

**JACOB LII SIOSI -V- PATTESON MAE**

**High Court of Solomon Islands  
(Palmer ACJ)**

**Civil Appeal Case No. 323 of 2001**

**Hearing: 30<sup>th</sup> January 2002**

**Judgment: 31<sup>st</sup> January 2002**

*D. Hou for the Appellant*

*A. Rose for the Respondent*

**Palmer ACJ:** This is an appeal against the orders of the Magistrates Court in Civil Case No. 44/2001 issued on 12<sup>th</sup> October 2001, in which the presiding Magistrate said:

*“Claims 1 and 2 are refused but stayed pending final determination of ownership of Mage and Hinaba Peko land.”*

Claims 1 and 2 of the Appellant as contained in his Statement of Claim filed in Civil Case No. 44 of 2001 in the Magistrates Court were claims for (1) damages for trespass and (2) damages for conversion of the ten coconut trees and one edible nut tree felled by the Respondent.

Appellant appeals on the following grounds:

- “1. The Learned Magistrate erred in law in holding that the court does not have jurisdiction pursuant to section 254(1) of the Land and Titles Act cap 133 to determine the Plaintiffs claim to the right to crop and/or use the coconut trees.
2. Properly constructed, section 254(1) of the Act only relates to a claim arising in connection with customary land but does not exclude a claim to the right to crop and/or use of the coconut trees. Proof of the right to crop and/or use of the coconut trees could be done independently without proof of the ownership of the land.
3. The Learned Magistrate erred in law in refusing jurisdiction without prima facie evidence that the claim in respect of the coconuts affects or arises in connection to the customary land.”

### **History of the dispute**

The parties dispute ownership of **Mage Land**, being customary land on Sandfly Island, stretching from *Kuli Sakai Levu River* to *Patuka* point (see sketch map marked as “A” annexed to the affidavit of Jacob Lii Siosi filed in the Magistrates Court on 7<sup>th</sup> September 2001 and attached to the Bundle of Documents filed in support of the Appellant’s Appeal). In that affidavit (paragraph 2), Siosi

deposes the Chiefs, which heard the dispute in January 1997 had awarded ownership in his favour. This is supported by another affidavit made by two of the chiefs who participated in that decision-making dated 31<sup>st</sup> August 2001. They confirmed, that the decision went in favour of the Appellant. That dispute is still pending, now before the Local Courts.

In or around the middle of 2000 and thereafter, the Respondent started clearing in an area of land known as **Hinaba Peko** within Mage Land (*see sketch map marked as "A" annexed to the same affidavit of Jacob Lii Siosi*). Appellant claims ten coconut trees and one edible nut tree were felled (*see paragraph 5 of the Statement of Claim of the Appellant filed in Civil Case no. 44 of 2001 in the Magistrates Court*). Appellant claims Hinaba Peko Land belongs to him and that the coconut trees and nut tree belong to him. As a result of this he filed a claim in the Magistrates Court (Civil Case no. 44 of 2001) in which he claims damages for trespass and conversion.

On 12<sup>th</sup> September 2001, the Appellant obtained interim orders ex parte restraining the Respondent from carrying out any further development on Hinaba Peko Land. On 3<sup>rd</sup> October 2001 the matter came before the same Magistrate for inter partes hearing. One of the preliminary matters raised by learned Counsel Mr. Hou before the Magistrates Court was the question whether the court could determine questions of conversion apart from issues of customary ownership of the land. In it's ruling the court held inter alia that the question of conversion is directly linked to the question of ownership and therefore must be stayed pending determination of the question of ownership of land.

Appellant appeals against that order only, arguing in essence that the question of right to crop or use the trees is separate and distinct from the issue of ownership of land in custom and could be determined separately. Mr. Hou submits the court below could determine questions of conversion of the trees without having to wait for determination of ownership of the land. Appellant claims the trees belong to him and therefore he is entitled to be paid compensation for damage and destruction caused by the Respondent.

The Respondent on the other hand disputes ownership of those trees. In his submissions before this Court, learned Counsel Mr. Rose for the Respondent submits that his client's right to those trees arise from ownership by the Respondent's uncle. He submits his client had been instructed to remove those coconut trees by his uncle.

### **Case Authorities**

Learned Counsels had relied on a number of case authorities in their submissions. The first case mentioned was *Oloni and Fagasi v. Konairamo and Fa'aferoa 1988/89 SILR 66*. The Respondents in that case had claimed in the Magistrate's Court damages for two trees cut and removed from what they claim was their customary land, Rakwana Land. The Appellants on the other claimed the trees were felled and removed from their land Tabakwakwa Land. The Principal Magistrate held he had jurisdiction to deal with that issue, as he could not be satisfied on the balance of probabilities that a land dispute existed between the parties. On appeal, Ward CJ upheld and ruled that the learned Principal Magistrate erred in finding he had jurisdiction when the evidence disclosed that a dispute on the exact location of the boundaries existed between the parties. The dispute turned on the question whether the trees were located on Rakwana Land or Tabakwakwa Land. His

Lordship held that was a dispute arising in connection with customary land and accordingly the provisions of section 231(1) [section 254(1)] of the Land and Titles Act applied.

The second case referred to was *Mae v. Konihaka* (1986) SILR 218. In that case, the Appellant had claimed damages for a coconut plantation, which he claimed, had been used by the Respondent for a period of four years. The Magistrate accepted jurisdiction and proceeded to deal with the Appellants claim on the basis that it pertained to use of plantation and not ownership of land. Ward CJ however found that when the Magistrate proceeded to deal with the issue, he did so primarily on the question of ownership of the land on which the plantation was located. He held it was clearly a matter arising in connection with customary land and directed that the matter be referred to the Local Court.

### **The right relied on by the parties.**

Appellant's claim of right over the coconut trees, stem primarily from his claim of ownership over Hinaba Peko Land (see *Statement of Claim filed in the Magistrates Court – paragraph 5 and affidavit of Jacob Lii Siosi – paragraph 3*). This in my respectful view is crucial to the submission made by Mr. Hou that there is no connection or nexus between questions of rights to use or crop the coconut trees and ownership of the land. The pleadings and affidavit evidence submitted simply show otherwise. They are linked together. The claim for damages for trespass and conversion both stem from the question of ownership of Hinaba Peko Land. It would have been different if the sole issue for determination before this court pertains to the question of ownership of the coconut trees alone. Unfortunately, that is not the case. The question of rights to use or crop the coconut trees is bound up with the ownership of the land. But even if they can be determined on their own, I am not satisfied they do not arise in connection with customary land. The case of *Fugui and Another v. Solmac Construction Company Limited and Others* (1982) SILR 100 relied on by Mr. Hou can be distinguished on the grounds that whilst it is conceded there may be a separate right to crop, the facts before me in this case show that the right to crop relied on is connected to the question of ownership of Hinaba Peko Land. It is evident from the matters pleaded in the Statement of Claim of the Appellant filed in the Magistrates Court and the supporting affidavit. So while it may be possible to determine questions of rights to crop or use of the coconut trees, it is not necessary to determine that issue when it is clear on the evidence and material before the court that such matter is directly connected to the question of ownership of the land. The authorities cited apply.

I am satisfied accordingly section 254(1) of the Land and Titles Act must apply. The claims of trespass and conversion are directly connected to the issue of customary ownership.

**Appeal dismissed with costs.**

**THE COURT.**