

SERA KOVELAU -v- JAMES KOGANA

High Court of Solomon Islands

(Palmer J.)

Land Appeal Case No. 2 of 1992

Hearing: 8 September 1994

Judgement: 15 September 1994

R. Teutao for Appellant

B. Titiulu for the Respondent

PALMER J: There are four grounds to this appeal. I will deal with them in turn.

Ground 1:

"That the said court erred in law in overturning the decision of the Guadalcanal Local Court which had ruled in favour of the Appellant on the basis that there was evidence before the Guadalcanal Local Court that Teterere land was purchased by Lova 1 the lineal descendant of the Appellant from Kogana 1 for 30 pigs and 30 shell money (the latter payment being for brideprice of the wife of Kogana 1) such as to establish the sale between Kogana 1 and Lova 1 and to prove the Appellant's claim on the balance of probabilities."

The first question to consider is, whether there was evidence of the land transaction, as described by the Appellant, before the Local Court.

At page 1, 2 and top of page 3 of the record of proceedings in the Local Court, we have a detailed account by the Appellant as to how ownership over Teterere land became vested in Lova 1. In contrast to this, is the sworn statement of the Respondent at page 7 of the record of proceedings. The version of the Respondent was that Teterere land was sold by Kogana to Kuki and Sake. At the last paragraph at page 7, the

Respondent conceded that the claim that Lova 1 had helped in the purchase of brideprice for Kogana's wife was true. He also stated:

"Lova looked after the land after Kuki and Sake died. When Lova No.1 died Lova No.2 and Bola looked after the land. When Lova No.2 died Bola return the land to me."

At page 8 of the record of proceedings during cross-examination, the Respondent was asked:

"There was no mention of Kuki and Sake during the hearing of the Chieves, why was that?"

A. I forgot it that time but I thought I mentioned it during the question of chieves."

One would have thought that if the sale of the land from Kogana 1 to Kuki and Sake was the crucial basis of the Respondent's claim, then it is indeed surprising that he could have forgotten to mention it in the Chief's hearing.

In its judgment, the Local Court recognised that the main issue boils down to the question as to who bought the land from Kogana 1; Lova No.1 or Kuki and Sake. In its assessment of the evidence the Local Court ruled that the sale was made between Kogana and Lova No.1.

I am satisfied, having perused the Local Courts record of proceedings and its judgment, that there was clear evidence on which it could have come to that conclusion.

On appeal to the Guadalcanal Customary Land Appeal Court however, it was overturned in favour of the sale from Kogana to Kuki and Sake. The reasons given are two-fold. First, it was held by the Guadalcanal Customary Land Appeal Court that

the Respondent's witnesses never mentioned anything about the bride price payment.

With respect, that is hardly material. But if it is material, then it is a question of weight, and that is insufficient as a ground for overturning the judgment of the Local Court, which had had the opportunity of hearing and observing the witnesses give evidence in court.

It is important to understand that much of the statements given in the Local Courts, are hearsay evidence or secondary evidence.

The Appellant called only one witness in the Local Court hearing, and the statement of that witness was basically on what he had heard. It was therefore a matter for the Local Court to decide on what weight to attach to that witnesses's statement.

At page 5 of the Local Court proceedings, at the second paragraph of Duddley Kema's (PW2) statement, he did state that he was told by Bola that the land was bought by Lova for 30 red money and 30 pigs. In the following paragraphs, he mentioned what others also told him.

In contrast the evidence adduced in respect of the sale from Kogana to Kuki and Sake, was scanty. No evidence of what the consideration, was given.

In customary land matters, where much of the evidence is not written down, knowledge of such sale, and especially as to what the consideration is, are very important, and there should have been some indication as to what the consideration was. As I have pointed out, the evidence adduced by the Appellant in respect of the sale by Kogana to Lova 1 is very detailed, as compared with the claim that the sale was made to Kuki and Sake.

The question of what weight to attach to the fact that the Respondent's witnesses never mentioned anything about the bride price is a matter for the Local Court to assess. And if one looks carefully at this point, one should not be surprised that there is a denial, and a different version given instead. That is hardly significant. The evidence before the Local Court showed that there were two different versions given. The Respondent stated that Kogana was already married when Lova 1 came to stay with him. That would naturally explain why no mention was ever made about any such payment of brideprice. The finding that the Respondent's witnesses never mentioned anything about the brideprice should be carefully weighed in the light of the two different versions given.

I note that the Guadalcanal CLAC did point out an omission which they felt was quite significant as to the validity of the Appellant's version. This was that the Appellant did not know what the name of Kogana's wife was. I appreciate this point, however, that would again be a matter of what weight to attach to that fact when assessed together with all the evidence before the Local Court.

Having perused the Local Court records and the Guadalcanal Customary Land Appeal Court records, I am not satisfied that the decision reached by the Local Court was one which no reasonable tribunal could have arrived at.

There was evidence before the Local Court on which it could have arrived at the decision it did.

The second reason given by the Guadalcanal Customary Land Appeal Court was that a number of Chiefs referred to by the Appellant in the Local Court hearing were not called, and that two chiefs referred to actually gave evidence against the Appellant.

The significance of this point with respect again is a matter of weight. The Local Court heard the evidence in chief of the two chiefs which were mentioned by PW1, and when they were being cross-examined. It is for the Local Court to decide what weight it should attach to their evidence as adduced in chief, and under cross-examination. One will notice from the records that during cross-examination of Mathew Tuanivali (DW2), and Samuel Basola (DW4), it was actually put to these two witnesses by the Appellant as to what the Appellant alleges had been earlier said in the Chief's hearing. That would show that the Appellant's claim was not a mere puff, but sincerely and honestly, made, and it would really be a matter for the Local Court to assess as to credibility and reliability.

The fact that other chiefs were not called is a matter for the Appellant to decide, and as to the question of what significance to be attached to this factor, is for the Local Court to assess. It heard the witnesses on both sides and observed them giving their statements. It therefore was in a better position to make determinations as to questions of credibility.

Having considered all the relevant matters pertaining to ground 1 of the appeal, I am satisfied it should be allowed.

GROUND 2:

"That the said court erred in law in failing to fully appreciate the significance of the fact that Lova 1 was from Tandai and Kogana 1 was from Teterere and that they were not of the same tribe or relatives and thus Lova 1 was not obligated by custom to give the 30 pigs and 30 shell money to Kogana 1 for nothing. Teterere land therefore is the 'quid pro quo' by Kogana 1 to Lova 1 for the 30 pigs and the 30 shell money paid by Lova 1 to Kogana 1 who was not obligated by custom to give Kogana 1 30 pigs and the 30 shell money for nothing."

This ground is not so much an error of law as to what weight should be attached by the Guadalcanal Customary Land Appeal Court to the questions pertaining to the sale and transfer of Customary ownership over Tetere land from Kogana 1 to Lova 1. This ground accordingly is dismissed.

GROUND 3:

"That the said court erred in law in its reasoning process in that if infact Tetere land was bought by Kuki and Sake who were of a different tribe from Kogana 1 and that it was Bola who returned Tetere land to the Respondent's tribe as Bola was the last descendant it is significant that there was no iota of evidence before the said court of any consideration (in cash/shell money and in kind) given to Bola the last surviving descendant of Kuki and Sake by Kogana 1 and/or Kogana 2 or their descendants for the return of Tetere land by Bola to the descendants of Kogana 1. It is also significant that the statement that Bola was the last descendant of Kuki and Sake (the last descendant being the reason for returning Tetere land back to the descendants of Kogana 1) is false when there was evidence before the court that Bola was not the last descendant as there was evidence that he had children of his own. This falsity of evidence and the lack of consideration being given on the part of the descendants of Kogana 1 for the alleged return of Tetere land had made the alleged purchase of Tetere land by Kuki and Sake unbelievable, suspect and false."

The evidence of James Kogana, as contained in the record of proceedings of the Local Court, showed that Kuki and Sake and Bola were of the same tribe. In its judgment, the Guadalcanal Customary Land Appeal Court considered the lack of knowledge of the Appellant as to what was given in return in appreciation to Lova 1 by Kogana for the 30 shell money and 30 pigs, as quite significant. (see page 4 of the judgment). And yet it failed to apply the same standard of carefulness and detail as to what was the consideration given for the sale

from Kogana to Kuki and Sake, and what was given in return. What is normally of vital significance in any land transaction, but especially in transactions over customary land where much of the details of the transactions are done by word of mouth, is the consideration that was given. No such details were provided to support the sale from Kogana to Kuki or Sake. Also, the Guadalcanal Customary Land Appeal Court failed to consider what was the consideration given by the Respondent to Bola, the last surviving descendant of Kuki and Sake, and what was given in return. These transactions are more recent and yet the details are scanty. The only evidence given for the return of the land was in the form of food, but no details are given. Also it failed to consider why if the land is so important and that it had been bought and belonged to Bola, that he should see fit to return it. Bola is not a caretaker. He holds the position of owner of that land and can do what he likes with it. He can give it to his children if he wants.

I am satisfied that this point raised as to the error in the reasoning process of the court should be allowed.

The second matter raised by Mr Teutao as to error of law in the reasoning process of the court relates to the claim that Bola was the last surviving descendant of Kuki and Sake. Mr Teutao submits that this point is not true as Bola had children.

Unfortunately, this point is not very clear as the question of whether Bola is the last surviving descendant of the tribe of Kuki and Sake will depend on how the descendants of a tribe are traced. This point has not been argued in court and accordingly, I cannot be certain if what is raised by the Appellant is applicable and correct.

GROUND 4:

"That the said court erred in law in holding that the fact that Lova 1 was made the headman of Teterere was only because he could understand English when in fact Lova 1 was made Headman of Teterere because he had also become landowner of Teterere land by virtue of the sale and that this reason is even more significant as Lova 1 was from Tandai and not from Teterere thus could never be made a Headman of another area without becoming in anyway linked to Teterere people without any ownership of land in the Teterere area."

The evidence on this point was introduced by the Respondent at the Local Court hearing. No cross-examination was raised on this point, or questions put to the Respondent that Lova 1 may have been elected as a headman because of his status as a land owner also in that area. The Local Court therefore had no basis on which to make the conclusion it did concerning the appointment of Lova 1, and may have done so more as an assumption. It is possible that Lova 1 may have been appointed as a headman because of his status as a landowner, but equally it could have been due to the fact that he could communicate better with Europeans through his knowledge of the English language.

I am not satisfied on the balance of probability that this ground should be allowed.

The appeal is allowed under ground (1) and ground 3(i) of the Notice of Appeal. The judgment of the Guadalcanal Customary Land Appeal Court is set aside and substituted with the judgment of the Local court.

(A.R. Palmer)

JUDGE