

AUGUSTINE TAERAMO & THOMAS ILALA -v- REGINAM

High Court of Solomon Islands

(Muria ACJ)

Criminal Case No. 38 of 1992

Hearing: 26 January 1993

Judgment: 26 January 1993

A. Radclyffe for Appellant

Director of Public Prosecution for the Respondent

MURIA ACJ: This is an appeal against convictions by the two appellants. On 26th January 1993 I allowed the appeal and said I would give my reasons later. I now do so.

On 6th October 1992 both appellants were convicted of Simple Larceny and were each sentenced to 6 months imprisonment.

In their Notices of Appeals the appellants stated that there was no evidence to support the Magistrate's finding of guilty against the appellants.

I need not go into the other grounds as it is clear that on the evidence before the court, the convictions of the two appellants cannot stand.

From the record, there was no evidence against one of the appellants, Thomas Ilallatofea. He should not have been made to answer a case against him in the first place.

In so far as the case against Augustine Taerama, the evidence did not show that he was not justified in claiming a right over the trees which were cut from the land in question. The land was a customary land. Mr. Posala claimed it to be registered but there was no evidence to that effect either. There was also a claim by Mr. Posala that the land was won by him in a court case. But no evidence of that decision was produced to the Magistrate's court.

There was evidence that the timbers extracted from the trees were taken away by the community and not by the appellants alone for a church building.

In cases such as the present one, where ownership of the land is put in issue, it is wrong for the court to ignore it and proceed with the case. Ownership of the land where the trees were or are growing is vital. It must be resolved before the court can properly say that the accused person has no right to cut the trees and extract timbers from the particular land.

In this case, the Magistrate had ignored this vital aspect of the case. In doing so he ignored the appellants' defence under section 8, Penal Code.

In those circumstances the convictions cannot stand and the appeals must be allowed.

(G.J.B. Muria)
ACTING CHIEF JUSTICE