LIFUASI -v- DANITOFEA

High Court of Solomon Islands
(Ward C.J.)
Civil Case No. 160 of 1990
Hearing: 13 August 1991
Judgment: 19 August 1991

A. Nori for Applicant
T. Kama for the Respondent

WARD CJ: This case encapsulates many of the problems encountered in cases involving customary land and the inability of the High Court to resolve them.

In 1954 a case was heard by Deputy Commissioner Tedder between Irofanua and Taloasui. The plaintiff was claiming a large area of land called Takiibakwa, Faniure and Abuaero. At the end of a long and detailed hearing the court ruled the area of land "belongs to the lines of Irofanua, Wanefakwa and Irakalo but (the court) recognises that the lines of Daefa, Bungo, Otangali, Reni, Baeifui have important rights of usage on the ground". The present plaintiff is a descendant of the winning party in that case and the defendant the same line as the losing party.

In 1979 a case was brought in the local court over substantially the same land between Kanabaea and Tabania. The latter was a member of the plaintiff's line and the court found in his favour.

In 1984, the present defendant and two others, Stalin Daefa and Ed Delaiano, took the case to the local chiefs for determination. The chiefs first asked whether the intention was to reopen the 1954 case and the present defendant is recorded as replying

> *"No. In the 1954 land case, Taloasui from my tribe disputed Abu'uero or Ma'anafinesi the coastal most portion of the Sisiufa-Ooba land whilst the entire customary land base on the first land allocation in North Malaita made from 25 generation ago has never been disputed"*

He then went on to explain that the intention was to bring the whole area of Sisiufa-Ooba land for determination. That land would include Tabiibakwa in Sisiufa.

An extremely well kept record shows that the chiefs held a detailed and careful hearing. They went back to the beginnings of the Tobaita people and the original allocation of the land by Bulibaita, the founder of Nofe, on seven of his eight sons. They found the Sisiufa-Ooba land was a single allocation and in general terms that the present defendants line occupied the Sisiufa side of the land and Stalin Daefa's line occupied the Ooba side. They ruled that the present plaintiff's line were a latecomers to the area and had established rights to live in Daefa's land on the Ooba side.

The plaintiff does not accept that decision. He has, since the 1954 case, acted on what he accepted as a clear court decision in his favour and recently has established a cocoa plantation. The defendant and others, on the basis of the chief's decision in 1984, are preventing him properly developing that plantation. Also, in order to bring out their crops, a road was to be built but it is not now going ahead. The present respondent is Permanent Secretary in the Ministry of Transport, Works and Utilities and it is suggested he has used that position to force the issue on the road. I have not sufficient evidence to decide if that is true but, if it is, it would be a most unfortunate attitude for a senior public officer to take.

The applicant, in an attempt to sort the matter out, came to this Court for a number of declarations to try and establish the true position. He now only seeks an answer on the fourth question.

> *"That the chiefs have no jurisdiction or power to hear and determine ownership of Takiibakwa land between the applicant and the respondent as they belong to the two respective lines or tribes who went to court over the same land in 1954 and therefore the chiefs' decision dated the 20th June 1984 is null and void".*

The answer to that question in general is relatively easy but it does not, unfortunately, solve the problem of this case as a whole.

The 1954 case was not appealed and is now res judicata. That means that neither the chiefs under the "Nori act" nor any court are entitled to reconsider the rights to that area of land as between the parties to the 1954 case or their lines. Inasmuch as the applicant and respondent are from the lines of the original disputants, that is a end of the matter. However, it would be unrealistic if the matter was left there.

The 1954 case, although it appears to give a clear answer, raises some problems which this Court can recognise but, unfortunately, not solve. The plaintiffs in that case, brought an action against a party who was only disputing an area next to the coast. He claimed that was part of a larger strip of land which included coastal land outside Sisiufa land and on both sides of it. Had the Deputy Commissioner confined his

ruling to that land, the present problems might not have arisen but he finally ruled on an area he defined clearly and which appears to cover not only the portion disputed in that case but a much larger area covering all of Sisiufa land and a substantial part of Ooba land. Had that decision been appealed, it seems likely that his ruling would have been limited to the coastal area in dispute. However, it was not and so it now stands.

The chiefs' decision, if it is correct, suggests the Deputy Commissioner's case contained a number of fundamental errors both in the history of the land and the geography of the area involved. They confine Takiibakwa land to Sisiufa and not the wider area described by the Deputy Commissioner. They gave some rights to the applicant over Ooba land including, presumably, the portion of Ooba land within the Deputy Commissioner's so-called Takiibakwa land but give him no rights to the area that is, they say, Sisiufa land.

I cannot comment on the accuracy of the chiefs' decision but I can say they carefully considered a substantial amount of evidence and wrote a decision that they clearly hoped would resolve the position. Unfortunately, as far as the proportion of the land covered by the 1954 decision is concerned, their decision has no force. The applicant was entitled to rely on and has relied on that as a final court decision. On the basis of that decision he has started agricultural developments on the land covered by that case. He was entitled to do so and the respondent and his line have no legal right to interfere with his use of that land.

In his ruling, the Deputy Commissioner referred to Daefa and a number of others. However, they were not parties to the case and that part of his decision is clearly obiter. Thus those parties are not bound. It has been stated many times by the Courts that these cases are inter partes. In this case that means the matter is settled between the applicant and his line and the respondent and his line. It does not bind others who may have a claim and they can, if their case has not been before a court previously, bring a claim. No doubt in such a case, the chiefs' opinions in the 1984 hearing will be considered by the court considering it.

I do not say this to encourage further litigation. The problem with customary land is that, whilst a man who takes a case to court is seeking finality so he can be secure in his right to use the land, he is always subject to the claims of other people. The result must be a serious obstacle to any worthwhile long term development. The Local and Customary Land Appeal Courts frequently find in favour of a new disputing party and so put out a person who has believed for years he had security of tenure. All too often the decision of the Court is a bald statement of ownership with no consideration given to the money and time invested in the land by the dispossessed party under a bona fide claim of right.

Whether the Deputy Commissioner was right or wrong, the applicant had a decision in his favour that was not disputed in the courts for 25 years. When tested in the Local Court in 1979, his position was confirmed. On the strength of that he has developed the land. He is entitled now to the protection of that decision and the respondent's line is prevented from claiming rights beyond any stated in the 1954 decision.

The respondent in his affidavit stated he took the matter to the chiefs in an attempt to sort out the whole issue. I have no doubt he was genuine in that hope. He was willing alternatively to have the matter settled by the church. It may be that this issue could still be resolved by some form of arbitration or conciliation where the rights of all parties are ascertained but the fact remains the applicant has a court case that defines his position between his line and that of the respondent.

I said at the outset, this will no doubt be considered unsatisfactory but this Court is bound by the law as prescribed by Parliament. Only Parliament can change the law and despite many warnings by the courts of the need for such change, it has done nothing. Disputes over land arouse powerful feelings and affect the lives of many people in a most profound way. All the parties may have strongly and sincerely held claims and the present state of the law means that the courts are frequently unable to give either side the finality and certainty to which they should be entitled.

The consequences of such uncertainty could be extremely serious both personally and nationally and Parliament would be wise to give the matter its most anxious and urgent consideration.

(F.G.R. Ward)
CHIEF JUSTICE