judge regarded as an extract from the award (exhibit F) was admitted in evidence by him. It is signed by the Travelling Commissioner and *inter alia* expresses the view that the Kwahus were entitled to succeed for reasons therein

stated. It was not in fact an extract from the award but an extract from a report relating to the award made by the Travelling Commissioner to the Secretary for Native Affairs at Accra. The Court of Appeal after considering arguments relating to exhibit F advanced by the appellants took the view that "there was no evidence before the Court as to the terms of the actual award made." Their Lordships do not find it necessary to decide whether this view is correct and therefore refrain from commenting upon it, because the Courts in Africa arrived at concurrent findings of fact in favour of the respondents on a consideration of the evidence apart from the award and the arbitration proceedings. The Trial Judge said:—

> "I should, if of opinion on the evidence before me that the Commissioner came to a wrong decision, give effect to that opinion. But having weighed the evidence outside the award my view is that the balance is slightly in favour of the Kwahu Stools."

He did say "in my final conclusion I have been influenced by the award." In the circumstances this must be taken to mean that he was satisfied on the other evidence that the Kwahus had the better claim, and that this conviction was strengthened by the award which he thought admissible. The Court of Appeal said:—

> "During the four days that this appeal has been argued before us it has been increasingly clear to us that the evidence is far from slightly in favour of the plaintiffs' (Kwahu) Stools as the learned Judge has found. We are satisfied upon a review of all the evidence that the plaintiffs are entitled to the declaration."

The question which has now to be considered is whether there is sufficient reason to disturb these concurrent findings of fact arrived at on the evidence apart from the evidence furnished by the arbitration proceedings and the award. The principles which guide the Board in dealing with cases in which there are concurrent findings of fact are clearly and exhaustively set out in a judgment of the Board delivered by Lord Thankerton in the case of *Srimati Devi* v. *Kumar Ramendra Narayan Roy* (1946 A.C. 508) and there is no need to restate them here. There is nothing in this case which would entitle the appellants to ask their Lordships to review the evidence in detail with the object of testing the correctness of the concurrent findings arrived at by the Courts below.

In support of his submission that their Lordships should review the evidence counsel for the appellant argued that the judgment of the learned Trial Judge was historically inaccurate. In particular he argued that the view of the learned Trial Judge that after certain incidents which he referred to "it seems probable that any Wusutas then settled on the West bank of the Volta on the land in dispute would have fled before the enemy" was historically incorrect. There is nothing that has been pointed out to their Lordships from the historical material which was placed in evidence before the Trial Judge which demonstrates that he could not have arrived at the finding mentioned. The finding is concurred in by the Court of Appeal. It has been suggested that there is material in historical works not placed before the Courts in Africa which indicates that this concurrent finding is historically inaccurate. The appellants had a full opportunity of placing all the relevant evidence before the Courts in Africa and their Lordships are not prepared to review that evidence in the light of further historical material which may be placed for the first time before them.

Counsel for the appellants argued further that his case had been prejudiced by the consideration at the trial of the title to a tract of land larger than the land claimed by them. Prejudice can sometimes be caused in that way. But counsel was constrained to admit that in this case, decided largely on facts derived from tradition, the evidence relating to the land not claimed by the appellants was relevant to the consideration of title to the land claimed by them. Their Lordships are therefore unable to find any substance in the argument.

It was also argued that the Courts below had misapprehended the case as presented by the parties. In support of this contention their Lordships were referred to a statement made by the Trial Judge that " The Wusuta case is that the Wusutas regained dominion over the land." This statement is quoted with approval by the Court of Appeal. It has been said that the Wusuta case was that the Wusutas had always had dominion over the land, had never lost it and consequently never " regained " it. Their Lordships are of the view that when the words referred to are read in the context of the judgment as a whole the contentions for the appellants, even if accepted, do not lead to the inference that the Courts in Africa have misapprehended any point of material importance.

The argument of misapprehension was sought to be supported by a reference to a statement in the judgment of the Court of Appeal that the area of the subject matter of the case was twenty square miles when in fact it was very much larger. This same mistake occurs in the evidence of a surveyor. The plan (exhibit A) shows the scale upon which it was prepared. It is difficult for their Lordships to imagine that this plan which played a prominent part in the presentation of this case to them was given so little consideration by the Court of Appeal that it did not realise that it was dealing with a tract of land vastly exceeding twenty square miles in area. Their Lordships are of the view that the misstatement in the place where it occurs was purely inadvertent, and that there has not been a lack of appreciation of the true extent of the land or, as the result thereof, of the true character of the points upon which a decision has been given.

Lastly it was said that the Court of Appeal has failed to attach due importance to the evidence of occupation. The Trial Judge discusses the question of occupation in a paragraph which begins, " I would however state that it does appear that at present there are more Ewes on the land than Kwahus," a statement *prima facie* in favour of the appellants. This discussion is not commented on by the Court of Appeal but " evidence of occupation " is referred to by the Court of Appeal and their Lordships are convinced that it was fully conscious of the views expressed by the learned Trial Judge and gave due weight to those views and to the question of occupation.

The appellants have failed to satisfy their Lordships that there is any ground for reviewing in detail the evidence upon which the Courts in Africa have arrived at concurrent findings.

For the reasons given their Lordships will humbly advise Her Majesty that the appeal be dismissed. The appellants must pay the respondents' costs in this appeal.

(20141) Wt. 8267—24 100 12/53 D.L.

In the Privy Council

WUDANU KWASI, ACTING CHIEF
OF ATIPRADAA, AND ANOTHER

v.

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NKANSAH II, DSASEHENE OF
BUKURUWA-KWAHU) AND ANOTHER

DELIVERED BY MR. L. M. D. DE SILVA

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