VELLA DEVELOPMENT COMPANY v. WESTERN PROVINCE

In the High Court of Solomon Islands
Sitting in Gizo
(Ward C.J.)
Civil Case No. 232 of 1989
Hearing: 4 December 1990
Judgment: 5 December 1990

J. Hardiker for Plaintiff
B. Nichols for Defendant

WARD CJ:

The plaintiff claims damages for trespass by the Province. The trespass alleged arose when the defendant widened and straightened a road through the land of the plaintiff in October 1983. No questions have been directed by either side to why this action has lain dormant for so long. The evidence shows that, prior to the writ being filed in October 1989, the last act was a meeting in April 1984.

The plaintiff's case is that, in October 1983, the Province's bulldozer entered their land and started to knock down coconut trees to widen the road. The Plantation manager, Poulsen, went to the men and asked them to stop. They said that, if they had to stop, they would pull out the machines and he said it was up to them. He said he had to check with the directors and could not authorise their actions. However, the men simply continued.

In the course of their road improvement they felled 250 trees and took a large amount of gravel estimated by the plaintiff at 397 loads and almost certainly more.

Poulsen said that the machines had arrived about a week before and had made the road up from Vonunu. The first he had heard of the plan was when one of the Provincial Members and Minister of Works in the Provincial Government had come and tried to make him sign papers - presumably a consent to the road work. The member, Zapu, was called by the defence and denied the earlier incident.

Poulsen spoke to two men who worked in LUD about this and they went to Gizo to try and arrange compensation. It appears the trip was unsuccessful although one of the LUD men, an Englishman, Bradfield, who has since returned to England, told Poulsen in 1985 that the Province had agreed to pay.

The plaintiff called two of the directors whom the defendant alleged had agreed to the road improvement. Both denied any such agreement. On the contrary, they told how they had a meeting of directors on 26th April 1984 and discussed the question of compensation. At that meeting it was resolved

that Bradfield should deal with the matter.

The defendants called the, then, Provincial Minister, Zapu, and another member of the Assembly, Maeke. They both told the Court that there had been talks for some time about this road. It was raised at the Area Council some time before and had been put to the Provincial Assembly. They insisted they had spoken to three directors and been told by each that they could go ahead with the road. They said it was agreed that, as the road was of general benefit, the Province should not pay compensation for damage to coconut trees or for gravel removed.

There are many points of conflict between the parties and the question of liability depends largely on the credibility of the witnesses. Both counsel point to the more secondary aspects of the evidence as support for their cases.

The plaintiff points to the fact that some of the defence witness agreed Poulsen came and asked who was paying compensation for the trees. Had the matter been agreed as the defendants suggest, he would not have needed to do so. They also point out it was equally consistent with his case that a few weeks later, he counted the trees and took the trouble to measure the road to assess the amount of gravel that had been taken. Similarly, the minutes of the meeting of the Directors in April and effectively the only document in the case, showed that they clearly were not bound by any agreement not to claim compensation.

The defence points to the fact that the witnesses they called showed that the Province policy was deeply rooted in their minds and that, had there been a complaint, they would have stopped work. They argue that the nature of these cases means that such agreements are frequently oral.

As far as the witnesses are concerned, I felt Poulsen was mistaken about who spoke to him the day the bulldozer started working on VDC land but he was generally credible. I find the two directors less convincing and was not happy with their evidence.

On the defence side, I find Zapu was a reasonably convincing witness but I had considerable doubts about Maeke. It was suggested by Mr. Hardiker that they, in fact, simply pushed ahead with the road without permission because of the proximity of the election in December. Despite their denials, I feel the fact of the election would have affected their anxiety to complete the project but I do not think it does more. I do not see that it would make them more likely to do it in a way that could cause controntation or publicise it less. I accept the matter was raised in advance at earlier Area Council meetings. I also accept that there was nothing unusual in carrying out such a project without any written agreement.

On the whole, I found the attitude of the Assembly members and the procedure they adopted extremely worrying. I accept they spoke to the Area Council and obtained their approval but, after that, made no attempt to supply more details of what the work entailled.

I have referred to the two directors. The Chairman of the directors was a chief of Sabora. He said he knew nothing of the road until it was being built. When it was completed, there was a big feast and he did not attend. I did not believe him on either of these matters. It is clear on the evidence, as I have said, that an Area Council meeting took place and I do not accept he would not have heard of it. Equally I preferred the evidence of the defence witness who described his presence at the feast.

The other director was also President of the Area Council. He said there was a meeting and they were told by Maeke and Zapu the road was to be maintained and upgraded. The Council agreed but he said he was never approached by Zapu over VDC land.

I find altogether the professed ignorance of the VDC people unconvincing. Poulsen claims to have known nothing and yet he knew of the arrival of the machinery a week before and, about a week before that, claims to have been asked to sign a paper by Zapu. The plaintiff's case is that Zapu went to the trouble of trying to obtain that signature but did not take the trouble of asking the directors.

Ivulu, the Chairman of the directors, claims not to know of a project that was discussed in the Area Council and arose largely from the wish of the people of the village of which he is a chief. Semipitu was the President of the Area Council and, despite the discussion in that Council, never thought of the question of VDC's involvement. I do not believe them on this matter. At the same time I find it very had to accept much of the evidence of the two Assembly members.

However it is on the plaintiff to prove his case. They claim this was a trespass committed without permission. I do not accept that has been proved. Had no permission been given at all, I do not believe they would have sat back after their initial protest and allowed the work to continue. Day after day, coconut trees were being knocked down and large quantities of gravel removed. It is inconceivable that, had no permission been given at all, they would have allowed this to happen. I believe the answer lies in what they did do. The first protest by Poulsen, the visit to Gizo and the Board Meeting in April all refer not to the trespass but to the question of compensation for trees and gravel. That may account for the delay in proceeding. Had this been a totally uninvited and blatant trespass rather than merely a matter of compensation, no doubt there would have been more prompt action.

As I have said I am satisfied on balance that permission to carry out the road works was given by the directors and it was realised that involved cutting trees and removing gravel but the "**policy**" of making the communities pay in the sense of not claiming compensation was possibly not explained sufficiently.

Equally it may be the scale surprised the plaintiff but in no subsequent action do they attempt to stop or curb the trespass apart from Poulsen's original protest. Every energy was directed to claiming compensation. In fact the suggestion of a trespass was never raised it appears in five and half years, until this action was commenced.

This Court cannot deal with the compensation as damages for trespass because the trespass has not been proved. The damage caused by the roadwork may have been larger than expected but I do not feel it is of such a scale that it amounts in itself to a separate trespass.

The plaintiff's claim is dismissed.

The defendant counterclaims for the road to the manager's house. No evidence has been led to prove that there was any agreement made sufficient to found the counter claim and it is also dismissed.

The plaintiff must pay the defendant's costs on the principal claim. I do not feel the counter claim has added to the case and so I made no order for costs in that.

(F.G.R. Ward)
CHIEF JUSTICE