James Town (Alata) Stool and Another v. Sempe Stool and Another

[1989-90] GLR 393.

Supreme Court, Accra

31 July, 1990

Appeal against the decision of the Court of Apeal reversing the judgment of Acolatse J at the Divisional Court in an action for, inter alia, declaration of title to James Town stool land.

AMUA–SEKYI JSC. The James Town stool has under it three quarters or sections, the occupant of the Alata stool is also the occupant of the James Town stool. The quarters of Alata, Akumajay and Sempe are individually and collectively under the Ga Mantse, and with the quarters of Abola, Asere, Gbese and Otublohum in Ussher Town constitute what is known as Ga-Mashi. The people of James Town lived under the shadow of the English who had entrenched themselves in the James Fort, and those of Ussher Town attached themselves to the Dutch in Ussher Fort.

The claim of the Alata stool to paramountcy over those of Akumajay and Sempe was contested in *Ababio IV v Quartey* (1916) PC '74–'28, 40. In the trial cour, Ababio had obtained judgment against the defendants, who were subjects of Asere, in trespass over land at Oblogo. On appeal he was non-suited by the Full Court on the ground that his claim to represent all the three quarters of James Town was disputed by Akumajay and Sempe. On a further appeal to the Privy Council, the Full Court was directed to make any necessary amendment and deal with the real matter in controversy between the parties. The court comprising Smyly CJ, Watson and Porter JJ found that the claim of Ababio to be James Town Mantse had been established and affirmed the finding of trespass made against the defendants.

Oblogo lies just outside the land in dispute in this case; but Korle Gonno, Korle Bu, Odorkor, Sabon Zongo and Dansoman are within it. All these lands have been lumped together and given the broad name of Lartebiokorshie. They lie on the west of the Korle Lagoon and extend to the Sakumo Lagoon. They may safely be taken to be James Town stool lands; but the question is, to which of the three quarters do they actually belong?

The actions started as a contest between the Crabbe family of Alata and some subjects od Sempe in the Ga Native Court. The suits were transferred to the Divisional Court where the trial took place before Acolatse J with the Alata and Sempe stools as the real contesting parties. The result was the preditable one that Acolatse J found that each stool had proved that certain parts of the land were in their use and occupation. Doing the best he could be adjudged each stool to be the owner of the land so occupied.

Acolatse J delivered his judgment on 10 May 1963. by section 8(1)(a) of the Courts Act, 1960 (CA 9), the parties could appeal as of right to the then

Supreme Court. The Crabbe family and the Alata stool lodged appeals against the judgment on 22 June and 6 August 1963 respectively. The defendants filed np cross-appeal, but five years later, on 23 April 1968, with the appeal still unheard, they gave notice under rule 16 (1) of the supreme Court [Court of Appeal] Rules, 1962 (LI 218) of their intention to contend at the hearing that the judgment be varied.

Before the appeal could be heard, number of important constitutional developments took place. First, the Supreme Court set up under CA 9 was abolished by paragraph 95 of the Court Decree, 1966 (NLCD 84). Under paragraph 1, a Court of Appeal replaced the Supreme Court as the highest court of the land. Then with the coming into force of a new Constitution on 23 August 1969, the Court of Appeal established by NLCD 84 was abolished and replaced by a Court of Appeal above which was a new Supreme Court. The appeal against the judgment of Acolatse J came before this Court of Appeal which on 13 July 1970 delivered a judgment dismissing the appeal of the Crabbe family and the Alata stool and varying the judgment in favour of the Sempe stool.

Although a further appeal lay to the Supreme Court under article 105 (1)(*a*) of the Constitution, 1969 the modalities for exercising that right were not finally determined until the Supreme Court Rules, 1970 (CI 13) and the Courts Act, 1971 (Act 372) came into. Article 105 (1)(*a*) of the Constitution, 1969 provided as follows:

> "105. (1) An appeal shall lie from a judgment decree or order of the Court of Appeal to the Supreme Court,
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> (a) as of right, in any civil cause or matter where the amount or value of the subject matter pf dispute is not less than such an amount as may be determined by Parliament . . . "

Act 372, s 3 (1) (*a*) also provided:

> "3. (1) An appeal shall lie from a judgment, decree or of the Court of Appeal to the Supreme Court—
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> (a) as of right, in any civil cause or matter where the amount or value of the subject matter of the dispute or amount awarded or confirmed by the Court of Appeal is not less N¢10,000."

The accrual of the right of appeal was governed by 72 (1) of CI 12 which provided:

> "72. (1) Subject to the provision (2) of section 13 of Part IV of the First Schedule to the Constitution, and notwithstanding any other provisions of these Rules, the right of any person to bring an action in, or to appeal to, the Court in any cause or matter, civil or criminal, conferred by the Constitution or by any other law which has accrued at any time,

(a) after the coming into force of the Constitution; and
(b) before the coming into force of these Rules, shall be deemed, for the purpose of these Rules, to have accrued on the coming into force of these Rules."

Section 13 (2) of Part IV of the First Schedule to the Constitution, 1969 was inapplicable as it dealt with matter pending before the full bench of the defunct Court of Appeal. And as to the time within which the appeal may be brought rule 72 (2) of CI 13 provided:

> "(2) Pursuant to the provisions of the immediately preceding subrule the time within which any such person may bring an action in, or to appeal to the Court shall be calculated from the date of the coming into force of these Rules."

In *Hammond v Odoi* [1972] 2 GLR 459, CA, it was argued that the commencement date of CI 13 was 25 March 1971. the court rejected this and said the date was 16 March 1971. When the appeal came up for hearing in the Supreme Court: see *Hammond v Odoi* [1982-83] GLR 1215, SC Aseda SC expressed the opinion that the correct date was 25 March 1971. For our purposes, however, the point is academic as the Alata stool having lodged their appeal to the Supreme Court on 8 April 1971 were well within the three months laid down by rule 8 (1) of CI 13.

The appeal was pending before the Supreme Court of the Constitution, 1969 when that court was abolished by the Courts (Amendment) Decree, 1972 (NRCD 101). By section 3 (2) (d) of the Decree the appeal became pending as a review before a revived full bench of the Court of Appeal. As it happened, the review was not heard, and continued to gather dust in the registry until the full bench was again abolished and replaced by the present Supreme Court. By section 5 of the First Schedule to the Constitution, 1979 the review became pending as an appeal before this court.

Coming to the merits of the appeal, it will be observed that Acolatse J who tried the suit had no doubts whatsoever as to how title to land in Accra was to be proved. He said:

> "The claim by each stool must be proved as to which of the two stools has the predominance of its subjects on the land. The test to apply in this case is the principle enunciated in *Anege Akue v Mantse Kojo Ababio IV* by the Privy Council judgment No 101 of 1924 [(1927) '74–'28, 99]. It states that by the custom of the Ga tribe land which had exclusively used by the inhabitants of a particular quarter belonged exclusively to that quarter."

The court of Appeal by its judgment (see *Crabbe II v Quaye; Crabbe v Boye (Consolidated)*, Court of Appeal ,31 July 1970, unreported) refused to accept this and suggested that the proper yardstick by which to determine the rights of the parties was that of original acquisotopm, They said, per Apaloo JA(as he then was):

> "The learned trial judge apparently unable to determine which of the two contesting stools was allodial owner of the disputed land fell on the principle enunciated in *Anege Akue v Mantse Kojo Ababio IV* by the Privy Council that 'by the custom of the Ga tribe land which had been exclusively used by the inhabitants of a particular quarter belonged exclusively to that quarter.' The dispute in this case is not about quarter lands and it is impossible to say on the evidence that any particular portion of the land in dispute was exclusively used by any of the contesting stools or its subjects. The learned trial judge erroneously thinking this was the case, partitioned the land in a manner neither side sought to justify. It was complained on behalf of the co–plaintiff stool that the judge was wrong in adopting this test as it could only be restored to 'when there is doubt as to who originally was the owner of the land in dispute.' With this complaint counsel for the co–defendant stool agreed. We share the unanimity of counsel on this but as we have, unlike the learned trial judge, decided who was and is the original owner of the land in dispute this test ceases to have any relevance."

On the finding of fact that neither stool had shown that it was in exclusive possession of the whole land the Court of Appeal was in full agreement with the trial court. If therefore Acolatse J applied the proper test then the interference of the Court of Appeal with his judgment cannot be justified.

Before I deal with *Akue v Ababio IV* (1927) PC '74–'28, 99, I think I ought to consider three cases which were decided earlier in time. In *Solomon v Noye*, 25 May 1880, unreported, referred to in *Kwaku v Brown* (1913) Ren 683, the plaintiff was the James Town Mantse, and he sued on behalf of the three quarters. The dispure wass over land at Marko on the west of the Korle Lagoon. Even though the Akumajay Mantse gave evidence that the land belonged to the Asere quarter, judgment was given in favour of Solomon upon proof that Freeman, his grantee, had been in undisputed possession of the land for over twenty years.

In *Kwaku (Tetteh) v Brown (Kpakpo)* D Ct 25 April 1912, unreported, the Ga Mantse had, on behalf of the four quarters of Ussher Town as well as Akumajay and Sempe granted permission to Kwaku, an Abola subject, to build a house at Chorkor on the West of the Korle Lagoon. The Alata quarter of James Town objected and had the building razed to the ground. Dismissing an action for trespass brought by Kwaku against the Alata subjects, Griffith C J made this all–important pronouncement relative to the land law of the Ga people of Accra. He said:

> "At the present day the land on the land on the other side of the Korle Lagoon is dotted with farms belonging to the James Town people, most of the farms appearing to belong to Alata; no doubt many have been kmade quite lately but some of the Alatas have not only farmed on the land on the other side of Korle for years but with

> the consent of the Alata Mantse, have built houses thereon and they have not been in any way disturbed . . .
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> In a case of this sort I am not much concerned as to how this possession came about. Until comparatively recently all the land around and about Accra and the other towns was waste land; people dare not live outside towns in unprotected villages as they would have been in great danger of capture by marauding natives. Questions of the ownership of land were probably never raised unless some European wanted a piece of land whereon to build a fort or factory and as the forts and factories were always built close to some town there could have been rarely any question as to whom such land belonged. In the early days I doubt whether the Aseres would have claimed any land, except what was quiet close to their quarters, there was no need to claim any land, it was all common property . . .
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> Where there is so much doubt, so much uncertainty, so much indefiniteness and where land has until recently been practically of no value all that the court can do, what they ought to do is to accept accomplished facts, and, whatever may have been the state of things two hundred years recognized that James Town collectively owns land on other side of Korle."

He held that by their exclusive possession of the land for many years the three quarters of James Town had acquired title to the land and that the consent of the Alata Mantse was necessary for the grant made to Kwaku.

In *Hammond v Ababio IV* (1912) D & F ''11–' 16, 17, the Asere Mantse challenged a grant made by the Alata Mantse to the Hausa community of land at Sabon Zongo. The Asere Mantse had the support of the four quarters of Ussher Town as well as of Akumajay and Sempe in his claim that his stool was the original owner of the land. The suit came before Smyly CJ who declared that the traditional histories of the various stools of Accra were so inconsistent and afforded so little help that all he could do was. "to come to existing facts and see whether the plaintiff has made out such a title by occupation as distinct from the alleged historical title as would justify me in granting him a declaration of title to the land in dispute."

He held that by such an examination the plaintiff, Hammond, had failed to make out the title of the Asere stool to the land.

These three cases decided that ownership of land outside Ussher Town and James Town is to be determined, not by alleged historical title, but by proof that the land was in the use and occupation of the subjects of the quarters. What *Akue v Ababio IV* (supra) did was to put the matter beyond argument by placing the seal of the Privy Council on these pronouncements of the Divisional Court. It began as an inquiry into a claim by Sempe to compensation for land acquired at Weija (called Weshing at the time). It is known as the *Accra Water Works Enquiry* and although tried in the Divisional Court before Smyly CJ is

reported in (1919) FC 64. The opposer was the Alata stool. At 90 Smyly CJ said:

> "I am forced to the conclusion that the Opposer has made out a clear case that the Weshiang lands and the land at Domiabra Amanfro and Afuamang were exclusively used and occupied by the Alatas, and in accordance with the Custom, as proved by the evidence, as to usage ansd custom of the Gas in James Town, namely that the land so used by a particular quarter belongs to that quarter. I give judgment for the Opposer."

On appeal to the Full Court *sub nom Mantse Anege Akue v Mantse Kojo Ababio IV*, Aitken Ag J deplored "the mass of worthless and obviously perjured evidence adduced before the court in this enquiry", adding "I for one am determined to rely on accomplished facts where nearly everything else is lies." Michelin J and Gardiner/Smith Ag J expressed similar views and the appeal was dismissed. In the Privy Council, '74–'28, 99, the traditional history, in so far as it was undisputed, and the law were stated thus at 100-101:

> "According to a tradition which appears to accepted by both sides, the Alata people came into the country with one Wetse Kojo from Lagos in or about the year 1642. They assisted the Sempe and Akumaji people in their wars with a neighbouring tribe, and as the result the lands of the Sempe and Akumaji people were placed under the stool of Wetse Kojo, and he and his successors thus became not only Manches of Alata, but also Manches of James Town.
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> It was found as a fact by both Courts in the Colony that the lands in question were exclusively used and occupied by the Alatas, and it was admitted by counsel for the appellant that the finding means that these lands were originally settled by the Alatas, the several villages and so forth being founded by them. This finding is accepted by the appellant.
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> It was further found by both Courts that the custom of the Ga tribe land which had been exclusively used by the inhabitants of a particular quarter of James Town belonged exclusively to that quarter.
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> At the trial, the consent appears to have been mainly reference to the question of the exclusively use and occupation by the Alatas, and it does not seem to have been seriously disputed that if this were established the result mentioned above would follow."

The appeal was dismissed, and the law has stood thus ever since. The court of Appeal in the instant appeal gave two reasons for rejecting this time–honoured test. They are first, that it applies to quarter lands only; and, secondly, there is doubt as to which of the traditional histories is true. The first is clearly untenable because apart from a few family holdings all lands in Accra are quarter

lands in the sense of being owned by one or other of the seven quarters rather than by the Ga State. As to the second, the Court of Appeal admitted that the traditional histories were irreconcilable. There was nothing new in this as the tradition of conquest by the Alatas and of original settlement by the other Ga quarters had been gone into and found wanting by the trial judge and by other judges in *Kwaku v Brown* (supra). *Hammond v Ababio IV* (supra) and *Akue v Ababio IV* (supra). The resulting position was summed up by Griffith CJ in *Kwaku v Brown* (supra) in these words:

> "The Aseres were the first occupiers of Accra therefore they were originally recognized as the owners of all the land round about Accra; then the Sempes and Akumajes separated themselves from the Aseres amongst who they had come to live with and located themselves on the other side of Korle Lagoon therefore they were recognized as the owners of certain lands at the other side of Korle which used up to that time, to be regarded as Asere land [this the plaintiff admits]: then the Sempes recrossed the lagoon and took up their quarters between the Aseres and the Korle Lagoon therefore they were recognized to be the owners of the contiguous lands which had up to that time belonged to Asere [this the plaintiff admits]: then the Alatas, Sempes and Akumajes united under British protection and, two centuries after the Alatas came, we find the Alata Mantse recognized as the Paramount Chief of James Town claiming holding and giving and permitting the farming and occupation of land on the other side of Korle."

In my view, it was wrong for the Court of Appeal to deal with the matter as though the question had never arisen before. The entire community of Ga–speaking people were immigrants who lived in the shadow of the Dutch, English and Danish forts and under their protection. It is no use pointing a finger at Wetse Kojo and his Alata followers as being foreigners who came here with nothing. The Asere, too brought nothing with them. Therefore, applying Ga custom to the conflicting claims of Alata and Sempe to ownership of all the landbetween the Korle and Sakumo Lagoons, the decision must be, as the trial judge and the Court of Appeal found, that neither stool had proved their case.

A considerable part of the argument before us was concerned with the plea of estopped. It was contended on behalf of the appellants that the Sempe stool were estopped by conduct and *per rem judicatam* from claiming title to the land. The first was pleaded in paragraph 4 of the reply of the Crabbe family and alleged that in *Hammond v Ababio IV* (supra) the Sempe stool had taken sides with the Asere stool. It was repeated in the pleading filed on behalf of the Alata stool. It appears that the Ga Mantse had convened a meeting of all his chiefs, except the Alata Mantse, at which it was agreed that the Asere stool should challenge the right of the Alata Mantse to to make a grant of part of Lartebiokorshie land to the Hausa community. The allegation is no doubt true, but I fail to see how Sempe can be estopped when the Alata stool defended the action as the representative of all the three quarters of James Town.

The second was not specifically pleaded, although in a document filed in the suit notice of intention to seek leave to amend so as to plead it was given. Whether the failure to seek leave was deliberate, as the Court of Appeal declared, or inadvertent, as counsel for the Alata stool suggested, is neither here nor there as the estopped raised would in any case have failed. In *Kwaku v Brown* (supra) the Alata subjects defended the suit in the right of all the three quarters of James Town. Then there is *Akue v Ababio IV* (supra) which adjudged the Alata stool to be entitled to compensation for the land acquired at Weija. However, as Weija is outside the land now in dispute, its bearing on these consolidated cases must be minimal; but it does prove wrong the the assertion by the Court of Appeal that the principles of Ga customary law enunciated therein apply only to quarter lands. Both Weija and Oblogo lie to the north of Lartebiorkoshie and are farther away from James Town. If the law applies in these far-away places then it does at Lartebiorkoshie which is nearer home.

The position of the Akumajays needs to be clarified. They claimed an interest in the land as subjects of the James Town stool. They also asserted that part of their land known as Opete Kpakpo was within the area in dispute. This land had been the subject of litigation between the Akumajay stool and the Abossey Okai family in the Divisional Court in 1945 when McCarthy J found in favour of the stool. That judgment was affirmed by the West African Court of Appeal and the Privy Council *sub nom Nii Abossey Okai II v Nii Ayikai II* (1950) 12 WACA 31 at 37. Surprisingly, the Akumajay stool did not apply to be joined in the present suit until rather late in the day when it could be said with justification that to permit them to do so would unduly delay the trial. Thus, they were compelled to stand by and watch the Alata and Sempe stools' contest for ownership of this large tract of land which included part of their own.

The decision of Acolatse J to parcel out the land between the contesting stools was severely criticized by the Court of Appeal which seemed to think that a finding as to ownership of the whole land ought to have been made in favour of one or the other stool. There was no reason why he should have done so. Both the claim and the counterclaim were for a declaration of title. Such a claim is not only to the whole land but also to every part of it. Therefore, if the court finds that each of the two contesting stools have proved their title to only part of the land it ought to say so and grant a declaration of title to that part. To dismiss the suit in its entirety would be to encourage multiplicity of suits as each stool would be obliged to issue a fresh writ in order to obtain title to the part found to belong to them in the first action. I would therefore allow each stool so much of the land in dispute as Acolatse J found in their favour. If the boundaries are uncertain they are at liberty to apply to the High Court for the appointment of a surveyor to demarcate the areas for them. It follows that the appeal succeeds and the judgment of the Court of Appeal dated 31 July 1970 is hereby set aside.

WUAKU JSC. I will preface my judgment with two quotations. The first is from the Privy Council's judgment delivered on 16 June 1927 in the case of

Akue v Ababio IV (1927) '74–'28, 99 at 100. Akue is variously spelt as Akwei or Acquaye. The passage reads:

> "The town of Accra consists of three divisions, of which one is James Town. Each division has a Manche, or chief, who is himself subordinate to a superior chief called the Ga Manche. The respondent is the Manche of James Town.
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> James Town is divided into three quarters, known as Sempe, Akumaji and Alat respectively, each with its own Manche subordinate to the Manche of James Town. The appellant is the Manche of Sempe. The respondent, as Manche of James Town, claims to have vested in him all property belonging to any of the three stools of Sempe, Akumaji and Alata. This claim was formerly disputed by the Manche of Sempe, but was upheld by a judgment of the Full Court in an action by the present respondent against one Quarter."

The other quotation is from the statement by the Crown Counsel, Mr. Coussey, on 16 March 1932 in *Re: Land Acquired for Services of Gold Coast Colony; Sempe Manche and others* [otherwise known as the *Tipping Depot Case*] tendered in the proceedings as exhibit M. In his opening statement he said:

> "The land subject matter of this acquisition has been acquired by Government from Manche Ababio IV of James Town through whom, they now claim. There are three quarters or stools in James Town, (a) the Alata stool, (b) the Sempe stool and (c) the Akumaji stool. Manche Ababio IV besides being the occupant of the Alata stool is also James Town Manche and Head of the three quarters or stools of James Town. This fact has been denied at various times by the Sempes and Akumjis but supported by judgments of this court and also by findings of the Commission of 1893 for Enquiring into Constitution of the Ga State."

It will be observed that the James Town Mantse has dual capacity. As James Town Mantse, he is the head chief of the three quarters, namely Sempe, Akumajay and Alata, and with regard to the Alata quarter, he is their Mantse and by the judgment in *Akue v Ababio IV* (supra) all property belonging to any of the three quarters is vested in him. My brother Amua–Sekyi JSC has delt more or less with the history of James Town, its lands and previous litigations concerning the same. In this judgment I prefer to use the nomenclature "James Town lands" because it was the one commonly used in almost all the previous proceedings. The Alata Mantse in his capacity as James Town Mantse had in various suits defended the title of James Town lands even though opposed by Akumajay and Sempe. Thus in about 1880 in the case of *Solomon v Noye*, 25 May 1880, unreported, the plaintiff claimed a piece of land called Makaw, as James Town stool land. So also in about 1912, in *Hammond v Ababio IV* (1912)

D & F '110-'16, 17 the defendant, Mantse Ababio, defended the action as James Town Mantse in a dispute involving a piece of land being part of Lartebiokorshie land as land within James Town lands. In that case learned counsel for the defendant, Mr. Mannerman addressing the court for the defendants stated that the "Land in dispute forms a portion of land belonging to the Sempes, Akumajes and Alatas" and that the Alata Mantse was head chief or king. There is also the case of *Ababio IV v Quartey* (1916) PC '74–'28, 40, the action was one for trespass brought by Mantse Kojo Ababio, suing as Mantse of James Town lands. Even in the case of *Akue v Ababio IV* (supra) Ababio IV claimed the money representing the purchase money paid by the government for certain lands taken by the government for puplic purposes as Mantse of James Town and also as the Mantse of Alata and asserted that he, as Mantse of Alata, was solely entitled to the fund on behalf of the Alatas.

In the proceedings on appeal before us and for first time, the court was called upon to determine as between the Sempe stool and the Alata stool, which stool had acquired the allodial title title to the hitherto James Town lands. The main issues agreed for the trial were therefore these:

(1) Whether the said lands comprised in this consolidated action are James Town *Alata stool lands* or *Sempe stool lands*.

(2) If the said lands are James Town *Alata stool lands*, then whether or not the said stool has granted the said land to the parties claiming title to the lands through the *James Town Alata stool* or whether they are caretakers or licensees on the said lands.

(3) If the said land belongs to the *James Town Alata stool* then whether or not the conduct of the parties claiming through the *Sempe stool* and their grantees is tantamount to a defiance of the said stool's title in the said lands entitling their interest to be forfeited by the said stool.

(4) If the said lands belong to the *James Town Alata stool*, then whether or not the grants to the parties claiming through the Sempe stool are void."

(The emphasis is mine.)

At the end of the trial Acolatse J. dismissed the claims by the co–plaintiff and co–defendant stools for title and held that the claim by each stool must be proved as to which of the two stools has the predominance of its subjects on the land. The test to apply in that case was the principle enunciated in *Akue v Ababio IV* (supra) by the Privy Council. Thereafter the learned judge proceeded to give portions of the disputed land which was exclusively under the stools of Alata and Sempe to each stool. He gave judgment with costs for the defendants in suit numbers 22/48 and 25/48 and the plaintiff in suit number 30/53 with costs. The co–plaintiff and co–defendant were to bear their own consts.

The plaintiff, Nii Yaw Duade Crabbe III and the co–plaintiff, Nii Adja Kwao II, James Town Mantse, appealed against part of the judgment. The

co–defendant, Nii tetteh Kpeshie II, Sempe Mantse, did not cross-appeal, but asked the judgment to be varied in his fovour. Several grounds of appeal were argued and in particular that the principles enunciated in *Akue v Ababio IV* (supra) did not apply and that that authority would apply only if there was doubt but not where there is evidence of origin of title. It was argued that the evidence of conquest was so clear that it settled the question who had acquired the allodidial title. In other words learned counsel had argued that it was wrong for the learned trial judge to have apportioned the land instead of granting absolute title to the co–plaintiff. Learned counsel for the co–defendant also argued that the co–plaintiff's claims to title based on conquest must fail if he failed to prove conquest and the claim of Sampe to title based on original settlement, if proved to succeed. He further stressed that "No apportionment should be made because no title should be given on title not sought."

It must be noted that learned counsel for the parties had agreed that the Court of Appeal should itself evaluate the evidence and to make its own findings. To crown it all, both the Alata and Sempe stools asked for leave to amend their respective claims to include the area of land claimed in their evidence but which was outside the original claim. The Court of Appeal acceded to the request.

The Court of Appeal dismissed the appeals by the co–plaintiff and the co–defendant and as argued by counsel for the parties, the judgment of the High Court was varied by deleting from the judgment such parts of it which apportioned various portions of the disputed land to the co–plaintiff and the co–defendant stools. The prayer for variation by the co–defendant was granted and also declaration of title to the area in dispute shown on the plan, exhibit D, and thereon edged green. Costs were also awarded in favour of the co–defendant against the co–plaintiff.

Against the Court of Appeal's judgment, only the co–plaintiff, Nii Adja Kwao II, James Town mantse, has appealed to this court. A great deal of industry was put in the preparation of the appeal by learned counsel for the appellant. Nonetheless, I think that the efforts of counsel are not rewarded as they might wish for, because of the view we have taken of the appeal.

The history of James Town shows clearly that three quarters constitute James Town, namely Akumajay, Alata and Sempe and that their "property" is vested in the James Town Mantse. See *Akue v Ababio IV* (supra). Each quarter can only claim ownership to an area which is in its exclusive possession. It will be wrong for any of the three stools to claim for itself the allodial title to all James Town lands. Upon that, l am also of the view that for the several reasons given above the appeal should be allowed.

The appeal succeeds not on the ground canvassed by the appellant. The co–defendant–respondent agreed with the appellant for the amendment in Court of Appeal for a claim by each side for a declaration of title which was refused by the High Court and also for setting aside of the apportionment which we rule was wrong and as we have restored the judgment of Acolatse J, I would award costs to neither party. Each party to bear his own costs. Any costs awarded in fovour of the co–defendant pursuant to the judgment of the Court of Appeal is to be refunded.

Because of the view taken of the appeal by us, I do not think that it is necessary to consider the many points raised in the appeal. I would however say that a party wishing to seek leave to amend in this court, should come by way of motion supported by an affidavit disclosing sufficient ground and the intended amendment should not be embodied in the party's statement and argued as if it has been granted before applying. The rules committee may have to consider this matter and give the proper direction.

FRANCOIS JSC. I agree with the two opinions read and have nothing useful to add.

OSEI–HWERE JSC. I agree.

AIKINS JSC. I also agree.

Appeal allowed.
L K A