OLONI and FAGASI -v- KONAIRAMO and FA'AFEROA

High Court of Solomon Islands
(Ward C.J.)
Civil Appeal No. 170 of 1989
Hearing: 13 October 1989
Judgment: 23 October 1989

Francis Waleilia for the Appellants
Andrew Radclyffe for the Respondents

WARD CJ: This is an appeal against the decision of the learned Principal Magistrate (Malaita) delivered on 1.10.89. The case was a claim for compensation for two agua trees cut down and removed from Rakwana land and judgment was given to the plaintiffs.

The appeal is against the magistrate's jurisdiction and the assessment of damages. On the first matter the grounds as amended are -

1. The judgment was against the weight of the evidence.

2. the court did not have jurisdiction to hear and determine the case in the light of evidence of disputed rights over customary land..

Ground 3 was abandoned. However the appeal has been based entirely on ground 2 and I deal with that now.

At the hearing, the plaintiff's case was that they owned the land on which the trees were standing. The defendants admitted cutting the trees but said they were on land owned by Alfred Arurumae and called him as a witness. He said the trees were on his land because he knew the boundaries.

The learned magistrate had been aware of the possibility of the case falling within section 231 of the Land and Titles Act and at the beginning of the record wrote -

> "Court: Preliminary finding - whether jurisdiction to hear case of trespass due for conversion.
>
> Defendants not landowners, Question of boundary only relevant to establish defence. For Defendants to adduce evidence permission given."

In his judgment he stated -

> "In this case the Plaintiffs are claiming compensation for the cutting down of two Agua trees. The defendants do not deny they cut down the trees. They say they had permission to cut them down from one Alfred Arurumae, the true landowner.

With this defence I am acutely aware of S.231 of the Land and Titles Act. I am mindful of the cases **Manubili & Others v. Fenda** and **Mae v. Koniuka** and **Maeru v. Mindu.** If this case involves a dispute about ownership of land then I do not have jurisdiction. I said so in a letter to the parties dated 17th May 1989. I take the view that I cannot make that decision in a vacuum. An active judicial thought process must take place. I must hear evidence.

It matters little that the decision on whether I have jurisdiction who affects the whole defence. If I find the court has jurisdiction then I effectively decide there is no land dispute and the defence cannot succeed.

To begin with I heard brief evidence from the parties and a defence witness, the supposed true land owner Alfred Arurumae. The Plaintiffs produced a decree from the High Court of 1968 which was by reference to a map. (map A). The Defence witness produced a map and nothing more. (map B). He said he was the owner of the land. I took the view that this was not sufficient. A single bare assertion such as "I am the true owner" cannot be sufficient evidence to oust the jurisdiction of the Court. If that were the case then the situation would be chaotic. One party in any dispute would simply have to say that and the Magistrate would have to say I cannot hear this case. I do not think that can be right. I accept of course that in some cases the magic words "land dispute" would not be relevant but in many cases they would be.

Therefore having heard brief evidence I decided that I could hear the case. I was mindful throughout the remainder of the evidence of the fact that should one or other of the parties adduce evidence that showed, on the balance of probabilities, that there was a genuine land dispute then I would have to stop the case and refer the parties to the Local Court by reasons of s. 231 of the Land and Titles Act. The parties would also have been reminded of the Provision of Local Courts (Amendment) Act 1985."

Mr Waleilia for the appellants suggests the magistrate is wrong in two ways. He says the use of the words 'land dispute' indicates that the magistrate has gone beyond the scope of section 231 and confused it with the Local Courts (Amendment) Act. He also urges that it was wrong of the magistrate to put the burden on the one of the parties to show on the balance of probabilities there was a genuine land dispute.

Section 231(1) reads -

"(1) A local court shall subject to the provisions of this section and ss.8D, 8E and 8F of the Local Courts Act have exclusive jurisdiction in all matters and proceedings of a civil nature affecting or arising in connection with customary land other than -

> (a) any such matter or proceeding for the determination of which some other provision is expressly made by this Ordinance; and
>
> (b) any matter or proceeding involving a determination whether any land is or is not customary land."

The sections of the Local Courts Act referred to there set out the initial procedure to be adopted for the settlement of customary land disputes. Section 8C defines customary land dispute as "a dispute in connection with the ownership of, or, of any interest in, customary land or the nature or extent of such ownership."

Clearly, therefore, the Local Courts Act deals exclusively with land disputes but section 231(1) of the Land and Titles Act is far wider. It is unfortunate that the learned magistrate referred only to a land dispute.

Having reviewed the evidence, he dealt with the matter in this way -

> "Can I say, on the balance of probabilities, that the Plaintiffs have proved that the trees were on their land? This is another way of asking, on the balance of probabilities is there a land dispute here? If I answer the first question in the affirmative the answer to the second question need not necessarily be in the negative. There could be a land dispute between the parties or the parties and a witness (as alleged in this case). If there is I have to be clear in my own mind that it does not impinge on the present case in any way for that would mean that s.231 of Land & Titles Act came into play.
>
> Here in this case I have to say that from the evidence I have heard I cannot say that on the balance of probabilities there in a land dispute involving the Plaintiffs and Alfred Arurumae. The answer to the second question posed above is no. I then go to the first question and on the evidence I have heard I find that the trees, which the Defendants admit they cut down, belonged to the Plaintiffs. The Defendants are liable to the Plaintiffs".

The evidence itself had not been based on a dispute over ownership of the land. It seemed to be accepted by all parties that Rakwana land was owned by the plaintiffs and that the neighbouring Tabakwakwa land was owned by Arurumae.

Although the plaintiffs claimed in evidence that Arurumae had walked the spearline between those lands and agreed the trees were cut from Rakwana land, that was denied by Arurumae.

In the defence filed by the first appellant before the magistrates court hearing, he stated -

"2. The land where the trees are cut from is not on Rakwana land but is on Tabakwakwa land.

3. Tabakwakwa land is owned by Alfred Arurumae."

At the outset of the hearing the defendant is recorded as saying -

"Alfred Arurumae owns land, gave permission for defendants to cut two trees".

It is clear that there is not a land dispute in the sense of the Local Courts Act. Ownership of the two areas of customary land as a whole is accepted. What is in dispute is whether the trees were in Rakwana or Tabakwakwa land. The evidence shows there was a dispute as to the exact location of the boundary.

That seems to me to be a clear case arising in connection with customary land and the learned magistrate should have declined jurisdiction to hear the matter.

Whilst that disposes of the matter, I feel I should pass on to deal with the test suggested by the magistrate that one or other of the parties needed to adduce evidence that showed on the balance of probabilities, that there was a genuine land dispute. Even correcting the unfortunate use of the words land dispute, I cannot accept that is the correct test. If that is the required standard, in many cases, the magistrate would be put in the position of having to evaluate evidence of customary matters in order to decide if the standard has been satisfied. That is what section 231(1) reserves for the local courts.

In many civil cases, the magistrate will see the case falls within section 231(1) from the documents filed. Where he does not, if the evidence reveals, prima facie, the case affects or arises in connection with customary land, he must stop the case.

I allow the appeal. The decision of the magistrates court is quashed. The parties should be advised to take the case to the local court.

Costs to be paid by respondents.

(F.G.R. Ward)
CHIEF JUSTICE