


AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
<p style="text-align: center;"><b>AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS</b>  <b>COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES</b></p>		

## CASE SUMMARY

**APPLICATION NO 059/2016**

**AKWASI BOATENG & 351 OTHERS v. REPUBLIC OF GHANA**

### A. THE PARTIES

1. Akwasi Boateng and Three Hundred and Fifty-One (351) others (“the Applicants”) claim to be an indigenous people and members of the Twifo Hemang Community, living in the Central Region of Ghana comprising seven (7) villages with forty- eight (48) Chiefs.
2. The Application is filed against the Republic of Ghana ( “the Respondent State”), which became a Party to the African Charter on Human and Peoples’ Rights (hereinafter referred to as “the Charter”) on 1 March 1989; the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (hereinafter referred to as “the Protocol”) on 16 August 2005; and deposited on 10 March 2011, the Declaration under Article 34(6) of the Protocol, accepting the jurisdiction of the Court to receive cases from individuals and Non- Governmental Organisations.

3. As filed in Court, the Application also listed J. E. Ellis and Emmanuel Wood, two (2) wealthy foreign merchants purportedly as the 2<sup>nd</sup> Respondents and the Chief of Morkwa, Ackwasie Symm alias Kenni of Morkwa (hereinafter referred to as “the Morkwa Chief”), a former chief of another community in the Central Region of Ghana, as the 3<sup>rd</sup> Respondent.

## B. COMPLAINTS

4. The Applicants allege that following boundary disputes which arose in 1884 between them and the Morkwa Community, in 1974, the 1<sup>st</sup> Respondent forcefully confiscated their lands<sup>1</sup>, following a recommendation from the Attorney General’s Office to compulsorily confiscate their land, by invoking its powers under Act 125 of 1962 to vest all the Twifo Hemang Ethnic Community Lands to the State to settle the matter once and for all.
5. They further allege that between the period 1974 and 1992, the 1<sup>st</sup> Respondent enacted five(5) laws, on the compulsory acquisition of their land and barred their access to a judicial remedy for the claims to their land. The laws are: The State Lands-Hemang Acquisition- Instrument, 1974 (Executive Instrument, 61) issued on 21 June 1974; The Hemang Acquisition- Instrument, 1974 (E.I 133); The Hemang Lands (Acquisition) Decree 1975 (NRCD 332); The Hemang Land (Acquisition) (Amendment) Law, 1982 (PNDC Law 29); and The PNDC Law 294 – Hemang Lands (Acquisition and Compensation Act) 1992.

---

<sup>1</sup> The Applicants have referred to their land interchangeably and using different names for instance:

- a.** In the Application, page 1 as “**Ethnic Community Land**”, page 2 as “**Native Ethnic Land**” and “**Community lands**”, paragraph 27(D) relating to a letter from one of their chiefs as “**stool or community land**”.
- b.** In the Applicant’s Response to the Respondents 1<sup>st</sup> Reply to the Application, paragraph 11 as “**Ancestral land**” and under Section 4(h) as “**Twifo Hemang Community Lands**”.
- c.** In the Applicant’s Response to the Respondent’s Observation on Reparations at the Introduction at paragraph 1, they referred as “**indigenous community land**”.
- d.** The 1972 Report of the Attorney General on the Twifo Hemang Stool Land filed by the Applicants refers to the land as “**Twifo Hemang Stool Lands**”

6. Furthermore, that the laws enacted by the 1<sup>st</sup> Respondent denied them the opportunity to exhaust the local remedies through filing an application or motion for commencement of a human rights action at the High Court. They argue that this position was affirmed by the Supreme Court of Ghana on 22 July 1998 in the case of *Ellis and Wood v Attorney General* which it dismissed for lack of jurisdiction to hear the matter.

### **C. ALLEGED VIOLATIONS**

7. The Applicants allege that they have been deprived of their community land in contravention of their rights under the Charter, specifically:
  - a) The right to property under Article 14 of the Charter; and
  - b) The right to economic, social and cultural development under Article 22 of the Charter.

### **D. APPLICANTS' PRAYERS**

8. The Applicants pray the Court to:
  - i. Find that the Court has jurisdiction by virtue of ratification of its Protocol by the Ghana Government (Article 56 of the African Charter) and by virtue of Articles 6, 34(6) and 5(3) of the Protocol;
  - ii. Find that the Application is admissible and must be upheld by the African Court due to the human rights violations alleged on the poor indigenous community of Twifo Hemang;
  - iii. Order the Respondents to produce their documents in connection with the Twifo Hemang Stool lands for study by the Court;

- iv. Order the Respondents to release the Twifo Hemang community land to the legally rightful ancestral owners;
- v. Order the abrogation of all instruments including the PNDC Law 294, that vests the Twifo Hemang community land on the Respondent;
- vi. Order that all royalties accrued from the time of the Respondent's compulsory acquisition of the Twifo Hemang Community land be paid/returned to the poor community dwellers to enable them develop the community and live a decent life; and
- vii. Ban the 2nd and 3rd Respondents from contesting the community land.

#### **E. RESPONDENT STATE'S PLEADINGS**

- 9. The Respondent State argues that the Court should dismiss the Application for lack of jurisdiction as the alleged violation predates the ratification of the Protocol in 2004. Furthermore, that the Applicants have failed to inform the Court of a specific right that has been infringed, and that the Court cannot proceed with the hearing of the Application since it cannot invent or conjure one for them.
- 10. The Respondent State raises two (2) objections regarding the admissibility of the Application. The first relating to the Applicants' failure to exhaust local remedies before filing the Application as required by Article 56(5) of the Charter and Rule 40(5) of the Rules and the second being that the Application was not filed within a reasonable time as required by Article 56(6) of the Charter and Rule 40(6) of the Rules.

#### **E. RESPONDENT STATE'S PRAYERS**

- 11. The Respondent State makes the following prayers:

- i. That the Court dismiss the Application for lack of jurisdiction as the alleged violation predates the ratification of the Protocol in 2004;
- ii. That the Court declare the Application inadmissible as it does not meet the admissibility requirements of Articles 56 (5) and (6) of the Charter on the exhaustion of local remedies and filing the Application within a reasonable time after exhausting local remedies; and
- iii. That the Court dismiss this Application as the Applicants have failed to inform the Court of a specific right that has been infringed, and that the Court cannot proceed with the hearing of the Application since it cannot invent or conjure one for them.