

VICTOR NGELE -v- SETHUEL KELLY

High Court of Solomon Islands

(Chetwynd, Commissioner)

Civil Case No. 103 of 1992

Hearing: 11 June 1992

Judgment: 11 June 1992

A. Nori for the Plaintiff

R. Teutao for the Defendant

**CHETWYND COMMISSIONER:** In this case the Plaintiff is seeking declaration about the equitable ownership of Parcel No. 191-023085. This land is situated close to the main market in Honiara. The parties have agreed that this matter should be dealt with on the affidavit evidence filed, that is the affidavit of the Plaintiff dated 1st April and filed on 2nd April, and that of the Defendant dated 5th June and filed the same day.

The Plaintiff's affidavit exhibits a letter (undated) from the Defendant. That letter is addressed to the Premier of Guadalcanal Province. It was received in the Premier's Office on 22/8/86. I have no need to go into that letter in detail because it is quite clear that it is an application on behalf of the constituents of South Guadalcanal for a lease of some land. The whole force of the letter is that the land would be acquired, not in the Defendant's sole name, but for his constituents. There can be no doubt of that.

The Defendant says that yes, it was his intention to obtain the lease on behalf of his constituents but that the situation changed because, despite appeals for financial contributors, none came in. He then decided to acquire the land in his sole name for his own purposes.

I have to decide, on the affidavit evidence, what was the position in 1987. 1987 is the operative date because that is when the lease came into effect, on 25th March 1987 to be exact.

The Defendant does not deny he wrote the letter exhibited to the Plaintiff's affidavit. He says his intentions changed at a later date. He points to a letter dated 14th July 1988. That letter is dated some 16 months after the lease was executed. It does

not show what was in anyone's mind at the time in question it merely shows what the Defendant says was in his mind.

However, I put a different complexion on the letter. It seems to me to show that it was still the intention to acquire the land for the constituents of South Guadalcanal. The Defendant mentions expenditure on the land before 1988 and the implication is that he was not refunded this money by his constituents. He therefore wanted to "give up everything because of lack of support from our people". The letter also says that the Executive (of Guadalcanal Province) decided the land should be returned to him as sole owner.

That letter again clearly shows that the land was acquired for the people or constituents of South Guadalcanal but they did not respond. The land had been acquired for the constituents but because the constituents gave no financial assistance the land was to be "returned" to the Defendant. This should not have happened. The lease should have been forfeit and the Defendant then could have acquired it for his sole use. It seems quite clear that the original lease was acquired by the Defendant for the benefit of the constituents of South Guadalcanal even though at a later stage the Province purported to hand over to the Defendant.

It is interesting to note that before the letter of July 1988 was written, some 6 months before, the Defendant had subleased part of the land. There is a premium of \$8000 plus a monthly rental of \$2000. The premium and monthly rental should have repaid any monies outstanding to the Defendant.

I think this is a clear cut case and the answer to question 1 must be yes. The Defendant did acquire the lease for the people of the South Guadalcanal constituency. I have no evidence before me on which I can base an answer to the second question. The whole nature of these proceedings seems to indicate that the Defendant has not been acting as a trustee should, but I cannot deal with implication. I decline to answer the second question.

Having answered the first question in the affirmative it logically follows that the Plaintiffs are entitled to the relief prayed for. I therefore order the Defendant to prepare an account of rents received from this property.

I must also order that future rents are received on behalf of the beneficiaries and placed in an account in their name.

It also follows that the Defendant cannot dispose of the property for his own benefit. My view is that the Defendant is precluded by the law from disposing of the

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property without the concurrence of the beneficiaries. However to make the position quite clear I will grant an injunction preventing the Defendant from selling or otherwise disposing of the property without the concurrence of the beneficiaries.

Costs will be awarded to the Plaintiff such costs to be taxed if not agreed.

  
(R. D. Chetwynd)

COMMISSIONER OF THE HIGH COURT