PRIVY COUNCIL

Effuah Amissah

Vs.

Effuah Krabah

Privy Council Appeal No.136 of 1931
(Lords Atkin, Alness and Maugham JJ.)

03.03.1936

JUDGMENT

LORD MAUGHAM J.

1. The claim of the Appellant in this case for herself and as representing the members of the family of Awooah Alookoo was in effect for a declaration that the members of the family of Awooah Alookoo are the owners of a number of specified lands and villages and of the lands and town of Dutch Seccondee, a town in the Western Province of the Gold Coast Colony, and for an account of all moneys and profits received by the defendants on account of, or out of, the said lands, villages and town from 1st January 1918, and also for an order upon the defendants to deliver up a stool described in the statement of claim as "the native state stool" and certain paraphernalia in the possession or custody of the defendants. The defendants (thirty-two in number) included the defendant Segu Winwah 2, the Ohene or chief of Dutch Seccondee, who was admittedly in actual possession of the state or town stool of Dutch Seccondee, together with the paraphernalia thereof and in possession in a certain limited sense of the lands of Dutch Seccondee district, claimed by the defendants to be attached to the state stool. The other defendants-were Odikroes or headmen under the stool of Dutch Seccondee or elders and councillors of that stool. Such of defendants as are Odikroes were respectively in immediate possession of the named villages claimed by the plaintiffs all of which villages are in Dutch Seccondee district. The plaintiffs named in the writ claimed to be acting for themselves and also on behalf of the members of the family of Awooah Alookoo, who is said to have founded Dutch Seccondee more than 200 years ago. There were three other persons who joined in the action with Effuah Amissah, but these persons are now dead and Effuah Amissah was the only surviving

appellant before their Lordships. Dutch Seccondee (or Sekondi) is now a town of some importance situate in Ashanta, a sea coast state of the Gold Coast.

2. The natives are Fantis, and speak a dialect of the Fanti language. The land law in the Colony is based upon native customs, and as pointed out in a judgment of this Board delivered by Sir Arthur Channell, in *Kobin Angu v. Cudjoe Attah (unreported P.G. Appeal No. 78 of 1915.)* the material customs must be proved in the first instance by calling witnesses acquainted with them until the particular customs have, by frequent proof in the Courts, become so notorious that the Courts take judicial notice of them. Their Lordships have not been informed of any customary law so established ; and they may observe that it would be very convenient if the Courts in West Africa in suitable cases would rule as to the native customs of which they think it proper to take judicial notice specifying, of course, the tribes (or districts) concerned and taking steps to see that these rulings are reported in a readily accessible form. In the present case, however it is common ground that it is part of the Fanti customary law that lands may be attached to the stool of an Ohene, or to the stool of a family; and no doubt (as appears from other cases) there may be privately owned lands. Further a Fanti family consists, subject to immaterial exceptions, of persons lineally descended through females from a common ancestress. A stool is not only a chattel, but it also connotes an institution with a religious significance. Certain paraphernalia or regalia, e.g., messenger sticks, state umbrellas and state drums go with the state stool and play an important part in a number of native ceremonies. The occupant of a stool is not regarded as the owner of the lands attached to it, but as being in some sense a trustee for the clan, tribe or family subject to the stool. He may be destooled, and if he is detected, the lands and regalia will remain with the stool. The Ohene as occupant of a state stool and an Odikro as occupant of a subordinate stool have certain judicial and administrative powers. Some moneys or profits accrue to the occupant of a stool, but in the present case their nature was left undefined. They seem to arise mainly in connection with sales or leases of stool lands, which take place in the case of a state or town stool with the consent of the Oheno, the elders and the councillors.

3. The evidence as to the consents necessary in the case of a family stool was left in some uncertainty. If the state stool incurs a debt all the subsidiary stools are bound to contribute their share in payment. If it is the debt of a family stool, only the family is liable. The distinction, if any, between a state stool and a town stool was not dealt with in the evidence. At the trial native witnesses for the defendants described the stool in question as "the big stool," or the "town stool." Nothing turns in this case on the name.

So much was proved or admitted or was common ground in the present case. One other admitted fact is of importance, namely, that the Ohene of Dutch Seccondee district must be a member of the Abrahiam Abradzie family.

4. The trial took place before Dalton, J., at a Divisional Court hold at Seccondee as long ago as the year 1923. The learned Judge dismissed the action on two grounds, first, that the plaintiffs were estopped by a judgment of Gough, J., in 1909, which operated as res judicata, and secondly that on the evidence they had failed to prove their case. There was an appeal to the Supreme Court of the Gold Coast Colony, Eastern Province; and at the Full Court held at Accra on 6th June 1929, the appeal was dismissed on the ground of res judicata. Final leave to appeal to His Majesty in Council was granted on 20th June 1931, but owing, it is said, to delays on the part of the appellant the appeal was not heard before their Lordships till the month of January 1936. Without attempting to apportion the blame for these extraordinary delays, their Lordships must express their regret that the action was not long ago and finally disposed of. At the trial before the learned Judge the plaintiffs' case was that there were two separate and distinct stools, the stool of Awooah Alookoo and the stool of Dutch Seccondee, and they alleged that the family of Awooah Alookoo was a branch of a larger family called the Abrahiam Abradzie family. The lands they claimed-practically all the lands in the Dutch Seccondee district which had not become private property - were, they asserted, attached to the stool of Awooah Alookoo and not to the state or town stool of Dutch Seccondee, of which the defendant, Segu Winwah 2, was the occupant. They also contended that this person was not the lawful Ohene, as he was not a blood member of the Abrahiam Abradzie family but the descendant of a domestic of that house.

5. The two questions of pedigree occasioned no difficulty. The learned Judge held that the alleged two families were one and the same, both being descended from Awooah Alookoo, the founder of the family, and that there was no evidence that the Abradzie family was a wider group than the family of Awooah Alookoo. He also held it to be clearly proved that Segu Winwah 2 and his predecessor on the stool, Annessie 2, were blood descendants of the Abrahiam Abradzie family. Evidence as to the election and installation of Segu Winwah 2 as Ohene of Dutch Seccondee was given by the production of a statement dated 12th January 1922 under Section 7 of the Chief Ordiance, 1904 signed by the Secretary for Native Affairs. There remained the question whether the lands in question were attached to the town or state stool of that place or to the family stool, if any, of Awooah Alookoo. The first defence was that the

appellant and other plaintiffs were estopped from alleging that the lands were attached to the family stool by a judgment of Gough, J., dated the 18th October 1909, and were estopped by proceedings before District Commissioner White in 1905, from disputing the title of the Ohene to the stool of Dutch Seccondee and the lands attached to it Dalton, J., acceded to the view that the judgment of Gough, J., effected an estoppel. On the appeal to the Full Court the same view prevailed. The appellant has contended before their Lordships that there was in the circumstances no res judicata. This therefore is the first point to be considered.

6. The decision of Gough, J., which was dated 18th October 1909, was given in three actions which by consent were heard together. In the first action the plaintiffs, three persons, Kweku Enoo, Kobina Tsia Effuah and T.E. Jobson, claiming to be members of the Abrahiam Abradzie family, sought on behalf of that family against the defendants, who included Annesi 2, the Ohene then occupying the state stool of Dutch Seccondee, and certain headmen, a declaration that they were entitled to a onethird share of the rents and profits of the lands of the stool and they claimed an account. The two other actions were brought against the defendant Kuma alone in respect of two small pieces of land which were also claimed to be lands attached to the Abrahiam Abradzie stool. The plaintiffs contended that the lands attached or supposed to be attached to the stool of Dutch Seccondee were the property of the Abrahiam Abradzie family and that by the native law the said family were entitled to one-third of the revenues arising from the leasing or sale of the stool lands, and accordingly that they were entitled to call upon the Ohene and his counsellors for an account of the said revenues. They alleged that they as plaintiffs were members of the Abrahiam Abradzie family and were authorised by the family to bring the actions.

7. The defendants on the other hand contended, as the respondents have contended on the present appeal, that the lands attached to the stool of Dutch Seccondee were not the property of the Abrahiam Abradzie family and that the stool of Dutch Seccondee was a town stool, not a family stool. They further contended that the plaintiffs did not represent the Abrahiam Abradzie family and were not authorised by the family to bring the actions. It should be added that there were no pleadings in the actions and their Lordships have taken the issues which were involved from the judgment of Gough, J. It will be noted that the questions involved, though not identical, were in some respects similar to the questions involved in the action now the subject of appeal. The three actions were dismissed. The lands in question were held to be attached to the town stool of Dutch Seccondee. The alleged native custom was not

proved. The land occupied by Kuma was held to be attached to the town stool. On the other hand, apart from the lands held by Kuma, there was no finding as to what lands were attached to the town stool and what lands to the family stool. The claim purported to be made on behalf of the Abrahiam Abradzie family and not on behalf of the Awooah Alookoo family, but as above stated this is a distinction without a difference.

8. One of the original plaintiffs in the present proceedings, Kobina Tsia Effuah, was also a plaintiff in the proceedings before Gough, J. It is, however, unnecessary to consider the effect which the judgment in the original action would have had either as a judgment in rem or as a judgment inter partes if it had been properly brought on behalf of the Abrahiam Abradzie family, because that question was clearly put in issue, and Gough, J., in his judgment stated that be was not satisfied that the claims asserted in the name of the three plaintiffs were genuinely passed by the Abrahiam Abradzie family collectively or that the family had authorised the three plaintiffs to bring the actions. This point seems to have escaped the notice of Dalton, J., and of the Full Court. In these circumstances it seems to their Lordships that it is impossible to hold as a matter of *res judicata* that the present members of the Awooah Alookoo or Abrahiam Abradzie family are estopped from asserting the claim which they have now made. Their Lordships do not doubt that an action by or on behalf of a family may result in a *res judicata* : see *Lingangowda v. Basangowda,* but such an action, if it is to bind absent or future members of the family, must be so constituted according to the local rules of procedure or by a representation order or in some other way that all such members can be regarded as represented before the Court. On appeal to the Full Court the learned Judges agreed with the trial Judge on the question of estoppel and on that ground dismissed the appeal. They stated however that although this decision made it unnecessary to go into the evidence it was not to be supposed that they did not agree with the findings of the Court below on the facts.

9. It therefore becomes the duty of their Lordships to consider whether the further decision of Dalton, J., on the questions of fact which he carefully considered and dealt with is correct. They have been referred in a fair and candid argument on behalf of the appellant to the whole of the evidence, and they have no hesitation in arriving at the same conclusion as the learned Judge. He had the advantage of seeing the witnesses most of whom were examined through an interpreter, and their Lordships would be slow to differ from his view as to the effect of such evidence in a case where the language used often has a local significance by no means identical with the English

words into which the native words are translated. Moreover, he has stated quite clearly that the evidence given for the defendants taken generally was far more satisfactory and convincing than that laid for the plaintiffs. Their Lordships observe that there were a number of defendants who stated positively that the lands in their possession as Odikroes were lands attached to the state or big stool, and that if they desired to deal with such lands they had to consult the Ohene of Dutch Seccondee and had never consulted with Effuah Amissah. On the other hand there was no evidence on behalf of the plaintiffs of any active assertion out of Court of a right to the lands in question. There were indeed some judgments, including that of Gough, J., above referred to, which, though not conclusive, were admissible in evidence as determining a question of public right and as evidence of reputation; but these, so far as relevant, were uniformly unfavourable to the plaintiffs' claim. It was in these circumstances inevitable that the claim by Effuah Amissah and her co-plaintiffs that the lands were attached to the family stool must fail. The final conclusions of the learned Judge were as follows:

> To recapitulate: the stool of Dutch Seccondee I find to be a town stool, upon which, however only blood members of the family of Abrahiam Abradzie can sit, that the lands claimed by the plaintiffs are attached to that stool. If there is any stool of Awooah Alookoo, and the plaintiffs have not satisfied me there is any such stool apart from the stool upon which Segu Winwah 2 sits, the lands claimed by plaintiffs are clearly not attached to it. They have failed to show that the defendants have wrongly dealt; with the lands they (plaintiffs) claim, they have failed to show that their consent and concurrence to such dealings with the land is necessary, or that they have any rights to the lands, or that the stool of Awooah Alookoo owned the lands for two hundred years or at all. It has in my opinion been satisfactorily proved that the defendant Segu Winwah 2 is in possession of the stool of Dutch Seccondee as Ohine of Dutch Seccondee, and that the lands claimed are attached to that stool. The other defendants who are Odikroes are in possession of the lands of their respective villages which are claimed by plaintiffs under the stool of Dutch Seccondee. The lands are not family lands but town lands, and are not attached to the Stool of Awooah Alookoo, if there is such a stool apart and distinct from the stool of Dutch Seccondee.

10. These conclusions were fully justified by the evidence, and their Lordships will accordingly humbly advise His Majesty that the appeal fails and should be dismissed with costs.

Appeal dismissed.

Cases Referred.

AIR 1927 PC 56= 101 IC 44=54 IA 122=51 Bom 450 (PC),