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CONTENTS

OF DOCUMENTS AND LITIGANTS
DISPUTES ON INHERITANCE IN ABETIFI - A TOWN OF COLONIAL GHANA

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Introduction[1]

In June of 1943, the Registrar of the Abetifi Native Tribunal recorded the following claim by plaintiff Ɔkyeame Kwame Ansong against defendant Kwaku Ansong in the record book of this small customary court in what is now Ghana:

> The plaintiff [Ɔkyeame Kwame Ansong] claims that defendant [Kwaku Ansong, should] show cause why the [plaintiff] is not liable to declare before the Tribunal that plaintiff is the bona fide and undisputed owner of all that piece or parcel of land situated being and lying at Oboyan near Abetifi (Presbyterian Mission Station) and bounded by the properties of the late Kofi Suoman, Madam Obyaa, late Madam Kru; a land with a compound house and its messuages and other appurtenances thereto built some time ago by the plaintiff for his mother Akosua Okyeraa late of Abetifi.[2]

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[1] I am grateful for financial support to conduct oral and archival research in Ghana (November 1992 to November 1993, and August to December 1994) from the Wenner-Gren Foundation (Gr. 5561), the John D. & Catherine T. McArthur Foundation, the Janggen-Pöhn Stiftung and Northwestern University. Many thanks also to Richard Abel, David L. Chambers, Gracia Clark, Lane Clark, David William Cohen, Steven Pierce, Renée Pittin and Lynn Thomas who commented on earlier versions of this paper, and to the participants in the Symposium on Law, Colonialism and Inheritance at Stanford University, May 10, 1996.

[2] Kwawu Traditional Council at Mpraeso (hereafter KTC), vol. 4: 190-210, Native

Both sides in this case agreed on the following events. About twenty years earlier, the plaintiff - an *Ɔkyeame* (spokesperson) of the *Adɔntenhene* of Kwawu[3] - had a house built at a cost of £52 for his late mother, Akosua Okyeraa, in the Christian Quarters of Abetifi. After his mother died, the *Ɔkyeame* made an attempt to sell the house in order to recover some of his debt. His brothers, however, did not permit the *Ɔkyeame* to part with the house. The brothers met under the mediation of their *abusua* (matrilineage) chief, *Akwamuhene* Kwabena Adofo, to find a compromise. One brother, Yao Charles, brought the *Ɔkyeame* £13, for which a receipt was issued, in order to cover some of the *Ɔkyeame*'s debt on the house. The receipt of £13 was presented to the Tribunal as crucial evidence of a money transaction between Yao Charles and the *Ɔkyeame*.

This dispute over the ownership of the house, as it was brought to the Tribunal, rested on two different readings of the receipt. The plaintiff, Ɔkyeame Ansong, saw the receipt as acknowledgement that Yao Charles, on behalf of his brothers and the *abusua*, had given him £13 to help repay the loan on the house. Since the brothers had contributed £13 to the outstanding debt, the house became, according to the *Ɔkyeame*, property of his whole *abusua*. The defendant, Kwaku Ansong, presented a different reading of this receipt to the Tribunal. He maintained that the receipt was a part-payment of £13 for the purchase of the house by Kwasi Akuamoa - one of the brothers of the *Ɔkyeame* - who had sent the money to the *Ɔkyeame* through Yao Charles; hence Kwasi Akuamoa had become the owner of the house. After this alleged sale of the disputed house, Kwasi Akuamoa had occupied the house with his wife and children until he died. The disputed house was inherited patrilineally - as defendant Kwaku Ansong explained to the Tribunal - by the children of the late Kwasi Akuamoa.[4] Defendant Kwaku Ansong was the brother-in-law of Kwasi Akuamoa; he represented the interests of the late Kwasi Akuamoa's children as their *wɔfa* (maternal uncle).

Kwaku Ansong's interpretation of ownership and succession was vehemently disputed

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Tribunal of the Adɔntenhene, Abetifi, *Ɔkyeame Kwame Ansong v Kwaku Ansong*, June 14, 1943 (hereafter *Ɔkyeame Kwame Ansong v Kwaku Ansong*). I am very thankful to Daasebrɛ Akuamoa Boateng II, Ɔmanhene of Kwawu, and Mr. E.A. Apeadu, Registrar of Kwawu Traditional Council, for providing me access to these customary court records.

[3] The *Adɔntenhene* of Kwawu is also the chief of Abetifi.

[4] Kwasi Akuamoa was a Presbyterian and lived within Christian Quarters of Abetifi. Rules of inheritance associated with Christian practice were applied after his death.

by the *Ɔkyeame*, who stated that the house was never sold and still belonged to his *abusua*. In order to underline his *abusua*'s claim, the *Ɔkyeame* had sworn an affidavit before the District Commissioner of Kwawu confirming the *abusua's* ownership of the house; the *Ɔkyeame* presented a copy of the affidavit to the Tribunal as evidence. The *Ɔkyeame* demanded that Kwaku Ansong prove the alleged sale of the house. This led the Tribunal to issue a summons calling Kwaku Ansong to testify, thereby initiating the present case.

This dispute about rights of succession in Abetifi calls attention to an ambiguous space in which people have maneuvered between two orders of inheritance throughout the twentieth century - one embedded in the matrilineal descent practiced among Akan people of Kwawu, the other established by the Presbyterian Church, the former Basel Mission. Both are part of a larger legal system created by colonial rule, elaborated and modified in post-independence Ghana. Such disputes concerning matters of inheritance were common among the people of Abetifi and frequently brought to the local Native Tribunal during the late colonial period. In this paper, based on close reading of *Ɔkyeame Kwame Ansong v Kwaku Ansong*, I explore conflicts over inheritance in Abetifi in the 1930s and 1940s.

The present discussion examines the experiences of cocoa farmers, traders and teachers with the colonial legal system in Kwawu, an area of small rural towns in the Ghanaian hinterland. The practices of litigants in the Native Tribunals of Kwawu are more representative of the involvement of most men and women with the colonial legal system in Ghana than those presented by Roger Gocking for the littoral towns of southern Ghana.[5] English common law was more widely practiced in the coastal towns than in the rural hinterland. Moreover, a professional class of lawyers had emerged since the late nineteenth century.[6] No lawyers were based in Kwawu during the 1930s and 1940s. Legal practices, as applied in inheritance disputes, tended to be more fluid and usually remained outside the scope of higher colonial courts, since decisions by Kwawu Native Tribunals were less likely to be appealed by professional lawyers.

All actors in the case, *Ɔkyeame Kwame Ansong v Kwaku Ansong*, were navigating between at least two different systems of inheritance. Their actions were grounded in a deeply historical understanding of the available options. In arguing their claims,

[5] In recent work, Gocking (1990; 1993) has focused on the construction of colonial law and on inheritance disputes among the 'educated classes' and 'intelligentsia' in the littoral towns of Ghana.

[6] Kimble (1963: 96ff.). For the interrelation between lawyers and the political economy in colonial Ghana, see Luckham (1981).

the litigants sought to create their own spaces in order to operate to their advantage. The present discussion aims to show how the various participants - the plaintiff and his witness and the defense, as well as the members of the Tribunal - worked within the intricacies of these two conflicting notions of inheritance. An analysis of a single case enables a close examination of domains of negotiation and contestation, even if they may not be explicitly addressed within the recorded proceedings. Such an approach reveals the social relations and legal options of the litigants, embedded within the larger historical context of Kwawu during the late colonial period. This discussion expands the case study method developed by legal anthropologists examining processes of dispute settlements. I have attempted to make the case study method more historical by scrutinizing the historical construction of the colonial legal system as it operated in Kwawu.[7]

In this paper, I am especially interested in the innovations wrought by the introduction of written documents to legal disputes conducted in and outside the courtroom at the Abetifi Native Tribunal. I will explore the operation, meaning and interpretation of written documents within this case, and then examine how the existence of these documents influenced legal strategies selected by the litigants. Hence, the paper also addresses issues dealing with the interconnections between orality and literacy as reflected in the legal proceedings at a small rural court in colonial Ghana.

Abetifi in Kwawu

The Akan state of Kwawu, about one hundred miles north of Accra, is mainly located on part of a mountain ridge, at times resembling a plateau, with spectacular scarps that stretch from the Volta river in the east to the Asante town of Mampong in the west. Kwawu also encompasses lands in the forest area south of the ridge, and portions of the savannah of the Afram plains north of it. Most larger Kwawu towns, including Abetifi, are situated on the ridge and enjoy a cooler climate than the surrounding lowlands. During much of the nineteenth century, Kwawu was part of greater Asante, the dominant power in pre-colonial Ghana. In 1875, following the British defeat of Asante and invasion of the Asante capital of Kumase, the Kwawu *Ɔmanhene* (paramount-chief) and his *ahene* (subchiefs) broke with their Asante overlord and welcomed the Basel Mission, which opened a church and a school in Abetifi. The Basel missionaries were instrumental in negotiating the Protectorate Treaty of 1888 with the British, gradually incorporating Kwawu into the Gold Coast

[7] Gulliver (1969a; 1969b); Nader and Todd (1978); for a critique, see Starr and Collier (1989) and, more broadly, Chanock (1985).

Colony.[8]

As elsewhere in the Gold Coast, missionaries of the Basel Mission - a pietistic organization from Switzerland with strong ties to Württemberg in southern Germany - made a deliberate effort to separate their newly converted Christians from local people.[9] When they opened a station in Abetifi, they acquired land outside of town and offered plots to converts to build houses within the boundaries of the *Salem* or Christian Quarters. There, converts were expected to live according to a set of rules, the *Gemeindeordnung*, which intervened in every aspect of daily life and reframed relations by promoting specific forms of masculinity and femininity. According to these guidelines, and contrary to Akan practice, husband and wife were expected to live together with their children under one roof, share meals, worship together and plan the education of their children. For their sons, schooling was compulsory; for their daughters, it was optional, though recommended.[10] The *Gemeindeordnung* also established specific rules concerning inheritance and succession. During the First World War, the Basel Mission was expelled and replaced by the Scottish Mission.[11] Although the latter granted more independence to the mission church, which reorganized itself as the Presbyterian Church of the Gold Coast in 1926, the separate Christian communities continued and expanded during the interwar period.

Missionary and colonial observers portrayed the matrilineal people of Kwawu as industrious farmers who cultivated land around the towns on the ridge and in farming

[8] Ameyaw-Gyamfi (1966); Nkansa-Kyerematen (1976); Haenger (1989). Following recommendations by the Institute of African Studies, University of Ghana, Legon, I use the spelling *Kwawu*, and not the colonial orthography *Kwahu*; in all citations, the original spelling is left intact.

[9] Schlatter (1916); Witschi (1965; 1970).

[10] Basel Mission Archives (hereafter BMA), D-9.1c, 11a *Ordnung für die evangelischen Gemeinden der Basler Mission in Ostindien und Westafrika*, 1865 (hereafter *Gemeindeordnung* 1865), and BMA, D-9.1c, 13b, *Ordnung für die evangelischen Gemeinden der Basler Mission auf der Goldküste*, revised 1902 (hereafter *Gemeindeordnung* 1902); cf. Jenkins (1985: 19ff.) For a discussion of missionary gender ideals, see Miescher (1991); Prodolliet (1987); cf. Allman (1994). I am thankful to Paul Jenkins for his continuous assistance in my research at the BMA.

[11] In 1917/18, all Basel missionaries were expelled from the Gold Coast because of their close connection to Germany; some were permitted to return in 1926, Witschi (1965: 162ff.; 1970: 306ff.); Smith (1966: 155ff.).

villages south of the plateau, growing a variety of food crops such as "mountain rice, yams, plantains, bananas, maize, white and red beans, tomatoes, garden eggs and okra".[12] In addition, Kwawu men regularly hunted game in the Afram plains and fished in the Afram river.[13] During the colonial era, Kwawu people were also well-known for their trading activities. In the nineteenth century, when most trading interest focused on the north, traders frequented markets across the Afram plains in Salaga and Atebubu, exchanging kola nuts, imported fabric and glass beads for hides, metal craft and slaves. At the beginning of the twentieth century, Kwawu traders began to re-orient their trading towards the emerging commercial centers in the cocoa growing areas of southern Ghana. They successfully invested their profits in cash crops, launching a cocoa industry within Kwawu, and erected cement buildings in their hometowns on the Kwawu ridge to demonstrate their newly acquired wealth. During the interwar years, many large houses were built in Abetifi, some of them two stories high.[14]

Introduction of Colonial Law in Kwawu

The implementation of a colonial legal system in Kwawu was anything but simple. In the Gold Coast Colony, the British government had recognized chiefly judicial power in the Native Jurisdiction Ordinance, 1883. This defined the legal relation between a select group of chiefs' customary courts, called 'Native Tribunals', and British courts. While most criminal matters, such as murder, robbery, serious theft or slave-trading, were dealt with in British courts, the Tribunals primarily adjudicated civil cases, as well as some criminal offenses - 'seduction', 'slander', 'fetishism' and 'witchcraft' - which were considered too remote from English

[12] Crowther (1906: 178); this published report by the District Commissioner for Kwawu was endorsed by the Acting Commissioner Eastern Province, H.M. Hull, Accra, January 30, 1906, National Archives of Ghana (hereafter NAG) ADM 11/1/1445. For early reports by Basel missionaries, praising the "industriousness" of the Abetifi people, see E. Werner, Kyebi, May 6, 1875, BMA, D-1. 27, 257.

[13] NAG, ADM 11/1/242, see report by H.N. Thomas, conservator of forest, on elephant hunting in the Afram plains, December 8, 1908, and inquiry by District Commissioner Hobbs about Kwawu-Kumawu land dispute, with much evidence about fishing in plains, April 1912.

[14] For the northern markets frequented by Kwawu traders, see Arhin (1979: chs. 3, 4); Garlick (1967: 470ff.); for the preference of Kwawu traders to invest in cocoa, see Garlick (1971: 57f.); for the monumental houses in the hometowns, see Bartle (1978: 115); cf. Hill (1963: 192).

common law to try in British Courts.[15] The Ordinance also granted the Governor of the Gold Coast the right to dismiss a chief and made judgments of the Native Tribunals subject to appeal to British courts.[16]

Although Kwawu became a British protectorate in 1888, its territory remained outside British jurisdiction.[17] During the 1890s, when British colonial officials began to interfere with Kwawu's affairs at the request of the Basel missionaries stationed in Abetifi, colonial representatives became acutely aware that they lacked jurisdiction.[18] In 1896 the Executive Council of the Gold Coast sought to remedy the situation by making the Kwawu protectorate part of a new district within the Eastern Province, without consulting "Kwawu chiefs and commoners".[19] Kwawu's legal status remained uncertain until 1909, when the Governor finally brought Kwawu

[15] Gocking (1993: 97) noted that "to Africans ... failures to punish [such cases involving 'superstitious beliefs'] represented horrendous miscarriages of justice, and allowing native courts to prosecute such cases was an important concession to African conception of justice."

[16] Native Administration Ordinance, No. 5, 1883; cf. Kimble (1963: 460-469); for the construction of African colonial legal systems, see Mann and Roberts (1991).

[17] According to article IV of the protectorate treaty, the chiefs of Kwawu only committed themselves, in return for the protection granted by Britain, "not to be guilty of executing people in sacrifice," to "encourage trade and give facilities to traders, and not to cede their territory or accept a protectorate from any other European power" without first obtaining the consent of the Governor (Nkansa-Kyeremateng 1990: 40).

[18] NAG, ADM 11/1/1445. Missionary F. Ramseyer, Abetifi, October 3, 1892, requested British intervention, because a "magician" was extorting money from "poor people"; upon advice by the Queen's Advocate noting a "possibility of a question of Jurisdiction," the Governor decided not to intervene, Minutes, November 4 and 9, 1892. When Sheriff J.R. Phillips was sent to investigate the detention of Christians in Kwawu by Nana Kwasi Boama, chief of Aduamoa, Phillips was warned by the Colonial Secretary of his limited legal options, "the Secretary of State having decided . . . that the Supreme Court has not acquired jurisdiction over Kwahu by the treaty dated the 5th May 1888." Minute, October 16, 1893.

[19] Bartle (1978: 76); *Government Gazette* (1896: 391). The following year the boundaries of the new district were altered and it became the Birrim District (Bening 1974: 72f.).

under British jurisdiction by proclamation.[20]

The Native Jurisdiction Ordinance, 1883 was amended in 1910. The revised ordinance applied the provisions of the 1883 law to all divisions of the Colony, including Kwawu, strengthening Native Tribunals, which became "compulsory courts of first instance in matters not falling clearly under British law".[21] Under the amended ordinance, literate chiefs were required to keep and preserve records of their proceedings; illiterate "Head Chiefs" (paramount chiefs) should, at least, inform the District Commissioner of all decisions in land cases, which were to be recorded in a special book. Appeals from Native Tribunals were directed to the "superior Native Tribunal" of the "Head Chief"' (in Kwawu the *Ɔmanhene* of Kwawu in Abene) and from him to the District Commissioner's Court. Only with the consent of the District Commissioner's Court, or by an order of a higher court, could there be further appeal to the Divisional Court.[22] In Kwawu a District Commissioner's Court was established at the new headquarters of Mpraeso in 1914, after Kwawu became a separate administrative unit.[23] Although it was the responsibility of the District Commissioner to supervise Native Tribunals, Kwawu *Asafo* companies, consisting of the *mmerantɛs* ('commoners' or 'young men'), were quite efficient in regulating the conduct of the Native Tribunals, by correcting, for example, the severest forms of extortion and forcing chiefs to adjust their court fees and fines through the early 1930s.[24] So far, no written English records of the Kwawu Native Tribunals have been found from the first decade of the amended Native

[20] For conflicting opinion on Kwawu's legal status, see NAG 11/1/1445, Memo by H.M. Hull, January 26, 1901; F. Crowther to District Commissioner, Birrim, H.K. Greenway, February 14, 1908. The Governor's proclamation is cited in NAG 11/1/1445, June 30, 1909: "... the Division under the Head Chief of Kwahu was brought within the operation of the 'Native Jurisdiction Ordinance'."

[21] Rathbone (1993: 60); Kimble (1963: 468f.).

[22] *The Gold Coast Native Jurisdiction (Amendment) Ordinance*, No. 7, 1910, sect. 15 (i), 16, and 25 (rule 18, 19).

[23] NAG, ADM 34/4/1-45, for the records of the District Commissioner's Court at Mpraeso.

[24] NAG, ADM 11/1/738, "New Orders and Regulations Inaugurated by the Whole Kwahu Asafos," Abetifi, November 6, 1917, providing a detailed account of the regulation of court fees and fines in the Native Tribunals; NAG, ADM 11/1/1445, Crowther's report on Kwawu Asafo, December 24, 1905, for an earlier attempt at reducing court fines; cf. Simensen (1975).

Jurisdiction Ordinance. Recordkeeping only improved after passage of the Native Authority Ordinance, 1927 (NAO). Continuous records from at least two Native Tribunals in the towns of Abetifi and Pepease have survived.[25]

A system of more "interventionist indirect rule"[26] was formalized in the Gold Coast by the NAO. It is outside the scope of this paper to recount the controversy around this Ordinance; but it suffices to say that the NAO improved the position of paramount chiefs and their councils as the highest authority within each state. The councils received the right to decide what constituted customary law, subject to the Governor's approval.[27] The NAO specified punishments for criminal offenses, thereby strengthening the criminal jurisdiction of Native Tribunals.[28] The Ordinance upgraded the chiefs' Tribunals while protecting them from their political opponents by explicitly banning "barrister, solicitor, proctor or attorney" from appearing for any party in legal proceedings in Tribunals, thus bringing senior chiefs into "closer collaboration with the British Government in return for a definite increase in prestige and responsibility".[29]

An important figure in the operation of the restructured Native Authorities was the Tribunal Registrar, who acted as the principal clerk and legal advisor. Outside the coastal towns, as in Kwawu during the 1930s and 1940s, Registrars were often the

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[25] KTC, vols. 1-44, contain the catalogued records of Native Tribunals in Kwawu. The earliest record book, vol. 13, stems from the Native Tribunal of Obo, covering the years 1923/24.

[26] Gocking (1993: 95, 100).

[27] Kimble (1963: 492-497); there was considerable opposition by nationalist politicians, expressed in the press, especially *The Gold Coast Times*. In Kwawu, the NAO institutionalized the colonial policy of strengthening the *Ɔmanhene* against local opposition, historically expressed by the *Nifa* division under the *Nifahene* of Obo; cf. inquiries into stool disputes, NAG, ADM 11/1/1445, passim, and Bartle (1978: 77).

[28] Gocking (1993: 100). For example, Native Tribunals became responsible for enforcing the Colony's health and sanitary regulations; cf. KTC, vol. 1: 101, Native Tribunal of Adɔntenhene, Abetifi, *Tribunal v Adjoa Safoa, Kwabena Mpere, Abena Akyemaa, Kwame Kwame Dwamena*, October 3, 1929; all defendants were fined 5/. for "having unlawfully neglected weed to grow on their compound cont. to sec. 46 N.A.O. (a) No. 18 of 1927."

[29] Kimble (1963: 497); The Native Administration Ordinance, No. 18, 1927, sect. 57.

only literate people on Native Tribunals, playing a central role in interpreting and implementing the provisions of the NAO, as well as adopting and modifying local customary law.[30] Aware of the Tribunal Registrars' influence, the colonial government sought to circumscribe their position by introducing formal legal training in 1929. Annual training and refresher courses included a variety of subjects such as court procedure, the NAO, administration of stool treasuries, the principles of "Direct and Indirect Rule", police duties and prison managements. Registrars were also instructed in "Native History and Custom", English grammar, sanitation, agriculture, postal duties and "General Knowledge".[31] The first few courses were disappointing. In 1931, at the annual two-week training course in Cape Coast, only nine of twenty-nine participants passed. The final report concluded that the lectures were geared to secondary school leavers, while many participants had only a primary school background.[32]

The government encouraged the professionalization of Tribunal Registrars by organizing the 'educated officers' of Native Tribunals into the Tribunal Registrars' Association. According to its by-laws, the Association fostered "mutual aid and friendship" among its members, all Registrars, and helped to attract a "better class of scholars" to the Native Administration in order to assist the chiefs "as regards to better management and improvements of their States". The Association organized the training and refresher courses under the auspices of the Secretary of Native Affairs and the Provincial Commissioners. The by-laws characterized the Association as a "good link", enhancing cooperation between the colonial government and the "Native States". Therefore, the by-laws explicitly barred the Association and all its members from entering politics. Although the Association elected its own governing council, the government kept a close watch by making political officers ex-officio council

[30] Interview with G.F. Debra, a former Registrar, Abetifi, April 13, 1993, (#21: 1ff.) Government reports frequently deplored the "bad influence" of Registrars. See NAG, ADM, 11/1/598, report of O.J. Collison, Acting District Officer of Kwawu, December 20, 1928, characterizing the *Ɔmanhene*'s Registrar, Mr. Wilson, as "the reverse of trustworthy," pursuing his own strategies when drafting letters on behalf of Kwawu chiefs.

[31] NAG, ADM 11/1/1012, "Syllabus" for Tribunal Registrar training and refresher course, February 1931; "Tribunal Registrar Instruction Syllabus," in *Tribunal Registrar's Handbook* , Accra, 1931 (hereafter *Handbook* 1931).

[32] NAG, ADM 11/1/1012, Tribunal Registrar's Training Course, Central Province, Cape Coast February 1931; the previous year, three Registrars from Kwawu had passed the course for the Eastern Province, Koforidua, and obtained their certificates, among them J. Francis Addo from Abetifi.

members. Moreover, the minutes of the governing council had to be forwarded to the Governor.[33] In promoting the position of Tribunal Registrar as a new profession for 'scholars', the government sought to remedy the Depression-induced increase in unemployment among school leavers, who were perceived as potential political trouble makers. Designing the scheme of the Tribunal Registrars' Association, the government also attempted to create an arena for 'educated women' to serve as unpaid officers at its social functions. Hence, the management and conduct of the Association should "always be in the hands of European and African Ladies and Gentlemen".[34] Considering the importance of the Tribunal Registrars within the newly organized Native Authorities, it is not surprising that the speakers' list for the "Grand Anniversary" of the Association in Cape Coast, April 1932, reads like a Who's Who of the political and educational establishment. Chaired by the Secretary of Native Affairs, senior political officers, secondary school principals, lawyers and local paramount chiefs addressed the participants. Leisure activities consisted of matches between Registrars from different regions competing in the colonial sports of tennis, football and cricket.[35]

Norms of Inheritance in Kwawu

According to the anthropological literature, the people of Kwawu, as those in other Akan areas of Ghana, practice matrilineal inheritance.[36] In 1927 government anthropologist R.S. Rattray worked for a few months in Kwawu. He requested a former Tribunal Registrar, Eugene Addow, to write a brief ethnographic account about the local people and their customs. It appears that Addow was familiar with Rattray's work on Asante and fitted his 'Notes on Kwahu' into Rattray's framework. Addow remarked that because Kwawu was founded by immigrants from Asante, "there is not much difference between the family system of the Kwahus and that of

[33] NAG, ADM 11/1/1012, Draft copy of the "Tribunal Registrar's Association, Gold Cost and Ashanti, Bye-Laws," c.1929.

[34] NAAG, ADM 11/1/1012, "Bye-Laws," cf. list of subjects for addresses at the Tribunal Registrars' Assocation Meeting in Cape Coast, March 1932; and Gocking (1993: 105).

[35] NAG, ADM 11/1/1012, 'Provisional Programme' of the Tribunal Registrars' Association's grand event in Cape Coast, March 26 through April 3, 1932.

[36] Nkansa-Kyeremanteng (1990: 54f.); cf. inheritance practices in the neighboring Akan states: Rattray (1929: 1-21); Danquah (1928a: 181ff.); Hannigan (1954).

their brethren the Ashanti, succession is through the female".[37] Addow explained:

> The brother by the mother [*wɔfa*] if surviving is the rightful person to succeed to one's personal property, if no brothers surviving then the eldest son of the eldest sister [uterine nephew], but much depends upon the personal character, morals and health of the successor, as everyone to succeed to property is usually elected and approved by the family [matrilineage, *abusua*], before one can take possession. Family property such as land, lake, portion of river, fetish are in the hands of the head of the family who hold the same in trust of the family.

Addow qualified the difference between *personal* property and *stool* or *family* (*abusua*) property:

> A person who succeeds to property becomes the absolute owner of the personal property of the deceased but only a trustee of the family properties so inherited, and he cannot sell, pawn, pledge or lease such family property without the knowledge or consent of the members of the family.[38]

Addow listed examples when a person could deviate from this practice of inheritance. Somebody "aggrieved" by the "action or omission of some duties" by the potential

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[37] Addow (n.d.: 8); there is no date on this manuscript by Addow, but since Rattray stayed in Kwawu in 1927, it can be assumed that Addow's account was written during the same year. According to Addow, Kwawu people "belong to 7 (seven) distinct tribes [matriclans] like all the Akan people of the Gold & Coast and Ashanti." Addow (n.d.: 21) explicitly referred to Rattray as the authority in Akan customs "who will dig down patiently to fathom the mystery."

[38] Addow (n.d.: 8f.). Concerning land tenure, Addow (n.d.: 11f.) stated that "any portion of virgin forest within a Village Stool land, cleared for farming or other purposes by an individual, becomes the property of the family of such individual." Land cleared within a chiefdom and "used by inhabitants of a village for farming, snail gathering, hunting or fishing purposes becomes the property of such village." Addow noted further, using the past tense for the first time, that "*slaves were never permitted to own lands* (emphasis in original typescript)," hence all their "personal and landed property belonged absolutely to their masters." Addow did not, however, explain whether Native Tribunals still applied this practice during the 1920s. "Strangers from different district", on the other hand, were granted hunting, fishing and farming rights, as long as they paid rent to the owner.

heir, or a person who wanted to recognize "a meritorious service rendered to him by any of his own children", was

> at liberty during his life time or on his death bed to make a present to any of his own children of any part of portion of his personal property, and such presentation is to be witnessed by some members of the family and some other witnesses.

Addow, referring here to gifts *inter vivos* and nuncupative (oral) wills, stated that beneficiaries of such transactions were required to make an offering of "rum or palm-wine to the father as thanks for the present received". This offering, *aseda*, completed the contract, and - at least according to norms recorded by Addow - "no one had the right to take such present away".[39]

While these guidelines about inheritance practices focused on men, Addow also described a situation in which women could inherit property. When no suitable men of the matrilineage were available to succeed, "the senior female or her nominee" was entitled to inherit all property of the deceased, "both personal and family", and even a stool (office of chief or sub-chief). In the latter case, a woman was required to be past menopause, since a stool was held "sacred" and "a woman in her monthly period . . . unclean". Debts, according to Addow, were inherited along with other properties; the successor was "liable to pay all claims after one year". All those "claiming any money or other property from the successor" were expected to attend the funeral of the deceased and offer "sympathy rum" before announcing an outstanding debt to be proved by witnesses. Without following this procedure, it was "impossible" for the debtor "to make a formal claim". Properties could be distributed among several members of the *abusua*; the "head of the family and the elders both male and female" having the right to allocate shares to senior and junior heirs as appropriate.[40]

These customary practices, as summarized by Addow, were not the only normative framework about inheritance in Kwawu during the colonial period. First, the Marriage Ordinance, 1884 had brought a major legal innovation to the Gold Coast Colony. Persons who contracted a monogamous marriage under the Ordinance were no longer governed by customary law but became subject to the English common law of succession. If people under the Marriage Ordinance died intestate, they passed on their property according to 'English law', that is, exclusively to wife and children,

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[39] Addow (n.d.: 9f.); for nuncupative wills, *samansew*, in Asante, see Rattray (1929: 15).

[40] Addow (n.d.: 10f.)

excluding any member of their *abusua*.[41] The Marriage Ordinance was most unpopular, not only because divorce became difficult and costly and subject to a British court but also because of the exclusion of the customary 'family' from inheritance. Therefore, very few couples entered such marriage contracts, causing disappointment among missionaries, who had hoped the Ordinance would strengthen Christian marriages.[42] The Ordinance was also severely criticized by Gold Coast lawyers for undermining local 'family' obligations. As a result of this broad opposition, the inheritance section of the Marriage Ordinance was amended in 1909, granting two-thirds of the deceased's estate, according to English law, to a man's wife and children, and one-third "in accordance with the provisions of the native customary law". In Kwawu, this meant a third went to the *abusua* (matrilineage).[43]

Second, and more important, the Basel Mission had initiated changes in inheritance practice in Kwawu. Since establishing a Christian community in Abetifi in the late nineteenth century, the Mission sought to introduce different rules of inheritance for their Christian converts, which strengthened claims of wife and children at the expense of those of the *abusua*.[44] The revised 1902 *Gemeindeordnung*, like the original one of 1865, stated that upon the death of congregation members their estates should be divided equally among *all* children and wives and not, as practiced by "heathens", among "distant relatives" or even "strangers". If there were no wives and children, the closest relatives should inherit; in such cases, the *Gemeindeordnung* recommended, poor people and Christian institutions should also be considered. As in the original Marriage Ordinance, the *abusua* was excluded and only referred to as "distant relatives". The revised version of 1902 explicitly drew a parallel between its inheritance regulation and 'English law', indicating that all Christian marriages should be contracted under the 1884 Marriage Ordinance, although this was more an

[41] The Marriage Ordinance No. 14, 1884, sect. 36, 39; cf. Gocking (1990: 609), and Ollennu (1966: 239-258).

[42] The number of Christian marriages actually dropped after introduction of the Marriage Ordinance, see statistics in *Gold Coast Blue Book*, 1877-183, cited in Gocking (1990: 609n); see the negative assessment by Schlatter (1916: 3, 170ff.) in the 'official' history of the Basel Mission, deploring the high costs of Ordinance marriages and missed opportunities to change 'heathen' practices.

[43] The Marriage (Amendment) Ordinance, No. 2, 1909, sect. 15; see Gocking's (1990: 610ff) account of the legal challenges of the Ordinance; cf. Ollennu (1966: 243ff.).

[44] Cf. the polemic comment by Schlatter (1916: 3, 173) concerning the *Neffenerbrecht* among the Twi speaking people.

the turn of the century, as well as a new attitude towards the 'native order' developing in the colonial government during the 1920s, best represented in the policy of 'indirect rule'. During the 1930s, some state councils also took the initiative to modify inheritance custom along Christian lines by suggesting that a share of a man's estate should pass to wife and children if he died intestate. These recommendations and proposed by-laws, however, were never sanctioned by the Governor as required by the NAO.[49]

Justice N.A. Ollennu (1966: 247ff.) argued that the Presbyterian Church introduced its 1929 rules of inheritance without any statutory base, hence "plac[ing] its adherents above the law of the land". Ollennu cited a case in the paramount chief's Native Tribunal of Akyem Abuakwa of 1916, in which Christian children of the deceased, who had been married according to customary law, did not secure a third of their father's property from his successor - the *wɔfase* (uterine nephew). Ollennu concluded that personal law was "not abrogated by change of religion"; therefore, Christian children were not entitled to one-third of their deceased's father's estate, and Basel Mission regulations did not change the law of succession in Akyem Abuakwa. Roger Gocking (1993: 106ff.), looking less at the abstract law than at changing legal practices, has analyzed the same case, contending that the Tribunal acted as an "important 'law modifier'". The Tribunal's judgment constituted an innovation in Akyem Abuakwa customary law by stipulating that the widow of a customary marriage receive one-third of the deceased's estate. Such debates about legal practice in colonial courts concerning succession disputes have rarely involved cases from Native Tribunals of Kwawu - courts less prominent, and less observed, than the highest Tribunal of Akyem Abuakwa, whose decisions were even published.[50] Nor have scholars examined how individual litigants chose where to settle disputes in succession matters and how they navigated between different systems of inheritance, while seeking to achieve their legal aims.

Negotiating Inheritance

The case, *Ɔkyeame Kwame Ansong v Kwaku Ansong*, brought to the Abetifi Native

[49] Such resolutions were passed by the Winneba State Council in 1933, the Joint Provincial Council in 1938, and the Akyem Abuakwa State Council in 1939, cited in Ollennu (1966: 144); cf. Gocking (1993: 108).

[50] The cited case, *Frempoma & ors. v Buxton*, was published in Danquah (1928b: no. 211). It is also revealing that the Kwawu Native Tribunals were *not* investigated by the three important commissions of inquiry examining customary courts, cf. Gold Coast (1943; 1945; 1951).

ideal than actual practice.[45]

After the expulsion of the Basel Mission and the reorganization of its congregations as the Presbyterian Church of the Gold Coast, the *Gemeindeordnung* was again revised in 1929, slightly changing the regulation on inheritance.

> When a Christian member of our congregation dies intestate, the property should be divided into three equal parts; one part for the widow, one part for the children, and one for the family [*abusua*]. Christians are advised to remember this rule in the making of wills. If there are no widows nor children the next of kin inherit; but if there are no near relatives it is usual to remember the poor and Christian institutions.[46]

These Presbyterian *Regulations* now acknowledged claims by the *abusua*. Reference to English Law in the section on inheritance was no longer included. Rules on marriages had also been revised. Reflecting the unpopularity of the 1884 Marriage Ordinance, the *Regulations* distinguished between two types of marriages available to Christians: 'Marriage under Ordinance', which could only be legally performed by a minister "in a duly licensed building", and "marriage according with native customary law", blessed in any church building. Before a Christian ceremony could be performed for the latter, the parties had to profess to be married "in accordance with customary law", which, if possible, should have been witnessed by two presbyters (church elders).[47]

The revised rules of inheritance reflected the increased autonomy of the Presbyterian Church from the Basel Mission and (since 1918) the Scottish Mission in the organization of its internal affairs and the adjustment of its rules to the practices of its members.[48] Further, the *Regulations* should be read within the larger judicial climate of the Gold Coast, whose colonial courts tended to support the customary law claims of the matrilineage over those of the conjugal family. Roger Gocking (1990: 611ff.) has pointed out a "revival in traditional culture" among Gold Coast elites after

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[45] *Gemeindordnung* 1865, 19, para. 131, *Gemeindeordnung* 1902, 38, para. 13.; concerning Christian marriage, ibid., 26ff., para. 86, 91.

[46] BMA, D-9.1c, 13d, The Presbyterian Church of the Gold Coast, *Regulations Practice & Procedure*, revised 1929 (hereafter *Regulations* 1929), 23, para. 235.

[47] Ibid., 18, para. 187-189.

[48] "Obsolete rules" were omitted, ibid., 37, para. 332; cf. Smith (1966: chs. 9, 10).

Tribunal in June of 1943, provides a rich opportunity to study the complex maneuverings of legal actors in a succession dispute.[51] These actors were embedded in and deeply committed to a web of relationships that encompassed notions of status, power, gender, kinship and religious affiliation. A close reading of this case allows a partial reconstruction of these larger contexts, providing views of the participants' movements in and outside the court while negotiating between conflicting systems of inheritance.

The Abetifi Native Tribunal that heard this case convened under the *Adɔntenhene* of Kwawu (chief of Abetifi) and his *mpanyinfoɔ* - a group of elders consisting of five sub-chiefs.[52] A crucial figure was the Tribunal Registrar, T. Dankwi. Although he was to take "no part" in the "actual trial of the case" and should "under no circumstances retire with the Chiefs and Councillors to consider their decision", he was still at the center of the court's operation. He not only kept records in English translation but also acted as legal advisor, reading and interpreting all written evidence, as well as informing the Tribunal about relevant provisions in the NAO.[53]

The proceedings of the Abetifi Native Tribunal in *Ɔkyeame Kwame Ansong v Kwaku Ansong* closely followed an English model. First, Ɔkyeame Ansong (plaintiff) presented his case, then his witness Robert Boateng gave evidence, followed by Kwaku Ansong (defendant) and his three witnesses, Kwasi Atuobi, Teacher Donkor and Ɔpanyin Okra. After each testimony the opposing party and the Tribunal had a chance to examine or cross-examine the witness. In the record, the Tribunal spoke as one body, since the individual members asking questions were not identified. The English notes of the proceedings lose much of the flavor and eloquence of the Twi language, such as proverbs and other rhetorical skills. The Registrar did not record

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[51] *Ɔkyeame Kwame Ansong v Kwaku Ansong* was selected out of over 130 customary court cases I transcribed from the records of the Abetifi Native Tribunal, covering the years 1928-1947. My interpretation also draws on observations gathered during seventeen months of field work in Kwawu between 1992 and 1994, as well as interviews with relatives of some of the participants. These conversations took place before I closely analyzed the present case. I am grateful to my interview partners for their time and patience.

[52] The Abetifi Native Tribunal consisted of a body of men and women who were either occupants of stools, office holders at the *ahenfie* (chief's palace), local military commanders, or lineage heads. Only rarely were all present during a case. I thank Takyiwaa Manuh for information on this point.

[53] *Handbook* 1931, 1, para. 3, passim instructed the Tribunal Registrar how to organize and record the proceedings.

any introductory or closing formulae, which were (and are) common in Akan culture when addressing somebody of high status at the *ahenfie* (chiefly palace).[54]

This inheritance dispute (summarised in Figure 1) focused on whether a house in Christian Quarters of Abetifi, which the *Ɔkyeame* (plaintiff) had built for his late mother, Akosua Okyeraa, twenty years previously (c. 1923), still belonged to him and his *abusua* (matrilineage) or whether the house had been bought by the *Ɔkyeame*'s brother, the late Akuamoa, who had subsequently passed it on to his children according to the inheritance rules of Christian Quarters. The answer to this question was crucial for solving the dispute, since ownership of the house determined the application of inheritance norms. While Kwawu people within the town of Abetifi practiced matrilineal inheritance favoring the *abusua*, a deceased Christian's estate was divided into three equal shares for wife, children and *abusua*. Moreover, if the deceased owned a house in Christian Quarters - the Christian settlement founded by the Basel Mission in the late nineteenth century - the house would pass on solely to his children and wife. In the present case, the *Ɔkyeame* claimed ownership on behalf of his *abusua*. On the other side, the defendant, Kwaku Ansong, represented the interests of the late Akuamoa's children, as their *wɔfa* (maternal uncle). Hence, Kwaku Ansong spoke for the matrilineage of Akuamoa's children, while also pleading for patrilineal succession.

Ownership of the disputed house rested on two opposite readings of a receipt that the *Ɔkyeame* had issued to his brother Yao Charles. Did Yao Charles, on behalf of his *abusua*, present the *Ɔkyeame* with £13 to help repay the *Ɔkyeame*'s debt, as the *Ɔkyeame* argued? Or did Yao Charles give £13 to the *Ɔkyeame* for Akuamoa - as Kwaku Ansong maintained - thus initiating Akuamoa's purchase of the house? The matter was complicated for the Tribunal because Yao Charles, who passed the money to the *Ɔkyeame* and supposedly witnessed the sale of the house, had also died.

In the course of the proceedings, the two parties presented the Tribunal with a myriad of conflicting stories and recollections of how this case had evolved since the death of the *Ɔkyeame*'s mother about seven years before (c. 1936). These bits of narratives can be grouped into five sequential episodes comprising the entire case. A reading of these episodes reveals shifting perspectives and interpretations of the participants' actions. All the episodes involved people who either testified before the Tribunal, remained silent while acting behind the scenes, or had already been put to rest in their graves.

The *first* episode took place immediately after the *Ɔkyeame*'s mother, Akosua Okyeraa, had died (c. 1936). The house she occupied in Christian Quarters, built by

[54] Cf. the recent study on Akan orality, Yankah (1995).

Plaintiff's *Abusua* (Matrilineage)

Akwamuhene Kwabena Adofo
(most senior member of plaintiff's *abusua*, sub-chief in Abetifi)

Akosua Okyeraa
(plaintiff's mother, moved into disputed house c. 1923, died c. 1936)

Akosua Okyeraa's sons:			
Ɔkyeame Kwame Ansong (claims house on behalf of his *abusua*) *plaintiff*	Kwasi Akuamoa (allegedly purchased house c. 1937, died 1941, passed on house to his children)	Yao Charles (handed crucial receipt of £13 to the *Ɔkyeame*, died 1943)	Robert Boateng (successor to Yao Charles) *plaintiff's witness*

Kwame Nhyee (plaintiff's creditor of £30)

Defendant and His Witnesses

Kwaku Ansong
(brother-in-law of Kwasi Akuamoa,
wɔfa, maternal uncle, to Kwasi Akuamoa's children)
defendant

Kwasi Atuobi
(caretaker in the disputed house)
defendant's first witness

Teacher Donkor
(retired Presbyterian teacher and presbyter)
defendant's second witness

Ɔpanyin Joseph Okra
(senior Presbyter)
defendant's third witness

Carpenter Dorku (Kwaku Ansong and Akuamoa's friend,
accompanied them during the alleged house sale)

Figure 1 Participants in *Ɔkyeame Kwame Ansong v Kwaku Ansong*

the *Ɔkyeame* with a loan, was vacant. Since the *Ɔkyeame* urgently needed to repay the loan, he decided to sell the house. This caused much protest among his brothers. They all met in the late mother's house and tried to convince the *Ɔkyeame* to change his plan, to no avail. In order to keep the peace among the brothers, they were

called, as the *Ɔkyeame*'s witness, Robert Boateng, testified, by the most senior member of their *abusua* (matrilineage), *Akwamuhene* Adofo, to gather for mediation at his house in the center of Abetifi.[55] According to Richard Boateng, the *Ɔkyeame* stated that he still owed £30 to Kwame Nhee and this creditor "was pressing hard". In two sessions, the *Akwamuhene* negotiated a compromise that the brothers should assist the *Ɔkyeame* "with any amount possible" in paying the debt on the house.[56] Brother Yao Charles volunteered to pay £13, for which the *Ɔkyeame* issued a receipt. This document, presented to the Tribunal, became the major evidence in this case. The "part payment" on the "house account" by Yao Charles, as recorded on the receipt, altered the ownership of the disputed house according to the *Ɔkyeame* and his witness, Robert Boateng.[57] They explained to the Tribunal that, according to "custom", the house no longer belonged to the *Ɔkyeame* but had become property of his whole *abusua*, because Yao Charles, on behalf of his brothers, had contributed to repay the debt. Finally the brothers also decided that, since brother Akuamoa needed a place to live, he and his wife should move into the empty house. This first episode shows how the record of this case provides insight into processes of arbitration within a matrilineage - beyond the courtroom. It appears that a case only reached the Abetifi Tribunal after other institutions of dispute settlement had failed. No records were kept of proceedings at these local sites of arbitration.[58]

The *second* episode demands a shift in perspective. It features the tailor Kwaku Ansong (defendant) who recalled for the Tribunal the time after the brothers reached a compromise about their mother's house (c. 1936). Kwaku Ansong narrated how Akuamoa not only moved into the mother's house but subsequently bought it. Since Kwaku Ansong's sister was married to Akuamoa, Kwaku Ansong accompanied his

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[55] The *Akwamuhene* is third in command in the town of Abetifi, after the divisional chief, the *Adɔntenhene*, and his deputy, the *Kurontehene*; interview with Rev. E.K.O. Asante, nephew of Ɔpanyin Adofo, Abetifi, March 30, 1993, (#30: 6).

[56] *Ɔkyeame Kwame Ansong v Kwaku Ansong*.

[57] Ibid.

[58] Other cases from the Abetifi Native Tribunal also allow a reconstruction of abitration and dispute settlement *outside* the courtroom, especially, KTC, vol. 2: 87f., 95-125, Abetifi, *Salome Owusua v Charles Gyeni*, August 1936, in which plaintiff and defendant sought arbitration from the head of their matrilineages, village chiefs, friends, and the presbyters and minister of the Abetifi Presbyterian Church; cf. Danquah's (1928a: 83ff.) discussion about arbitration before *abusua* elders; for post-colonial Ghana, see the accounts of dispute settlement in the *Asantehemaa*'s (Queenmother's) court in Manuh (1988), and outside the court in Lowy (1977, 1978).

brother-in-law during the initial negotiations. They went, accompanied by carpenter Doku, to visit the *Ɔkyeame*, who then agreed to sell the house for £20. After these negotiations, Akuamoa left for Kwawu Tafo where he was staying; like many Kwawu people, he had a second residence while working outside his hometown.[59] Not much time elapsed before Kwaku Ansong travelled to Nteso, a town outside Kwawu Tafo, for a funeral. There he met again with Akuamoa and Yao Charles, the *Ɔkyeame*'s brother. Kwaku Ansong recalled that during the funeral celebrations Akuamoa handed Yao Charles £13 to take to the *Ɔkyeame* as "part-payment" for the house. Later, Kwaku Ansong heard from Kwasi Akuamoa that he had paid the remaining balance of £7 to the *Ɔkyeame* (c. 1937). Since Akuamoa remained in Tafo, Kwaku Ansong arranged for a caretaker, Atuobi, to live in the house at Christian Quarters with his wife. As an indication that the *Ɔkyeame* was no longer interested in the house, Kwaku Ansong maintained that the *Ɔkyeame* never came to look after the house; even a wall collapsed, and had to be repaired, without the *Ɔkyeame*'s knowledge. At times Akuamoa returned to Abetifi and received guests in the house. The leadership of Christian Quarters also considered Akuamoa owner of the house. Two presbyters (church elders) testified for Kwaku Ansong. Teacher Donkor recalled that when he returned as pensioner to Abetifi in 1937, he went to greet Akuamoa and Yao Charles and learned from them about Akuamoa's house purchase at Christian Quarters. Even the senior presbyter, Ɔpanyin Okra, declared with authority that Akuamoa and Yao Charles had visited the church leaders and "made it known to the Presbyters . . . that [Akuamoa] bought the house in question from plaintiff [the *Ɔkyeame*]".[60] Akuamoa died around 1941.

The content of this second episode was disputed by the *Ɔkyeame* before the Tribunal. He denied any recollection of the visit by Kwaku Ansong and Akuamoa concerning purchase of the house. In addition, the *Ɔkyeame* closely questioned Kwaku Ansong, who had to admit he was not present when the balance of £7 was paid, and had no receipt for this final payment. Further, the *Ɔkyeame* cross-examined Kwaku Ansong's witnesses about this episode. Caretaker Atuobi, Teacher Donkor and panyin Okra all had to agree that they "did not see or witness the sale" of the house.[61] This episode reflects mobility, work and social networks of the participants. Many of them lived in spaces that reached far beyond Abetifi. They worked and acquired their wealth outside their hometown - through cocoa, trading or salaried

[59] Kwawu Tafo is a town on the Kwawu plateau, about three hours by foot from Abetifi, during the 1930s and 1940s an important center of the expanding cocoa industry in Kwawu. Akuamoa was most likely a cocoa farmer.

[60] *Ɔkyeame Kwame Ansong v Kwaku Ansong*.

[61] Ibid.

employment - which enabled some to build cement houses in Abetifi. Caretakers, often junior family members, lived in these houses. These migrants regularly visited Abetifi and maintained contacts; most of them eventually returned to retire, die, or be buried.

The *third* episode brought all actors to Abetifi for Akuamoa's funeral in 1941. After the final rites were performed, they met at Christian Quarters to divide Akuamoa's belongings. Teacher Donkor, as witness for Kwaku Ansong, explained to the Tribunal how Akuamoa's properties were shared among "children and family" according to Presbyterian "customs and regulations".[62] Here Donkor referred to the 1929 Presbyterian regulations, which divided properties of a deceased Christians equally among wife, children and *abusua*.[63] But there were *different* rules concerning the house in Christian Quarters of Abetifi. Teacher Donkor recalled how senior presbyter Ɔpanyin Okra, the dominant figure of these deliberations, contended "that the house of any deceased according to church regulations is *for the children and therefore not shared* [my emphasis]".[64] This was a crucial distinction, reflecting the understanding of the Basel Mission that buildings in Christian Quarters, on land purchased by the Mission for its converts in 1876, could only be occupied by Christians, and inheritance, therefore, should follow exclusively patrilineal lines.[65] Ɔpanyin Okra himself remembered that he declared the house was not part of Akuamoa's shared property but should go "according to our regulations . . . to *wife* and children [my emphasis]". Ɔpanyin Okra's recollection has additional significance, since this was the only time that Akuamoa's wife was explicitly

[62] Ibid.

[63] *Regulations* 1929, 23, para. 235.

[64] *Ɔkyeame Kwame Ansong v Kwaku Ansong*.

[65] It appears that the Basel Mission's claim to enforce specific inheritance norms rested on its having purchased the land of Christian Quarters for one hundred and ten dollars in 1876, see BMA, D-1. 28, 242, J. Weimer to Basel, Abetifi, February 22, 1876. In a related case, heard by the Tribunal in 1942, the same senior presbyter, Ɔpanyin Okra, had testified that he knew of several examples "of Christian wives and children who are in the possession of many houses in the Quarters. . . . Whatever a deceased Christian leaves is shared in the 3/3 system, but this *does not include a house* if the deceased happens to leave one [in Christian Quarter, my emphasis]. By regulation of the Church the house left by the deceased ... is presesently the bona fide property to the children [and wife if alive] of the deceased." KTC, vol. 4: 127, 129-134, Native Tribunal of Adontenhene, Abetifi, *Joseph Baah Donkor v Emmanuel Ommane*, September 1, 1942.

mentioned in the record as inheriting along with her children. Although Kwaku Ansong represented Akuamoa's children as *wɔfa* in this dispute, it remains unclear to what extent he also claimed ownership for his sister, Akuamoa's widow.[66]

After Ɔpanyin Okra's announcement, a heated debate erupted. The *Ɔkyeame* protested and maintained that the house did not belong to his late brother Akuamoa. He recalled the history of the house, built by him for his mother and now a possession of his *abusua*, since his brothers had agreed to help repay the debt. Kwaku Ansong and Teacher Donkor rejected the *Ɔkyeame*'s version and confirmed that Akuamoa had purchased the house. At this point, according to Kwaku Ansong, Yao Charles also affirmed Akuamoa's purchase and noted the custom "that a family debt is not paid by one [member only] and that Akuamoa paid the amount on purchase of the house".[67] When the *Ɔkyeame* demanded to see a receipt for this transaction, Charles told the assembly - according to Kwaku Ansong - that all receipts were at Tafo, and he would get them next time he travelled there. Kwaku Ansong further observed that *Akwamuhene* Adofo - senior member of the *Ɔkyeame*'s *abusua* - and many other "family members" were present during this debate. Since they did not speak up on the *Ɔkyeame*'s behalf, it appears that Kwaku Ansong considered their silence implicit approval of the "custom" that a debt within an *abusua* should be shared by more than one member.

Under cross-examination by the Tribunal, the *Ɔkyeame* again denied the existence of such a custom concerning debt payment. Further, the *Ɔkyeame*'s brother and witness, Robert Boateng, explained that he did not speak up for his brother, since he was too young, and not the chosen *abusua* successor of the late Akuamoa.[68] After this eventful meeting, the children and wife of the late Akuamoa continued living in the disputed house. This episode contains the central moment of the case, when the different claims of ownership collided at the end of Akuamoa's funeral, bringing together at one site different and competing notions of inheritance arguably applicable to the house. It reveals the tensions concerning inheritance practices in Abetifi during the early 1940s. Despite normative statements by the participants, succession arrangements were not clear but had to be negotiated and re-asserted within specific

[66] In his opening statement, the *Ɔkyeame* observed that Akuamoa's widow was still living in the house; in all subsequent testimony, she is not mentioned in the claims of Kwaku Ansong.

[67] *Ɔkyeame Kwame Ansong v Kwaku Ansong*.

[68] After each funeral, the *abusua* in Kwawu selects a successor for the deceased man or woman, not only to inherit his (or her) properties but also to fulfill social obligations on behalf of the deceased.

circumstances, reflecting claims and backgrounds of the litigants. The one person who could have answered many open questions was no longer available. Yao Charles had died eighteen months later.

The *fourth* episode focused on negotiations after Yao Charles's death in 1943, first following his funeral and then at a meeting before the presbyters. When Yao Charles's belongings were divided, all actors gathered again in Christian Quarters. The *Ɔkyeame* took the opportunity to re-assert his *abusua's* claim of ownership. He was, however, interrupted by Ɔpanyin Okra, the senior presbyter. Okra told him that because they were now sharing Yao Charles's estate he would not permit the *Ɔkyeame* to raise this issue. Instead, the *Ɔkyeame* was invited to present his case to the minister and presbyters. Teacher Donkor, Kwaku Ansong's witness, recalled that he, as the literate teacher, was chosen to open and inspect Yao Charles's box. While destroying all documents of "no value", he suddenly found the document relating to the house. *Akwamuhene* Adofo, representing the *Ɔkyeame*'s *abusua*, immediately called for a public reading of the paper. Donkor identified the *Ɔkyeame*'s signature, which had been witnessed by the former Registrar Akyea,[69] and read the English document: "I have received £13 from Charles Koranteng [Yao Charles] being *part payment of my house account* [my emphasis]."[70] Ɔpanyin Okra, recognizing the importance of this document, asked that it be given to him for safe-keeping. *Akwamuhene* Adofo, as the *Ɔkyeame* recalled, opposed this request, contending the paper belonged to Robert Boateng, recently chosen as Yao Charles's successor. Teacher Donkor complied, and the precious document ended up with the *Ɔkyeame*'s younger brother, Robert Boateng. Donkor informed the Tribunal that he considered the paper as "clear proof of the purchase of the house". Under cross-examination, Donkor verified that the receipt, presented by the *Ɔkyeame* to the Tribunal and marked 'Exhibit A', was the duplicate of the document found in Yao Charles's box. The original receipt was handed to the Tribunal as 'Exhibit C' by Boateng, when testifying on behalf of the *Ɔkyeame*.[71]

Three days later, the *Ɔkyeame* appeared before the Abetifi minister and presbyters.

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[69] Since the *Ɔkyeame* needed his signature to be witnessed by Registrar Akyea, he was probably illiterate and signed the document with a cross.

[70] *Ɔkyeame Kwame Ansong v Kwaku Ansong*.

[71] The legalistic tone in reporting about written evidence discloses the formal legal training of the Registrar who "tendered, accepted and marked as Exhibit" both receipts, ibid. *Handbook* 1931, 6ff., para. 45, explicitly stated the importance of "Marking Exhibits," giving precise instructions to Registrars about the treatment of documents.

While he hoped to find support for his claim, he was simply told that the presbyters had nothing to add since Akuamoa had bought the disputed house. Ɔpanyin Okra, as senior presbyter, offered the *Ɔkyeame* the option of returning with *Akwamuhene* Adofo. At this point, the record again reveals local forms of dispute management. Ɔpanyin Okra suggested that the *Ɔkyeame* appear before the presbyters with the support of the most senior member of his *abusua, Akwamuhene* Adofo, so he would be better represented. Adofo, who frequently sat on the Tribunal, was well versed in legal matters, and it appears that he was the influential figure behind the *Ɔkyeame*'s case.[72] In this meeting the two most powerful elders of both parties convened to make a final attempt to settle the dispute out of court. The record does not tell much about the negotiations before the presbyters. Recalling the incident, Ɔpanyin Okra only told the Tribunal that the *Akwamuhene* and the *Ɔkyeame* were informed that because "Charles had borne witness" of the house sale, they had no other choice, according to the regulations of Christian Quarters, than "asking the wife and children [of the late Akuamoa] to take it".[73] In this episode the crucial evidence, the receipt of £13, finally re-surfaced. Both parties, aware of its legal power, had sought to appropriate this document. Since the receipt was phrased in rather ambiguous language, it allowed opposite readings. Teacher Donkor, Kwaku Ansong and the presbyters understood "part payment of my house account" as the beginning of the transfer of ownership from the *Ɔkyeame*, through Yao Charles, to Akuamoa. The *Ɔkyeame*, however, maintained that the "house account" referred to the outstanding loan, and "part payment" was only a first installment from his brothers assisting in debt repayment, thereby making the house *abusua* property. Thus, each side considered the receipt as vital evidence. Separately from claims about the meanings of the receipt, ownership, indeed inheritance, of the document itself was contested. Only upon the *Akwamuhene*'s intervention was the paper declared *abusua* property, passing down matrilineally to Yao Charles' successor, Robert Boateng.

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[72] In this case, according to the recorded minutes, Ɔpanyin Adofo was not among the Tribunal members; occasionally Adofo presided as acting *Adɔntenhene* over the Abetifi Native Tribunal, e.g. KTC, vol. 2: 280, 296-308, *Afua Kisiwah v Kwasi Mununu*, June 21, 1937. Adofo was an active trader and cocoa farmer; interviews with Rev. E.K.O. Asante, Abetifi, February 12, 1993, (#12: 7), and September 30, 1994, (#89: 8ff.). On November 23, 1994, Rev. Asante showed me Ɔpanyin Adofo's former house, where many of the deliberations among the plaintiff's *abusua* took place.

[73] *Ɔkyeame Kwame Ansong v Kwaku Ansong*. For the obligations of the presbyters as church elders settling disputes within the congregation, cf. *Ordnung* 1902, 13, para. 26, and *Regulations* 1929, 2ff., para. 16, 32.

The *fifth* episode took the two principal litigants to the District Commissioner, leading to one day of proceedings at the Abetifi Tribunal on June 14, 1943 and finally to a judgment. Having been rejected by the presbyters, the *Ɔkyeame* went to the District Commissioner of Kwawu at Mpraeso and swore an affidavit that his *abusua* owned the disputed house in Christian Quarters, a copy of which he presented to the Tribunal. Again the Registrar was very careful in handling this written evidence. Following his instructions closely, he recorded: "Affidavit tendered in evidence read and interpreted into Twi by Registrar and accepted, marked 'Exhibit B'."[74] Another copy of the affidavit was sent to Kwaku Ansong who, in turn, swore his own affidavit before the District Commissioner. Then the *Ɔkyeame* requested the Tribunal to issue summons calling Kwaku Ansong to prove ownership on behalf of the late Akuamoa's children. Summing up his testimony before the Tribunal, Kwaku Ansong gave copies of both affidavits to the Tribunal, also "tendered in evidence", accepted and marked by the Registrar as exhibits 'D' and 'E'.[75]

In its judgment, the Tribunal decided for the *Ɔkyeame* and awarded him the costs of the case against Kwaku Ansong.[76] The Tribunal maintained that "[it] had taken pains to listen to both parties and their witnesses and found that there had been no substantial proof by the defendant [Kwaku Ansong] to make or convince the Tribunal as to the purchase of the house in question by the late Akuamoa". Central to the Tribunal's argument was the failure by Kwaku Ansong and his witnesses to show or present as evidence "the written document" prepared when Akuamoa acquired the house from the *Ɔkyeame*. The Tribunal referred here to the absence of witnesses and lack of documentation for payment of the final balance of £7. Concerning the crucial receipt about the transfer of £13 from Yao Charles to the *Ɔkyeame* - which both sides agreed was crucial - the Tribunal followed the narrower reading, suggested by the *Ɔkyeame*, that it referred only to a transaction of £13 "by one Yao Charles to plaintiff [the *Ɔkyeame*] as part payment of certain house account". Thus, for the Tribunal, the receipt was no proof of the house purchase by Akuamoa, as Kwaku Ansong and his witnesses contended.[77] In this last episode, the two parties sought support in their claims outside Abetifi by swearing affidavits before the District Commissioners of Kwawu. The exact contents of these affidavits, which might have

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[74] *Ɔkyeame Kwame Ansong v Kwaku Ansong*. Cf. *Handbook* 1931, 6f., para. 45.

[75] *Ɔkyeame Kwame Ansong v Kwaku Ansong*.

[76] The amount of the costs were not listed in the notes of the proceedings, but taxed on a later date, of which a record has not been located. Again, the Registrar followed precisely his instruction, *Handbook* 1931, 3, para. 12.

[77] *Ɔkyeame Kwame Ansong v Kwaku Ansong*.

been quite detailed, were not incorporated into the record of this case. It would be interesting to know whether the *Ɔkyeame* and Kwaku Ansong sought help from literate legal experts - such as the local Registrar, or a clerk at the District Commissioner's office - before swearing their affidavits in Mpraeso. Both carefully prepared this step, which involved a fee, in their long struggle to claim ownership of the disputed house.

Discussion

Examining the five episodes of the case, *Ɔkyeame Kwame Ansong v Kwaku Ansong*, we have seen the importance of arbitration outside the courtroom. Although the content of these meetings is only partially disclosed in the Tribunal record, the leading mediators can be identified: *Akwamuhene* Adofo and Ɔpanyin Okra. They acted as "centerpeople", Adofo working for the interests of the *Ɔkyeame*'s *abusua* and Okra, the senior presbyter, negotiating for the late Akuamoa's children, who were represented by Kwaku Ansong in court. Centerpeople, as Karen Sacks has argued in quite a different context, distinguish themselves by forming "interpersonal networks" with similar values, based on shared kinship or work experience, taking initiatives and mediating conflict.[78] *Akwamuhene* Adofo and Ɔpanyin Okra, as centerpeople, were not only crucial before the dispute reached the Tribunal but also played an important role during the proceedings. While Ɔpanyin Okra testified in court as Kwaku Ansong's third witness, Adofo was not recorded speaking as a witness, nor did he take his customary seat as *Akwamuhene* on the bench. Still, Adofo was very much present at the Tribunal. His name was frequently evoked, and his actions, prior to the proceedings, were described in detail by several witnesses. Thus, he probably was not far from the courtroom on the day the Tribunal heard this case.

In some ways these two *mpanyinfoɔ* (elders), centerpeople within their communities, stood at opposite ends of the dispute. Adofo, a trader and cocoa farmer with close ties to the *ahenfie* (chief's palace), represented and defended matrilineal inheritance against innovations, such as moves towards patrilineality, practiced in Christian Quarters.[79] Further, the *Akwamuhene*, as occupant of a senior stool in Abetifi, stood for 'tradition', chiefly office and religious practices, which were still shunned by

[78] In a suggestive study, Sacks (1984: 290, 285ff., 294ff.) has explored the activities of hospital ward-secretaries as "centerpeople" creating continuity between family and work.

[79] Interviews with Rev. Asante (#30: 6f.); (#12: 7); (#89: 8ff).

members of the Presbyterian Church in the 1940s.[80] Ɔpanyin Okra, on the other hand, had been the senior presbyter for almost thirty years. He was a towering figure in Abetifi, considered an embodiment of the local Presbyterian Church and its separate settlement.[81] He argued for Presbyterian forms of inheritance and for the specific rules concerning Christian-owned houses in the Christian Quarters. Okra was no stranger to the Tribunal, since he was frequently called to testify in matters regarding Presbyterian rules.

There was also common ground between these two centerpeople. Both were highly respected within their communities and acted as *mpanyinfoɔ* with similar authority and status, although in quite different settings. They worked as brokers in establishing a consensus without, however, abandoning their legal principles, thus taking a pqsition of moderate partisanship.[82] *Akwamuhene* Adofo was more successful. Not only did his party convince the Tribunal to adopt their reading of the receipt, but Adofo, operating from behind the scenes, seems to have had a certain

[80] The relations between Presbyterians and chiefly institutions were intensively debated during the 1940s; BMA, D-10. 1, 11, "Memorandum from the Synod of the Presbyterian Church of the Gold Coast to the State Council of Akyem Abuakwa," Abetifi, August 1942, which upheld the notion that Christians should stay away from rituals and performances practiced by Akan chiefs, such as libations or *odwira* festivals, because of their (non-Christian) "religious meaning." A practicing Presbyterian could not become occupant of a stool and had to abdicate if he wanted to receive a Christian funeral. This Memorandum was written as response to BMA, D-10.4, 23, "Memorandum to the Synod of the Presbyterian Church of the Gold Coast by the State Council of Akyem Abuakwa," July 11, 1941, in which the Presbyterian Church was accused of not paying proper respect to chiefly institutions; cf. Smith (1966: 235ff.).

[81] The separate Christian Quarters were also criticized in the Akyem Abuakwa State Council Memorandum and defended by the Presbyterian Church, ibid. Ɔpanyin Okra took up the position as senior presbyter in 1916, cf. BMA, D-3.7, Abetifi, February 22, 1917, D.E. Akwa, Annual Report; Interview with Ɔpanyin Yao Annor, Abetifi, November 16, 1993, (#68, 69).

[82] Gulliver (1969b), in his case study of dispute settlement among the Ndendeuli of Tanzania, observed that in the absence of an intermediary two mediators from the opposing parties adopted "the role gradually" but also pursued their own interests. Arbitration attempts by such "notables" - leaders and men of influence - were received with some scepticism but conceded to be useful to a disputant who needed advice and encouragement because not especially competent in advocacy and negotiation.

influence on the outcome of the case. Adofo and the *Ɔkyeame*, in his role as spokesperson for the Abetifi chief, had an additional advantage, since both were obviously close to the *Adɔntenhene*, the president of the Tribunal.[83]

Although the disputed house was originally inhabited by the *Ɔkyeame*'s late mother Akosua Okyeraa, women remained remarkably absent in this case. Only once was a woman mentioned as an individual actor, when the *Ɔkyeame* stated that the late Akuamoa's wife, "defendant's sister", continued living in the house after her husband's death. The record never refers to her again. Rather, Kwaku Ansong only argued for ownership on behalf of her children. Not all inheritance cases at the Abetifi Native Tribunal were exclusively dominated by men. There are instances where women, as "jural adults", took legal action on their own.[84]

Nevertheless, in this case all participants acted as *gendered* litigants, embodying certain notions of masculinity and (among those not mentioned) femininity. Although the location of this case, the *ahenfie* (chief's palace) of Abetifi, was mainly a male space, women were not excluded, even if the *Adɔntenhene* and most his sub-chiefs were men.[85] The two social settings represented in this dispute, the town of Abetifi and Christian Quarters, had different notions of gender. While women could serve in high offices at the *ahenfie*, the Presbyterian Church excluded them from the ranks of ministers and presbyters. In Akan marriages, practiced in Abetifi, wives were first members of their *abusua*, often remained quite independent from their husbands, and had duolocal residence; in Christian marriages, wives were supposed to subordinate

[83] Cf. Cohen's (1991) argument about the relevance of "discordant voices," which are silent in court records but remain center stage within the "sociology of participation," mediating power and constructing consent.

[84] Allman (1991: 177) divided between women in customary courts into "jural minors" and "jural adults," the latter taking legal action in "cases involving land disputes, inheritance claims and debt recovery." For inheritance cases heard in Abetifi with women as litigants, cf. KTC, vol. 3: 404-409, Native Tribunal of Adɔntenhene, Abetifi, *Ama Biraa v Ɔkyeame Kwaku Buabeng*, October 22, 1940; or, vol. 7: 211-213, Native Tribunal Adɔntenhene, Abetifi, *Kofi Amoafo v Adwoa Gyaba*, February 29, 1932.

[85] Women, if beyond menopause, could occupy a stool, but usually men spoke on their behalf during public proceedings. In the 1930s, the stool of the *Kurontehene* of Abetifi was occupied by a woman; cf. KTC, vol. 2: 204-211, Native Tribunal of *Adɔntenhene*, Abetifi, *Abena Danwa v Kwasi Kuma*, February 1937, in which the female *Kurontehene*, Yaa Anomaa, presided over the proceedings; see Addow (n.d.: 10ff.).

themselves to their husbands, and spouses were expected to share a house.[86] The Basel Mission and the Presbyterian Church had altered the existing gender system by creating different educational programs for their male and female converts, training women in domestic skills as future mothers and wives, while preparing men for new positions in the colonial society as clerks, teachers and ministers.[87] Such conflicting notions of gender were also reflected in inheritance disputes. The Church sought to strengthen the patrilineal conjugal family, which embodied different spaces, responsibilities and expectations for men and women, while the *Ɔkyeame*, supported by the *Akwamuhene*, sought to protect the interests of the *abusua*.[88]

Reading the records of the Abetifi Native Tribunal, one immediately recognizes the English model concerning the order of testimony, as well as the arrangement of questions and answers during cross-examination. Moreover, these English notes of the Twi proceedings not only lose the linguistic richness of the participants' testimony, but also completely ignore individual performance and non-verbal expressions at the *ahenfie*. Litigants, addressing the Tribunal, were expected to act and speak according to their status in relation to the Tribunal president. For example, men had to lower their cloth, and remove their sandals. There was a remarkable continuity of some customary practices in the Christian Quarters in spite of innovations concerning social relations and rules of inheritance. Eugene Addow (n.d.: 10ff.) reported that it was Kwawu custom to express a claim about a deceased person's property - an outstanding debt or ownership of a house - when the deceased's estate was divided at a meeting after the principal funeral rites had been performed. The case shows that this 'custom' was practiced not only in Abetifi and the rest of Kwawu but also *within* the Christian Quarters. All witnesses described how the *Ɔkyeame*, albeit unsuccessfully, publicly announced his *abusua's* claim of ownership to his late mother's house after Akuamoa's and Yao Charles's funeral.

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[86] Cf., BMA, D-9.1c, 13d, *Regulations Practice & Procedure*, revised (1929), p. 2 (para 12), p. 19 (para 202ff.). After 1960, women could also serve as presbyters. This evidence from Kwawu that women had more autonomy and political space within local settings than in Christian communities runs contrary to observations about women's experience in colonial Southern Africa: cf. Chanock (1985: 186); Walker (1990: 15); Schmidt (1992: ch. 5).

[87] Miescher (1995); cf. Allman (1994); Hansen (1992).

[88] In my dissertation I am exploring such ideologies of masculinity and the negotiation of male gender expectations in Kwawu in response to the programs of missionary and colonial activity between 1890 and 1957: see Miescher (1997).

Furthermore, senior members of an *abusua* represented younger ones who needed legal support. The *Akwamuhene* Adofo acted as arbitrator in the dispute between the *Ɔkyeame* and his brothers, and as advisor to the *Ɔkyeame* during the second meeting at the presbyters and in the proceedings before the Tribunal. Although Christian inheritance rules promoted patrilineal succession, it is striking that representation of litigants followed the same matrilineal principles as among non-Christians of Abetifi. When the children of the late Akuamoa had to convince the Tribunal that they owned the disputed house, they chose their *wɔfa* (maternal uncle), Kwaku Ansong, to speak on their behalf rather than a member of their late father's family. Therefore, although the late Akuamoa's children supposedly inherited a house through the patrilineal line, their *abusua*, represented in the proceedings by Kwaku Ansong, considered it its interest and responsibility to champion the claim of the late Akuamoa's children in court.

In adjudicating ownership of a house, the Tribunal also determined the form of inheritance. Justice N.A. Ollennu's (1966: 147ff.) argument that there was no statutory basis for separate inheritance rules among Presbyterians was obviously not relevant for this case. Rather, the Abetifi Native Tribunal not only acknowledged the practice of dividing property of deceased Christians equally among wife, children and *abusua* but also accepted the more rigid rules of Christian Quarters, which reserved the house of a deceased member exclusively for the children.[89] Evidence from other cases indicates that the Presbyterian inheritance rules were not questioned but upheld by the Tribunal.[90] The Basel Mission's fear in 1917 about losing control over its Christian settlements because it could no longer enforce its own regulations, did not materialize, at least in Abetifi.[91]

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[89] Oral accounts confirm this practice, mentioning, however, "wife and children" as beneficiaries of a house in Christian Quarters, interviews with Rev. E.K.O. Asante, Abetifi, June 7, 1993, (#36:1ff.); Adelaide Opong, Abetifi, April 14, 1993, (#22: 18) with the assistance of Joseph Kwakye; and Ɔpanyin E.K. Addo, Abetifi, September 28, 1994, (#81: 27ff.) with the assistance of Kwame Fosu. They emphasized the flexibility of these rules, contending that maternal relatives could temporarily keep a room in a house.

[90] Cf. KTC, vol. 4: 127, 129-134, Native Tribunal of Adontenhene, Abetifi, *Joseph Baah Donkor v Emmanuel Ommane*, September 1, 1942, in which the Tribunal decided that a house in question at Abetifi Christian Quarters belonged to the deceased children and not to the *abusua*.

[91] BMA, D-3.7, Abetifi, March 3, 1917, missionary H. Henking noted that the colonial government would no longer allow the Basel Mission exclusive dominion over its Christian settlements. Henking was told by a District Commissioner that the

A close reading of the case has clearly shown the importance of written documents in the Native Tribunal of Abetifi during the early 1940s. The *Ɔkyeame* and Kwaku Ansong sought support from the District Commissioner of Kwawu by obtaining a sworn affidavit to strengthen their claims concerning ownership of the house. In their presentation of the dispute, the two litigants relied on the power of written documents to achieve their goals. Both the *Ɔkyeame* and Kwaku Ansong built their arguments around the *same* document. The *Ɔkyeame* considered the receipt of £13 by Yao Charles, on behalf of the *abusua*, as "part payment" for the outstanding debt on the house. Kwaku Ansong, less successfully, presented this document as evidence of the sale of the house to Akuamoa. In its judgment, the Tribunal also underlined the relevance of documents first by noting the absence of any written receipt to prove the sale of the house by Akuamoa and then, by framing its decision as a reading of the crucial receipt, following the interpretation proposed by the *Ɔkyeame*. This reliance on documents was an innovation in the proceedings at the Abetifi Native Tribunal during the early 1940s. Only a decade earlier, hardly any written evidence was presented and recorded in the proceedings of the same Tribunal.[92]

The changes brought by written documents had additional consequences. They affected the mechanics of the Tribunal. While most cases recorded in the late 1920s and early 1930s began with the swearing of the local chief's oath, the practice of issuing a written summons, as in this case, started to replace these local oaths during the 1940s.[93] Furthermore, the increased importance of documents upgraded the position of the Tribunal Registrar. While paying little attention to recording elaborate courtly behavior in his notes, the Registrar carefully kept track of all documents submitted to the Tribunal, listing them as individual pieces of evidence, marked as exhibits 'A' to 'E'.[94] As administrator of this new evidence, he was often the only

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Mission did not have the right to expel somebody from the "Station" or establish its own regulations; hence Henking warned that in a few years there would be many "fallen Christians" and "heathens" living within Christian settlements.

[92] Cf. the records of civil cases from the Abetifi Native Tribunal from 1928 to 1932, KTC, vol. 1, passim.

[93] The oaths of Abetifi are *Benada* and *Yawda*, cf. the inheritance case about rights of a cocoa plantation, initiated by oath, KTC, vol. 5: 67f., 83-91, Abetifi Native Tribunal, *Yao Asamoah v Kwaku Dankyi*, October, 20, 1932. For the importance of oaths in Akan courts, see the early ethnographic account of Akuapem by Griffith (1905); Danquah (1928a: 69-83); and the definitions of recognized oaths in the Native Administration Ordinance, No. 4, 1927, sect. 36, 37.

[94] The Registrar followed instructions for "Marking of Exhibits" in *Handbook* 1931,

person, at least in more remote places, who could write, read and interpret documents to the court. Colonial observers, aware of this crucial role, deplored abuses by Tribunal Registrars and other scribes offering their services to litigants.[95]

The introduction of written documents into the oral proceedings of the Abetifi Native Tribunal was a dynamic process. The oral practices of the court strongly affected the reception of this new evidence. Most legal documents, such as receipts or affidavits, were written in English. To be understood, therefore, they needed oral commentary and exegesis. It was up to the Registrar to read them aloud and, in most instances, translate them into Twi. When the Registrar carried out this task, he not only made the written documents accessible to the non-literate Tribunal members and litigants but also subjected them to the modes of an oral performance. Needless to say, his choice of words and form of presentation either strengthened or reduced the document's significance and credibility, thus influencing its impact on the outcome of the case. Therefore, the incorporation of English legal literacy within the proceedings of the Native Tribunal was mediated by oralizing the written word. And, to borrow Isabel Hofmeyr's metaphor, "[b]y bathing documents in the stream of orality", the actors in the Tribunal also "subordinated them to the prevailing practices and procedures of an oral world".[96]

The increased use of documents in Native Tribunal proceedings also reflected new options of combining orality and literacy. For example, documents provided means to preserve wishes beyond one's lifetime. As Eugen Addow pointed out, nuncupative (oral) wills - deathbed instructions before witnesses to be respected by the *abusua* - were a common practice in Kwawu.[97] During the 1940s and 1950s, colonial

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6ff., para. 45.

[95] Cf. Gold Coast (1943: 23, para. 22, 1945: 23, para. 49, 51).

[96] Hofmeyr (1994: 62) presented a series of case studies on the impact of the introduction of literacy - as by literate bureaucracies - on orality in a South African chiefdom in the Northern Transvaal during the twentieth century.

[97] Addow (n.d.: 9ff). Frequently, such oral wills were mentioned in inheritance cases brought to the Tribunal, KTC, vol. 1: 372-381, Native Tribunal of Adɔntenhene, Abetifi, *Yao Asamoa v Kwaku Dankyi*, October 20, 1932; and KTC, vol 5: 67f., 93-91, Kwawu Native Authority Court "C" Adɔnten, Gyase and Kyidom Division, Abetifi, *Yao Tawia v Kwabena Barifi & Ama Benewa*, November 8 - December 20, 1945; the latter case took place after under the revised Native Courts (Colony) Ordinance, No. 22, 1944, and *Akwamuhene* Adofo was the president of the Tribunal.

administrators and African legal scholars sought to "improve" such local oral practices. Although one colonial expert, A.J. Loveridge, considered public oral wills less contested than secret English written wills, he urged "development" of the custom of nuncupative wills. Loveridge (1950: 28) proposed that a written transcript of customary wills should be made "as a useful permanent record of the occurrence". It appears that only wealthy traders or literate teachers and clerks either left written wills or had their oral instructions confirmed by a written document.[98] When such wills were challenged, legal action usually was taken to a higher court. The civil jurisdiction of a "Divisional Chief's" Tribunal, like the one in Abetifi, was limited, according to NAO, to suits relating to succession "to property of any deceased native" whose value did not exceed £200.[99] Inheritance disputes, like *Ɔkyeame Kwame Ansong v Kwaku Ansong*, in which a house was supposedly sold for £20, were closer to the scale of cases heard by the Abetifi Native Tribunal.

The 'trail of paper' and the mediations, arguments and interpretations that revolved around the receipt reveal the multidimensional complexities of inheritance arrangements in Kwawu. These arrangements were not static but fluid and were negotiated in each case, reflecting individual and collective interest, status, gender, age, occupation and religious affiliation, as well as the evolving interpersonal networks of the participants. In such inheritance disputes, litigants were navigating between competing notions of inheritance and succession yet also pursuing interest and opportunity, thereby creating for themselves new spaces in the intricacies of these conflicting rules and customs.

[98] So far, no case has surfaced in the records of the Abetifi Native Tribunal with reference to either a written (English) will, or an oral will preserved by a written transcript or a sworn affidavit. But there are many oral recollections in Abetifi that wealthy people made written wills, Rev. Asante (#36: 2). Ɔpanyin Yao Annor, Abetifi, September 23, 1994, recalled a case from his *abusua* when a nuncupative will was recorded posthumously by the successor depositing a sworn and written affidavit before a District Commissioner.

[99] Native Administration Ordinance, No. 18, 1927, sect. 44, 2e; after the court reform of 1944, this amount was reduced to £100 for a Court Grade "C" which was established in Abetifi; cf. Native Courts (Colony) Ordinance, No. 22, 1944, and Hailey (1951: 212).

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