

Ghassoub and Ghassoub v. Sasraku

[1961] GLR 496.

Judicial Committee of the Privy Council

24 July 1961

LORD DENNING, LORD MORRIS OF BORTH-Y-GEST AND THE RT. HON.
MR. L. M. D. DE SILVA

APPEAL (N. 38 of 1960) from a judgment of the Court of Appeal (van Lare, Ag. C.J., Granville Sharp, J. A. Ollenu, J.) delivered on the 12th January, 1959, (reported *sub nom. Sasraku v. David* at [1959] G.L.R.7) affirming the judgment of Sarkodee-Adoo, J. in the Land Court, Kumasi delivered on the 17th December, 1957 in an action for *inter alia*, declaration of title to land.

W. Jayawardena and *Miss D. Phillips* for the appellants.

H. V. A. Franklin and *T. O. Kellock* for the defendant.

LORD MORRIS OF BORTH-Y-GEST delivered the judgment of their Lordships. This case concerns certain lands approximately eight square miles in area, which formed part of a much larger area of land in Chempaw. The original plaintiff in the action sued as the head and representative of a family company of Teshie people (hereinafter called the plaintiff family company) and claimed that his family company had become the owners of the lands (eight square miles) in or about the year 1925. The original plaintiff died in the course of the proceedings and the respondent was substituted in his place. The respondent representing the plaintiff family claimed that the lands (consisting of three adjoining pieces of land) were sold by the stool of Chempaw. The stool of Chempaw is a sub-stool to the Paramount Stool of Kokofu. Kokofu is within what was, prior to 1957, the colony of Ashanti. The respondent (representing the plaintiff company) further claimed that the sale had been with the knowledge and consent Paramount Stool of Kokofu and that his family company had been in possession ever since they had purchased.

At the time when the plaintiff family company claimed to have purchased the lands, the Omahene of Kokofu was Nana Kofi Adu. But in the year 1951 he was destooled for selling lands. His successor, who was enstooled the same year, was Nana Osei Assibey II. He gave evidence at the trial and said that at his enstoolment he was told that three pieces of land at Chempaw had been sold. He had sent for the family company: they attended and told him that they had bought the land by out right sale gula. In the course of his evidence while referring to the destoolment of Nana Kofi Adu he also said that "The Odikro of Chempaw was similarly destooled for selling stool lands in collaboration with Nana Kofi Adu".

The action arose out of certain events which took place early in 1956. A member of the plaintiff family company who was a headman of a village on the lands in question was working on his farm when he heard the noise of the

felling of trees. He went to investigate and saw a caterpillar-machine. It had, he said, "cut a swathe right through from Chempaw over our boundary into our land". He said that the (the plaintiff family company) had kept the boundaries of their land cut. He saw a young man with an axc cutting a mahogany tree. Enquiries revealed that those who were engaged in the process of felling trees (certain persons trading in partnership as Naja David Sawmill Company) were doing so pursuant to right which they claimed were given to them under a timber felling agreement made by them with Nana Osei Assibey III and his elders, representing the Kokofu State, on the 30th October, 1953. By that the Sawmill Company were to be entitled upon stipulated terms to cut down certain prescribed numbers of trees of defined species during the said period. The trees could be felled within the areas of Chempaw lands. That an area of approximately forty square miles which included the lands (approximately eight square miles in area) which the plaintiff family company claimed that they have acquired in or about a year 1925. Not unnaturally the plaintiff family company through their head and representative brought proceedings to the protest what they alleged was their rights. They claimed an injunction to prevent the Sawmill Company from trespassing in their lands. The Sawmill Company were not in a position either to admit or to deny that the plaintiff family has acquire the land which they claimed but them to strict proof that the land which they claimed was sold to them with the knowledge and approval of the Stool of Kokofu. As the Sawmill Company could only rely upon the rights given to them by their agreement of the 30th October 1953, the reasonable course was followed of joining Nana Osei Assibey III (representing the stool of Kokofu) as a co-defendant. In the result the main contestants were the plaintiff and the co-defendant.

The claim which was presented by the plaintiff was that "by native custom evidenced by documents dated the 23rd day of December 1927, 4th day of August 1934, and 12th day of April 1935 respectively" the lands were sold absolutely to the plaintiff family by the stool of Chempaw and that such sale was with the knowledge and the consent of the Paramount Stool of Kokofu. In addition to the claim for an injunction the plaintiff claimed a declaration of his title to the ownership of the lands. It was said that the sale had been by the native custom of guaha performed between the plaintiff and the representatives of the stool of Chempaw and that the plaintiff's title depended upon that custom. The three documents above referred to were not relied upon save as constituting evidence that the native custom of guaha had been performed. The case proceeded on the assumption made by all concerned (but now said by the respondent to have been erroneously made) that the documents could not in any further way be relied upon because of provisions of the Concessions ordinance. (Mr. Franklin now submits that the Concessions Ordinance¹ did not apply and was not in force in Ashanti at the relevant time and go further submits that the relevant Ashanti Ordinance² should not be so constructed as to be applicable

¹Cap. 136 (1951 Rev.)

²Laws of Ashanti (1928 Rev.) Vol. 1

to the three documents.)

The claim of the plaintiff was that from at least the dates of the above mentioned documents his family had been in possession of the lands and that such possession had been adverse to any stool claims: that the plaintiff had established sixteen villages on the land and had cut and kept cut lived on the land for twenty years or more before 1956.

The co-defendant raised a number of issues in his defence. Prominent amongst them was the following:

“The co-defendant says that the existing custom prevailing in Ashanti and which also prevails at Kokofu stool land has ever sold by the Kokofu stool to anyone.”

When the co-defendant was giving evidence he said that his defence to the action was two-fold: (1) the land is not saleable in Ashanti and (2) that the land in question was sold to the plaintiff’s family by the Odikro of Chempaw without the knowledge or consent of the then Omanhene of Kokofu, Nana Kofi Adu. He regarded the first of those as the more important.

A consideration of the proceedings in the Supreme Court and in the Court of Appeal leads to the conclusion that the issue that was regarded as of major consequence was the issue as to whether the lands in question had been saleable at all. The issue as to knowledge and consent appears to have commanded a subordinate measure of attention. The fact that it was known, as testified by the co-defendant, that both the former Odikro of Chempaw and the former Omanhene of Kokofu had been respectively destooled because they had collaborate in selling stool lands may have made it difficult to challenge any evidence (the onus for giving which was on the plaintiff) tending to prove that the alleged sales were with the knowledge and consent of the former Omanhene of Kokofu.

Evidence was given at the hearing of the action that the ceremony of guaha had been performed but this evidence did not include any positive evidence that any representative of the paramount stool was present. The co-defendant maintained that the land in question was not saleable. He said that the plaintiff’s family company had been paid any tribute or rent and that though during the years after his entoolment he had sent for them they had refused to come to terms with him.

The action in the Supreme Court (Land Court) was heard by Sarkodee-Addo, J. He considered that the evidence overwhelmingly supported the contention that land saleable in Ashanti. He said:

“I find that the plaintiff’s company is in possession of the said land as owners thereof by right of purchase under an absolute sale by guaha from the stool of Chempaw with the knowledge and consent of the Paramount Stool of the Kokofu State”.

He held that the plaintiff was entitled to a declaration of title and to an injunction. The co-defendant had counterclaimed for a declaration of title, for

recovery of possession and for damages for trespass. The counterclaim was dismissed. The defendants and the co-defendants and the co-defendant appealed to the Court of Appeal (van Lare, Ag. C.J., Granville Sharp J.A. and Ollenu, J.) who subject to certain observations as to the nature of the plaintiff's right in regard to the and subject to a revision of the order for costs, dismissed the appeal. Summarizing the main issues Granville Sharp, J.A. said in his judgment:

“It could not to questioned on the evidence that the three purported sales relied upon by the plaintiff had in fact taken place and it was seriously disputed that guaha had been performed on each occasion. The evidence upon these matters was alienable by sale and if so, whether the sales here on question were carried out without the knowledge and consent of the co-defendant the paramount stool over the vendor stool, the Chempaw.”³

He said that though there had been ten grounds of appeal they had not all been argued and that the arguments presented raised the three main themes:— (a) that the sales by guaha were not proved, (b) that was not proved that the sales were made with the knowledge and consent of the paramount stool, the co-defendant, and (c) that sale of land in Ashanti is not possible under native custom. The Court of Appeal rejected all these contentions. In the course of this judgment (with which van Lare, Ag. C.J. and Ollenu, J. agreed) Granville Sharp, J. A. said:

“There was evidence that the Omanhene had in fact assented to other sales of lands in the locality and it was proved that certain destoolment charges against him to which he made no answer, included complaints in respect of such sales. Two important fact emerged in the course of the evidence. In relation to the first and the third sales, the documents are witnessed by the linguist to the Omanhene of Kokofu which signature is binding on the Omanhene, and it would be unlikely that he could have been in ignorance of the intervention sale, though no signature affecting him appears on the relevant document. The three sales were of contiguous parcels of land comprising in all an area of some eight (8) square miles.

These portions that at the date of the objection raised by the later occupant of the stool, been occupied by the plaintiff family company for periods varying between 20 and 30 years. The whole area had been clearly demarcated and the boundary cuts and marks had, it appears, been meticulously kept and cleared. Even if it could not be said, as I hold it could, that on this evidence the learned judge was correct in finding knowledge and consent on the part of the Kokofu stool, the facts clearly constitute proof of such latches and acquiescence on the part of the stool as would render it inequitable to interfere with the plaintiff in occupancy of the land, and still less

³[1959] G.L.R. 7 at pp. 10-11

so if it should be in the interest of the Sawmill Company whose felling agreement is in most general terms and would seem to grant them *carte blanche* to wander over the whole length and breadth of the Kokofu stool lands and fell wherever they encountered fellable timber, this to the extent of thousands of trees.”⁴

The Court of Appeal appear have to been in error in thinking that the third document was witnessed by the linguist to the Omanhene of Kokofu (though the first seems to have been) and Mr. Franklin for the respondent did not desire to support any contention that if the signature of such linguist appears on the first of the documents the knowledge and consent of the Omanhene ought from such circumstance to be referred.

Before their Lordships’ Board it was recognized by the appellants that both the Land Court and the Court of Appeal had decided that land in Kumasi was alienable and it was not sought to challenge such conclusion. In his careful argument on behalf of the appellants Mr. Jayawardena submitted firstly that it had not been proved that any of the sales were made with the knowledge and consent of the Paramount Stool of Kokofu and secondly that even if they were, they were invalid because they offended against the provisions of the Concessions Ordinance which was in force at the date of the sales by *guaha*. In regard to the latter submission their Lordships observe that it was not advance either in the land Court or in the Court of Appeal and that it finds no place in the grounds of appeal contained in the notice of appeal to the Court of Appeal. It follows that the Judgments contained neither mentioned of the submission nor any observations in regard to it. Mr. Franklin while urging that the submission was misconceived was content that it should be advanced either. He was the more content because he sought in turn to contend that the declaration of the title pronounced in his clients favour ought not to bear the limitations referred to in the judgment of Granville Sharp, J.A. in Court of Appeal. He sought so to contend on the basis that the three documents above referred to possessed more than evidentiary value and that it was only because of a mistake as to which was the relevant Concessions Ordinance that it had been assumed that the documents were themselves valueless save as evidence of the performance of *guaha*. It is to be observed, however, that the respondent had not sought any leave to appeal or to cross–appeal against the Judgment of the Court of Appeal.

Their Lordships do not consider it would be appropriate at this stage of the litigation to embark upon new enquiries or to deal with issues now previously advanced and in regarded to which their Lordships do not have the benefit of the opinions of the Land Court or the Court of Appeal. Accordingly their Lordships find it unnecessary to express any view in regard to the interpretation or the applicability of the Concessions Ordinance to which both learned counsel referred.

Mr. Jayawardena’s submission that it was not approved that the sales to the plaintiff family company had been with the knowledge and consent of the

⁴*ibid* at pp. 14-15

Paramount Stool of Kokofu merits careful consideration. Mr. Franklin submitted the contrary. He contended in the alternative that if such knowledge and consent had been lacking the result would have been that the sales were violable but not void and he contended that they had not been voided. He further contended that in any appellant Nana Osei Assibey III was “estopped by laches amounting to acquiescence”.

The fact that at the trial the issue that was regarded as of dominant consequence was the issue as to whether land in Ashanti was saleable may well have induced economy in the measure of the attention devoted to the evidence establishing the knowledge and consent of the Paramount Stool. Their Lordships have, however, come to the conclusion that it has not been shown that the findings of the Land Court of Appeal ought to be disturbed. Before any dispute arose the lands in question had been occupied by the plaintiff family company for periods of between twenty and thirty years. After the purchase by the plaintiff family had kept the boundaries of the land cut. They had kept boundary mark clear. They had not paid any tribute. They had not paid any rents or tolls. It was known that the former Omanhene had in fact assented to other sales of land. Indeed it was known that he and the Odikro of Chempaw had collaborated in selling lands. By reason of these various circumstances it was reasonable and permissible for the court to interfere and to arrive at the conclusion that have had been knowledge in the consent by the Paramount Stool. Having reached this conclusion their Lordships find it unnecessary to express any views in regard to the alternative contentions advanced by the respondent.

Their Lordships will therefore report to the President of Ghana as their opinion that the appeal should be dismissed and that the appellants should pay the costs.