

BONAPARTE v. WALAKATAKA II (PRACTICE NOTE)

IN THE COURT OF APPEAL, ACCRA

10TH APRIL, 1972

CORAM: APALOO J.S.C., AMISSAH AND SOWAH JJ.A

Practice and procedure / Evidence / Visit of court to locus in quo / Impressions gathered on a visit to locus in quo / Weight to be attached thereto.

CASE SUMMARY

Apaloo J.S.C. delivered the judgment of the court. [His lordship reviewed the evidence in the case after the Court of Appeal had inspected the land, the subject-matter of the action for trespass and continued:] We think therefore that we ought to differ from the conclusion of the learned trial judge. But before doing so, we have given consideration to the caveat issued in such cases as Keteku v. Dzogbenuku (1956) 1 W.A.L.R. 134 and Dza v. Komla (1956) 1 W.A.L.R. 145; and in particular, Boakye v. Baabu (1956) 2 W.A.L R. 183 where the West African Court of Appeal warned against allowing the impressions, gained on a visit to the locus in quo, to replace the conclusions properly drawn from the evidence and the demeanour of the witnesses who gave it. But on the special facts of this case, we cannot accept that the demeanour of the interested witnesses, who testified in this case, can be a certain guide to the truth. In the conflict of evidence which ensued between the rival parties, the only neutral evidence and the safest indicator of the truth is the real and colourless evidence produced at the inspection.

In this connexion, we agree with the statement in the second holding of the headnote in Anto v. Mensah (1957) 3 W.A.L.R. 218 at p. 220, C.A. that:

"Although a Native Court should not allow their impressions, gathered on a visit to the locus in quo in a dispute concerning land, to become a substitute for the evidence they have heard in court, yet this is not to say that they should not attach to those impressions whatever weight they think appropriate in the circumstances of the case. Where plans are not tendered in evidence. a visit to the locus in quo will frequently form an effective and acceptable substitute for such plans and in these circumstances the impressions gathered by the members of the Native Court can be treated on the same lines as impressions gathered by them from the demeanour of witnesses in court."

DECISION

Accordingly, as we said, the impressions we gathered at the locus in quo support the appellant's evidence and wholly belie the respondent's. We conclude therefore that no hedge or coconut trees form the eastern boundary between the appellant's land and that of the respondent's family. We think therefore that the learned judge's contrary finding was wrong and ought to be reversed.

S. Y. B.-B.

COUNSEL

M. K. Ayisi for the appellant.

Ako Adjei for the respondent.