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DEREK DAI

-V-

JOHN PALM TEAITALA  
JOHN DOUGLAS TEAITALA  
AUBREY TEAITALA  
AND  
REGISTRAR OF TITLES

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THE HIGH COURT

PALMER JUDGMENT

HIGH COURT OF SOLOMON ISLANDS  
(PALMER J)

Civil Case No. 200 of 1995

Hearing: 16th October, 1995

Judgment: 22nd December, 1995

*Andrew Radclyffe for Plaintiff*

*Patrick Lavery for First Defendants*

*Second Defendant (abides judgment of court)*

**PALMER J:** The Plaintiff seeks by originating summons filed on 11 July, 1995, rectification of the Perpetual Estate in Parcel No.211-001-1, under section 209 of the Land and Titles Act on the grounds of mistake or fraud. The perpetual estate is registered in the names of John Palm Teaitala, John Douglas Teaitala and Aubrey Teaitala, as joint owners (the First Defendants). The Plaintiff claims that that registration had been obtained, made or omitted by fraud or mistake.

### **The Law**

In seeking to ascertain the rights and interests of the parties and the grounds on which their respective claims are founded, the relevant provisions of the Land and Titles Act must be carefully scrutinised. Section 209(1) deals with the power of the Court to effect rectification of the land register.

*"Subject to subsection (2), the High Court may order rectification of the land register by directing that any registration be cancelled or amended where it is so empowered by this Act, or where it is satisfied that any registration has been obtained, made or omitted by fraud or mistake."*

Section 209(2) however sets a limit to the exercise of that power in certain circumstances.

*"The land register shall not be rectified so as to affect the title of an owner who is in possession and acquired the interest for valuable consideration, unless such owner had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or causes such omission, fraud or mistake or substantially contributed to it by his act, neglect or default."*

I do not think it is disputed that subsection 209(2) is the applicable provision. It simply provides that rectification cannot be ordered by this Court unless, it is established either that the Defendant:

- (a) had knowledge of the fraud or mistake in consequence of which rectification is sought; or
- (b) caused such fraud or mistake; or
- (c) substantially contributed to it by his act.

### **The Issues**

What was the fraud or mistake relied on by the Plaintiff?

In the affidavit of Derek Daii filed on 11 July 1995, at paragraph 5, he states that he was the descendant of HOROTALA of the MATAHAORA TRIBE which sold the said land in Parcel 211-001-1, then known in custom as MALA'OPU LAND, to the Colonial Government by indenture dated 3rd March 1914. Copies of that indenture are attached to the same affidavit of DEREK DAII, marked "D". The Plaintiff says that that document supports his claim that the true original customary landowner of Mala'opu Land was Horotala of the Matahaora tribe. When the Commissioner of Lands therefore sought to have the said land transferred to the "*original customary landowners*" as a matter of Government stated policy, it should have offered the perpetual estate in the said land to the Plaintiff rather than to the First Defendants. In paragraph 7 of the same affidavit of Derek Daii he states that the First Defendants and their Wala'animaepaina (*Walanimaepaina*) tribe had no rights in custom over the said land.

### **The Defence Case**

The First Defendants say that they are the correct descendants of the "*original customary landowners*" of the said land. At paragraph 4 of the affidavit of John Palm Teaitala filed on 19 September, 1995, he states that when Mala'opu Land was sold to the Colonial Government, Horotala was merely given the right to receive the money for the sale of the said land. He did not own the land. The land was owned by the WALA'ANIMAEPAINA TRIBE, and permission was given to him merely to receive the sale money, by the said tribe. Accordingly, they assert that there was no fraudulent misrepresentation as to the question of the original landowners.

**WHO WAS THE ORIGINAL CUSTOMARY LANDOWNER(S)**

It is without contention that the stated policy of the Government was to transfer the perpetual estate in Mala'opu Land to the original landowner(s). The simple question therefore before the Commissioner of Lands was to identify who was the original landowner. Now this would seem to be a very simple matter in this clear case. There are original documents of conveyance showing clearly how the land had been bought from the ORIGINAL LANDOWNER; in this case it was HOROTALA. There has been no doubt, question, challenge or dispute raised as to the validity and legality of that conveyance. It has stood the test of time since 1914 (*some 81 years*). I do not think there is any complicated issue of law or custom necessarily involved in the determination of the above question. It is more a simple application of plain common sense than anything else. The original landowner was Horotala. The rightful person therefore to whom the perpetual estate in the said land should have been transferred to would have been Horotala. Horotala however, is dead. Who then in custom should succeed him? Whoever that person is, his rights can only stem from the original landowner, not from any unknown person or tribal grouping. The original conveyance documents are crystal clear. Horotala was described as the "*beneficial owner*". To identify who the original owners of the said land in custom therefore, would necessarily mean ascertaining who or which of the descendants of Horotala is the rightful person or persons in custom who would have succeeded his interest, had the title to the said land been handed down.

The only clear evidence of a claim directly linked to Horotala as can be noted from the affidavit evidence before this court relates to the claim of the Plaintiff. At paragraph 5 of the affidavit of Derek Daii filed on 11 July, 1995, he states that Horotala was his paternal grandfather. This has not been denied by the First Defendants (see affidavit of John Palm Teaitala filed on 19 September, 1995, at paragraph 4). At paragraph 7 of the same affidavit of Derek Daii, he states that inheritances in land on Ulawa Island, are traced through the patrilineal system. No evidence to the contrary has been adduced. According to that system, he says that the land would have passed to him. Again no evidence to the contrary has been adduced. Now, I do bear in mind that the above are matters in custom, and that the appropriate place for issues in custom to be raised is not in this court. However, it is their relevance for the purposes of this hearing that is important. What the Plaintiff has done here is to set out clearly his claim to being the descendant of the original landowner and the right or correct person to whom the perpetual estate in the said land should have been transferred to. Also it is significant that no issue has been raised against those matters in custom. I think that is understandable because the claim of the First Defendants is based on a different ground.

The First Defendants say as contained in the affidavit of John Palm Teaitala filed on 19 September, 1995, that Horotala was merely given permission to receive the money for the sale of the said land by the "*true original landowners*", who they say was the Wala'animaepaina Tribe. Unfortunately, there is no such evidence in the Indenture dated 3rd March, 1914. What was alleged in the affidavit

of John Palm Teaitala filed on the 19 of September, 1995 at paragraph 4, as concerning the 'true position' regarding the receipt of the purchase price by Horotala may have been true. Unfortunately, that is too late now to raise as a defence. The land had been sold and the records which have not been disputed for the past 80 or so years, showed very clearly that Horotala was the beneficial owner. If it was otherwise it would have said so. The evidence before this court, which is unchallenged, is clear and conclusive.

**DID THE FIRST DEFENDANTS HAVE KNOWLEDGE OF THE FRAUD OR MISTAKE OF WHICH RECTIFICATION IS SOUGHT?**

There can be no doubt that the First Defendants had knowledge of the sale of the said land by Horotala. That sale was never disputed. In fact it was positively acknowledged. What was denied was the capacity in which the sale was done. The First Defendants say that the true owner of the said land was the Wala'animaepaina Tribe. However, as already pointed out it is now too late to raise that claim now. The records are very clear. The First Defendants knew about the sale of the said land by Horotala, however, they have sought to assert a contrary claim of ownership to what was recorded in that Indenture of the 3rd March, 1914 without supporting evidence. If that was not being dishonest, then it clearly was based on a mistaken belief on their part that they were the rightful persons to have the perpetual estate in Parcel No. 211-001-1 transferred to them as the correct representatives of the original landowners. The First Defendants knew that the records showed clearly that Mala'opu Land had been sold by Horotala and not the Wala'animaepaina Tribe. It clearly was a mistake therefore to assert their rights based on the purported ownership of the said land by the Wala'animaepaina Tribe. There has been no evidence produced other than a mere assertion that the chiefs of Moli and Haraina Villages were aware of that.

I am satisfied that the First Defendants had knowledge of the fraud or mistake of which rectification is sought.

**QUESTION OF GOVERNMENT STATED POLICY**

One of the points raised by Mr Lavery, of Counsel for the Defendants, is that the courts should not interfere on a policy of the Government. That is a correct proposition. However, the court is not interfering on any Government Policy here. The Government policy sought to be enforced has already been decided upon. The court is not here interfering with that stated policy. What is in issue is the question as to the identification of the original landowner(s). Whoever that is or are, will receive the transfer of the perpetual estate in Parcel No. 211-001-1, in accordance with the stated policy of the Government. It is as much the concern of the court, as it is of the Commissioner of Lands (*the Government*), to see that the rightful persons receive the transfer of the said perpetual estate. The Commissioner of Lands is not seeking to transfer the perpetual estate, simply to any claimant who asserts that they are the original landowner(s). It is to be a transfer to the **correct or true original landowner**. If a landowner therefore should purport to claim to be the original

landowner when he is not, then surely the original landowner should be able to rectify that where it is allowable by law. In this case, section 209 of the Land and Titles Act does make provision for that.

**RECTIFICATION - In whose favour?**

There has been some suggestion that the matter should be referred to the Local Court on the question as to who are the descendants of the original landowners. However, I do not think that is necessary in the circumstances of this case. At least, we know, and there is no dispute as to who is the original landowner in this case. The relevant question, is as to who is or are, the rightful descendants of Horotala, in custom, who would have been entitled to succeed him or his interests? The affidavit evidence before this court is clear and unambiguous. It all points in favour of the Plaintiff. Accordingly, I am satisfied that rectification should be made in his favour.

**ORDERS OF THE COURT**

1. The perpetual estate register in Parcel No. 211-001-1 be rectified so as to cancel the registration of John Palm Teaitala, John Douglas Teaitala and Aubrey Teaitala as joint owners of the said perpetual estate.
  
2. The perpetual estate register in Parcel No. 211-001-1 be rectified so as to effect registration in turn of DEREK DALL as the owner of the said perpetual estate.
  
3. Costs in favour of the Plaintiff.

**ALBERT R. PALMER**

A. R. Palmer  
JUDGE