

ROSELYN DETTKE -v- WILLIAM PI & ANOTHER

High Court of Solomon Islands

(Palmer J.)

Land Appeal Case No. **10 of 1994**

Hearing: **31 October 1994**

Note of Oral judgment: **31 October 1994**

P. Tegavota for Plaintiff

W. Pi (First Respondent) in Person

L. Vutiade (Second Respondent) no appearance.

PALMER J: I have read through the notice of appeal filed on the 18th of February, 1994, and the grounds of appeal raised. The crucial issue raised basically is that there had been a failure to comply with the procedural requirements of Part V of the Land and Titles Act, in particular the provisions of section 61(b), and section 63(b) of the Land and Titles Act. Those provisions specifically require that the owners, or the duly authorised representative of such owners, or the identity of the persons who have the right to sell the land, be determined by the Acquisition Officer.

In the records of proceedings of the Acquisition Officer, he identified two Claimants with separate, distinctive and opposing claims. These claimants represented the Ghaobata and the kakau tribes. The Acquisition Officer was thereby obliged to hear their claims and make a determination as to who were the persons who had the right to sell the land.

The determination of the Acquisition Officer however, was to appoint trustees on behalf of the two claimants. In other words it was more of a non-determination than any determination at all. He did not do what was required of him by the Act.

The Magistrate's Court, accepted the appointment of the trustees made by the

Acquisition Officer , and thereby perpetrated the error committed by the Acquisition Officer.

The error seems to have been committed through a mis-understanding of the requirements of Part V of the Land and Titles Act.

Part V of the Land and Titles Act relates to the procedures set out for the purchase or lease of customary land. In this case it is a purchase of customary land.

The elaborate procedures set out under Part V seek to ensure that the rightful persons to sell the customary land are identified. It is incumbent therefore on the Acquisition Officer to so make a determination in this particular case where there are two claimants. The claims of the representatives of the Gahobata tribe and the Kakau tribe are not identical, therefore it is only logical to conclude that they cannot be appointed as trustees of the rightful persons to sell the land. There are two persons each claiming that they are the rightful persons to sell the land. A determination therefore had to be made by the land Acquisition Officer as to who of those two groups were the rightful owners and thereby then proceed to identify who of that tribe are the rightful persons to sell the land.

I am satisfied that the Appellant had been substantially prejudiced by a failure to comply with the requirements of Part V of the Land and Titles Act. The Appeal is therefore allowed. The judgment of the Magistrate's Court is set aside and re-mitted back to a new acquisition officer to be appointed to re-commence the acquisition proceedings de novo.

ALBERT R. PALMER

(A R Palmer)

JUDGE