MALAITA DEVELOPMENT AUTHORITY -V- MARILYN GANIFIRI & DAVID GANIFIRI, COMMISSIONER OF LAND & REGISTRAR OF TITLES

High Court of Solomon Islands
(Palmer ACJ)

Civil Case No. 217 of 2000

Hearing: **28th July 2001**
Judgment: **30th January 2002**

A.Radclyffe for the Plaintiff
J. Hauirae for the 1st Defendants
J. Keniapisia for the 2nd and 3rd Defendants

Palmer ACJ: The Plaintiff applies for rectification of the Land Register in Parcel Number 171-001-343 being 0.0886 hectares of land in Auki, Malaita Province, pursuant to section 229 of the Land and Titles Act [Cap. 133], on the grounds of mistake.

Claim of the Plaintiff

The Plaintiff claims it is entitled to be registered as the rightful owner of the fixed-term estate in Parcel 171-001-343 on the basis that it held a binding agreement with the Commissioner of Lands ("the Commissioner") for the grant of that fixed-term estate. It claims, but for the mistake in the description of Lot 450/A as 171-001-319, it ought to have been registered as the owner of the fixed-term estate in parcel 171-001-343.

Plaintiff relies on the sworn evidence of Ruben Moli and documents in the Agreed Bundle filed 10th May 2001, in particular those at pages 12, 13, 15, 16, 17, 20, 21, 22, 24, and 25. Plaintiff argues there was a valid offer and acceptance of the grant of the fixed-term estate in Lot 450/A but that an Officer from the Commissioner of Lands Department inadvertently described Lot 450/A as Parcel No. 171-001-319. This led to the preparation and execution of a grant instrument with the wrong parcel number.

The defence of the First Defendants

The first Defendants base their defence to this case on a grant made in their favour in respect of the same land dated 14th July 1998 (page 45) and lodged for registration on 21st July 1998. They argue they have acquired a valid interest in the said land and that it over-rides any other grants that may have been made to the Plaintiff. They also submit there is no mistake in the grant made in their favour, that the Commissioner was well aware of the mistake and yet decided in any event to make the grant to them.

The Issue

The issue is whether registration had been effected by mistake. It is for the Plaintiff to prove to this court on the balance of probabilities that registration of the fixed-term estate in Parcel No. 171-001-343 had been made, obtained or omitted by mistake. If the Plaintiff succeeds in proving this then it is entitled to have the register rectified.

The mistake

I accept as fact, there was a mistake when the grant in favour of the Plaintiff was processed (page 20). Instead of quoting the correct parcel number for Lot 450/A, the Commissioner quoted a wrong parcel number. This resulted in the offer of a wrong parcel number (171-001-319) to the Plaintiff (page 21). The Commissioner and Plaintiff however were never at odds, confused or uncertain about the physical description and identity of the land in question. There was *consensus ad idem* on the subject matter of the grant that was intended. There was also in my respectful view *consensus ad idem* that the Commissioner intended to grant and the Plaintiff intended to accept, grant of no other fixed-term estate than parcel number 171-001-343. This is crucial because there had been suggestions to the effect that the Commissioner did not make any valid offer to the Plaintiff. Unfortunately, the evidence before this court shows otherwise. There were lands officers working with the Provincial Secretary Malaita throughout, who kept the Commissioner informed about what was going on (pages 13, 14,15, 16, 17, 18, 19, 20, 21, 24). There has been no suggestion otherwise (the history of events reflected in the correspondences between the Commissioner and the Plaintiff and the Provincial Secretary to Malaita Province speak for themselves) that it was not the intention of the Commissioner to grant the fixed-term estate in parcel number 171-001-343 to anyone else other than the Plaintiff.

Amazingly though, by letter dated 9th December 1996 (page 32) purportedly written by the Provincial Secretary (Malaita), signed on his behalf by David R. Houkari, addressed to the Deputy Commissioner of Lands, it was insinuated that a direct allocation could be made to Mrs. Merilyn Ganifiri. That same lands officer however was well aware of the arrangements, offers and the fact that a grant had been made to the Plaintiff in respect of Lot 450/A (see pages 16 and 17). How or why that lands officer could make such suggestion to the Deputy Commissioner of Lands is indeed surprising. He cannot plead ignorance; as to excuse I cannot find any either to justify the writing of such a letter. Secondly, it appears that the Provincial Secretary did not screen or clear that letter purportedly signed on his name before it was dispatched. Had he done that, it would have been obvious to him that the letter drafted by David R. Houkari and signed on his behalf, was improper and inaccurate. To that extent, the Provincial Secretary Malaita must bear some responsibility for permitting the confusion that has arisen in this case. This incident highlights in a way the responsibility that leaders, persons in authority have over their subordinates to ensure that their work is closely supervised and that all correspondences sent out in their name and on their behalf must be sighted, screened and cleared personally by them before being sent out, otherwise they must bear responsibility for the actions of their officers or subordinates.

Thirdly, in the same vein, the Commissioner of Lands too failed in his duty to properly check the records in his office and responded ignorantly, by purportedly making a fresh offer of a grant in respect of Lot 450/A. It is amazing that both the Deputy Commissioner of Lands J.W. Naghe and the Commissioner should be ignorant of the actions that had been taken in respect of Lot 450/A. If anything, it is tantamount to dereliction of duty. Care, diligence and commitment should have been the order of the day. Had that been exercised, there could have been no room for confusion, regarding the status of Lot 450/A. It was the same land (see heading of letter dated 18th December 1996 – [page 33]) in which an offer had earlier been made to the Plaintiff and a grant executed (albeit mistaken with regards to the parcel number). It should have been obvious from the files in the Commissioner's Office. Either the records were not checked through, the filing system in that Office a mess, or that someone had deliberately acted in defiance of previous decisions. In any case, something fell apart in the Commissioner's Office resulting in this confusion.

Offer to Mrs. Ganifiri

This raises question as to the validity of such an offer. Was it a valid offer? Respectfully, this must be answered in the negative. The reason being that an earlier offer in respect of the same land had been

made to the Plaintiff and duly accepted. A binding agreement thus existed between the Commissioner and the Plaintiff. In order for the Commissioner to be able to make a valid offer to the first Defendants, the original agreement would first have to be discharged.

There are a number of ways in which an agreement can be discharged. It can be discharged by accord and satisfaction (*British Russian Gazette and Trade Outlook, Ltd. v. Associated Newspapers, Ltd., [1933] 2 K.B. 616*, per Scrutton L.J. at p. 643) or by agreement (*Morris v. Baron & Co. [1918] A.C.*, such as where another property is offered to the Plaintiff and is accepted in lieu of Lot 450/A. It can also be discharged by breach (*Anson's Law of Contract 25th Edition* at page 523). However, a breach does not itself discharge but may confer option on the injured party to accept the breach as discharging the agreement. The injured party may choose to affirm the agreement instead (*White and Carter (Councils), Ltd. v. McGregor [1962] A.C. 413*). In such cases, the option lies with the injured party, not the party breaching the agreement.

This raises next the question whether there is evidence to show that the agreement between the parties had been discharged. Again I must answer this question in the negative. I find no evidence to show that the agreement (the grant instrument) had been discharged by virtue of accord and satisfaction or by agreement. There is also no evidence to show that the agreement had been discharged by breach, and even if that is so, that the Plaintiff had accepted it. The effect of this means the Commissioner had no right in law to make a fresh offer of a grant in respect of Lot 450/A to the first Defendants. He had nothing to offer as what he initially had, had been divested of his control. The purported offer made by the Commissioner and signed by J.W. Nahge on 18th December 1996 therefore was a nullity. The Commissioner cannot give what it does not have. Acceptance of that invalid offer would have made no difference. The purported grant of the fixed-term estate in parcel number 171-001-343 in turn was a nullity, based on a mistaken belief that the Commissioner had power to make such grant.

When the matter thus was brought to the attention of the Commissioner by letter dated 1st May 1997 (page 35, 36, 37) he should have acted immediately to have the matter rectified. He ought to have known that a mistake had been committed and have it corrected, instead of delaying the matter further. Where he was unsure, he should have sought advice from the Attorney General's Office. Had he done so, he might have saved himself and all the parties unnecessary litigation and costs in having to come to Court to sort this matter out. All that needed to be done, was for the grant instrument to be rectified by inserting the correct parcel number and have it re-lodged for registration. That was not done. So the question whether a valid offer had been made to Mrs. Ganifiri must be answered in the negative.

Rectification

The Plaintiff is entitled to the relief sought in its Statement of Claim. It has proved on the balance of probabilities that a mistake existed in the processing of its application, which ought to have been rectified by the Commissioner. That failure resulted in the Plaintiff being deprived of the fruits of what it had legally acquired through the allocation, offer and execution of a grant of the fixed-term estate in Lot 450/A.

This Court has power under section 229 of the Land and Titles Act to rectify the land register where it is satisfied registration had been obtained, made or omitted by mistake. I am satisfied on the evidence before me registration of Lot 450/A, being the fixed-term estate in Parcel Number 171-001-343, in favour of the Plaintiff had been **omitted** as a result of a mistake. Accordingly, the purported registration of the First Defendants over the same fixed-term estate respectfully must be cancelled. In other words, registration of the fixed-term estate in Parcel Number 171-001-343 in favour of the first Defendants had been obtained by mistake. The Commissioner was mistaken that he had power to

make a fresh grant to the first Defendants. I am also satisfied the first Defendants were aware of the mistake as early as 14th August 1997 (page 40) and that accordingly subsection 229(2) would not apply.

There has been suggestion based on the decision in *David Lilimae & Fox Irokalani v. Commissioner of Lands, Registrar of Titles & Rex Fera HC-CC 298 of 1997* at page 8 that this court does not have power to grant the declaration sought in paragraph 14(d) of the Statement of Claim, being that the Plaintiff is entitled to be registered as owner of the fixed-term estate in the land. Respectfully I disagree. The meaning of "**rectification**" includes the correction of an error in a register or instrument (see *Osborn's Concise Law Dictionary sixth edition*). In Black's Law Dictionary sixth edition "rectification of register" means:

> *"In old English law, the process by which a person whose name is wrongly entered on (or omitted from) a register may compel the keeper of the register to remove (or enter) his name."*

The meaning of rectification thus is not merely confined to cancellation but correction. Further, Section 229 expressly gives power to this court not merely to cancel but to **amend**. The meaning of "amend" includes to change, correct or revise (see Black's Law Dictionary). See also definition of "amend" in the Interpretation and General Provisions Act (Cap. 85):

> *"includes repeal, revoke, rescind, cancel, replace, add to or vary, and the doing of any two or more of such things simultaneously in the same Act or instrument".*

I am satisfied the Plaintiff is entitled to the declaration sought that it be registered as owner of the fixed-term estate in the said land.

On the question of costs, it is my respectful view that the Second Defendant must not only bear the costs of the Plaintiff but also that of the First Defendants. Had the Commissioner and his Officers exercised diligence in the discharge of their duties this dispute would not have come to court. That is an embarrassment to that office but also an unnecessary burden on Government because ultimately it is the Government that will have to bear the costs of the actions of some officers or persons who have failed to act diligently.

ORDERS OF THE COURT:

1. **Grant order for rectification of the Fixed-Term Estate Register in Parcel Number 171-001-343 on the grounds of mistake, by having the registration in favour of the first Defendants, Mrs Marilyn Ganifiri and David Ganifiri cancelled forthwith.**

2. **Grant Declaration that the Plaintiff is entitled to be registered as owner of the Fixed-Term Estate in Parcel Number 171-001-343.**

3. **Order that the Grant Instrument executed between the Commissioner and the Plaintiff be rectified by having the correct parcel number inserted or a fresh grant executed in favour of the Plaintiff and to be re-lodged for registration.**

4. **The costs of the Plaintiff and the First Defendants to be borne by the Second Defendant.**

THE COURT