

STANLEY BOPI & ANOTHER -v- JOHN LAGI

High Court of Solomon Islands

(Palmer J.)

Civil Case No. 207 of 1991

Hearing: 11 August 1993

Judgment: 13 August 1993

A. Radclyffe for Plaintiffs

C. Tagaraniana for the Defendant

PALMER J. The plaintiffs claim damages for trespass and an injunction restraining the defendant and his family from entering on or remaining on Borohinaba.

The defendant argues that he has a right of ownership over the said land and therefore has not committed any trespass. His defence essentially stems from Lagis standing as the other representative of the Gaubata tribe. (*See Stanley Bopi and Another -v- Walter Linesapa CC123/88 per judgement of Ward C.J. dated 29th May 1990*).

The plaintiff's right of ownership arose from a sale of the land by Christian Mara to Stanley Bopi and Fr. William Tarai in 1978. The original of that sale document is contained in file CC 123/88 and submitted also as an exhibit before this court.

In the High Court's judgement in that civil case between Bopi and Tarai -v- Walter Line Sapa (as representative of his Line) and Dikea, His Lordship Chief Justice Ward found that there was a valid sale to Bopi and Tarai (who are the same plaintiffs in this case) for the sum of \$200.00 in 1978.

Christian Mara's right to the land in question came from a land enquiry decision made by Deputy Commissioner Hunter on the 26th of June 1957. In that enquiry the two parties in dispute were the Kakau tribe, represented by Kokona, Polycarp, Frank Bollen and Victor Vikino, and the Gaubata tribe represented by Lagi and Mara. Deputy Commissioner Hunter's decision was that the Gaubata Line or tribe were the correct owners of the land in dispute.

Borohinoba land is within the area of that land known as Tagasagini, which is owned by the Gaubata tribe.

The two representatives of the Gaubata tribe at that time were Lagi and Mara. For purposes of dealings in respect of that land I am satisfied they can be approached and consulted.

In Chief Justice Ward's judgement in Civil Case 123/88 delivered on the 29th of May 1990 he accepted that Christian Mara had joint ownership rights to the land in question with Lagi. His conclusion in essence is that Christian Mara had rights to make a sale and that therefore there was a valid sale of the land.

It is important to note that by 1978 the other representative or joint owner of the Tagasagini land had already died. In the defendant's evidence under Oath, he stated that Lagi died in 1963. There is no evidence before this court to show that there was a replacement or successor to Lagi. Accordingly, the land rights vested automatically on Christian Mara. Of course he held those rights for and on behalf of the Gaubata tribe. However, this meant that he could effect the sale without the necessary signature of anyone else as the sole surviving representative or joint owner of the Gaubata tribe.

The question as to whether Christian Mara made the necessary consultation or obtained the necessary consent of the Gaubata tribe is not for this court to consider in this hearing.

It is sufficient that he was the sole surviving representative of the Gaubata tribe at the time of the sale. I am equally satisfied accordingly he had the rights in that capacity to dispose of the land by way of a sale in 1978. Whether there has been a breach of customary rights is a matter between Christian Mara and the Gaubata tribe.

The Defendant in this case as I have stated, bases his claim on Lagi, the other representative of Gaubata tribe. It is possible that Lagi had a separate and distinct claim to Tagasagini land from Christian Mara, based on his different sub-tribe. This aspect however was never brought out in the 1957 enquiry. It was not raised in the 1978 sale, nor in the 1980 Gela Local Court case between *Stanley Bopi -v- John Dikea GLC 45/80*.

In the records of the 1980 Gela Local Court decision it states:

"... the land was fully paid for \$SI.200.00 demanded by the Landowners themselves. Therefore, Mr Stanley Bopi is now the true new Land Owner for the Borohinaba Land. He may have all the rights to do anything in the land according to his own will with his brother Fr. William Tarai."

Nothing was ever raised about any concerns that Christian Mara may not have had the necessary rights to effect the sale. The Local Courts decision was upheld in the Customary Land Appeal Court.

In 1990 in civil case 123/88, the same plaintiffs in this case took up a claim against Walter Linisapa. The judgment of that I have already referred to.

The significance of that case and its direct relevance to this defendant is to be found in the blood relationship of the defendant Walter Linisapa in CC 123/88 and the defendant in this case, John Lagi. Walter Linisapa is the son of Lagi, the other representative named in the enquiry held in 1957 by Deputy Commissioner Hunter. Walter Linisapa did not at any time raise the issue that his father Lagi had a separate and distinct customary claim to Tagasagini from Christian Mara. In the Defendants evidence under oath he stated very clearly that Lagi represented the Vahunabolo sub-tribe, whilst Christian Mara represented Saka. He raises this to substantiate his argument that Christian Mara had no right to sell the land that his sub-tribe (Vahunabolo) owned.

In CC 123/88, Walter Linisapa's defence was essentially based on Lagi's standing or claim.

The defendant in this case is born from Lagi's sister. Lagi is therefore his uncle. His defence in this case however is based also on Lagi's standing. According to his own words Lagi represented his sub-tribe - Vahunabolo.

His claim in custom therefore is identical to Walter Lini Sapa's claim in custom. This court has already made a ruling in respect of Walter Linisapa. This defendant now seeks to argue that he has a different claim in custom because of his different sub-tribe.

With due respects, I am not convinced. The fact that this defendant is born from a woman whilst Walter Linisapa is born from a man will make little difference to the fact which he testified to that Lagi represented his sub-tribe Vahunabolo, and accordingly his claims and that of Walter Linisapa would essentially have been the same. If they were different he has not produced sufficient evidence to bring that out. When asked, he traced his rights through Lagi, the very same rights which Walter Linisapa would have relied on as the son.

I am therefore obliged to rule and find for the plaintiffs. I award damages of \$200.00 also and order that the defendant and his family be restrained from entering or remaining on Borohinaba land without the express permission of the plaintiffs. Costs to the plaintiff.

(A.R. Palmer)

JUDGE