

~~GH-6-1~~

23, 1961

IN THE PRIVY COUNCIL

No. 48 of 1960

ON APPEAL
FROM THE COURT OF APPEAL, GHANA

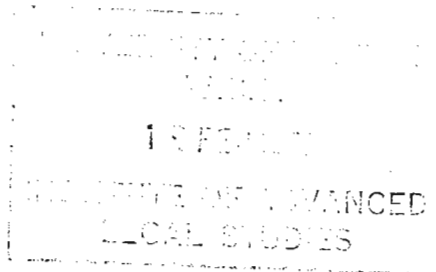
B E T W E E N :

SARAH QUAGRINE ... (Plaintiff) Appellant

- and -

B. CROSBY DAVIES (substituted
for SAM FERGUSON, deceased) of
Anomabu ... (Defendant) Respondent

RECORD OF PROCEEDINGS



63695

HERBERT OPPENHEIMER, NATHAN &
VANDYK,
20, Copthall Avenue,
London, E.C.2.
Solicitors for the Appellant.

A.L. BRYDEN & WILLIAMS,
53, Victoria Street,
London, S.W.1.
Solicitors for the Respondent.

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B E T W E E N :SARAH QUAGRINE ... (Plaintiff) Appellant

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RECORD OF PROCEEDINGS

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1.

IN THE PRIVY COUNCIL

No. 48 of 1960

ON APPEAL
FROM THE COURT OF APPEAL, GHANA

B E T W E E N :

SARAH QUAGRAINE (Plaintiff) Appellant

- and -

B. CROSBY DAVIES (substituted
for SAM FERGUSON, deceased) of
Anomabu ... (Defendant) Respondent

10

RECORD OF PROCEEDINGS

No. 1

CIVIL SUMMONS

Suit No. 62/48

IN THE NATIVE COURT "B" OF AYAN-BREMAN
CONFEDERACY - AYAN DENCHIRA, GOLD COAST

In the Native
Court "B" of
Ayan-Ereman
Confederacy

No. 1

In the matter of:-

Civil Summons.

SARAH QUAGRAINIE OF SALTPOND ... Plaintiff
A N D

14th October
1948.

20

SAM FERGUSON OF ANAMABU FOR
HIMSELF AND AS SUCCESSOR ACCORDING
TO NATIVE CUSTOMARY LAW OF SAMUEL
AUGUSTUS BUAHIN SAMPSON (DECEASED) Defendant

To Sam Ferguson of Anomabu

You are hereby commanded to attend this Native
Court at 8.30 o'clock on the 2nd day of November,
1948 to answer a suit by Plaintiff against you.

The Plaintiff claims:-

The Plaintiff claims by virtue of two Certifi-
cates of purchase dated 16th February, 1881 and

In the Native Court "B" of Ayan-Breman Confederacy

No. 1

Civil Summons.

14th October 1948 - continued.

11th January, 1893, respectively, and by virtue of Privy Council Judgment dated 15th November, 1929 thereon (Privy Council Appeal case No. 36/1928, between Abraham Essel versus Rebecca Davies per John Ekwan Sampson as Respondent) from the Defendant herein, RECOVERY OF POSSESSION FROM and EJECTMENT OF the said Defendant his Agents, workmen, Privies and/or Licensees ALL THAT PIECE OF LAND being part and parcel of AGISSU LAND situate and lying in the Area of the Ayan-Na-Breman Confederacy Native Authority, as adjudicated by the Privy Council in favour of the Plaintiff on appeal, and bounded on North by River Kina, On the South by Charles Acquah's land, On the East by Abam's land and River Okyi, and on the West by lands belonging to Oera and Kobina Buatin; now wrongfully in possession of the defendant herein and occupied by his Agents Johnny Falady of Nyamibekyire and Yaw Opoku of Ekuambassie - And for the Defendant to show cause why this Native Court should not order concrete Pillars to be fixed by a Licensed Surveyor as permanent boundary marks between the Plaintiff and the Defendant to implement the Privy Council Judgment referred to herein. (b) And also for perpetual injunction restraining the Defendant, his agents, Workmen, Servants, Privies and/or Licensees from further entry into or interferences with the Plaintiff's right of ownership of the said land or from having any dealings with respect of the said land.

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20

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Dated at Ayan Denchira this 14th day of October, 1948.

14.10.48.

Sum claimed

Court Fees	£2.	
Mileage	11.	--
Service	1.	--
Adasuum	5.	--
	<u>£2. 17.</u>	<u>--</u>

40

Witness to mark:
(Sgd.) ? ? ? ?
Registrar.

(Sgd.) Awusie Awuakyi II,
PRESIDENT OF NATIVE COURT.

Take Notice that if you do not attend the Native Court may give judgment in your absence.

No. 2

ORDER OF TRANSFER TO LAND COURT

In the Supreme
Court of the
Gold Coast
(Land Court,
Cape Coast)

IN THE SUPREME COURT OF THE GOLD COAST
CENTRAL JUDICIAL DIVISION,
LAND COURT, CAPE COAST.

No.2

FORMAL ORDER DIRECTING TRANSFER OF
A 'LAND CAUSE' FROM A NATIVE COURT
(UNDER SECTION 54, SUB-SECTION 1,
PARAGRAPH C, OF THE NATIVE COURTS
(COLONY) ORDINANCE CAP.98

Order of
Transfer to
Land Court.

26th November
1956.

10

WHEREAS in exercise of powers conferred under and by Section 54, Sub-section 1, paragraph C of the Court (constituted by the Government Agent) at Cape Coast has reported the pendency in the Native Court "B" of Enyan-na-Breman, and circumstances of the 'land cause' the name and/or title and particulars whereof are shewn and/or set out in the Schedule hereunder, to the LAND JUDGE of the Central Judicial Division of the Supreme Court at Cape Coast:

20

NOW THEREFORE under and by virtue of powers conferred by the said Section 54 sub-section 1 paragraph C of the said Native Courts (Colony) Ordinance Cap.98, I, KOFI ADUMUA-BOSSMAN, LAND JUDGE for the time being exercising jurisdiction in the Central Judicial Division aforesaid, DO HEREBY ORDER AND/OR DIRECT that the said 'Land Cause' so pending in the said Native Court "B" of Enyan-Na-Breman at date hereof SHALL BE AND IS HEREBY TRANSFERRED to the Land Court in Cape Coast, to be heard and determined according to law and the practice and procedure obtaining in the said Land Court.

30

AND I DO HEREBY FURTHER ORDER AND/OR DIRECT that:-

- (1) The written application for the issue of the Writ of Summons, and
- (2) The original or duplicate copy of the said Writ of Summons, or the written record in the Record Book by the Registrar of the Native Court of "the claim or charge about which the oath (if "any) has been sworn", by which the said land

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In the Supreme Court of the Gold Coast (Land Court, Cape Coast)

No.2

Order of Transfer to Land Court.

26th November 1956 - continued.

cause was commenced or instituted in the said Native Court, and

- (3) Certified copy of the Record of proceedings from the commencement of the suit up to the date of receipt by the Native Court of Notice of Motion before the Magistrate for an order to report the pendency of the suit.

SHALL BE FORWARDED OR TRANSMITTED forthwith to the Land Court.

- Schedule hereinbefore referred to -

10

Suit bearing No. and entitled

SARAH QUAGRINE ... Plaintiff
 versus
 B. CROSBY DAVIES (Substituted
 For Sam Ferguson - (Deceased) ... Defendant

pending in the Native Court of Enyan-na-Breman.

Dated at the Registry of the Land Court of the Central Judicial Division of the Supreme Court, Cape Coast, this 26th day of November, 1956.

(Sgd.) S.K. Banson.

20

DIVISIONAL REGISTRAR.
(LANDS DIVISION)
CAPE COAST.

To -

- (1) The President or (2) the Registrar, Native Court of Enyan-Na-Breman.
- (3) Sarah Quagraine
- (4) B. Crosby Davies
- (5) To all others to whom it may or doth concern.

5.

No. 3

STATEMENT OF CLAIM

In the
High Court
(Land Court,
Cape Coast)

IN THE HIGH COURT OF JUSTICE
CENTRAL JUDICIAL DIVISION
LAND COURT CAPE COAST

No.3

Statement of
Claim.

Transferred Suit No. 6/1957

22nd May 1957.

SARAH QUAGRINE Plaintiff
versus

10

B. CROSBY DAVIES (SUBSTITUTED
FOR SAM FERGUSON DECEASED) ... Defendant

STATEMENT OF CLAIM

1. The Plaintiff is the daughter of Charles Barnes Acquah, deceased.

2. The Defendant is the son of one Rebecca Davies and has been substituted for Sam Ferguson, deceased, as the proper person to succeed to the property of Rebecca Davies in accordance with Native Customary Law.

20

3. By a Will dated the 6th day of March, 1907 the said Charles Barnes Acquah devised certain real property including Agissu land to his wife Elizabeth Acquah for life, remainder to his daughter the present Plaintiff whose maiden name was Sarah Duker Acquah absolutely and for ever.

4. During the lifetime and after the decease of the said Charles Barnes Acquah one Abraham Essel was the caretaker of the said Agissu land.

30

5. On the 16th day of February, 1881, one Francis A. Parker was granted a certificate of Purchase of land situate at Agissu and known as Agissu land.

6. On the 19th day of February, 1881, the said Francis A. Parker transferred the said land to C.B. Acquah referred to in paragraph 1 supra.

In the
High Court
(Land Court,
Cape Coast)

No.3

Statement of
Claim.

22nd May 1957
- continued.

7. On the 13th day of December 1923, the said Rebecca Davies claiming to be the owner of Agissu land, brought an action against Abraham Essel, who was caretaker of the said C.B. Acquah in the Native Tribunal of Ayeldu for an account of all tolls and rents collected from farmers on the said land.

8. On the 1st day of October, 1924 the Native Tribunal gave judgment in favour of the said Rebecca Davies, but that judgment was reversed by the Acting Provincial Commissioner, Central Province on the 14th day of April, 1927. 10

9. The judgment of the Acting Commissioner was reversed by the Full Court, but restored by the Privy Council on the 15th day of November, 1929, by which Judgment, ownership of the said land was declared to be in the Plaintiff.

10. The Plaintiff will contend that the Defendant is estopped from claiming ownership of Agissu lands.

11. The Defendant by his Agent, Servants, Workmen, Licencess or Privies have occupied portions of the said Agissu lands. 20

(a) And the Plaintiff, therefore, claims by virtue of the two Certificates of Purchase dated 19th February, 1881, and 11th January, 1893, respectively, and by virtue of Privy Council Judgment dated 15th November, 1929 thereon (Privy Council Appeal Case No.36/1928, between Abraham Essel and Rebecca Davies per John Ekwan Sampson as Respondent) from the Defendant herein recovery of possession of and ejectment of the said defendant, his Agents, servants, workmen, privies and/or Licensees from All that piece or parcel of land being part and parcel of Agissu land situate and lying in the Area of the Ayan-Na-Breman Confederacy Native Authority, as adjudicated by the Privy Council in favour of the Plaintiff on appeal, and bounded on the North by River Kina, on the South by Charles Acquah's land, on the East by Abam's land and River Okyi, and on the West by lands belonging to Oera and Kobina Buatin now wrongfully in possession of the Defendant herein and occupied by his Agents Johnny Falady of Nyamibekyire and Yaw Opoku of Ekwambasie, and for the Defendant to show cause why this Native 30 40

7.

Court should not order concrete Pillars to be fixed by a Licensed Surveyor as permanent boundary marks between the Plaintiff and the Defendant to implement the Privy Council Judgment referred to herein.

In the
High Court
(Land Court,
Cape Coast)

No.3

Statement of
Claim.

22nd May 1957
- continued.

10

(b) And also for perpetual Injunction restraining the Defendant, his agents, workmen, servants, Privies and/or Licencess from further entry into or interferences with the Plaintiff's right of ownership of the said land or from having any dealings with respect of the said land.

DATED AT ANIBOK CHAMBERS, CAPE COAST THIS 22ND DAY OF MAY, 1957.

(Sgd.) K. A. SEKYI,
COUNSEL FOR PLAINTIFF.

TO The Registrar
Land Court, Cape Coast

20

And to the above-named Defendant
B. Crosby Davies
or his Solicitor D. Myles Abadoo, Esquire,
Cape Coast.

No. 4

No.4

STATEMENT OF DEFENCE

Statement of
Defence.

(Title as No. 3)

29th May 1957.

30

1. The Defendant admits paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 9 of the Plaintiff's Statement of Claim.
2. The Defendant denies having at any time, since the Judgment of the Privy Council delivered the 15th November, 1929, claimed ownership of Agissu land (wrongly stated in paragraph 10 of the said Statement of Claim as "Agissu lands").
3. The Defendant avers that he and his agents, servants, workmen, licensees or privies had occupied and are occupying the lands known as and called "Nanado, Abberzaboasie and Abiswa" all bounded on

In the
High Court
(Land Court,
Cape Coast)

No.4

Statement of
Defence.

29th May 1957
- continued.

the North by the Agisu land on the West by Aisaidoo's land on the East by Ayansu land and river Amissah and on the South by Abiswa and Abusu lands, the family property of the Defendant, and not Agissu land or any portion thereof, and that on portions of two of the said three lands had been built or established Ekwambassie and Nyamebekyire villages, those two lands being respectively Nanado and Abiswa.

4. The Defendant avers that the Privy Council by its judgment dated the 15th day of November, 1929, found in favour of the Certificate of Purchase dated the 16th April, 1881 and virtually nullified the Certificate of Purchase dated the 11th January, 1893, in no uncertain terms as follows:-

"Under these circumstances their Lordships are
"driven to the conclusion that the title prior
"in point of date must prevail".

The Plaintiff therefore is estopped from claiming herein under the Certificate of Purchase of 1893 in addition to that of 1881.

5. The Defendant further avers that the boundaries of Agissu land shewn in the Plaintiff's claim do not coincide with the boundaries in the Certificate of Purchase of 1881, but rather coincide entirely with those in the Certificate of Purchase of 1893, which had been declared according to the said Judgment of the Privy Council, to be of no legal value, in other words, null and void.

6. The Defendant also avers that some time after the Privy Council Judgment, the Plaintiff engaged a Surveyor privately to survey Agissu land which forms boundaries with the Defendant's family land. The Surveyor did the work without notifying the defendant of his representative to be present to show where his family lands form boundaries with the Plaintiff's land as is customary, the result being that the survey covered the whole of the Defendant's family three lands, which the Plaintiff made the Surveyor believe as also Agissu land. When a former hearing of this case came before the Land Court on Appeal, the Defendant's Counsel brought this fact to the notice of the Court, and the learned Judge (Acolatse, J.) then ordered another survey to be made; and the Surveyor Mr. Ekow Selby was ordered to demarcate the Defendant's family three lands and to superimpose same on the Plaintiff's existing plan.

sic

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This was done and a plan was accordingly filed in the Court by the said Surveyor, which showed the said three lands as falling entirely within the area named and called by the Plaintiff as Agissu land.

In the High Court (Land Court, Cape Coast)

No.4

Statement of Defence.

29th May 1957 - continued.

10 7. Saving and excepting where expressly admitted the Defendant herein joins issue with the Plaintiff on her Statement of Claim, and says that neither he nor his agents, workmen, servants, privies and/or licensees had done any act or acts on the said Agissu land to entitle the Plaintiff to the relief claimed herein.

Dated at Cape Coast this 29th day of May, 1957.

(Sgd.) D. Myles Abadoo.
Counsel for Defendant.

To The Registrar,
Land Court, Cape Coast.

20 And to the above-named Plaintiff
Sarah Quagraine or her solicitor K.A. Sekyi Esq.
Cape Coast.

No. 5

No.5

COURT NOTES AND ORDER ON SUMMONS
FOR DIRECTIONS

Court Notes and Order on Summons for Directions.

IN THE HIGH COURT OF JUSTICE, GHANA,
CENTRAL JUDICIAL DIVISION,
LAND COURT - CAPE COAST,
THURSDAY, THE 11th DAY OF JULY, 1957,
CORAM: K. ADUMUA BOSSMAN

11th July 1957.

(Title as No. 3)

30 Further consideration of Summons for Directions.

Mr. Sekyi for Plaintiff.
Mr. Abadoo for Defendant.

Mr. Sekyi states Plan of the area claimed by the Plaintiff now filed.

In the
High Court
(Land Court,
Cape Coast)

Per Curiam:

By consent of both Counsel admitted as Exhibit
"Z" for purposes of the trial.

No.5

Ordered on the Summons for Directions as follows:

Court Notes
and Order on
Summons for
Directions.

- (1) Issues as disclosed in the pleadings
- (2) And whether Plaintiff entitled to the ownership and possession of the whole Area of land edged pink in Plan Exhibit "Z".
- (3) Trial on the 10th of September by a LAND JUDGE other than Adumua-Bossman, J.

10

11th July 1957
- continued.

(Sgd.) K. Adumua-Bossman,
J.

Plaintiff's
Evidence

No. 6

Plaintiff's Evidence

No.6

EKOW SELBY

Ekow Selby.

22nd October
1957.

IN THE HIGH COURT OF JUSTICE, GHANA,
CENTRAL JUDICIAL DIVISION,
LAND COURT - CAPE COAST,
TUESDAY, THE 22nd DAY OF OCTOBER, 1957,
CORAM: C.S. ACOLATSE, J.

20

(Title as No. 3)

By Court:

Sekyi for Plaintiff
Abadoo for Defendant.
Assessor present.

Sekyi:- Opens upon his pleadings calls:-

1 P.W.-

EKOW SELBY S.O.B. in English: - Licensed Surveyor
at Cape Coast. I prepared a plan upon instruction

of Plaintiff of an area of land described to me as Agissu land in 1945. The land is situate in the Saltpond district. There was no dispute about the land at the time I surveyed the area. I was instructed by the Plaintiff to demarcate the boundary for the purpose of taking possession. The area demarcated is edged pink on the plan. I did my survey from the Record of the Privy Council Judgment in which the boundary of the land then in dispute was described.

In the
High Court
(Land Court,
Cape Coast)

Plaintiff's
Evidence

No.6

I made another plan in 1953 by order of this Court to superimpose it on the plan I made in 1945. I took the Defendant's plan and superimposed it on the plan of 1945. I went on the land in 1953. Both parties were present. The Defendant gave me the names of different plots in the same area of the land known as Agissu. The names are Nanado land edged in Coffee colour, Agissu land edged in Yellow, Abberzaboasi land edged in Blue and Abiswa land edged in purple. All these different plots claimed by the Defendant are within the area claimed by the Plaintiff as Agissu land. The Defendant did not claim the area he pointed out to me as Agissu edged in Yellow but he claimed the rest of the area claimed by the Plaintiff and described by her as Agissu land.

Ekow Selby.

22nd October
1957 -
continued.

The area described by the Defendant as Agissu edged Yellow does not tally with the boundaries described in the P.C. Judgment of 1929, except that the northern boundary mentioned as Kyina Stream on the plan agrees with the P.C. Judgment. The Kyina Stream is the Northern boundary of the Area claimed by the Plaintiff. The Plaintiff claimed a larger portion of the Kyina Stream which is the northern boundary whilst Defendant allowed her only a smaller portion.

I actually surveyed the Defendant's area, claimed by him, in 1953 in his presence and superimposed it on Plaintiff's plan. This is the superimposed plan I made in 1953 and signed by me. (Tendered. No objection and marked "A").

"A"

The boundaries of the disputed area in the P.C. Judgment Record are:-

"All that piece of land situate at Agissoo bounded on the North by river Kina on the

In the
High Court
(Land Court,
Cape Coast)

South by Charles B. Acquah's land on the East
by Adam's land and river Oki and on the West
by Oera and Kobina Buatin's land."

By Consent:

Plaintiff's
Evidence

Judgment of P.C. Appeal No. 36 of 1928 deliv-
ered on 15th November, 1929, tendered and marked
"B".

No.6

CROSS-EXAMINED BY ABADOO:

Ekow Selby.

The Defendant showed me a document from which
I took particulars of boundaries for the survey in
1953 for the plan, Exhibit "A".

22nd October
1957 -
continued.

10

RE-EXAMINED BY SEKYI:- None.

No.7

No. 7

Sarah
Quagraine.

SARAH QUAGRAINE

2 P.W.

22nd October
1957.

SARAH QUAGRAINE: S.O.B. in Fantia; Housewife at
Saltpond. Charles B. Acquah was my father, deceased.

My late father owned an area of land in the
Saltpond District generally described as Agissu
land. This land was devised to me by my father
under a Will dated 6th March, 1907. My father
died on 18.5.1909.

20

One Abraham Essel was the Caretaker of the
Agissu land during the life time and after the de-
cease of my father Charles B. Acquah. I knew
Rebecca Davies, deceased. She was the mother of
the Defendant in this action.

Rebecca Davies sued my Caretaker Abraham Essel
claiming the Agissu land in the Native Court. The
case eventually went to the Privy Council. The
Privy Council gave judgment in favour of Abraham
Essel in Exhibit "B". The Judgment of the Privy
Council invested me with the ownership of the land.
In consequence of the Judgment I brought this action
for Recovery of Possession from and Ejection of
the Defendant from the land and also Perpetual
Injunction.

30

CROSS-EXAMINED BY ABADOO:

Abraham Essel is dead. He was my Caretaker. The case that went to Privy Council began in the Native Tribunal of Ayeldu in Kwaman-Kessi State in the Saltpond area.

In the
High Court
(Land Court,
Cape Coast)

Plaintiff's
Evidence

No.7

Sarah
Quagraine.

22nd October
1957 -
continued.

10 The Native Tribunal gave judgment in favour of Rebecca Davies against Essel. We appealed to the Provincial Commissioner's Court against the Native Tribunal Judgment. Essel obtained an Interim Injunction against Rebecca Davies during the Appeal before the Provincial Commissioner's Court. This is the Order with the description of the Area. It is an Exhibit tendered in evidence in the case of Sarah Quagraine versus Sam Ferguson in the Native Court "B" of Enyan Na Brenan at page 110 of the Record. (Tendered by Defendant. No objection. Marked "1").

I claim the whole area on the plan in Evidence as Agissu land.

20 I signed the Grounds of Appeal in this case from the Native Court to this Court. This is the paper. (Tendered and marked "2"). It is dated 2.5.1952. Paragraph 5 of the Exhibit "2" is correct. The lands Nanado, Abisabuasi and Abisiwa are the properties of the Defendant.

By Consent:

Title of Transfer to Rebecca Davies by C.B. Acquah dated 20th June, 1898 tendered and marked "3".

30 Judgment of the Divisional Court, Cape Coast before A. Earnshaw, J. dated 28th April, 1911 in case Elizabeth Acquah vs: Kojo Bronie & another for Possession of Land. (Tendered and marked "4").

I do not know anything about Exhibit "3" and "4". Elizabeth Acquah was my mother.

RE-EXAMINED BY SEKYI:- None.

By Court:

40 Selby - P.W.1 recalled by Court. Still on oath: I have here Exhibit "B". In it is a Certificate of Purchase dated at Saltpond 16.2.1881 to one Francis A. Parker of land described on the North is lied a river called Kina on the East the same

sic

In the
High Court
(Land Court,
Cape Coast)

river Kina, on the West is bounded with three
coconut trees, one Boxwood trees in the end. It
is under the Signature of John Smith, Judge or
Commissioner.

Plaintiff's
Evidence

No.7

The boundaries of the land given in the Certi-
ficate of purchase of 1881 do not include the whole
as claimed by the Plaintiff. The boundaries in
the Certificate of Purchase 1881 agree with the
boundaries edged in Yellow described as Agissu land
on the plan Exhibit "A".

10

Sarah
Quagraine.

22nd October
1957 -
continued.

The boundaries shown on the Certificate of
Purchase dated 11th January, 1893 in Exhibit "B"
at page 5 are the particulars of the Area claimed
by the Plaintiff on the Plan Exhibit "A".

CROSS-EXAMINED BY SEKYI: - None.

CROSS-EXAMINED BY ABADOO: - None.

Sekyi: Case for Plaintiff.

Defendant's
Evidence

No. 8

Defendant's Evidence

No.8

BENJAMIN CROSBY DAVIES

20

Benjamin
Crosby Davies.

Defendant's case

22nd October
1957.

BENJAMIN CROSBY DAVIES - S.O.B. in English:-

I am retired Civil Servant living at Cape
Coast.

The late Rebecca Davies was my mother. Sam
Ferguson was my Cousin. He succeeded Samuel
Augustus Buahen Sampson, my uncle, who was the
Successor according to Customary law to my mother.
I am now the present head of the family having
succeeded Ferguson.

30

I have seen and read through the Judgment of
the Privy Council in Exhibit "B" in the case Essel
versus Rebecca Davies.

The Judgment in Exhibit "B" refers to a Certificate of Purchase of 1881 which gives the boundaries consistent with the area marked Yellow on Exhibit "A" described as Agissoo land. I do not claim that area edged in Yellow described as Agissoo. I or my predecessor or workmen and servants have nothing to do with the area edged in Yellow.

In the
High Court
(Land Court,
Cape Coast)

Defendant's
Evidence

No.8

Benjamin
Crosby Davies.

22nd October
1957 -
continued.

10 I as successor to my predecessors own the lands Nanado, Abberzaboasi and Abiswa shown on the plan. These three lands originally belonged to Charles B. Acquah who transferred the title in them to Rebecca Davies, my mother as shown in Exhibit "3" and the Judgment in Exhibit "4".

The Plaintiff in this action is now claiming the portion of the area edged in Yellow described as Agissu together with our portions of land in Exhibits "3" and "4" as Agissu land. We have been in possession of the three lands in Exhibit "3" since 1898.

20 CROSS-EXAMINED BY SEKYI:

My Predecessor Rebecca Davies was claiming the land under the Certificate of Purchase of 1893 in the action in Exhibit "B". She was the Plaintiff.

30 The Plaintiff in the case of Rebecca Davies versus Essel which went to Privy Council was claiming (a) as owner of Agissu land situate in the Salt-pond district, an account of all tributes, tolls and rents collected as from the year 1911 to the present from the farmers working upon the said land Agissu by the Defendant in his capacity as Caretaker and to pay same over to the Plaintiff. The lands comprise in Exhibit "3" are not known by us as Agissu land. We claim the land in Exhibit "3".

RE-EXAMINED BY ABADOO: - None.

Abadoo: - Case for Defendant.

By Court:

Addresses adjourned: 23.X.57.

(Intd.) C.S.A.
J.

In the
High Court
(Land Court,
Cape Coast)

COURT NOTES AND ADDRESSES OF COUNSEL

No.9

Court Notes
and Addresses
of Counsel.

IN THE HIGH COURT OF JUSTICE, GHANA,
CENTRAL JUDICIAL DIVISION,
LAND COURT - CAPE COAST.
WEDNESDAY, THE 23rd DAY OF OCTOBER,
CORAM: C.S. ACOLATSE, J.

(Title as No. 3)

23rd October
1957.

By Court:

Parties present
Same Counsel.
Assessor present.

10

By Consent:-

Deed of Conveyance of Adjusoo land from Parker to C.B. Acquah tendered by both Counsel and marked "C" in the Record of Proceedings in case Essel (Defendant) versus Rebecca Davies (Plaintiff) at page 61.

The Record of Proceedings in case Essel (Defendant) Appellant versus Rebecca Davies (Plaintiff) Respondent tendered marked "D".

20

Judgment of Full Court dated 3.5.1924 tendered by Abadoo and marked "5" at page 98.

ADDRESSES:

ABADOO: -

Issues as disclosed in the pleadings must be followed.

The question to decide is whether Plaintiff entitled to the ownership and possession of the whole Area of the land edged Pink in plan Exhibit "A"?

30

Refers to Certificate of Purchase of 1881 on page 2 of Exhibit "A" which gave title of the land described therein. (See page 60 of Exhibit "D").

Exhibit "C" is a transfer of title of the land described in Exhibit "D" 61.

In the High Court (Land Court, Cape Coast)

No.9

Court Notes and Addresses of Counsel.

23rd October 1957 - continued.

10 Submits the land described as Agissu on Exhibit "A" has boundaries identical to the boundaries of the land transferred to Acquah by Parker in Exhibit "C" dated 22.9.1882. This was admitted by Essel in his application for Interim Injunction before the P.C. giving the description of the land, the subject matter of the Interim Injunction against the Plaintiff in that action. It is contained at p.110 of the Record of Proceedings in Exhibit "1" dated 25.XI.1924.

Claim is for Recovery of Possession and Ejection of the land described in two Certificates of Purchase of 1881 and 1893 respectively.

20 The Defendant in his evidence said he had never interfered with the area of the land described in Exhibit "1" since the Interim Injunction Order of 1924 and that he and his predecessors have been in peaceful possessions of the three parcels of land ever since the grant by Acquah in 1898 and by virtue of the Judgment in Exhibit "4" dated 28.4.1911.

The Defendant's occupation and use of the three parcels of land as claimed by Defendant in Exhibit "A" been admitted by the plaintiff in Exhibit "2" in her Grounds of Appeal.

30 The three parcels of land viz:- Nanado, Abberzaboasi and Abiswa - are on the sought of Agissu land edged Yellow on Exhibit "A". These three parcels of land were originally the properties of C.B. Acquah and were so described in the boundaries of the land transferred by Parker to Acquah in Exhibit "C" dated 22.9.1882. This transfer took place before the grant in Exhibit "3".

sic

40 The Plaintiff therefore is not entitled to her claim in this action to the whole area of land edged in pink on Exhibit "A" under her own admission on oath before the Court in this trial that the three parcels of land, "Nanado, Abberzaboasi and Abiswa are the properties of the Defendant."

Submits Plaintiff's action should be dismissed. The particulars of the land in question given in the Plaintiff's claim are entirely different from

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High Court
(Land Court,
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the land granted by Parker to Acquah. Exhibits "4" and "5" do not confer any title in the Plaintiff to warrant a claim for Recovery and Ejectment in respect of the three parcels of land in occupation and use by the Defendant.

No.9

Court Notes
and Addresses
of Counsel.

23rd October
1957 -
continued.

The Plaintiff is estopped by virtue of the Privy Council judgment in Exhibit "B" which practically nullified the Certificate of Purchase of 1893 and declared the Certificate of Purchase of 1881 to prevail. Acquah's title was derived from Parker to Agissu land, and Plaintiff's title is derived from Acquah under a devise of the Agissu land.

10

SEKYI: -

The Plaintiff is claiming firstly under a Certificate of Purchase of 1881 which is scanty in its information but it is rendered more effective in the Certificate of Purchase of 1893 which confers title on Rebecca Davies (see p.4 & 5 of Exhibit "B").

20

The area given in the Certificate of Purchase of 1881 does not tally with area edged Yellow on the plan - Exhibit "A".

It is not challenged and is in evidence that Charles B. Acquah in 1898 conveyed Nanado land, Abberzaboasi and Abiswa lands to Rebecca Davies, the mother of Defendant.

It is also not in dispute that the present Plaintiff sought unsuccessfully to set aside the document by virtue of which the grant was made by Acquah to Rebecca Davies, so that if the Agissu land is merely the area edged Yellow on the plan it would not have been necessary for the Defendant to rely on the Certificate of Purchase of 1893 as opposed to a clear grant of 1898 giving the Defendant this land.

30

Submits the three parcels of land in dispute are to the South immediately outside the area edged pink. The three parcels of land were heard of for the first time in 1945 when the Defendant pointed them out to the Surveyor.

40

Submits the Defendant is bound by the area

described in the Certificate of Purchase of 1893 on which Rebecca Davies based her claim against Essel in the P.C. Judgment.

In the High Court (Land Court, Cape Coast)

No.9

Court Notes and Addresses of Counsel.

23rd October 1957 - continued.

10 The P.C. Judgment preferred the prior Certificate of Purchase of 1881 to that relied on by Rebecca Davies in the C.O.P. of 1893. The P.C. did not declare that C.O.P. of 1893 was null and void but going on the maxim that "where the equities are equal the first in point of time shall prevail". The claim by Rebecca Davies upon the C.O.P. was postponed to the claim in the C.O.P. of 1881. The P.C. assumed that the two C.O.P. were identical.

The land "Agissu" was the subject matter of the action that went to the Privy Council. The Defendant then in that action is now the Plaintiff.

By Court:

Judgment Reserved.

(Sgd.) C.S. Acolatse,
J.

20

No. 10

No. 10

JUDGMENT

Judgment.

DIVISIONAL COURT, SEKONDI.
WESTERN JUDICIAL DIVISION,
SATURDAY THE 21st DAY OF DECEMBER, 1957.
CORAM: MR. JUSTICE ACOLATSE.

21st December 1957.

Transferred Suit No. 6/1957.

SARAH QUAGRAINE Plaintiff
versus

30

B. CROSBY DAVIES (SUBSTITUTED
FOR SAM FERGUSON - DECEASED)... Defendant

JUDGMENT:

The action is in a form of a claim by the Plaintiff based upon two Certificates of Purchase dated 19th February, 1881, and 11th January, 1893,

In the
High Court
(Land Court,
Cape Coast)

No. 10

Judgment.

21st December
1957 -
continued.

respectively and by virtue of Privy Council Judgment dated 15th November, 1929 thereon (Privy Council Appeal Case No. 36/1928, between Abraham Essel and Rebecca Davies per John Sampson as Respondent) against the Defendant herein for the recovery of possession of and ejection of the said Defendant, his agents, etc. from all that piece or parcel of land being part and parcel of Agissu land situate and lying in the area of the Ayan-Na-Breman Confederacy Native Authority as adjudicated by the Privy Council in favour of the Plaintiff on Appeal, and bounded on the North by River Kina, on the South by Charles Acquah's land, on the East by Abam's land and River Okyi on the West by lands belonging to Odra and Kobina Buatin now wrongfully in possession of Defendant herein. (b) And also perpetual Injunction.

10

The Plaintiff in her Statement of Claim pleaded in paragraph 3 as follows:-

"By a will dated the 6th day of March, 1907, the said Charles Barnes Acquah devised certain real property including Agissu land to his wife Elizabeth Acquah for life, remainder to his daughter the present Plaintiff whose maiden name was Sarah Duker Acquah absolutely and forever."

20

The Defendant in her Statement of Defence to the claim admits the Plaintiff's Statements of Claim but denies paragraphs 10 and 11. Paragraph 2 of the Defendant's pleadings is as follows:-

30

"The Defendant denies having at any time, since the Judgment of the Privy Council delivered the 15th November, 1929, claimed ownership of Agissu land (wrongly stated in paragraph 10 of the said Statement of Claim as "Agissu lands")."

The Defendant however avers in his pleadings that he had occupied and is occupying the lands known as and called "Nanado, Abberzaboasie and Abisiwa" all bounded on the North by the Agissu land on the West by Asaidoo's land on the East by Ayansu land and River Amissah and on the South by Abiswa and Abusu lands, the family property of the Defendant and not Agissu land or any portion thereof.

40

The Court had ordered a survey of the area claimed by the parties in this case and the same

surveyor submitted two plans made in 1945 and 1953 respectively. The Survey of the area in dispute was demarcated by the surveyor in presence of the parties. It was not brought to the notice of the Court in evidence that the Plaintiff objected to three plots of land claimed by the Defendant within the area claimed by Plaintiff edged pink at the demarcation.

In the
High Court
(Land Court,
Cape Coast)

No. 10

Judgment.

10 The Court made orders upon Summons for Directions before it as follows:-

21st December
1957 -
continued.

1. Issues as disclosed in the pleadings.
2. And whether Plaintiff entitled to the ownership and possession of the whole area of land edged pink in the plan.
3. Trial.

20 The history of the case stated its turbulent career in the matter of the Certificate of Purchase of 1881 and 1893 respectively and in 1898 a transfer of three parcels of land to Defendant by C.B. Acquah. These three pieces of land were subsequently devised by Acquah under his will of 1907 to his wife followed two days later by a deed of Gift. Acquah died on 18th May, 1909. The three pieces of land which are involved in this case are Nanado, Abbisaboase and Abisiwa.

30 There was a judgment in respect of the three pieces of land as mentioned above in case Elizabeth Acquah versus Kojo Brome and Rebecca Davies before Earnshaw, Judge in Exhibit "4" on 28th April, 1911 declaring that the three lands Nanado, Abbissaboase and Abisiwa were the property, of Rebecca Davies on the strength of the conveyance of 1898 by Acquah to his niece Rebecca Davies. There had been no appeal from that Judgment.

40 Sarah Quagraine substituted for Elizabeth Acquah, soon after, brought an action to set aside the Judgment of Earnshaw, Judge of the 28th April, 1911 upon the ground that the Conveyance was fraudulent. The Judgment of Earnshaw, Judge, was set aside by Watson, Judge, but was reversed on appeal by the Full Court thus restoring the Judgment of Earnshaw, Judge.

Sarah Quagraine brought a subsequent action

In the
High Court
(Land Court,
Cape Coast)

No. 10

Judgment.

21st December
1957 -
continued.

against the Defendant claiming that the Instrument or deed of 20th June, 1898, be brought in to Court and be cancelled and destroyed. The claim was dismissed against her on 9th November, 1922 by Hall, Judge, on ground that there was no declaration by the Full Court that the deed was made in fraud as suggested in the writ of summons and no jurisdiction in the Court to make the order asked for. This Judgment appears to be the last so far affecting these three pieces of land shown on the plans in evidence south of the land marked Agissu edged in yellow. The above actions referred to relate to the three pieces of land other than Agissu.

10

The Defendant next came into the picture as the Plaintiff in 1927 in the case "Rebecca Davies per J.E. Sampson versus Abraham Essel" before the Native Tribunal upon a claim as owner of Agissu land situate in Ekwambissi in the Saltpond District and an account of all tributes, tolls and rents collected as from 1911, etc.

20

The above case passed through the usual stages on appeal from the Tribunal to the Privy Council and whose judgment is in Exhibit "B". The Judgment referred to the lands in question in that they are called Agissu, and are part of a larger area called Ekwambassie, situate in the Saltpond District. Ekwambassie includes also three other parcels of land. The Judgment of the Privy Council restored the Provincial Commissioner's Judgment in favour of Defendant Appellant in "B". The Judgment in Exhibit "B" held that "the title prior in point of date must prevail." It would be in respect of the Certificate of Purchase of 1881.

30

In Exhibit "2" the Plaintiff in Grounds of Appeal in this same suit filed in the Supreme Court on 2nd May, 1952, said inter alia in Paragraph 5, "The Southern Boundary of Agissu land is constituted by the lands of C.B. Acquah comprising Nanado, Abissabuasi and Abisiwa which are the properties of the Defendant".

40

The case on the merit was heard by me when the parties gave evidence and tendered various exhibits directly touching upon the history of the Agissu land and the other three parcels of land.

The Plaintiff upon her Oath in this trial

admitted before the Court that the three parcels of land Nanado, Abissabuasi or Abberzaboasi and Abisiwa are the properties of Defendant.

In the
High Court
(Land Court,
Cape Coast)

No. 10

Judgment.

21st December
1957 -
continued.

10 In my opinion the issue as disclosed in the pleadings by the parties are in favour of the Defendant herein and there is only one answer to the question set in the order for Summons for Direction that the Plaintiff is not entitled to the ownership and possession of the whole area of land edged pink in the plan Exhibit "A". The agissu land is the land whose boundaries have been defined in the Certificate of Purchase of 1881 and in my view the land edged in yellow. The Defendant in her pleadings laid no claim to the Agissu land edged yellow on the plan. She claimed that she is not in possession of the area edged yellow and has no interest in that area and consequently there is nothing to recover from her.

20 The Plaintiff, however, claims for recovery of possession of the whole area edged pink and for ejectment. The Judgement in the P.C.'s Court operated to this effect "The Court is of opinion that Rebecca Davies has not proved that she is owner of Agissu land, with which this case deals, and therefore confirms its judgment of 20th July, 1925. Costs to the Defendant Appellant."

30 The Defendant in the action before the Tribunal in Davies versus Essel did not Counter-claim for Declaration of title and the Provincial Commissioner did not declare any title in the Defendant and the Privy Council Judgment in Exhibit "B" simply set aside the judgment of the Full Court and restored the Judgment of the Provincial Commissioner.

The claims by Plaintiff in this action cannot be maintained upon the evidence before me. I accordingly dismiss the claims herein against the Plaintiff in respect of the three parcels of land claimed by the Plaintiff.

40 I agree with the Assessor's opinion in favour of the Defendant.

Costs for Counsel agreed upon at Fifty Guineas. Other Costs to be taxed.

(Sgd.) C.S. Acolatse,
Judge.
21.12.57.

In the
High Court
(Land Court,
Cape Coast)

No. 11

MOTION ON NOTICE FOR REVIEW

No. 11

IN THE HIGH COURT OF JUSTICE, GHANA,
CENTRAL JUDICIAL DIVISION,
LAND COURT CAPE COAST
A.D. 1958.

Motion on
Notice for
Review.

Transferred Suit No. 6/1957

4th January
1958.

SARAH QUAGRINE Plaintiff

versus

B. CROSBY DAVIES (SUBSTITUTED
FOR SAM FERGUSON, DECEASED
OF ANOMABU) Defendant

10

MOTION ON NOTICE FOR REVIEW
UNDER ORDER 39:

TAKE NOTICE that this Honourable Court will be moved by BENTSI ENCHILL, Esquire, of Counsel for and on behalf of SARAH QUAGRINE the Plaintiff-Applicant herein praying under Order 39 for an Order reviewing the Judgment herein delivered by Acolatse, J., on the 21st December, 1957, and for such further or other order as to this Honourable Court may seem fit.

20

COURT TO BE MOVED on Saturday the 25th day of January, 1958, at 9 o'clock in the forenoon or so soon thereafter as Counsel for the applicant can be heard.

DATED AT NAOFERG CHAMBERS, ACCRA, THIS 4th DAY OF JANUARY, 1958.

(Sgd.) Bentsi Enchill,
SOLICITOR FOR THE PLAINTIFF/APPLICANT.

30

THE REGISTRAR,
LAND COURT,
CAPE COAST.
& TO
THE ABOVE-NAMED DEFENDANT
OR HIS SOLICITOR.

No. 12

AFFIDAVIT IN SUPPORT

IN THE HIGH COURT OF JUSTICE, GHANA,
CENTRAL JUDICIAL DIVISION
LAND COURT CAPE COAST
A.D. 1958.

In the
High Court
(Land Court,
Cape Coast)

No. 12

Affidavit in
Support.

4th January
1958.

Transferred Suit No. 6/1957

(Title as No. 11)

AFFIDAVIT OF SARAH QUAGRINE HEREIN:

10 I, SARAH QUAGRINE, the Plaintiff herein,
make Oath and say as follows:-

1. On the 21st December, 1957, Judgment was delivered herein against me. It was not until the 27th instant that I succeeded in obtaining a copy of it.

2. The fundamental issue in the suit was whether the land claimed by me and edged pink in the plan is Agissu land.

20 3. I am informed by my Counsel and verily believe that at the commencement of the trial, His Lordship the Judge ruled that this case is not an ordinary land case to be litigated by extensive evidence, as it was one turning primarily on the construction of the Privy Council Judgment; and that for this reason his Lordship requested essentially formal evidence only from me and the Defendant to enable us to tender the various proceedings together with such explanatory evidence as the Surveyor Mr. Selby could give.

30 4. That for this reason 5 witnesses who are adjoining owners of the said Agissu land or specially connected therewith whom I brought to Court could not be called.

5. That for that reason other documentary evidence in my possession and which has been used in previous

In the
High Court
(Land Court,
Cape Coast)

No. 12

Affidavit in
Support.

4th January
1958 -
continued.

suits between us, e.g. the evidence of the Defendant's predecessor in title at page 11 of the Record of Proceedings in Suit No. 23 of 1936 entitled S.A.B. Sampson versus Abraham Essel were declared by His Lordship to be unnecessary when my Counsel sought to tender them.

6. In view, however, of the reasoning behind His Lordship's Judgment, and particularly the importance he clearly attaches to my admission that the Defendant is the owner of Nanado, Abisiwa and Abbisaboase lands (an admission which I coupled with the contention that these lands lie to the South of Agissu land and NOT as claimed by the Defendants), I am advised by my Counsel and verily believe that the evidence of these witnesses is material and relevant to that principal issue, as also are the other documents in my possession, and that my claim has been gravely prejudicated by my not being permitted to have their evidence on record. 10

7. That the Defence also brought witnesses whom they did not make to give evidence as a result of His Lordship's ruling. 20

8. I am convinced that His Lordship's interpretation of the Privy Council Judgment and his adjudication as to what is Aggissu land would have been very different if he had permitted all the evidence to be led.

9. I shall file as a supplement to this affidavit copies of documentary evidence in my possession and known to the Defence which His Lordship's handling of the trial prevented us from tendering. I have to file this affidavit now to be in time. 30

sic

10. This dispute has been so long and arduous that I most urgently pray that the Court may be willing to adjudicate on its merits only after the hearing all relevant evidence.

11. Accordingly I pray for a review.

sic

SWORN AT Saltpond at 11.30 a.m.
this 4th day of January, -

(Sgd.) Sarah Quagraine 40

Before me

(Sgd.) J.D. Haizel,
Commissioner for Oaths.

No. 13

SUPPLEMENTARY AFFIDAVIT IN SUPPORT

(Title as No. 11)

In the
High Court
(Land Court,
Cape Coast)

No. 13

SUPPLEMENTARY AFFIDAVIT OF SARAH QUAGRaine:

Supplementary
Affidavit in
Support.

31st January
1958.

I, SARAH QUAGRaine, the Plaintiff herein make oath and say as follows:-

1. My earlier affidavit sworn herein had to be rushed in order that the application might be in time, and I indicated this in paragraph 9 thereof.
- 10 2. My application for a review is based on several grounds.
 - (a) The Judgment herein involves a finding in regard to the identity of Nanado, Abbissaboase and Abisiwa which is a patent error on the face of the record in as much as it is in conflict with the particulars contained in the conveyance dated 20th June, 1898, and is not supported by any other documentary evidence.
 - 20 (b) In fact the available documentary evidence conclusively shows that the said 3 lands are elsewhere than as claimed by the Defendants. Other documents assisting to prove this conclusively are:
 - (i) The Memorandum of Sale of Aberzaboassie dated 2nd August, 1892 made by Quamin Connanchine to C.B. Acquah and marked as Exhibit 'G' at page 96 of the Certified copy of Record of Proceedings in the present case when first
30 tried at the Native Court 'B' Ayan Denchira.
 - (ii) The Indenture of Conveyance dated 20th July, 1904 made pursuant to the Divisional Courts Order for Specific Performance BETWEEN YAMOA AND C.B. ACQUAH conveying the said Aberzaboassie land. The said conveyance is marked

In the
High Court
(Land Court,
Cape Coast)

No. 13

Supplementary
Affidavit in
Support.

31st January
1958 -
continued.

as Exhibit "1" in the said record of proceedings.

- (c) Having regard to the concurrent findings of the Full Court and the Privy Council that the Certificates of Purchase of 1881 and 1893 refer to the same area of land and to the justification for this finding given by Hall, J., in the said Full Court Judgment at page 56 of the Privy Council Record of Proceedings the finding that the Agissu land edged Yellow in the Plan Exhibit 'A' is patently erroneous. 10
- (d) In further support of (c) above I would crave leave to refer to the proceedings in the case Kwamina Mensah versus Charles B. Acquah decided by Judge Smith in 1895 and appearing as Exhibit "J" in the Record of Proceedings above referred to. The said case affirmatively establishes the land lying west of Ayinasu and the Ekua Emina Stream as Agissu land. 20
- (e) Exhibit "K" in the said Record of Proceedings being a memorandum of sale of Kojo Broni's Cocoa Farm prepared and witnessed by Defendant's predecessor in title J.E. Sampson contains an admission that the village Ekwambissie is on Agissu land, and I urge that this further establishes the southern extent of Agissu land.
- (f) The said Record of Proceedings above referred to being the Record of Proceedings in this very case when first tried in the Native Court "B" of Ayan Denchira was sought to be tendered by my Counsel, but His Lordship waived it off as being unnecessary for the determination of the present suit which His Lordship declared to be primarily a matter of the interpretation of the Privy Council Judgment. 30

3. I most humbly urge and pray that His Lordship may be pleased, in a case like this one of such complexity and long history, to admit the documents referred to herein in evidence, even if he is not disposed to hear any oral testimony of adjoining landowners. 40

In the
High Court
(Land Court,
Cape Coast)

No. 13

Supplementary
Affidavit in
Support.

31st January
1958 -
continued.

10 4. I am advised by my Counsel and verily believe that in view of the fact that the boundaries of Aberzaboassie land are given in the Memorandum of Sale marked Exhibit "G" in the said Record of Proceedings at page 96, and that the said Aberzaboassie land is therein described as being bounded on the North by Ayinasu land and on the East by Abusoo land, and in view of the fact that identifiable land marks are given in the Certificate of Purchase of Aboasoo land marked Exhibit "F" in the said Record of Proceedings, such as the village of Nkwantana, Asamah Krom, Asamoah Nkwanta and the river Aginasu giving considerable certainty as to the situation of the Abusu land, it would be of great assistance to the Court and manifestly in the interest of justice if the Surveyor were asked to indicate as far as possible on Exhibit "A" the said land marks and the position of Aberzaboassie as described in the said title deeds.

20 5. For it is manifest that even on the assumption that the 1989 conveyance of C.B. Acquah to Rebecca Davies is valid, the identification of the lands conveyed thereby must depend on C.B. Acquah's root of title to the said lands E.G. the Memorandum of Sale above referred to as Aberzaboassie land and the Certificate of Purchase of Aboosoo land.

sic

30 6. I am advised and verily believe that the bearest scrutiny will reveal that the areas indicated by the Defendant as Abisiwa and Nanado are the purest figment of the Defendant's imagination.

7. I am advised by my Counsel and verily believe that the foregoing are sufficient reasons to justify the Court to exercise its powers of review.

8. All the documents referred to herein are known to the Defendant and his Solicitor and certified copies of them are incorporated in records of proceedings of which he has copies and I will endeavour to have them before His Lordship the Judge at the hearing of this application.

40 SWORN at Saltpond at)
3.30 p.m. this 31st) (Sgd.) Sarah Quagraine
day of January, 1958) Deponent.

Before me

(Sgd.) J.D. Haizel,
Commissioner for Oaths.

In the
High Court
(Land Court,
Cape Coast)

No. 14

AFFIDAVIT IN OPPOSITION

No. 14

(Title as No. 11)

Affidavit in
Opposition.

6th February
1958.

I, BENJAMIN CROSBY DAVIES of Cape Coast, a
retired Civil Servant, make Oath and say as follows:-

1. That I am the Defendant herein.
2. That Judgment was delivered herein in my
favour on the 21st December, 1957.
3. That in pursuance of an Order made by the Court
herein, the Plaintiff's witness Ekow Selby, demar- 10
cated my three lands, namely "Nanado", Abisiwa"
Abberzaboasi" and superimposed them on the Plain-
tiff's existing plan, which had been made by the
same surveyor.
4. That I am informed by my Caretaker John O.
Falady and verily believe to be true, that through-
out the period of demarcation of the boundaries of
Agisu land, subject-matter of the dispute herein,
and the three other lands, "Nanado", "Abisiwa" and 20
"Abberzaboasi", the Plaintiff was personally present,
and did not either register any protest or raise any
objection to all that were pointed out to the sur-
veyor by my representative, but agreed to same, and
was so found by the Court in its Judgment herein.
5. That in view of paragraph 4 above, the resul-
tant plan made by the said surveyor was tendered by
Plaintiff's Counsel and accepted in evidence by
consent of parties herein.
6. That the statement contained in paragraph 3 of 30
the Plaintiff's affidavit of the 4th January, 1958
herein is wholly incorrect, as to the best of my
knowledge and belief, no such ruling was ever made
by the Court; I shall crave leave of the Court to
refer to the Court's notes of the proceedings on
the 21st and 22nd October, 1957 and of the Court's
notes and Order made on the 11th of July, 1957,
when the matter was before Justice K. Adumua Bossman.
7. That on the 4th of July, 1957 the Plaintiff
through her Counsel, filed an amendment of the issue

to be tried herein, to which I shall crave leave of the Court to refer, and that on the 22nd October, 1957 Counsel proceeded to prove the Plaintiff's claim herein upon the amended issue filed herein.

In the
High Court
(Land Court,
Cape Coast)

8. That throughout the hearing of the case, the Plaintiff's Counsel was not at any stage of the proceedings, prevented by the Court from calling witnesses whom he desired to call in support of the Plaintiff's claim herein.

No. 14

Affidavit in
Opposition.

10 9. That the Plaintiff's Counsel was also not prevented from producing or tendering in evidence all or any documents which were then available and essential in support of the Plaintiff's claim.

6th February
1958 -
continued.

10. That the various documents referred to by the Plaintiff in her supplementary affidavit herein, were, in fact, available, and could have been produced in evidence in support of her claim, if her Counsel therein thought the same to be relevant to the claim in issue.

20 11. That the boundaries and extent of the Agissu land are clearly and definitely defined in the Certificate of Purchase of 1881; the special features thereon, as referred to in the said Certificate of Purchaser were found to be on the land, thus leaving no doubt whatever, as to the situation and extent of the said Agissu land.

30 12. That I am advised and verily believe to be true that the application by the Plaintiff herein is purposely intended to induce the Court to grant a re-hearing of the Claim herein.

13. That in the circumstances, I make this affidavit opposing the Plaintiff's application for a Review herein, and that the Court may be pleased to dismiss the same with costs herein.

SWORN at Cape Coast this)
6th day of February, 1958.) (Sgd.) Sarah Quagraine sic

Before me
(Sgd.) ? ?
Commissioner for Oaths.

40 To the Registrar,
Land Court,
Cape Coast.

And
To the Above-named Plaintiff, Sarah Quagraine or
her Solicitor Bentsi-Enchill Esquire, Accra.

In the
High Court
(Land Court,
Cape Coast)

No. 15

AFFIDAVIT IN REPLY

(Title as No.11)

No. 15

Affidavit in
Reply.

19th February
1958.

I, SARAH QUAGRINE, the Plaintiff herein, make
Oath and say as follows:-

1. I deny the allegation contained in Defendant's
affidavit of the 6th February, that I did not
register any protest when his caretaker indicated
what he alleged to be Nanado, Abiswa and Aberzaboazi
lands. And I would add that if we were agreed
that those areas in fact are Nanando, Abisiwa and
Aberzaboasi there would be no dispute between us.

10

2. The plan of Mr. Selby was tendered by consent
as being the plan ordered by the Court to be made.

3. I did see my Counsel attempt to tender docu-
ments which His Lordship waived off as unnecessary,
and I am informed by the Counsel Mr. Kweku Sekyi
and verily believe that the non-tender of the docu-
ments mentioned in my earlier affidavit and the
fact that my witnesses were not called arose from
indications given by His Lordship regarding what he
required.

20

SWORN at Saltpond at)
3.30 p.m. this 19th day) (Sgd.) Sarah Quagraine
of February, 1958.)

Before me

(Sgd.) J.D. Haizel,

Commissioner for Oaths.



COURT NOTES ON MOTION FOR REVIEW

IN THE HIGH COURT OF JUSTICE, GHANA,
CENTRAL JUDICIAL DIVISION, CAPE COAST,
SATURDAY THE 22nd DAY OF FEBRUARY, 1958,
CORAM: MR. JUSTICE ACOLATSE, SITTING AT SEKONDI

Transferred Suit No. 6/1957

SARAH QUAGRINE Plaintiff

versus

10 B. CROSBY DAVIES (substituted
for Sam Ferguson Deceased) ... Defendant

Motion on Notice for an Order reviewing the Judgment
of 21st December, 1957.

By Court:

Enchill for Plaintiff-Applicant.
Abadoo for Defendant-Opposer.

Enchill:

Moves Court in terms of Motion and Affidavit
under Order 39.

20 The Court was misled by distinction drawn between
the two Certificate of Purchase of 1881 and
1893 into an interpretation of the P.C. Judgment
which is incorrect.

For the purpose of this application I intend to
place before the Court the documents referred to in
the Affidavits, by the Applicant of 4.1.58 and 31.1.58
to demonstrate the mistake or error apparent on the
face of the judgment.

30 The memorandum of sale of Aberzaboassie dated
2.8.1892 made by Connachine to C.B. Acquah, was not
before the Court as evidence to show the boundary of
the area claimed by the Defendants, as outside Agissu
land. The memorandum will show the boundary of
Aberzaboasi.

By Court:

Hearing: 8.3.58.

(Sgd.) C.S. Acolatse,
J.

In the
High Court
(Land Court,
Cape Coast)

No. 16

Court Notes
on Motion
for Review.

22nd February
1958.

In the
High Court
(Land Court,
Cape Coast)

No. 17

COURT NOTES AND INTERIM ORDER
ON MOTION FOR REVIEW

No. 17

8.3.58.

By Court:

Part heard.
Enchill for Plaintiff-Applicant.
Abadoo for Defendant-Opposer.

Abadoo: Addresses in reply.

Order:

After hearing argument from both sides it is evident that the issue involved herein is the physical identity and situation of the Agissu land of which the Plaintiff is the owner and the three plots of land admitted and as belonging to Defendant.

I accordingly order as follows that the boundaries of the Defendant's three plots of land, Nando, Abberzaboasie and Abissiwa as described at page 21 of the Record of Proceedings, Exhibit "D" and the boundaries of Agissu land as described in Exhibit "C" at page 61 of Exhibit "D" be severally delineated on a Plan to be prepared by the Surveyors, Selby and T.F. Mensah, both of Cape Coast.

Each party to deposit £25 into Court to cover the expenses of each Surveyor within one week.

Plan to be filed within three weeks from today's date.

This Motion is allowed to the extent of the Order above. Hearing adjourned - 12.4.58.

(Sgd.) C.S. Acolatse,
J.

17.5.58.

By Court:

Enchill for Plaintiff.
Abadoo for Defendant.

Enchill:

I now call upon the Surveyor to put the plan in evidence.

Court Notes
and Interim
Order on
Motion for
Review.

8th March and
17th May 1958.

10

20

30

EVIDENCE

No. 18

THEOPHILUS MENSAH

THEOPHILUS MENSAH: S.O.B. in English: - Licensed Surveyor at Cape Coast.

In the
High Court
(Land Court,
Cape Coast)

Evidence

No. 18

Theophilus
Mensah.

17th May 1958.

10 I joined Mr. Selby in making the plan before the Court upon the Order of this Court. This is the Plan of 1.5.58 signed by Mr. Selby and myself. I used Exhibit "A" in this Court as the basis or guide for our plan. We followed the Order of the Court as near as possible. It was not possible to demarcate the three plots of land, Nanado, Abberzaboasie and Abissiwa as described at page 21 of Exhibit "D". I demarcated Agissu land as described in Exhibit "C" at page 61 of Exhibit "D".

20 The Agissu land is shown on my plan and is bounded on the North by the River Kina. This River flows into the Amissa on the East and it also bears the name Kina River as the Plaintiff told me. The Plaintiff pointed out to me a tree on the West which she called Boxwood tree or Oman which I do not identify as such as I do not know the species. The Defendant denied the boundary marked by box-wood tree and said he did not know the tree. The Defendant's representative was present on the spot with the Plaintiff's representative. On the south it is supposed to be bounded by C.B. Acquah's land but I see no real definition of the Southern boundary because the whole area within the pink known as C.B. Acquah's land and no land of C.B. Acquah South of the pink. The Plaintiff's version is that the land south of the pink is C.B. Acquah's land.

30 We met a man on a land South of the pink who said he was in possession of the land for Defendant. The Defendant's representative was present and said nothing. We found that the name they knew in that area is Abisiwa and not Akitisiwa.

40 In the case of Arhin land there was two versions. One man Owusu by name alleged that his grandfather by name Arhin sold this land to Kwa John, C.B. Acquah's brother. Another man, Anansi,

In the
High Court
(Land Court,
Cape Coast)

Evidence

No. 18

Theophilus
Mensah.

17th May 1958
- continued.

also told us that his grandfather, Arhin and his two brothers sold the land to one Snyder who in turn sold it to E.J.P. Brown. It comes to this that if Arhin mentioned in the description in Exhibit "C" is correct then it is not clear which of the two versions is correct.

I found E.J.P. Brown's representative who pointed the northern boundary of their land and said they have their boundary on the North with Akwama's land.

10

I could not find Nanado land, Aberzaboasi and Abisiwa lands within the area edged pink unless we were able to determine the southern boundary of the Pink area which is the snug and which we were unable to do and we did not find the three plots of land South or outside the area edged pink. The Defendant pointed out the three plots of land within the area edged pink. We saw people on the lands but we did not ask them to confirm. We did not ask the people any question about the Defendant's three plots of land.

20

It is difficult to demarcate the area claimed by the parties by the particulars and descriptions given at page 21 in Exhibit "D" and page 61 of Exhibit "C" in Exhibit "D". The reason being that the Southern boundary of Agissu which should be the northern boundary of the three plots of land of Defendant's claim as contained in the Exhibits is not well defined and we could not define the Southern boundary as claimed by the Plaintiff.

30

The area plotted by us as Charles Barnes Acquah's land South of the Pink is what the Plaintiff has pointed out to us whether that is Acquah's land or not we do not know except that the Plaintiff said so and the Defendant denied.

Nobody pointed out Abusu land to us except the Defendant. He did not claim Abusu land. He only identified the land to us.

Ayinasu which lies South East of the plan was shown to us by representatives of the Ayinasu people and they said they form boundary with Defendant's representative on the North and West.

40

I saw the people of E.J. Steele Dadzie's land

which is the same as Asiedu's or Asandu land. They say they form boundary with Charles Acquah. They call the whole area in pink Charles Acquah's land and not by respective names of the Plaintiff or Defendant. The representative of Steele told us the plot of land was sold to Anamaboe's Stool.

In the
High Court
(Land Court,
Cape Coast)

Evidence

No. 18

10 I am trying to say all the landowners South of the area edged pink say that they form boundary with Charles Acquah's land north of the area edged pink and that means Charles Acquah has no land South of the area edged pink.

Theophilus
Mensah.

By Court: Hearing: 21.5.58.

17th May 1958
- continued.

(Sgd.) C.S. Acolatse,
J.

29.5.58.

29th May 1958.

20 EXAMINED BY ENCHILL: THEOPHILUS MENSAH Still on oath: We did not go further east to find the extent of Abisiwa land in possession of Defendant South of the area edged pink. This land Abisiwa is different land from Abisiwa land within the area edged pink North of Ayanasu Land. One Hayford said he was collecting tolls from Abisiwa land in the South for the Defendant. The Plaintiff did not tell us that he wanted to take us further South to show us Aberzaboasi land. He did not ask to go anywhere else. The Plaintiff did not ask us to go to Nkwantanan which is far away down South. The Plaintiff asked us to plot the whole length of River Amisa or Kina but we did not do so as the river runs from the North to West and way down South to Area not in dispute. It is a very big river. The Plaintiff asked us to plot Nkwantanan on the plan but we did not do so.

The representative of the owner of the land lying West outside the area edged pink said that that was Ocra's land and their family had sold the southern portion of the land to Kobina Buatin. Kobina Buatin's representative was not on the spot nor Nana Prah Egyinsaim.

40 The Defendant did not show me any specific features identifying Nanado, Aberzaboasi and Abiswa land within the pink area. He might have done so under the former plan. The Plaintiff identified

In the
High Court
(Land Court,
Cape Coast)

Evidence

No. 18

Theophilus
Mensah.

29th May 1958
- continued.

Odontwi's cocoa within the area edged pink claimed by the Plaintiff who said there is a case about it with Odontwi. The Plaintiff also pointed out Samapa ruins on the East. The Defendant agreed that a cocoa farm shown on Nanado's land belong to Kwame Mensah. Mensah's farm lies in Aberzaboasi. The Plaintiff also pointed out Kojo Bronyo's farm to us in Aberzaboasi. The Defendant agreed. The Defendant also pointed out another Kojo Bronyo's land.

sic

The Defendant pointed out the boundary of Agissu edged Yellow by Cocoa nut tree. I did not go to Agissu edged Yellow. I do not know the area marked Agissu on the North edged Yellow. Ekua Amina Stream was identified.

10

I am a Fanti. All Fantis call River Amisa, Ochi. River Amisah is known as Kina or Ochi (Oki). Kina means mother of Ochi.

We did not find Nanado anywhere outside the area edged pink except that the Plaintiff calls Arhin's land Nanado on the South of the Pink area.

20

The Defendant pointed out the area of Nanado to us which ~~is~~ edged in Brown including the V shape outside the pink.

The whole area is bounded on the West by Asiedu (Asandu) land. Asiedu land is on the West of the 'V' shape. There is no dispute that the Defendant is in possession of the 'V' shape edged Brown. The word Arhin's land was Defendant's version but the Plaintiff claimed it to be Nanado land. The Defendant came with someone who informed us that the land marked Oduafa belonging to Kwa John originally was Arhin's land and since changed had to Kwa John. I did not see Kwa John.

30

sic

I did not see a copy of Brown's document but the Plaintiff showed me a diagram of Brown's land. Mr. Brown's son came to see me with Plaintiff at Cape Coast. We met in Mr. Brown's house. The Defendant was not present. Mr. Selby was present. Mr. Brown's son said the original document is with Lawyer Abadoo. Mr. Abadoo was not present. We did not go to see Lawyer Abadoo about Brown's statement. Mr. Brown's Caretaker took us to the land and pointed out the Northern boundary of Brown's land. Both parties were present. I do not quite

40

remember seeing the copy of the document. Mr. Brown's Caretaker said he had no instruction to point out the other boundaries.

In the High Court (Land Court, Cape Coast)

The Plaintiff did not seem to know the extent of the boundary of the Abisiwa on the South. We did not ask the Defendant to point out the boundary of this Abisiwa. It is not true that the Plaintiff insisted to show us the whole boundary of Abisiwa and we said we had no time.

Evidence

No. 18

10 It was someone who told us that the Abisiwa on the South is in possession of the Defendant. The Defendant admitted. It was Hayford. We did not ask the Defendant to show us the boundary of this Abisiwa land for no special reason.

Theophilus Mensah.

29th May 1958 - continued.

The reason why we did not go to Nkwantana was that it is very far South and we have to cross somebody else's land. It is further down South of the area in dispute. We could not know we are going through somebody's land until we get there.

20 The Plaintiff did not say that Nkwantanan is one of the land marks by which Aberzaboasi could be determined. The Plaintiff said Ayimasu land is on the Northern Boundary of Aberzaboasi land. We did not go to Nkwantanan at all.

A Chief came on the scene with his people when we were on the Western boundary of the area.

30 I cannot say that the plan does not agree with the boundaries given at page 21 of the proceedings because we have Asiedu on the West, River Amisah and Ayinasu on the East, on the North Agissu land and on the South by Arhin's land and Akitisiwa which is marked on the plan as Abisiwa.

By Court:

At this stage Hearing adjourned 7.6.58.

(Sgd.) C.S. Acolatse,
J.

In the Supreme Court of Ghana (Land Court at Accra)

No. 19

ORDER OF TRANSFER

No.19

IN THE SUPREME COURT OF GHANA

Land Suit No. 6/57

Order of Transfer.

SARAH QUAGRANIE Plaintiff

versus

B. CROSBY DAVIES, etc. Defendant

17th June 1959.

(Sgd.) W.B. VAN LARE
AG: CHIEF JUSTICE.

WHEREAS the above-named cause is now pending in the Land Division of the High Court, Cape Coast in the Central Judicial Division: 10

AND WHEREAS an application for Review is part-heard before Acolatse, J. presiding at the Land Court at Cape Coast during 1958:

AND WHEREAS the said Acolatse, J. being now assigned to the High Court at Accra in the Eastern Judicial Division, it is considered desirable to transfer the whole of the said matter to the Land Court at Accra in the Eastern Judicial Division for hearing to continue before the said Acolatse, J. 20

NOW by virtue of the powers conferred upon the Chief Justice by Section 36 of the Courts Ordinance (Cap.4), I WILLIAM BEDFORD VAN LARE, exercising the powers of the Chief Justice of Ghana under and by virtue of Section 10(2) of Cap.4 of the Laws of Ghana do hereby order that the said matter be entirely transferred from the Land Division of the High Court, Cape Coast in the Central Judicial Division to the Land Court at Accra in the Eastern Judicial Division to be dealt with by the latter Court according to law: 30

AND I FURTHER ORDER:-

- (1) that the process and proceedings in the matter and attested copies of all entries

in the books of the Land Court at Cape Coast in the Central Judicial Division relative thereto be transferred to the Land Court at Accra in the Eastern Judicial Division.

In the Supreme Court of Ghana (Land Court at Accra)

No. 19

(2) that the said matter be set down for hearing at the Land Court at Accra in the Eastern Judicial Division at early as possible and with every possible despatch;

Order of Transfer.

10

(3) that the Registrar of the Land Court at Accra in the Eastern Judicial Division do cause the parties to be notified of the hearing date and of this transfer generally.

17th June 1959 - continued.

Given under my hand and the Seal of the Supreme Court, of Ghana, Victoriaborg, Accra, this 17th day of June, One thousand Nine hundred and fifty-nine (1959).

(Sgd.) Colonel H. Drury
CHIEF REGISTRAR.

20

No. 20

No. 20

PROCEEDINGS

Proceedings.

26th September, 1959.

26th September 1959.

In the Land Division of the High Court of Justice Ghana, Eastern Judicial Division, held at Victoriaborg, Accra on Saturday the 26th day of September, 1959, before Acclatse, J.

Transferred Suit No. 9/59.

SARAH QUAGRANIE Plaintiff
versus

30

B. CROSBY DAVIES etc. ... Defendant

By Court:

Motion for Review
Part Heard
Same Counsel.

Enchill:

I close my examination in chief of the Surveyor, Theophilus Mensah.

In the Supreme
Court of Ghana
(Land Court at
Accra)

EVIDENCE CONTINUED

No. 21

THEOPHILUS MENSAH

Evidence
continued

CROSS-EXAMINED BY ABADOO:

THEOPHILUS MENSAH: S.O.B. in English:-

No. 21

Theophilus
Mensah.

I confined myself to the boundaries described at page 21 of Exhibit "D" and the boundaries described in Exhibit "C" at page 61 of Exhibit "D" when I went on the land for the survey.

26th September
1959.

I made no fresh Survey when I went on the land. I took the plan prepared by Selby in the original case to the land and compared details with the features of the land and superimposed additional details on the plan marked Exhibit "A" in the case.

Cross-
Examination.

I now produce the plan I made with Selby from Exhibit "A" and put in additional details as existing as present at the time we went on the land. Accepted by consent and marked "A1".

sic

We (Selby and I) did not visit the site of the Boxwood tree on the North Eastern side of the original plan. The Plaintiff showed us a tree however on the South-western which she called Boxwood tree but it was not admitted by Defendant. We did not know the nature of the tree. My impression of the tree pointed out to us by the Plaintiff was that it is too young to be the one marked on the North-Eastern side of Exhibit "A" as Boxwood tree. I mean too young to be the Boxwood tree mentioned in the Certificate of Purchase.

RE-EXAMINED BY ENCHILL: No questions.

CROSS-EXAMINED BY ENCHILL:

No. 22

Ekow Selby.

26th September
1959.

No. 22

EKOW SELBY

EKOW SELBY: S.O.B. in English:

Licensed Surveyor at Cape Coast.

10

20

30

I made Exhibit "A", the original plan in 1945 for and on behalf and at the request of the Plaintiff to demarcate the boundaries in accordance with a Certificate of Purchase mentioned in the Privy Council Judgment in a case relating to the land. It was a private plan I made for the Plaintiff.

In the Supreme Court of Ghana (Land Court at Accra)

Evidence continued

No. 22

10 I made Exhibit "A" upon the Order of the Court on 17.10.53 in this case and demarcated the three areas claimed by the Defendant on the plan I had prepared for the Plaintiff. I went with the Defendant and he too pointed out his claim.

Ekow Selby.

The area edged pink on Exhibit "A" was delineated on the original private plan I made for the Plaintiff in 1945.

26th September 1959 - continued.

I put in the plan I originally made for the Plaintiff in 1945 those people forming boundaries with area claimed by the Plaintiff. The boundary owners were invited by the Plaintiff and came on the land and pointed out their boundaries.

20 The Defendant pointed out the area edged yellow on Exhibit "A" as Agissu land belonging to Plaintiff. The site marked coconut tree, Ant Hill and Boxwood tree was pointed out to me by the Defendant on the North-Eastern side of the area edged yellow. The Plaintiff was not present.

30 The Defendant claimed in addition the area edged Brown outside the area within the pink. The Defendant accepted the outer boundaries of the pink and so in demarcating his claim it was not necessary to call the adjoining owners except the Southern boundary with is outside the Plaintiff's claim when I brought in the representative of the Stool of Anomabo to stand on his boundary in relation to the protruding area in Brown.

sic

The Defendant accepted Samanpa ruins on the South-Eastern side of Exhibit "A".

40 I accompanied Theophilus Mensah with both parties in making Exhibit "A1". The adjoining owners were present. We did not go to the site edged yellow as that area in yellow was admitted by the Defendant on Exhibit "A". The adjoining owners on the Western boundary confirmed the boundary shown on Exhibit "A" in making "A1".

In the Supreme
Court of Ghana
(Land Court at
Accra)

Evidence
continued

No. 22

Ekow Selby.

26th September
1959 -
continued.

There is marked on Exhibit "A1" on the South-Western side of the plan Boxwood tree. The tree on the South-Western is not very thick as the tree on North-Eastern of Agissu. I cannot tell if it is Boxwood tree. The Boxwood tree on the North-Eastern is an old one. I cannot tell if it is the same kind of tree as the Boxwood tree on the North-Eastern of Agissu land. It is a young tree.

The Plaintiff called the area to the immediate left of the protruding area edged Brown outside the pink as C.B. Acquah's land and the Defendant called it Asiedu's alias Asandu's land.

10

A man gave us the information about the land to the right of the protruding Brown outside the pink area as Arhin's land who sold it to Snipper and Snipper to Brown. The man who gave us the information was a Caretaker for the Brown family who was instructed by Brown's eldest son to show us the land and said Arhin's land is South of Acquah's land. We found Abisiwa land to the east of Arhin's land outside the pink which is in possession of Defendant. A tenant of the Defendant gave us the name Abisiwa. A Caretaker of the Defendant by name Hayford who collects tribute for Defendant was present. The Defendant was not present. His representative was present when Hayford gave us the information. He did not say anything. We did not go further East from this point as someone had suggested because we the Surveyors were satisfied with our survey and had already demarcated Abisiwa land on Exhibit "A" and "A1".

20

30

The Plaintiff's representative pointed out Kojo Bronyi's cocoa farm to us on Exhibit "A1". The Defendant disagreed and pointed out No.2 Kojo Bronyi's cocoa farm on the land.

There are two Kwami Mensah cocoa farms on the land marked on Exhibit "A1". Kwami was present on the site and told us he paid £5 for each farm to Defendant's representative.

Kwami Odantoi sent a representative to the site and pointed out his farm as a boundary.

40

CROSS-EXAMINED BY ABADOO:

I gave evidence in this case as the Surveyor who made the 1953 plan by order of the Court. I

stand by the evidence before the Court on the trial of the substantive case.

RE-EXAMINED BY ENCHILL:

The Boxwood tree mentioned in the Certificate of Purchase is on the East and not on the West.

There is no river or stream, East or West around the area coloured yellow. There is a ruin Kina on the North of Agissu land edged yellow.

To Court:

10 I did not see any Boxwood tree on the South-Western within the area edged pink in 1945 for the Plaintiff nor did I see it when I made Exhibit "A" for the Court. It was not indicated to me by Plaintiff then and in 1953.

In 1953 the Defendant pointed out Boxwood tree on the North East. I saw it and indicated it on Exhibit "A".

20 The Plaintiff did not point out a Boxwood tree to me in 1945 on the North East when I made the plan for her and so I did not look for it.

I don't know if a Boxwood tree could have been there in 1945.

The Boxwood tree indicated on the plan Exhibit "A" does not tally with the position of the Boxwood tree in the Certificate of Purchase.

River Amisah is called Okyi. The Okyi is a river on the Eastern into which River Kina flows. Kyina is mother Okyi.

By Court: It is now 1.30 p.m.

30 Adjourned: - 10.10.59.

(Intd) C.S.A.
J.

In the Supreme
Court of Ghana
(Land Court at
Accra)

Evidence
continued

No. 22

Ekow Selby.

26th September
1959 -
continued.

In the Supreme
Court of Ghana
(Land Court at
Accra)

10th October 1959.

By Court:

Evidence
continued

Motion for Review.
Part heard.
Same Counsel.

No. 22

RE-EXAMINED BY ENCHILL:

Ekow Selby.

EKOW SELBY:- Still on Oath. - The Plaintiff pointed out her land having C.B. Acquah's land on the South. We were able to follow the land and found two pieces of C.B. Acquah's land. One the Plaintiff called Nanado, the Defendant called the same land Kwa John's land. Both parties called the second piece Abisiwa. The Plaintiff suggested for us to go further South East which is far away and to do that we had to go through other people's land who are not interested in the matter and so we finished at Abisiwa and returned. The Defendant was not interested in the suggestion by the Plaintiff to go further South East and we the Surveyors saw no necessity to do so and we stopped at Abisiwa. What the Defendant called Kwa John's land is C.B. Acquah's land according to Brown's document.

10th October
1959 -
continued.

10

20

No. 23

No. 23

Further Court
Notes on
Motion to Review.

FURTHER COURT NOTES ON MOTION TO REVIEW

ENCHILL:

10th October
1959.

I close the evidence on the Motion. I desire to ask leave pursuant to the Surveyors to tender the following :-

- (1) The Judgment of 1895 and 1909 which are exhibits "S" and "T" of Privy Council Proceedings being Judgment obtained by C.B. Acquah v. Andoh and Acquah v. Annoful referred to in the Privy Council Judgment which is Exhibit "B" in this case.
- (2) The Judgment in the case of Mensah v. C.B. Acquah also decided in 1895 of 30th August in the Supreme Court, Cape Coast concerning Samanpa ruins.

30

- (3) The Judgment in Abraham Essel v. Odontwi dated 30.6.31 in the D.C.'s Court Saltpond. Judgment in Nos. 2 and 3 are Exhibits "J" and "C" in the Record of Appeal from the Native Court to the Land Court in this case.
- (4) The title Deed concerning Abberzaboasi land conveyed from Yamoah to C.B. Acquah being Exhibit "J" in the same Record of Appeal.
- 10 (5) Sale of Kojo Broni's farm dated 15.12.24, being Exhibit "K" in the same Record of Appeal.
- (6) And finally Licence of Kwami Mensah by J.E. Sampson to farm on Agissu land, dated 1.9.53.

In the Supreme Court of Ghana (Land Court at Accra)

No. 23

Further Court Notes on Motion to Review.

10th October 1959 - continued.

The last two being admissions by Defendant as to Agissu land.

ABADOO:

20 The Review was granted on 8.3.58 based solely upon the order made by the Court. The order does not give the applicant to adduce fresh evidence which evidence must be within the knowledge of the Plaintiff at the time the case was being heard by the Court and which fresh evidence was in the possession and knowledge of the Plaintiff in the trial of the case.

30 Some of these exhibits were tendered in the Proceedings before the Native Court which were on appeal before the Land Court declared null and void and set aside in the previous trial in this case which was sent back to the Native Court for retrial and was subsequently transferred from the Native Court to the Land Court at Cape Coast which heard the case and gave judgment. The motion for review was based upon that judgment in this case on 21.12.57.

RULING:

40 Upon hearing the Argument on the application by Enchill at the close of the examination of the Surveyors to tender as fresh evidence by series of judgments I am of opinion that the Plaintiff being in custody and possession of these documents, now sought to be tendered, at all material dates during the trial, cannot now be allowed to adduce new

In the Supreme
Court of Ghana
(Land Court at
Accra)

No. 23

Further Court
Notes on
Motion to
Review.

10th October
1959 -
continued.

evidence which was in her knowledge and ought to have been in her knowledge with due diligence. Application refused.

SUBMISSIONS:

ABADOO:

The Order of Review as laid down in under Order 39. Refers to Redwar's 1954 and also the case of Hammilton v. Mpolley of the Full Court on 15.4.21, at Cape Coast.

The issue to be tried in this case is contained in the Amendment of the Summons for Directions and in which an Order was made by Bossman, J. on 11.7.57. 10

The Plaintiff claims ownership of the land described in the Certificate of Purchase of 1881. The onus on the Plaintiff to show the extent and boundaries of the land as contained in the Certificate of Purchase of 1881.

Ekow Selby prepared Exhibit "A" by order of the Court on 17.10.53 subsequent to the plan made by him on instruction of the Plaintiff without the Defendant. 20

Ekow Selby gave evidence on 22.10.57 upon his survey.

There is an admission by Plaintiff on record to the land claimed by Defendant.

The Plan Exhibit "A1" made by the surveyors in this review corresponds entirely with the original Exhibit "A" with exception of indication of Boxwood tree on the West of the plan Exhibit "A1".

The Plaintiff now seeks to adduce entirely different evidence from the one adduced in 1957. Plaintiff has not satisfied this Court upon the record upon which the Court based its judgment to justify a review of that judgment. 30

The Review Order is merely to challenge the plans made by the surveyor. Selby's survey of Exhibit "A" upon which the Court gave its decision cannot be altered by him now and is bound by his former evidence.

By Court:- Adjourned 17.10.59. 40

(Intd.) C.S.A.
J.

17th October, 1959.

By Court: Motion for Review.
Part heard.
Same Counsel.

In the Supreme
Court of Ghana
(Land Court at
Accra)

No. 23

SUBMISSIONS:

ENCHILL:

10 The case of Hammitton v. Mpoley simply decides Review is a discretionary matter. In the present case Court has granted a limited review. The case of Halton does not arise.

Further Court
Notes on
Motion to
Review -
continued.

17th October
1959.

This review is based upon an account of some mistake or error apparent on the fact of the Record refers to Order 39.

The Surveyors failed to implement the Order of the Court.

Refers to evidence of the Surveyor Mensah as follows:- "It was not possible to demarcate the three plots of land, Nanado, Abberzaboasie and Abisiwa as described at page 21 of Exhibit "D"."

20 The plan submitted by the Surveyors is substantially the same as the original and plan because they failed to go on the land and demarcate the boundaries within the terms of the Order.

sic

The evidence established that the Defendant is in possession of land South of the area edged pink; one of the plots of land is called Abisiwa and the other called Nanado.

Refers to Essell vs: Rebecca Davies. 2 W.A.C.A.5.

30 Submits having regard to the P.C. Judgment Exhibit "B" and the admission contained in paragraph 5 of the Summons for Direction in this case the onus is laid on the Defendant to prove that he had a better right to possession of any part of the land within the pink area.

The Defendant's Statement of Defence admits in paragraph 5 that the Plaintiff's coincides entirely with those in the Certificate of Purchase in 1893.

In the Supreme Court of Ghana (Land Court at Accra)

No. 23

Further Court Notes on Motion to Review.

17th October 1959 - continued.

Defendant admitted Paragraph 9 of Plaintiff's Statement of Claim in Paragraph 5 of his Summons for Direction.

Submits the claim in Exhibit "D" at P.2 relates to the area edged pink as Agissu land based on 1893 Certificate.

The Judgment in Exhibit "B" constitutes an estoppel per rem Judicatam from alleging that any area within the Certificate of Purchase of 1893 is not Agissu land. It is an estoppel also as to conduct.

10

Refers to Oloto v. Administrator General & ors. 12 W.A.C.A. 76 Susuana Anyema Nettey v. Odjidja Civil Appeal No. 38/58 of 8.6.59.

Exhibit "1" is irrelevant to this case.

Ruling:- 31.10.59.

(Intd.) C.S.A.
J.

No. 24

Ruling Dismissing Motion for Review.

31st October 1959.

No. 24

RULING DISMISSING MOTION FOR REVIEW

20

31st October, 1959.

In the High Court of Justice, Ghana, Eastern Judicial Division (Lands Division) held at Victoria-borg, Accra, on Saturday the 31st day of October, 1959, before C.S. Acolatse, J.

TR.L.No. 9/59

Sarah Quagraine Plaintiff
versus
B. Crosby Davies Defendant

RULING:

30

The Plaintiff in this case claimed for recovery of possession of the whole area of land edged pink and for ejection against the Defendant.

The Defendant, however, laid no claim to the land edged yellow which he described to be the Agissu land in dispute and consequently there is nothing to recover from him.

In the Supreme
Court of Ghana
(Land Court at
Accra)

The trial came before me on the 22nd October, 1957 at Cape Coast. The Plaintiff was represented by Counsel, Mr. Sekyi, who conducted the case on her behalf. He called the Surveyor and the Plaintiff to testify in the case.

No. 24

Ruling Dismiss-
ing Motion for
Review.

10 The Plaintiff is claiming under a Certificate of Purchase of 1881 and the Defendant claimed under a Certificate of Purchase of 1893 which conferred title on Defendant's predecessor in Exhibit "B".

31st October
1959 -
continued.

20 The case before the Court really turned upon the interpretation to be placed upon the Judgment of the Privy Council and the distinction to be made between the boundaries described in the Certificates of Purchase of 1881 and 1893 so as to be able to locate the Agissu land and the three parcels of land claimed by the Defendant as Nanado land Aberzaboasi and Abisiwa lands.

I gave judgment on the 21st day of December, 1957, for the Defendant upon the evidence before me.

30 Mr. Enchill moved the Court for Review of the Judgment which came before me on the 22nd February, 1958, sitting at Sekondi, for hearing. His argument was based upon the point that "The Court, was misled by distinction drawn between the two Certificates of Purchase of 1881 and 1893 into an interpretation of the P.C. Judgment which is incorrect". His contention was that the three pieces of Nanado, Aberzaboasi and Abisiwa lands are outside the area edged pink lying south of the area. He also raised the question that the Plaintiff was not given the opportunity to call witnesses in support of her case.

40 On the 8th March, 1959, after hearing Counsel and finding that the issue involved is the physical identity and situation of the Agissu land of which the Plaintiff is the owner and the three pieces of land admitted as belonging to the Defendant I made an Order that boundaries of the Defendant's three plots of land as described at page 21 of Exhibit "D" and the boundaries of Agissu land as described in Exhibit "C" at page 61 of Exhibit "D" be severally

In the Supreme
Court of Ghana
(Land Court at
Accra)

No. 24

Ruling Dismiss-
ing Motion for
Review.

31st October
1959 -
continued.

delineated on a Plan to be prepared by the Surveyors, Selby and T.F. Mensah, both of Cape Coast.

I allowed the motion to the extent of the Order above: It was meant to see whether the Surveyors would produce a plan different to the plans tendered in the trial and to clear up the confusion in the identity of the land or lands claimed by each side.

The Court resumed sitting on 17.5.58, and took evidence of the Surveyor Mensah. One interesting feature of his evidence runs as follows:

10

"I am trying to say all the landowners South of the area edged pink say that they form boundary with Charles Acquah's land North of the area edged pink and that means Charles Acquah has no land South of the area pink."

In another passage of his evidence, he said:

"It is difficult to demarcate the area claimed by the Parties by the Particulars and descriptions given at page 21 in Exhibit "D" and page 61 of Exhibit "C" in "D".

20

Mr. Selby also gave evidence upon this Motion, Mr. Enchill tendered six exhibits which were refused by the Court upon the objection taken by Mr. Abadoo.

I find at the conclusion of the hearing of the Review that the new plan is identical with the plans tendered in the trial. The location of the disputed lands in the new plan is just the same and tallies more or less with Selby's old plans.

Mr. Enchill was seeking to introduce fresh evidence in this Review contrary to the Order and entirely different evidence from the evidence in the trial. It was an attempt on part of Enchill to re-open the matter and go on better than the Plaintiff's former Counsel.

30

In my opinion the Plaintiff failed to satisfy

this Court, upon the Record upon which the Court based its Judgment, to justify a review of that Judgment. The Counsel for Plaintiff had every opportunity of raising points taken by him in this Review in the trial and in truth some of the points taken in this Review are the same facts and submission made in the trial.

In the Supreme Court of Ghana
(Land Court at Accra)

No. 24

Ruling Dismissing Motion for Review.

31st October
1959 -
continued.

10

I think this Review does not justify me to vary the Judgment I had given and there is no foundation whatever to say that the Plaintiff was prevented from calling his witnesses. The review is dismissed; costs for the Opposer assessed at One Hundred Guineas inclusive.

(Sgd.) C.S. Acolatse,
Judge.

Counsel:

Mr. Bentsi-Enchill for Plaintiff.
Mr. Myles Abadoo for Defendant.

In the Court
of Appeal,
Ghana

No. 25

NOTICE OF APPEAL

No. 25

IN THE GHANA COURT OF APPEAL
ACCRA A.D.1959

Notice of
Appeal.

SARAH QUAGRINE ... Plaintiff/Appellant

versus

B. CROSBY DAVIES (SUBSTITUTED
FOR SAM FERGUSON - DECEASED
OF ANOMABO) ... Defendant/Respondent

3rd November
1959.

NOTICE OF APPEAL:

10

TAKE NOTICE that the Plaintiff being dissatisfied with decision of the Land Court, Accra, contained in the Ruling and Judgment of Mr. Justice Acolatse dated the 31st day of October, 1959 and the 21st day of December, 1957 respectively doth hereby appeal to the Court of Appeal upon the Grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

And the Appellant further states the name and address of the person directly affected by the appeal are those set out in paragraph 5.

20

2. PART OF THE DECISION OF THE LOWER COURT COMPLAINED OF:

Whole decision.

3. GROUND OF APPEAL:

1. The learned trial judge in his two judgments failed to apprehend and to deal with the real issues raised by the pleadings on all of which he should have found in favour of the Plaintiff. The said issues were:-

30

(a) Whether or not the area claimed by the Plaintiff (being the area edged pink in the plans exhibited) is the area in respect of which by the Privy Council Judgment Exhibit "B" Defendant's predecessor

Rebecca Davies was adjudged incompetent to claim tolls etc. from Plaintiff's Caretaker Essel

In the Court
of Appeal,
Ghana

No. 25

Notice of
Appeal.

3rd November
1959 -
continued.

10

And if so, whether Defendant was not bound to surrender possession thereof to the Plaintiff, having regard to the Defence admission of Plaintiff's title to the Agisso land and to the specific admission contained in paragraph 5 of the Statement of Defence to the effect that the boundaries claimed by the Plaintiff "coincide entirely with those in the Certificate of Purchase of 1893."

20

- (b) Whether the ONUS did not therefore lie on the Defendant to prove a better entitlement than the Plaintiff to those portions of the land within the area edged pink alleged by Defendant to be Nanando, Abberzaboasie and Abisiwa contrary to Defendant's predecessor's claim that the area edged pink was the Agisso land which resulted in the said Privy Council Judgment Exhibit "B" admitted by the Defence to have declared Plaintiff's title to the Agisso land;

AND if so whether the said onus was discharged.

30

- (c) Whether or not the Defendant was not estopped by his said admission in paragraph 5 of the Statement of Defence and by the Privy Council judgment Exhibit "B" from alleging as against the Plaintiff that any area within the said boundaries (edged pink) of the 1893 Certificate of Purchase is anything other than Agisoo land therefore Plaintiff's property.

40

2. The learned trial Judge totally misdirected himself concerning the effect of the surveyors' evidence (which he treated with unwarranted selectivity) and failed to appreciate this significance of the discovery that the Defendant is in possession of C.B. Acquah's land known as Abisiwa and Nanando SOUTH of the area edged pink.
3. By the said discovery of land outside the area

In the Court
of Appeal,
Ghana

No. 25

Notice of
Appeal.

3rd November
1959 -
continued.

edged pink called Abisiwa in possession of the Defendant "sufficient reason" for a general review was provided and the learned trial Judge acted contrary to natural justice equity and good conscience and failed to do justice in refusing to admit documentary evidence in the form of Judgment and title deeds which would have assisted still further the physical identification of the lands in dispute, uncertainty in regard to which had motivated the review order for a new plan.

10

4. The Judgment was contrary to the weight of evidence.

4. RELIEF SOUGHT FROM THE COURT OF APPEAL:

Reversal of the decision of the Land Court, the grant of the reliefs prayed for by the Plaintiff and appropriate orders in respect of costs in the Court below and in the Appeal Court.

DATED AT NAOFERG CHAMBERS, ACCRA, THIS 3rd DAY OF NOVEMBER, 1959.

20

(Sgd.) A.W. Acquah,
Solicitor for the Appellant.

(Sgd.) K. Bentsi-Enchill
Counsel for the Appellant.

No. 26

No. 26

Preliminary
Objection
taken by
Respondent.

PRELIMINARY OBJECTION TAKEN BY RESPONDENT

IN THE COURT OF APPEAL, GHANA,
A C C R A

23rd May 1960.

(Title as No.25)

PRELIMINARY OBJECTION OF THE DEFENDANT-
RESPONDENT HEREIN FILED THIS 24th DAY
OF MAY, 1960.

30

PLEASE TAKE NOTICE that at the hearing of the above-named Appeal the Defendant-Respondent herein will by the leave of this Honourable Court raise the following preliminary objection to the hearing

of the Appeal herein; that is to say -

In the Court
of Appeal,
Ghana

No. 26

Preliminary
Objection
taken by
Respondent.

23rd May 1960
- continued.

(a) That this Honourable Court has no jurisdiction to hear the Appeal herein in as much as the Notice of Appeal herein was filed long after the statutory period of Appeal that is (3) Three months have lapsed; the said Judgment having been delivered on the 21st day of December, 1957, consequently the Appeal herein is not competent before this Honourable Court.

10

Dated at Cape Coast this 23rd day of May, 1960.

(Sgd.) C.F.H. Benjamin,
COUNSEL FOR DEFENDANT-RESPONDENT.

TO THE REGISTRAR,
COURT OF APPEAL, GHANA,
ACCRA.

AND TO THE ABOVE-NAMED PLAINTIFF-APPELLANT
SARAH QUAIGRAINE HER AGENT OR SOLICITOR
K. B. ENCHILL ESQUIRE, B.L., ACCRA.

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No. 27

No. 27

COURT NOTES OF ARGUMENTS OF COUNSEL

Court Notes of
Arguments of
Counsel.

31st May, 1960.

31st May 1960.

In the Court of Appeal Tuesday the 31st day of May, 1960 - Coram Arku Korsah, C.J., van Lare and Granville Sharpe, JJ.A.

No. 34/60

Sarah Quagraine v. B. Crosby Davies etc.

Mr. Enchill for Appellant.
Mr. Hayfron Benjamin for Respondent.

30 Counsel for respondent takes preliminary objection -

Except it be in a claim and counter-claim, a suitor is only entitled to one judgment and not two.

I refer to p.19 of record. Judgment on 21st December 1957. From that Judgment there was no appeal

In the Court
of Appeal,
Ghana

No. 27

Court Notes of
Arguments of
Counsel.

31st May 1960
- continued.

Immediately. Notice of Appeal in respect of the Judgment was filed on 5th November 1959 at p.54 consequently the appeal is not competent before the Court.

Application for review of that Judgment was made by the Court refused. Application for review filed at p.24, on 4th January 1958.

Submit that for these reasons the appeal is not competent before the Court.

Counsel for Appellant - The application for review was granted vide p.34. He finally made a ruling at p.50 on 31st October, 1959 and the right of appeal starts from this date, and submit that it cannot be disputed that the appeal from the ruling is within time. Since his judgment on 31st October 1959 incorporates the former judgment then appeal therefrom would be an appeal from the original Judgment. By virtue of Order 39 rule 6 this is the only effect upon the former. 10

Counsel for Respondent - Replies right of appeal within 3 months submit Judgment of 31st October, 1959 not a final Judgment because it was only an application for review. Refers to p.- calls attention to note "Review is dismissed" also to p.51 line 22 I gave judgment on the 21st December 1957 also pp.52-53 I allowed the motion to the extent of the order above. 20

The contention of the learned Judge is obvious vide p.52, line 30 etc. Mr. Enchill was seeking etc.

It is clear what was exercising his mind was whether the application 30

Finally I submit that judgment of 1959 was not a final Judgment.

Court - Ruling reserved.

(Sgd.) K.A. Korsah, C.J.

No. 28

JUDGMENT

IN THE COURT OF APPEAL
ACCRA, GHANA

In the Court
of Appeal,
Ghana

No. 28

Judgment.

13th June 1960.

Coram -

Korsah, C.J.
van Lare, J.A.
Granville Sharpe, J.A.

C.A. Civil Appeal
No. 34 of 1960

13th June, 1960

Sarah Quagraine, ... Plaintiff-Appellant

v.

B. Crosby Davies (substituted)
for Sam Ferguson, deceased,
of Anomabu, ... Defendant-Respondent

J U D G M E N T

GRANVILLE SHARP, J.A.: The question that arises for determination in this appeal involves the interpretation to be placed upon Order 39 of the Rules of the High Court and the rules made under the order. It comes before us on appeal (a) from a judgment of Acolatse, J. and (b) from a Ruling of the same learned Judge dated 21st December, 1957 and 31st October, 1959 respectively, and the argument placed before us by Mr. Bentsi-Enchill for the Appellant, - the plaintiff in the suit - expressed succinctly, is that by his ruling of 31st October 1959 the learned Judge granted a review of his earlier final Judgment by confirming it, and that therefore if the ruling is set aside on appeal, the earlier Judgment may also be set aside if it should appear that on the merits of the case it was erroneous, and further that the time for appealing against this earlier judgment begins to run only from the 31st October, 1959, because it was then that the learned Judge

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In the Court
of Appeal,
Ghana

No. 28

Judgment.

13th June 1960 -
continued.

confirmed it so as to make it his final judgment. On this basis it was submitted that the Notice of Appeal was filed within the time fixed by the Rules.

Mr. Bentsi-Enchill has brought to our notice certain authority upon which he seeks to rely in support of his contention. Firstly he cites from Woodruffe and Ali on "Civil Procedure in British India" 2nd Edition at pp.1377 and 1378 a passage which he submits is 'in pari materia' with the present case. The passage is as follows -

10

"When a case is reheard on review the order on the rehearing is a new decree whatever the result is. Even though on the application for review coming on for hearing the Judge allowed it on a comparatively insignificant point and forthwith directed a clerical error in the decree to be rectified; and the time within which to appeal on the decree runs from the date of such order." Counsel stresses the last sentence of this citation. Next he has called to our attention a passage from the judgment of Gardiner Smith, J. in the case of Effom & Ors. v. Frumah & Ors., reported in Selected Cases of the Divisional Courts of the Gold Coast Colony at p.41. The case in question arose under the old order 42 r.1 which we do not doubt has for the purpose of this appeal not been changed in material respects by Order 39 rule 6 on which Counsel places so much reliance. What Gardiner Smith, J. said was "In my opinion Order 42 r.1 reopens the whole case and enables the Court to make any order whatsoever. This is the effect of the Indian Rules, which are similar to our own."

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30

The importance of these citations from the point of view of their relevance or irrelevance to the facts of the present case will appear from what follows later in this judgment.

The relevant provisions of Order 39 are as follows -

"1(1) Any person considering himself aggrieved -

"(a) by a judgment or order from which an appeal is allowed, but from which no appeal has been preferred; or

40

"(b) by a judgment or order from which no appeal is allowed;

"and who from the discovery of new and important
"matter or evidence which, after the exercise of
"due diligence, was not within his knowledge or
"could not be produced by him at the time when
"the judgment was given or the order made, or
"on account of some mistake or error apparent
"on the face of the record, or for any other
"sufficient reason, desires to obtain a review
"of the judgment given or order made against
"him, may apply for a review of the judgment or
"order to the Judge who gave judgment or made
"the order.

In the Court
of Appeal,
Ghana

No. 28

Judgment.

13th June 1960
- continued.

10

"(2) A party who is not appealing from a judg-
"ment or order may apply for a review of the
"judgment notwithstanding the pendency of an
"appeal by some other party except where the
"ground of such appeal is common to the appli-
"cant and the appellant, or when being respon-
"dent, he can present to the Appeal Court the
"case on which he applies for the review.

20

x x x x x x x

"3(1) Where it appears to the Judge that there
"is not sufficient ground for a review, he shall
"dismiss the application.

"(2) Where the Judge is of opinion that the
"application for review should be granted, he
"shall grant the same:

"Provided that no such application shall be
"granted on the ground of discovery of new
"matter or evidence which the applicant alleges
"was not within his knowledge, or could not be
"adduced by him when the Judgment or order was
"given or made, without strict proof of such
"allegation.

30

x x x x x x x

"6. When an application for review is granted,
"a note thereof shall be made in the register
"and the Court or Judge may at once rehear the
"case or make such order in regard to the re-
"hearing as it thinks fit, and upon such rehear-
"ing the Court or Judge may reduce, vary or con-
"firm its previous judgment or order."

40

In the Court
of Appeal,
Ghana

No. 28

Judgment.

13th June 1960
- continued.

In the light of these provisions must be considered what the learned Judge did in the case of the application before him and also the extent and limitation of and to his jurisdiction under the Rules.

The Application for a review of his Judgment dated 21st December 1957 was made by motion dated and filed the 4th January 1958 in the following form:

"MOTION ON NOTICE FOR REVIEW UNDER ORDER 39"

10

"Take Notice that this Honourable Court will be moved by Bentsi Enchill, Esquire, of Counsel for and on behalf of Sarah Quagraine the Plaintiff-Appellant herein praying under Order 39 for an Order reviewing the Judgment herein delivered by Acolatse, J., on the 21st December, 1957, and for such further or other order as to this Honourable Court may seem fit.

"Court to be moved on Saturday the 25th day of January, 1958, at 9 o'clock in the forenoon or so soon thereafter as Counsel for the applicant can be heard.

20

"Dated at Naoferg Chambers, Accra, this 4th day of January, 1958."

This motion was supported by full affidavits but neither to these nor to the evidence filed in reply is it necessary to refer.

On February 8th 1958 the proceeding came on for hearing under sub-title as follows:- "Motion on Notice for an Order reviewing the judgment of 21st December 1957." The hearing of the motion was adjourned. It was resumed under the same sub-title on February 22nd 1958 and, again under the same sub-title, on the 8th March 1958. From then onwards to the 17th October 1958 the nature of the proceeding with which the learned Judge was concerned was described by him, when he described it, as "Motion for Review" and it was not until the 31st October 1958 that the learned Judge, in our view through inadvertence, used an expression which appears to us to be both equivocal and wanting in validity "Ruling upon the Review", and added, after reading his Ruling, a consequent Order in the terms

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40

"The review is dismissed with costs for the Opposer."

In the Court
of Appeal,
Ghana

Mr. Bentsi Enchill relied on the following passages in the Ruling of the learned Judge:

No. 28

Judgment.

13th June 1960
- continued.

10 "I gave Judgment on the 21st day of December,
"1957, for the Defendant upon the evidence be-
"fore me. Mr. Enchill moved the Court for
"Review of the Judgment which came before me on
"the 22nd February, 1958, sitting at Sekondi,
"for hearing. His argument was based upon the
"point that 'The Court was misled by distinc-
"tion drawn between the two Certificates of
"Purchase of 1881 and 1893 into an interpreta-
"tion of the P.C. Judgment which is incorrect.'
"His contention was that the three pieces of
"Nanado, Aberzaboasi and Abisiwa lands are out-
"side the area edged pink lying south of the
"area. He also raised the question that the
"plaintiff was not given the opportunity to
"call witnesses in support of her case.

20 "On the 8th March, 1959, after hearing Counsel
"and finding that the issue involved is the
"physical identity and situation of the Agissu
"land of which the plaintiff is the owner and
"the three pieces of land admitted as belonging
"to the defendant I made an Order that boundaries
"of the Defendant's three plots of land as des-
"cribed at page 21 of Exhibit 'D' and the bound-
"aries of Agissu land as described in Exhibit
30 "C' at page 61 of Exhibit 'D' be severally de-
"lineated on a Plan to be prepared by Surveyors,
"Selby and T.F. Mensah, both of Cape Coast. I
"allowed the notice to the extent of the Order
"above: It was meant to see whether the Sur-
"veyors would produce a plan different to the
"plans tendered in the trial and to clear up the
"confusion in the identity of the land or lands
"claimed by each side."

X X X X X X X

40 "I think this Review does not justify me to
"vary the Judgment I had given and there is no
"foundation whatever to say that the plaintiff
"was prevented from calling his witnesses. The
"Review is dismissed costs for the Opposer
"assessed at One Hundred Guineas inclusive."

In the Court
of Appeal,
Ghana

No. 28

Judgment.

13th June 1960
- continued.

These passages he said clearly indicated that the learned Judge had allowed the application for Review to some small extent, and he would no doubt on his cited authorities, contend that this re-opened the whole case and made the time for appealing against the earlier Judgment run from October 31st 1958.

Counsel however seemed to fail in his appreciation of another passage in the Ruling:

"Mr. Enchill tendered six exhibits which were
"refused by the Court upon the objection taken
"by Mr. Abadoo. 10

"I find at the conclusion of the hearing of the
"Review that the new plan is identical with the
"plans tendered in the trial. The location of
"the disputed lands in the new plan is just the
"same and tallies more or less with Selby's old
"plans.

"Mr. Enchill was seeking to introduce fresh
"evidence in this Review contrary to the Order
"and entirely different evidence from the evi- 20
"dence in the trial. It was an attempt on
"part of Enchill to re-open the matter and go
"on better than the plaintiff's former Counsel.

"In my opinion the plaintiff failed to satisfy
"this Court upon the Record upon which the
"Court based its judgment, to justify a review
"of that judgment. The Counsel for Plaintiff
"had every opportunity of raising points taken
"by him in this Review in the trial and in truth 30
"some of the points taken in this Review are the
"same facts and submission made in the trial."

This passage in our opinion destroys the validity of the argument that the learned Judge reheard the case and confirmed his previous judgment. Indeed it indicates clearly in our opinion that the proceeding was for the purpose of eliciting the strict proof of allegations which is required by the proviso to rule 3(2) of Order 39. The learned
Judge did not make any alteration or correction
clerical or of any other kind in his judgment or
'decree'. In dismissing the motion he refused to
vary it in any way. The rule requires to be emphasised - I will read it again (r.3(2) re-read). On 40

his findings it is evident that the learned Judge concluded that the requisite proof of these allegations was wanting, and in the circumstances if he purported to grant the application for Review he acted without jurisdiction and his ruling would therefore be a nullity. He in fact dismissed the application, though it must be said that he did so in inappropriate words, which with a little more care he could easily have avoided. We cannot allow ourselves to be enslaved to mere words, particularly when, as here, they are used loosely and inaptly. It is the real intendment of the ruling, read as a whole and in the light of the true nature of the proceedings, that must be regarded.

10

Looking at the matter in this way there is only one conclusion to which we can come namely, that the Application for Review was dismissed by the learned Judge within the limits of his jurisdiction, which he would have transgressed if he had purported to do more.

20

In the result the refusal to review would be the only matter upon which appeal could in any event be to this Court, but in fact and in Law no appeal lies against a refusal to grant a review. Therefore the only matter remaining against which this appeal is brought is the final Judgment dated 21st December 1957. The Notice of Appeal was filed on the 5th November 1959 by which date the time had long expired. The appeal is not properly before the Court and therefore stands dismissed.

30

(Sgd.) K.A. Korsah, C.J.

(Sgd.) W.B. van Lare, J.A.

(Sgd.) G. Granville Sharp, J.A.

Bentsi Enchill for the
Appellant.

Benjamin for the Respondent.

In the Court
of Appeal,
Ghana

No. 28

Judgment.

13th June 1960
- continued.

In the Court
of Appeal,
Ghana

No. 29

COURT NOTES GRANTING FINAL LEAVE TO APPEAL
TO HER MAJESTY IN COUNCIL

No. 29

Court Notes
granting Final
Leave to
Appeal to Her
Majesty in
Council.

25th June, 1960.

In the Court of Appeal, Saturday the 25th day of
June, 1960.

Coram: Granville Sharp sitting as a Single Judge
of Appeal.

25th June 1960.

Civ. Motion 39/60.

Sarah Quagraine ... Plaintiff-Appellant 10

v.

B. Crosby Davies, etc. Defendant-Respondent

Motion on notice for an Order for Final Leave
to appeal to Her Majesty in Council, etc.

Mr. Bentsi Enchill for the Applicant.

No appearance for Respondent.

Final leave granted as prayed.

(Sgd.) G. Granville Sharp.
J.A.

E X H I B I T S

"C"

DEED OF CONVEYANCE MADE BETWEEN F.A. PARKER
AND C.B. ACQUAH

DEED OF CONVEYANCE OF ADJUSOO LAND FROM
PARKER TO C.B. ACQUAH

Exhibits

Plaintiff's
Exhibit

"C"

Deed of Con-
veyance made
between F.A.
Parker and
C.B. Acquah.

19th February
1881.

10

20

30

KNOW ALL MEN BY THESE PRESENTS that I THE
UNDERSIGNED have this Nineteenth day of February
One thousand eight hundred and eighty-one disposed,
Transferred and made over to C.B. Acquah of Anamaboe
that plot of land by the name of Agusoo being pur-
chased by me in the Public Auction by order of the
Court and do hereby dispose transfer and make to the
said Charles B. Acquah his heirs Executors and
assigns that plot of land by the name of land Adjusoo
situated in the Ayan District bounded on the North
by the River Kina on the East by the same River on
the West by the Box tree of Oman tree and on the
South by C.B. Acquah's land - I the undersigned for
myself heirs executors and assigns do hereby agree
to dispose transfer and made over the said land by
the name Adjusoo to C.B. Acquah his heirs executors
and assigns to have and to hold and behoove the
said land forever. I undersigned for myself exe-
cutors and assigns do hereby offer myself to warrant
and depend the said land from all incumbrances
against any one who may or will have to dispute
against the said C.B. Acquah owing the said land.

I hereto set my signature before the under-
signed witnesses.

(Sgd.) F.A. PARKER.

WITNESSES:

(Sgd.) J.E. AMONOO
" R.Z. AIKINS.

CERTIFIED TRUE COPY
(Sgd.) THOS. BLANKSON,
REGISTRAR.
22nd September, 1882.

Exhibits

"3"

Defendant's
ExhibitDEED OF TRANSFER"3"
Deed of Transfer.
20th June 1898.

KNOW ALL MEN by these presents that in consideration of the sum of Thirty Five Pounds received from Rebecca Davies of Anamaboe (but at present residing at Saltpond) I the undersigned have this twentieth day of June eighteen hundred and ninety eight disposed, transferred and made over to the said Rebecca Davies her heirs executors and assigns these three plots of land named, Nanando, Abberzaboasi and Abiswa situate in the Ayan District in the Gold Coast Colony all bounded on the North by the Agissu land on the West by Aisaidoo's land on the East by Ayansu land and River Amissah, and on the South by Abiswa and Abusu lands.

10

I the undersigned for myself heirs executors and assigns do hereby agree to dispose, transfer and made over the said three plots of land viz:- Nanando, Abberzaboasie, and Abisiwa to Rebecca Davies her heirs executors and assigns to have and to hold for ever.

20

I the undersigned do hereby offer myself to defend these three above-mentioned plots of land from all incumbrances against any person or persons who may have to dispute against the said Rebecca Davies owing the lands.

In witness whereof I hereunto set my hand and seal this day and year first above written.

(Sgd. sealed and
delivered in presence:

30

(Sgd.) JF. Davies
Thomas Hagan
Anamaboe
20th June, 1898.

(Sgd.) C.B. Acquah (LS.)
Rebecca Davies

Certified true copy
(Sgd.) R. Arthur Crabbe
Registrar.

Put in evidence by the Plaintiff in case of Eliz.
Acquah v. Bronie & anr. marked "D".

(Intd.) R.A.C.
Regr. 27.4.11.

40

"4"

JUDGMENT OF DIVISIONAL COURT, CAPE COAST -
ELIZABETH ACQUAH vs. KOJO BRONIE & ANOR.

Exhibits

Defendant's
Exhibit

"4"

29.4.11.

At a Divisional Court held at Cape Coast on Friday the 28th day of April, 1911 before his Honour Mr. Justice Albert Earnshaw, Judge.

Judgment of
Divisional
Court, Cape
Coast -
Elizabeth
Acquah vs.
Kojo Bronie &
anor.

ELIZABETH ACQUAH

vs:

10

KOJO BRONIE & ANR.

28th April
1911.

Possession of land.

x x x x x x x x

20

There will therefore be judgment for the Defendants with costs and the Court decrees that three plots of land named Nanado, Abberzabroasie and Abisiwa situate in the Ayan District in the Gold Coast Colony all bounded on the North by the Agissu land, on the West by Aisiedoo's land on the East by Anyansu land River Amissah and on the South by Abisiwa and Abusu lands are the property of the Defendant Rebecca Davies.

The costs of the Defendants will include the costs of yesterday and today and plaintiff will have set off the costs of the day of the adjournment of February, 1911.

(Sgd.) A. Earnshaw
J.

30

CERTIFIED TRUE COPY
(Sgd.) TANDOH-WILSON,
REGISTRAR.

Exhibits

"5"

Defendant's
Exhibit

JUDGMENT OF SUPREME COURT, GOLD COAST COLONY -
SARAH QUAGRaine vs. REBECCA DAVIS

"5"

Judgment of
Supreme Court,
Gold Coast
Colony - Sarah
Quagraine vs.
Rebecca Davis.

3rd May 1924.

"D" referred to on paragraph 6.
Put in evidence in Sampton v. Essel by Plaintiff
and marked Exhibit "B".

(Intd.) J.O.K. Regr.
Ayeldu.

This is the paper writing marked "G" referred to in
the Affidavit of John Equan Sampson. Sworn before
me this 20th day of October, 1924.

10

(Sgd.) J.B. AIKIN,
COMMISSIONER FOR OATHS.

3rd May, 1924.

In the Supreme Court of the Gold Coast Colony,
Eastern Province, at the Full Court held at Victoria-
borg, Accra, on Saturday, the 3rd day of May, 1924,
before Their Honours Sir Philip Crampton Smyly,
Knight Chief Justice, Mr. Justice William Plunkett
Michelin, Judge and Mr. Justice Ernest Gardiner-
Smith, Acting Judge.

20

SARAH QUAGRaine ... Plaintiff-Appellant

vs.

REBECCA DAVIS ... Defendant-Respondent

Smyly, C.J.

In my opinion the question whether or not the
deed in question was fraudulent, was not in issue
before the appeal Court of April, 1921, and beyond
an expression of opinion on the part of Mr. Justice
Nettleton, there is no finding to that effect by
the Appeal Court. The Judgment of Mr. Justice
Watson has been set aside. The Full Court have
decided that the question of fraud was in issue
before Earnshaw J. whose judgment has not been
appealed against.

30

In my opinion the Judge of first instance was right in declining jurisdiction as a Court of concurrent jurisdiction - further that he would have been justified in non-suiting Plaintiff on the ground of no cause of action being disclosed in the Writ of Summons.

Appeal dismissed with costs £21.14.6d.

CRAMPTON SMYLY,
Chief Justice.

10

I concur.

W.P. MICHELIN,
J.

I concur.

E. GARDINER-SMITH,
Ag: Judge.

Certified true copy
(Sgd.) JR. DICKISON,
Ag: Chief Registrar.

Exhibits

Defendant's Exhibit

"5"

Judgment of
Supreme Court,
Gold Coast
Colony - Sarah
Quagraine vs.
Rebecca Davis.

3rd May 1924
- continued.

"1"

20

PAGE 110, RECORD OF PROCEEDINGS IN NATIVE COURT -
REBECCA DAVIS PER J.E. SAMPSON vs. ABRAHAM ESSEL.

Defendant's Exhibit

"1"

IN THE SUPREME COURT OF THE GOLD COAST COLONY
CENTRAL PROVINCE,
PROVINCIAL COMMISSIONER'S COURT
CAPE COAST

REBECCA DAVIS per J.E. SAMPSON Plaintiff-Respondents
VS:
ABRAHAM ESSEL Defendant-Appellant

Page 110,
Record of
Proceedings in
Native Court -
Rebecca Davis
per J.E.Sampson
vs. Abraham
Essel.

30

GEORGE V. by the Grace of God of the United Kingdom
of Great Britain and Ireland and of all British
Dominions beyond the Seas King Defender of the
Faith, Emperor of India.

25th November
1924.

REBECCA DAVIS per J.E. Sampson of Anamaboe, Central
Province in the Gold Coast Colony, their relatives,
agents, servants, and workmen and every of them
greeting.

Exhibits

Defendant's
Exhibit

"1"

Page 110,
Record of
Proceedings in
Native Court -
Rebecca Davis
per J.E.Sampson
vs. Abraham
Essel.

25th November
1924 - continued.

WHEREAS by an Order of the Honourable John Lucas Atterbury Commissioner of the Central Province bearing date the 21st day of November, 1924, and made in a certain action wherein the above-named ABRAHAM ESSEL is Defendant-Appellant and you the said Rebecca Davis is Plaintiff-Respondent, it was ordered that a Writ of Injunction should issue to enjoin and restrain you the said Rebecca Davis, your relatives, agents, servants, and workmen and each and every one of you from entering into or working on the land, the subject of this action and cutting palm trees, cocoa-nuts, plantains and plucking kola-nuts and cocoa or doing anything on the said land pending the determination of this suit the said land being situate at Ekwambassie in Ayan Division in the Saltpond District called Agissu and bounded on the North by the River called Kina on the East by the same River Kina, on the West by three Cocoa-nuts Trees on the South by one Box Wood Tree.

10

20

We therefore do hereby strictly enjoin and command you the said Rebecca Davis, your relatives, agents, servants and workmen and ever of you under penalty or order as may appear to us meet to be imposed or made to be levied upon you and each and every one of you and of your lands goods and cattle to our use that you and every one of you do from henceforth altogether and absolutely desist from entering into or working on the land the subject of this action and from destroying the farms and crops thereon pending the determination of this appeal and the said land being situate in the Saltpond and boundaries given as above mentioned.

30

And further command you the said Rebecca Davies to pay to the said Abraham Essel the costs of preparing issuing and serving this Writ.

DATED AT CAPE COAST this 25th DAY OF NOVEMBER, 1924.

(Sgd.) ? ? Botsio,
REGISTRAR,
PROVINCIAL COMMR'S COURT.

40

"B"

JUDGMENT OF PRIVY COUNCIL - ABRAHAM ESSEL
vs. REBECCA DAVIES PER JOHN EKWAN SAMPSON

Exhibits

Plaintiff's
 Exhibit

PRIVY COUNCIL APPEAL NO. 36 of 1928

"B"

ABRAHAM ESSEL ... Plaintiff-Appellant
 vs:
 REBECCA DAVIES per
 JOHN EKWAN SAMPSON ... Defendant-Respondent

Judgment of
 Privy Council
 - Abraham
 Essel vs.
 Rebecca Davies
 per John Ekwan
 Sampson.

10

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
 OF THE PRIVY COUNCIL, DELIVERED
 THE 15th NOVEMBER, 1929

15th November
 1929.

Present at the Hearing:

LORD BLANESBURGH
 LORD WARRINGTON OF CLYFFE
 SIR CHARLES SARGANT.

(Delivered by LORD WARRINGTON OF CLYFFE).

20

This appeal raises a question as to the title to certain lands in the Gold Coast Colony. The lands are not tribal or family lands, and it is common ground that the title to them must be determined substantially in accordance with English law.

30

The action was in form an action by the respondent, Rebecca Davies, claiming as owner of the land an account against the appellant as caretaker thereof of the tributes, tolls and rents collected by him since the year 1911, and an order for payment of the amounts found due. The appellant defended on the ground that the respondent was not the owner of the land but that the ownership thereof was vested in one Sara Quagraine, the devisee thereof under the will of her father, Charles Barnes Acquah, deceased, for whom and for whose devisees the appellant was caretaker. It is common ground that the question of title is properly raised and may be determined in such an action.

ExhibitsPlaintiff's
Exhibit"B"

Judgment of
Privy Council
- Abraham
Essel vs.
Rebecca Davies
per John Ekwan
Sampson.

15th November
1929 -
continued.

The action was commenced on the 13th December, 1923. The name of one J.E. Sampson, a brother of the respondent, appears on the writ, which purports to be in the name of the respondent "per J.E. Sampson." Mr. Sampson is dead. He appears to have had no personal claim to the land. The respondent was the real Plaintiff.

The Native Tribunal before whom the action first came on for trial decided the question of title in favour of the respondent. On appeal to the Cape Coast, Provincial Commissioner this order was reversed and the action was dismissed and the appeal allowed with costs. The respondent appealed to the Supreme Court of the Gold Coast Colony, who on the 9th July, 1927, allowed the appeal with costs and restored the order of the Native Tribunal. The present appeal is brought by leave granted on the 17th December, 1927.

10

The parties concerned are all natives of the Colony.

20

It will be convenient for the sake of clearness to state first the facts supporting the title of the said Sara Quagraine, on whose behalf the appellant is prosecuting the appeal, and then to consider the claim set up by the respondent.

The lands in question are called Agissu, and are part of larger area called Ekwambassie, situate in the Saltpond District. Ekwambassie includes also three other parcels of land, the names of which need not be mentioned, but may be referred to as "the three other parcels." These three other parcels were formerly the property of Charles Barnes Acquah. The nature of his title is immaterial to the present question.

30

Prior to the 16th February, 1881, the Agissu lands were the property of one Abina Owoodoowa (hereinafter referred to as Abina).

She appears to have been indebted to one F.A. Parker, who recovered Judgment against her in an action in the Supreme Court of the Colony.

40

On the 16th February, 1881, the following certificate was issued under the hand of the Judge or Commissioner, viz:-

" CERTIFICATE OF PURCHASE OF LAND
IN THE SUPREME COURT OF THE GOLD COAST COLONY,
PROVINCE, A.D.1881

Exhibits

Plaintiff's
Exhibit

Between FRANCIS A. PARKER ... Plaintiff
and
ABINA OWOODOOWAH ... Defendant

"B"

THIS IS TO CERTIFY that FRANCIS A. PARKER has been declared the Purchaser of the right, title and interest of Abina Owoodoowah in the messuages, lands and tenements hereinafter that is to say all that land situated at Aguisoo called Aguisoo on the North is lied a river called Kina on the East the same river Kina on the West in bounded with three Coco-nuts trees, 1 Boxwood tree in the End which said messuages lands and tenements were sold in execution of a decree in the above suit by order of this Court dated 24th day of January, 1881.

Judgment of
Privy Council
- Abraham
Essel vs.
Rebecca Davies
per John Ekwan
Sampson.

15th November
1929 -
continued.

Dated at Saltpond the 16th day of February,
1881.

(Sgd.) John Smith.

(Signature of Judge or Commissioner)"

On the 19th February, 1881, Parker executed a conveyance of the Agissu land to Charles Acquah, his heirs, executors and assigns. The explanation appears to be that the debt, the subject of the action, through nominally owing to Parker, was really a debt due to Acquah, Parker being a mere nominee or trustee for him. This appears from a document signed by Abina and printed at p.64 of the record.

The title of Acquah to the Agissu lands was impeached by or on behalf of Abina in an action tried on the 17th August, 1882, before the then acting Chief Justice, who decided in favour of Acquah, though he, for reasons not now apparent, considered the transaction by which Parker obtained the land from Abina to be of a very doubtful character.

There is not direct evidence of any further claim of Abina against Acquah in respect of the ownership of the Agissu lands.

On other hand, on two occasions in his lifetime, viz., in 1895 and in 1909, Acquah successfully

ExhibitsPlaintiff's
Exhibit

"B"

Judgment of
Privy Council
- Abraham
Essel vs.
Rebecca Davies
per John Ekwan
Sampson.

15th November
1929 -
continued.

maintained actions for trespass upon the said lands. Acquah died on the 18th May, 1909, having by his will dated the 6th March, 1907, devised the Agissu lands and the three other parcels of land to his wife, Elizabeth Acquah, for her life, and after her death to his daughter Sarah Quagraine, absolutely. By a deed of gift dated the 8th March, 1907, he gave the same lands to his wife, but as this deed contains no words of inheritance, she presumably took thereunder a life estate only. This last fact is not disputed. 10

The present appellant was appointed by Acquah, caretaker of the Agissu lands, and this appointment was continued after his death by Elizabeth, his widow, and after her death by Sarah Quagraine. The caretaker of land, according to the law or custom of the Colony, appears to be not a mere rent collector, but to be entitled to the possession or receipt of the rents and profits of the land in his own right as against third persons, though of course, he has to account to the real owner. 20

The appellant as such caretaker regularly collected tribute from farmers on the land, both before and after the death of Acquah. He has successfully maintained actions for trespass on several occasions, is one of which a rival caretaker appointed on behalf of the respondent was a defendant. In this action he obtained a judgment, dated the 27th February, 1914, declaring that he was entitled to hold, possess and occupy the Agissu lands as caretaker against the respondent. Subsequently by another order in the same action, dated the 10th June, 1914, it was declared that according to the true construction of the order of the 27th February, 1914, the appellant had no authority to evict any person living or being on the lands other than persons living or being on such portion of the lands as he was entitled to occupy himself. This order appears only to affect his right as against certain occupiers to actual possession, but not his right to receive tribute. In giving judgment on the 27th February, 1914, the Court expressly declined to make any declaration as to the right or title of the present respondent to the Agissu lands. 30 40

So far, from the date of the transactions in 1881 down to the present time, the actions of the parties and the result of the somewhat extensive

litigation were consistent with the ownership by Acquah and his successors of the Agissu lands. In 1911, however, during the trial of an action in which Elizabeth Acquah was plaintiff and Rebecca Davies was defendant, an incident happened which has proved the occasion for the present trouble. The writ in that action has not been produced, but it appears from the judgment of the Full Court in the present action that the action was one in which Elizabeth Acquah claimed as against the respondent a declaration that she was entitled to the three other parcels of land, as, indeed, under the will and the subsequent deed she was, but as tenant for life only. Whether this claim extended to the Agissu lands is not proved, but their Lordships think that it may be inferred that it did not from what took place at the trial. The case was heard before Earnshaw J. on the 28th April, 1911. Mr. Bucknor was counsel for the plaintiff, who, it must be remembered, was only tenant for life of the Agissu lands. The defendants as to the three other parcels of land relied on a deed of gift, dated the 20th June, 1898, by Acquah to the respondent. It would seem that this was accepted as sufficient evidence of her title to the three other parcels of land, and the judgment declared that she was so entitled. There appears in the record in that action the following passage as quoted by Hall J. in his judgment in the present case.

30 "Mr. Bucknor for Plaintiff.
"Mr. Brown and Sampson for Defendant.

"Mr. Bucknor for Plaintiff said that on going through documents he had found a certificate of purchase showing that Rebecca Davies had purchased and was the owner of Agissu land. The Plaintiff Kojo Mbroh possesses through Rebecca Davies. Mr. Bucknor therefore asked to withdraw the claim. Mr. Brown consented.

40 "Claim struck out with costs for Defendants to include yesterday and to-day.

"Certificate of purchase with receipt attached was produced on notice by the plaintiff and was delivered to the defendant Davies as being hers by the Court."

This judgment was afterwards attacked by Sarah

Exhibits

Plaintiff's
Exhibit

"B"

Judgment of
Privy Council
- Abraham
Essel vs.
Rebecca Davies
per John Ekwan
Sampson.

15th November
1929 -
continued.

Exhibits
 Plaintiff's
 Exhibit

"B"

Judgment of
 Privy Council
 - Abraham
 Essel vs.
 Rebecca Davies
 per John Ekwan
 Sampson.

15th November
 1929 -
 continued.

Quagrainie, Elizabeth Acquah having died, but only so far as it related to the three other parcels of land, and on the ground that the deed of gift of 1898 was a fraud on creditors.

The documents produced were a Certificate of Purchase given in an action in which Acquah was plaintiff and Abina was defendant, and a receipt endorsed thereon.

The certificate is in the following terms,
 viz:-

10

"THIS IS TO CERTIFY that REBECCA DAVIES has been declared the PURCHASER for the sum of TEN POUNDS TEN SHILLINGS of the right, title and interest of ABINA OWOODOOAH in the messuages lands and tenements hereinafter mentioned, that is to say:

"All that piece or parcel of land situate at Agissoo bounded on the North by river Kina on the South by Charles B. Acquah's land and on the East by Abans land and river Oki and on the West by Oera and Kobina Buatin's land.

20

"Which said messuages land and tenements were sold in execution of a decree in the above suit by order of this Court, dated the 31st day of October, 1892.

"Dated at Cape Coast the 11th day of January, 1893.

"HAYS REDWAR,
 "(Signature of Judge) Acting."

And it purports to be signed by the Acting Judge.

The endorsed receipt is as follows:-

30

"£10.10. Od.

"Received from Mrs. REBECCA DAVIES the sum of Ten Pounds Ten Shillings being a piece of land which she bought in the satisfaction of the Writ of Fi: Fa: issued on the above case.

"Ekuamabasi
 "30th November, 1892.

(Sgd.) C.S. VERTAGE,
 "SHERIFF MESSENGER".

The Court in the order now appealed from have accepted the view that the lands mentioned in this certificate were identical with those mentioned in the certificate and that, notwithstanding the last mentioned certificate and transfer, the transaction of 1893 effectually vested the lands in the respondent.

10 The Provincial Commissioner avoided the difficulty by holding that there was no sufficient evidence of the identity of the lands described in the two certificates respectively. On this point their Lordships are of opinion that there are no sufficient materials on which to arrive at a definite conclusion, but they are willing for the purposes of this judgment to assume that both certificates related to the same lands.

20 The title of Acquah and his successors under the transactions of 1881 appears to be a perfect title not only on paper, but one that is consistent with the subsequent conduct of Acquah and others, and it surely would require a clear case to defeat this by a subsequent transaction, not being, of course, a conveyance by Acquah or someone claiming under him.

30 Now, this certificate does not purport to relate to the sale and purchase of any right, title or interest of Acquah in the lands, and it would indeed be absurd to sell an interest of the plaintiff in execution of a judgment against the defendant. Nor can their Lordships accept the view that Acquah can be estopped from saying that Abina had no interest to sell. He is not the vendor. It is quite possible, especially seeing that in 1882 Abina had disputed the validity of the sale in 1881, that she, although there is no direct evidence to that effect, was again asserting some claim, and that he himself became the purchaser, through the respondent who was his niece as nominee, of that claim, whatever it might be, especially as any money paid to the Sheriff would go towards discharge of the judgment debt under the F1: Fa: Some colour is given to this possible solution by the fact that the certificate and receipt were retained by Acquah and were found, apparently by accident, among his papers two years after his death. Moreover, the respondent, though still alive, was not called to give any account of the alleged sale in 1893, or to say that

40

Exhibits

Plaintiff's
Exhibit

"B"

Judgment of
Privy Council
- Abraham
Essel vs.
Rebecca Davies
per John Ekwan
Sampson.

15th November
1929 -
continued.

ExhibitsPlaintiff's
Exhibit"B"

Judgment of
Privy Council
- Abraham
Essel vs.
Rebecca Davies
per John Ekwan
Sampson.

15th November
1929 -
continued.

she paid the purchase money, an omission all the more striking seeing that her evidence in support of her claim to the property given in 1914 was then described in the judgment of the Court as being most unsatisfactory. The receipt is signed by the Sheriff's Messenger and not by Acquah, and does not amount to an admission by the latter of any payment by the respondent. No evidence was adduced to show that, by some means in the interval between 1881 and 1893, the land had reverted to Abina or that the transaction of 1881 was not a genuine transaction. Any admission by Counsel in the action of 1911 would not bind Sarah Quagraine, who was not his client.

10

Under these circumstances their Lordships are driven to the conclusion that the title prior in point of date must prevail, and that accordingly the judgment appealed from should be set aside and judgment of the Provincial Commissioner restored, and that the respondent should be ordered to pay the costs in the Courts below. As to the costs of this appeal: When the case was called on the appellant was not presented by Counsel, for no Counsel had then been instructed, and but for their Lordships indulgence in delaying the hearing to permit of Counsel being instructed the appeal would have been dismissed with costs. Afterwards Counsel was instructed and the case proceeded, but their Lordships think that, under the circumstances above mentioned, the appeal should be allowed without costs.

20

30

They will humbly advise His Majesty accordingly.

GROUNDS OF APPEAL

Defendant's Exhibit

IN THE SUPREME COURT OF THE GOLD COAST
CENTRAL JUDICIAL DIVISION
LAND COURT, CAPE COAST.

"2"

SARAH QUAGRAINIE Appellant

Grounds of Appeal.

VS:

2nd May 1952.

B. CROSBY DAVIS
(SUBSTITUTED FOR SAM
FERGUSON - DECEASED) Respondent

10

GROUNDS OF APPEAL

BECAUSE:

1. The Judgment is against the weight of the evidence.
2. The Judgment of the Native Court misunderstood and misconceived judgment of the Privy Council in the case of Abraham Essel v. Rebecca Davies and another.
- 20 3. The Defendant is estopped by the Judgment of the Privy Council from re-opening the question of the boundaries of the land Agissu.
4. The Plan put in evidence by the Plaintiff shows the boundaries of the Agissu land claimed by the Appellant.
5. The Southern boundary of Agissu land is constituted by the lands of C.B. Acquah comprising Nanando, Abisabuasi and Abisiwa which are the properties of the Defendant.

Dated this 2nd day of May, 1952.

30

(Sgd.) Sarah Quagraine,
Appellant.

To the Registrar,
Land Court, Cape Coast.

And to the Respondent
B. Crosby Davies of Cape Coast.