MARTIN TANO -v- HUGO BUGORO & ACQUISITION OFFICER

High Court of Solomon Islands
(Palmer J.)
Land Appeal Case No. **1 of 1994**
Hearing: **26 April 1994**
Judgment: **28 April 1994**

J. Remobatu for Appellant
H. Bugoro (First Respondent) in person
C. Ashley for Second Respondent

PALMER J: On or about the 14th of August 1992, an Acquisition Officer, Mr Laury Penros Palmer was appointed by the Commissioner of Lands for the purpose of acquiring a customary land, known as KOLOSORI, for mining purposes.

By the time a written agreement was executed with the persons who purport to be the owners, or with the duly authorised representative of such owners, pursuant to section 61(b) of the Land and Titles Act, it was clear that there were six groups of claimants, each claiming ownership, over Kolosori Land. The group with which this appeal is concerned with is the Group identified as Group (2), 'G2' by the Land Acquisition Officer.

Under that group, the written agreement was signed by the 1st Respondent in this appeal, for and on behalf of the three tribes, namely; Vihuvunaghi, Thogokama and Posamogho.

Pursuant to sections 62 and 63 of the Land and Titles act, a public hearing was convened, at Huali village, on or about the 30th October 1992.

The area of land which this group of claimants claimed ownership over, stretched from Piregha to Kolosori. This land area is not disputed by the other five landowning groups. The dispute came from within the group itself between the appellant, on behalf of the Thogokama tribe, and the First Respondent on behalf of the Vihuvunagi and Posomogo tribes.

In his findings (contained at page 23 of the Report made by the Land Acquisition officer), he stated:

"Therefore taking into account everything which was said by Martin Tango and Hugho Bughoro and the witnesses including all the documents produced, I dismissed the claim by Martin Tango and determined that the land was owned by Thogokama, Vihuvunagi and Posomogo tribes which now be represented by Martin Tango for the Thogokama Hugh Bughoro for Vihuvunagi and Posomogo tribes."

In his final decision (contained at page 24) he stated:

"Therefore taking into account everything which was mention in the first part and second part of acquisition report including all the documents annexed, I determine that Joel Malo, Hugh Bugoro, Levi Likoho, Lonsdale Manase and Joseph Bengere are to be the trustees for the tribes and have the rights to lease the land to Commissioner of Lands."

The trustee for and on behalf of Thogokama, Vihuvunagi and Posomogho tribes was determined by the Land Acquisition Officer to be Hugh Bughoro, the First Respondent in this case.

It is this decision, and the findings of the Land Acquisition Officer, which the Appellant disagreed with, and so lodged an appeal to the Magistrate's Court, under section 65(1) of the Land and Titles Act.

The appeal was heard by the Magistrates Court on the 16th of September 1993 and judgment given on the 30th of September 1993. Eight grounds of appeal were raised by the appellant. These were all dismissed by the Magistrates Court, and the decision of the Acquisition Officer upheld. It is from the decision of the Magistrates Court that this appeal has now been lodged.

Ground 1:

"The Magistrate erred in law in holding that the determination by the Acquisition Officer does not determine the land ownership but merely to identify persons who should be the trustee for the land on the ground:

(a) That before the Acquisition Officer can determine who the trustees for the land should be, he must first determine if the Vendors or lessors are the owners of the land and have the right to sell or lease the land and to receive the purchase money or rent.

(b) that the spirit of Part V of the Land and Titles Act (Cap 90) will not be complied with if the determination by the Acquisition Officer is to merely identify persons who should be trustees."

This appeal point related directly to the comments of the learned Magistrate at paragraphs (2), (3) and (4) of page 4 of his judgment. Those comments however, must be put within their context. They were made in the context of dealing with ground (6) of the Notice of appeal filed at the Magistrates Court on the 11th of December 1992. It is important therefore to consider ground (6) of that Notice of Appeal. Ground (6) read:

> *"That Hugo Bugoro has not (sic) right whatsoever, both traditionally and legally to make or commit himself to any instrument of agreement concerning the land concern, with the Commissioner of the Lands. Simply because he is not the owner of the land in question."*

It is important to understand that the appeal points raised in the Magistrates Court were drafted by lay men. It is therefore important to consider them more carefully to grasp the issues that are being raised.

The issue raised in ground (6) in essence in my view was a direct challenge to the claim of customary ownership of the First Respondent. It purports to submit it seems, that there was no evidence or insufficient evidence, whether from traditional or legal sources, to show or prove to the satisfaction of the Land Acquisition Officer that the First Respondent was the owner of the block of land from Piregha to Kolosori. The identification of Hugo Bughoro therefore by the Land Acquisition Officer it is alleged was without basis.

It is important therefore for the learned Magistrate to consider the evidence and submissions made before the Land Acquisition Officer as contained in the records of proceedings, in detail and to make a ruling, whether there was sufficient evidence before the Land Acquisition Officer, to make the finding that he did eventually make. By venturing in to consider the powers of the Acquisition Officer under sections 61, 62 and 63 of the Land and Titles Act, he misdirected himself and erred in law, when he concluded that, because the Land Acquisition Officer did not have power to determine questions of customary ownership, and that accordingly, he did not make any such findings of ownership, it was therefore not necessary for him to interfere with the determination of the Acquisition Officer. In other words, it was not necessary for him to consider ground (6), and accordingly, he dismissed it. Perhaps the error was committed more out of a misunderstanding, by the learned Magistrate of what the requirements of appeal ground (6) were about.

I do not think it is necessary to consider in detail the points raised concerning the powers of the Land Acquisition Officer. The ruling of this Court in respect of the powers of the Land Acquisition Officer, under sections 61, 62 and 63 of the Land and

Titles Act, in the case of ***Manedao & Others*** -v- ***Roroi and Others*** Land Appeal Case No.2 of 1993, judgment delivered on the 11th of August 1993, are directly applicable to this first ground of appeal. At the risk of repeating what was said in ***Manedao & Others*** -v- ***Roroi and Others*** (ibid), it is sufficient to make the following points.

No where in the provisions of sections 61, 62 and 63 does it say that the Land Acquisition Officer had no power to consider questions of customary ownership. Section 62(b)(i) and (ii) specifically states that the Land Acquisition Officer shall publish notice of the arrangements for a public hearing to decide any claims *"that the vendors or lessors named in such agreement are not the owners, or that such vendors or lessors do not have the right to sell or lease the land and to receive the purchase money or rent;".*

In order to make a decision as to whether the vendors or lessors are not the owners, common sense simply dictates that one must enquire into questions of ownership. At the same time, if one wants to make a decision as to whether the vendors or lessors have the right to sell or lease the land, one must also necessarily consider questions of customary ownership. Under section 65(b), the same process applies. In order to identify the persons who have the right to sell or lease the land, it is uppermost that a finding on customary ownership be made. The rights of the person who has the rights to sell or lease the land must necessarily come from somewhere. They do not exist in vacuo. In the same way, the rights of the Trustees came from somewhere. A trustee does not hold property in vacuo. He is appointed by the Customary Landowners to represent them. This means that the customary Land owners are identifiable. It is inevitable that a finding as to customary ownership must necessarily be made before the vendors or the lessors can be identified.

It was wrong therefore for the learned Magistrate to say that the Land Acquisition Officer had no power to make a determination on the question of customary ownership and thereby decline to enquire into the issue raised in ground (6) of the Notice of Appeal (Magistrate's Court).

If one looks at the records of the First Part of the Acquisition Proceedings, at page 10, last paragraph, the learned Acquisition Officer did make a finding as to ownership. I quote:

> *"I therefore believed that Vilunvunaghi, Posamogho and Thogokama tribe owned the land they claimed and accepted that Mr Bughoro to sign and Martin Tango to sign for and on behalf of Thogokama tribe."*

In the records of the Second Part of the Acquisition Proceedings, at page 23, first paragraph, the learned acquisition Officer again reiterated his findings in customary ownership. I quote:

> *"Therefore taking into account everything which was said by Martin Tango and Hugho Bughoro and the witnesses including all the documents produced, I dismissed the claim by Martin Tango and determined that the land was owned by Thogokama, Vihurunagi and Posomogo tribes which now be represented by Martin Tango for the Thogokama Hugho Bughoro for Vilurunagi and Posomogo tribes."*

The learned Magistrate therefore erred in stating that the Land Acquisition Officer did not in fact determine the ownership of Piregha - Kolosori land.

I am satisfied the learned Magistrate committed an error of law in holding that the Land Acquisition Officer did not have power to make findings as to customary ownership and therefore erred in not considering the submissions in relation to the question of customary ownership of the Appellant and the First Respondent.

In the interest of justice, it is my view that ground (1) of this Appeal must be allowed.

GROUND TWO

> *"The Magistrate erred in law in ruling before the actual commencement of the Appeal excluding witnesses for the Appellant to give evidence in support of Ground 2 of Appeal against the Acquisition Officer on the grounds:-*
>
> *(a) There was a breach of the principle of natural justice in that the Appellant was not given the opportunity to have his witnesses heard.*
>
> *(b) That the hearing in the Magistrates Court is that of an appeal from the determination of the Acquisition Officer therefore the hearing by the Magistrate should be by way of a rehearing which should include perusing the records of the Acquisition Officer and hearing evidences adduced on behalf of the Appellant and the Respondents to rebut records made by the acquisition Officer during the public hearing."*

The record of proceedings in the Magistrate's Court did not reveal that the learned Magistrate ever made an exclusive ruling as alleged. There is also no evidence in the records of proceedings to show that such an application or request was ever made to the learned Magistrate for witnesses to be called in support of ground (2) of the Notice of Appeal to the Magistrate's Court.

The specific allegation under this ground related to ground (2) of the Notice of appeal in the Magistrates Court. Ground (2) of that appeal read:

> *"Aside from the written statement we made and submit to the Lands Acquisition Officer, we were not given the opportunity to speak and further explain and deliberate on our claim of the land concern. Even our witnesses were not allowed to speak and testify on our behalf."*

In the judgment of the learned Magistrate, he concluded that the Appellant was given ample opportunity to present and explain his claim. At page 2, last sentence of paragraph 6, the learned Magistrate stated that the appellant presented his claim and the Acquisition Officer heard five witnesses. What he failed to differentiate was that those five witnesses were called by the First Respondent, or gave evidence in support of the First Respondent's claim.

I am satisfied that the learned Magistrate failed to enquire diligently into the merits of ground (2) of the Notice of appeal to the Magistrates Court. Had he done so he would have become aware of the obvious fact that no witnesses intended to be called by the Appellant it seems in the Land Acquisition proceedings were either allowed to be called, or ignored. That is with respect, a clear breach of the principles of natural justice. By making an exclusive ruling at the beginning of the Magistrate's Court hearing, the learned Magistrate was with respect denying the Appellant the opportunity of having his claim being ever fairly and properly heard, before any determination was made.

The record of proceedings at the first page did show that the Appellant had five witnesses. It is therefore quite possible that the learned Magistrate did make such an exclusive ruling but did not record it.

I am satisfied too that an appeal hearing under section 65(1) of the Land and Titles Act is one by way of re-hearing. This means that the learned Magistrate may allow such witnesses as he deems appropriate to be called which would assist him in the determination of the appeal. Each party too may call such witnesses as it may consider necessary for the purposes of the appeal, and any decision made by the Magistrate to disallow any witness will be a matter of discretion.

I am satisfied ground (2) must be allowed.

Ground 4

This ground is related to ground 2 and so I will consider it next.

"That the Magistrate erred in finding that the Appellant and his five witnesses gave evidence in the public hearing held by the Acquisition Officer on the grounds that:-

(a) The Appellant's witnesses were not allowed to give evidence to rebut the report made by the Acquisition Officer which the Magistrate solely relied upon.

(b) The Acquisition Officer did not hear evidence of any of the Appellant witnesses supporting the Appellant's claim that he has the right to sell or lease the land.

(c) The Acquisition Officer did not fully comply with the requirements of Section 63(b) of the Land and Titles Act (cap 930.

It is not disputed under this ground that the five witness heard by the learned Acquisition Officer spoke for and on behalf of the First Respondent. It is clear to me that the Appellant had witnesses to call during the Acquisition proceedings but was not allowed to do so. In the Magistrate's Court hearing the Appellant sought to rectify that error, but again was denied. I have already ruled under ground (2) that that was a breach of one of the fundamental principles of natural justice. Both sides must be given a fair opportunity to present their claim and call such witnesses as they consider appropriate. It is all the more important in this particular case, because the transactions related to a purchase of the land in dispute in 1954 from Nelson Tatari. The First Respondent's group allege that the purchase was done by three brothers. The Appellant alleges that the purchase was done by only one of the brothers, Silas Tano, who is his father. This is a factual question and therefore such relevant witnesses that each party may wish to be called should be allowed to do so, before any determination is made.

I am satisfied that not only has there been a breach of natural justice but that the requirement of section 63(b) of the Land and Titles Act has not been complied with. By excluding the witnesses of the Appellant his claim had not been fairly and properly heard. Ground 4(a) and (b) in my view have already been ruled upon under ground (2) and so I do not need to make any further ruling on them. Ground 4(c) is also allowed.

Ground 3 in my view does not add anything further to the issues raised in ground (2) and (4). If no witnesses were allowed in the Magistrate's Court, then no opportunity for cross-examination could ever be given.

Ground (5) is not so much a point of appeal than a notice of intention to adduce evidence in support of the 4 grounds of appeal already raised.

A number of documents have been submitted in which the Appellant seeks to show further proof of ownership over the land in dispute. I accept the submission of Mr Ashley that those are matters which should have been put before the Land Acquisition Officer and the Magistrate's Court for their consideration. It does seem that those documents were available in the hearings below. It is the Court below and the Land Acquisition Officer, who are the correct bodies to make the necessary findings of fact in relation to these documents. I fail to see any issue of law under this point which would warrant the intervention of this Court. The Land Acquisition Officer is entitled to consider those documents plus all other submissions and evidences submitted on behalf of all claimants before making a determination. It is not clear whether in the Magistrate's Court, the Appellant sought to adduce these documentary evidence as well, but was denied that opportunity. The question of whether these documents should be adduced in the Magistrate's Court as well is a matter of discretion for the Magistrate presiding.

Accordingly, it is not necessary to make any ruling on this ground.

The appeal is allowed and I direct that the issues raised in ground (6) of the Notice of appeal filed in the Magistrate's Court on the 11th of December 1992 be re-heard by the learned Magistrate or another Magistrate, together with the five witnesses of the Appellant as sought to be heard in support of ground (2) of the Notice of Appeal as filed with the Magistrate's Court on the 11th December 1992.

Each party to bear their own costs.

(A.R. Palmer)
JUDGE