
**BARTHOLOMEW RIOLO
AND MORRIS MISITI**

v.

**DAVID ELOFIRAMO
AND GEORGE LINGANALEFO
(On behalf of their UALA TRIBE)**

Plaintiffs

Defendants

**HIGH COURT OF SOLOMON ISLANDS
(PALMER J)**

Civil Case No. 224 of 1995.30

Hearing: 9 October, 1995

Judgment: 4 January, 1996

*A. Radclyffe for the Plaintiffs
A. Nori for the Defendants*

PALMER J: The Plaintiffs apply by notice of motion for a writ of attachment for contempt of court to be issued against the Defendants on the grounds that they have continued to interfere with the lawful rights of the Plaintiffs as owners of the area of land at the mouth of the Malu'u River from which gravel and sand had been extracted, ownership of the said land having been determined in Land Case No. 7/83 in the Malaita Local Court, in favour of the Plaintiff's father.

The Plaintiffs Claim.

The Plaintiffs rely on the determination of the Malaita Local Court in that Land Case 7/83, between LINGANAFELO GEORGE AND DAVID ELOFIRAMO -v- MISITI (*a copy is attached to the affidavit of Morris Misiti filed on 2 August, 1995 and marked Ex. "A"*). The Plaintiffs claim that the Local Court had ruled that his father, Misiti was the owner of the land areas, IROBULI and ALILO. The area from which the gravel and sand was extracted is at the mouth of the Malu'u River, and not disputed. The Plaintiffs say however, that that is part of Alilo Land, of which they are the owner, by virtue of the Land Case 7/83. The Defendants have sought to interfere and deny their rights as contained in that Court judgment and hence the reason for this application.

The Defendant's Claim.

The Defendants say that the dispute in that Land Case 7/83 was over an area of land called Irobuli, and identified formerly as LR.178. It did not cover the area of land from which gravel and sand had

been sought to be extracted. They were not bound therefore by the decision of the Local Court in Case No. 7/83.

The Issue.

The issue before this Court is as to the correct identification of the land area in dispute between the parties in that case. Was it an area of land identified as Irobuli/Uala, or Irobuli/Alilo, or separate areas of land identified as Irobuli, Uala and Alilo? And what about the decree of the Local Court which referred to the land in dispute as Irobuli/Alilo?

The Affidavit Evidence.

In the affidavit of Morris Misiti filed on 2 August, 1995, at paragraph 5, he pointed out that the Defendants in the Land Case 7/83 appealed to the Malaita Customary Land Appeal Court concerning Irobuli Land only, and not Alilo Land. The Local Court's decree therefore concerning Alilo Land, they say was not affected, and binding on the current Defendants. They assert that the Local Court had ruled in their favour that they were the owners of two distinct lands, Irobuli and Alilo.

In contrast, the affidavit of George Linganafele filed on 21 September, 1995 sets out at paragraphs 3 to 9, the background facts to that Land Case 7/83, in which he sought to show that the land which was the subject of the dispute in that case was that portion of land formerly identified as LR.178, but which had been declared customary land under the provisions of the Land and Titles (Amendment) Act 1977. At subparagraph 3(b), George Linganafele stated that he then lodged a claim for ownership subsequently, to that land LR.178. At subparagraph (c), he states that late Moffat Misiti and Riolo challenged him for the customary title, primarily because it was them who had sold the land in 1905 to the South Seas Evangelical Church. At subparagraph (d) and (e) he states that when he lodged his claim to the Local Court, he referred to that Land as Uala/Irobuli, because his tribe had always regarded Irobuli Land as part of greater Uala. This is consistent with the name of the land in dispute as recorded in the heading of the judgment of that Local Court.

Another affidavit filed by Andrew Riigerea on the 22nd of September, 1995 also stated at paragraph 2(b) that Alilo land is a separate area of customary land situated between Irobuli Land (**formerly LR.178**) and Kakali Land; in which the Deponent resides. He then referred to the determination of the Acquisition Officer in respect of an area of land not far from that spot to support his claim of ownership, that the area was part and parcel of the customary land area known as Kakali Land.

The Findings of the Court.

First, the decree of the Local Court in that Land Case 7/83 refers to the disputed area as Irobuli/Alilo Land, but does not state what the boundaries of that land was. There were references to Uala high lands and low lands, and a principal tambu site called Alilo. The judgment of the Local Court however did not make clear whether the decree was in respect of two separate lands, Irobuli and

Alilo, and whether ownership of both had been vested in Misiti. There was no specific mention in that judgment that the area of land in dispute included an area of land also called Alilo.

Secondly, it appears that the Plaintiffs in that case took the view that Irobuli Land was part of Uala Land, and sought to present their case from that perspective. The judgment of the Local Court appears to be consistent throughout, making reference to such an area of land (see paragraphs 1 and 2 of page 1 of the judgment, also paragraphs marked (1), (2), (3), (4), (9), (10), (11), (13), and (14).

Thirdly, the only reference to Alilo Land were as follows:

- (i) At the third paragraph of page 1 of the Local Court judgment, there was a reference to a **"Alilo principal tambu places on the sea coat of the disputed area"**.
- (ii) At page 1 paragraph marked "(4)" there is a reference to the grandson of Kwagainao, called Boligia of O'OROBA tribe who lived at **"ALILO situated within the disputed land"**.
- (iii) At page 2, paragraph marked "16", there is a reference to **"ALILO/IROBULI lands disputed area"** which had been given to Misiti's ancestors.

What can be observed very clearly from the above references is that no where does it purport to show or state that there may have been an additional land called Alilo land which was also in dispute in that court case. Alilo land was referred to in the context of references to the claims of the parties to Irobuli Land (**formerly LR.178**). Nowhere in the above references does it sought to show that Misiti was claiming ownership of Alilo land as well.

Further, in the CLAC, there was no mention that the appeal was only in respect of one part of the judgment of the Local Court. To the contrary, the way the judgment was written, showed consistency with the Local Court case, that there was in fact only one area of land being disputed between the parties, and that the same area of land was in fact the subject of the appeal. The arguments raised in appeal before the CLAC are very similar to the arguments raised before the Local Court, (**see page 1 of the judgment at paragraphs 2, 3, 4, 5; page 2, at paragraphs 2 and 3**). Note in particular, paragraph 4 of page 1, in which it was stated that, **"Elofiramo (Appellant representing George Linganafelo as well) calls this land ALILO."**

Also at paragraph 3 of page 2, it stated how the Respondent (Misiti) had come to have ownership rights over the said land. Those ownership rights were the same rights ascertained by the Local

Court in favour of Misiti in respect of the same land. There was no mention of any separate land apart from the same land identified as Irobuli Land.

Finally, the explanations of George Linganalefo on the background facts to the origins of that Local Court Case 7/83, as contained in his affidavit filed on 21 September, 1995, have virtually gone unchallenged. His explanations are consistent with the judgment of the Local Court and the CLAC.

Conclusion.

Taking all the relevant evidence into account, I am not satisfied that Land Case 7/83 established conclusively, that the Plaintiffs were also the owners of a separate area of land called Alilo; distinct from Irobuli Land. There is little or no evidence to support that contention. Rather, the evidence points consistently to the judgment of the Local Court as referring only to an area of land identified as Uala/Irobuli, or Irobuli/Alilo, formerly identified as LR.178. But even if it could be held otherwise, (if possible), there has been no clear delineation of the boundaries of Alilo Land, and therefore it would have been impossible anyway, to say whether the said area of land where the gravel and sand had been removed was within the confines of Alilo Land or not. It would not have been proper accordingly, even to that extent to consider granting the writ of attachment for contempt.

The question of ownership therefore of the area of land from which gravel and sand had been removed appears not to have been litigated upon, and it would therefore be open to the parties to initiate proceedings in accordance with the Local Courts (Amendment) Act of 1985. Until a final determination has been obtained as between the parties in respect of that land, there is no jurisdiction on which a contempt action can be initiated before this Court. The application therefore for issue of a writ of attachment for contempt is accordingly dismissed.

Costs

Order for costs awarded in favour of the Defendant.

ALBERT R. PALMER

A. R. PALMER

JUDGE