

Buor v. Bekoe and Others

2 WALR 289, 1957

High Court, Eastern Judicial Division, Land Court

June 12, 1957

OLLENNU J. This is an appeal from a judgment of the Native Court "A" of Akyem Buakwa. The substance of the claim before the Native Court was for order for the redemption of a coca farm pledged by the plaintiffs predecessor to the first defendant, but at the request of the latter a note on the pledge was made in the name of the second defendant, a brother-in-law of the first Defendant.

The first defendants case in that the farm was offered to him on pledge to secure a loan of £46; he refused to accept it because it was too small, but the second defendant, who said he liked it, advanced the amount, and took the farm. Throughout the whole of his evidence-in-chief and under cross-examination he (the first defendant) created the impression that the transaction was one of loan and pledge, and that he was assisting the plaintiff to redeem the farm from the third defendant to whom the second defendant had transferred it without his knowledge. But in answers to questions put to him by the court he alleged that the farm was sold and not pledged.

The third defendant sought to tender in evidence a document dated June 23, 1926, which he said was the note prepared on the occasion of the transaction, and shows a sale, not a pledge. The Native court rejected this document because the plaintiffs second witness, one I. E. Ofori, who was alleged to have prepared the document, denied that he wrote and signed it, and the third defendant was not able to prove that document otherwise.

The Native Court accepted the evidence of the plaintiff and his witnesses, one of whom, now the Odidro of the town, was Okyeame (linguist) to the then Odiro at the date of the transaction, and who deposed that the transaction he witnessed wan one of loan and pledge necessary and was not obtained, and no portion of the purchase price the transaction he witnessed was one of loan and pledge and not one of sale, and therefore the consent of the Odikro was not necessary and was not obtained, and no portion of the purchase price was claimed by or paid to the Odikro as would have been the case if the transaction were one of sale, the purchaser being a non-Akyem Abuakwa native.

By leave of the court the appellants (the first and third defendants) tendered the document of June 23, 1926 that was rejected by the Native Court together with three other documents which Ofori admitted were written and signed by him in 1924, for comparison with the document of June 23, 1926 to enable the court to determine whether the latter was written and signed by Ofori. Ofori also signed his name in court, in its different forms; this was also admitted.

Dr. Danquah, for the appellant, compared the document of June 23, 1926 with each of the other documents and, pointing to the similarities between the

former and each of the others, submitted that it must have been written and signed by Ofori, and consequently that it is conclusive that the transaction was a sale and not a loan and pledge.

Mr. Opoku-Afari, on the other hand, submitted in the place that a comparison with the three others showed that the document of June 23, 1926 was not written by the same person who wrote those others. He submitted in the second place that even if the contents of the stool, and the stools one third share had non been paid. He cited Dr. Danquah's book entitled *Akan Laws and Customs*, 1928, p. 206 in support of that argument.

Dr. Danquah, in reply to the latter point, said that the stool had stood by all these thirty or more years during which the second defendant had occupied the land and subsequently sold the same to the third defendant, and therefore it is estopped from avoiding the sale.

As to the document of June 23, 1926 I must say that a careful comparison of it with the other documents reveals a close resemblance in certain aspects and characteristics. I think it is fair to say that it appears to have been written by the same person who wrote and signed the others.

And known to the native custom raised. I have to determine first of all whether a sale by a subject of this possessory rights in land to a non-subject of a stool without the knowledge and consent of the stool is void or violable. One this point the passage quoted from Dr. Danquah's book says that failure to obtain the necessary consent and to pay to the stool its customary one-third share has often resulted in forfeiture of the land to the detriment of both the vendor and the purchaser. However, I do not see how I can accept that book as an authority properly cited before the court, Dr. Danquah being still alive. It can only have a persuasive force with the court, nothing more.

Upon consideration of the whole matter I have come to the conclusion that such a sale is comparable to a sale of family land by the head or any other member of the family, and is not comparable to the situation that arises under the provisions of the Administration (Togoland) Ordinance, c. 112, s. 4, when a vendor sells without first obtaining the consent of His Excellency the Governor-General in writing. I hold, therefore, that the sale, if any, is only avoidable and not void. Therefore if it is shown that the Odidro and the principal elders knew of it, but sat by and allowed the purchaser, in the belief that he has acquired good title, to incur expenses to improve it, the stool will be held to be estopped. The crucial question therefore is, does the evidence on record show that the elders of the stool were aware that there had been a alienation of the subject's possessory or usufructuary title to the land, and is there evidence to show that the second and third defendant have expended money to improve the farm over the year? In this respect the evidence of the plaintiff's first witness, the present Okikro who was linguist to the then Odikro, is important. That evidence shows that he understood the transaction to be one of loan and pledge pure and defendant after the transaction. There is nothing to show that he, or the Odikro or nay elder of the stool, was aware of a sale. The occupation of the farm by the second defendant for a number of years, and subsequently by the third defendant, are not enough to acquaint them with such knowledge for

a pledge also would be entitled to occupy and to assign his pledge to another person.

Also as pointed out above, the evidence-in-chief and cross-examination of the first defendants supported the plaintiff's case that it was a loan and pledge transaction and not sale and conveyance. He said:

“About thirty and a half years ago Kankam approached me for a loan of £46. At his request I inspected his cocoa farm at kokobana in company of Okyeame Gyais and many others. I refused to accept the cocoa farm as security because it was very small. Kwaku Danso told me he like it and so he would give him that amount. I assisted him to pay the money and to accept the farm. Having paid the money I told Kankam to bring a clerk to prepare him a document in connection with that transition. One Ofori was called to prepare it in the name of Danso who paid the amount of £46.”

And in cross-examination he said, *inter alia*:

“I told you Danso sold this farm to Afua without my knowledge. I am still in possession of your £32 in order to redeem this farm from the third defendant.”

But strangely enough, in answer to the court he said, *inter alia*:

“Kankam sold the farm to Kwaku Danso and not pledged . . . it was Danso who purchased it.”

How the transaction came to change from loan and pledge to sale and conveyance he never stated and it is nowhere shown on the record. Here I must remark that the second defendant did not give evidence. The only conclusion that a court can come to upon that evidence is that the stool by its linguist knew of a pledge and had no knowledge of a sale. In those circumstances even if the document was prepared as for a sale of the farm the stool cannot be held to be estopped. Besides the evidence shows that what the second defendant alleges he bought for £46 some thirty years ago he should for the sum of £47. That certainly does not show any expenditure on improvement of the farm. For that reason also estoppel cannot arise.

For the reasons stated above I hold, in spite of the opinion I have formed with regard to the document of June 23, 1926, that the transaction was one of loan and pledge and not one of sale and conveyance of the land and therefore that the judgment of the Native Court must stand. The appeal is dismissed with costs.

Appeal Dismissed
S.G.D.