

# HENRY HA'AINA ~V~ ROBERT TALOANIWAIU AND ATTORNEY-GENERAL

High Court of Solomon Islands  
(Palmer J)

Civil Case No. 331 of 2001

Hearing: 9<sup>th</sup> May 2002

Judgment: 30<sup>th</sup> August 2002

*D. Hon for the Plaintiff*

*C. Ashley for the First Defendant*

*S. Manetoali for the Second Defendant*

**Palmer J.** The Plaintiff seeks rectification of the perpetual registers in parcel numbers 251-006-2, 251-006-3, 251-006-4 pursuant to section 229 of the Land and Titles Act (Cap. 133) ("LTA") on the grounds of mistake or fraud.

## **The facts**

The perpetual estates in parcel numbers 251-006-2, 251-006-3, 251-006-4 (*hereinafter referred to as "the Registered Lands"*) were registered in the name of the first Defendant, Robert Taloaniwaiu on or about 30<sup>th</sup> December 1982 (*see Exhibits "A", "B" and "C" annexed to the affidavit of Henry Ha'aina filed 28<sup>th</sup> November 2001*).

## **Allegation of Mistake**

The only allegation of mistake made is contained in paragraph 10 of the affidavit of Henry Ha'aina filed 28<sup>th</sup> November 2001. The Plaintiff alleges that the Commissioner of Lands mistakenly believed that the first Defendant was the sole owner of the Registered Lands or was induced to believe that as a result of the fraudulent misrepresentation by the first Defendant.

In his submissions before this Court the Plaintiff submits that he was mistaken in that he thought and believed all along that the first Defendant was acting on their behalf.

## **Allegation of Fraud**

The allegation of fraud raised by the Plaintiff is that the first Defendant made a false representation knowingly to the effect that he was "the only Survivor as a sole owner" (*see Exhibit "A" annexed to the third affidavit of Henry Ha'aina filed 6<sup>th</sup> May 2002*). The Plaintiff says this was false and that the first Defendant knew that it was false.

## **The first Defendant's Case**

First Defendant submits that the Plaintiff's case should be struck out as an abuse of the court's process in that the same issues raised in Civil Case 215 of 2001 in the Case Robert Taloaniwaiu .v. Henry Ha'aina CC 215 of 2001 judgment delivered 5<sup>th</sup> November 2001 are being raised again for determination by this court.

In Civil Case 215 of 2001, Henry Ha'aina pleaded in his defence that Robert Taloaniwaiu held the Registered Lands in trust or on behalf of the Pawa Landholding Group. Unfortunately, his defence was

dismissed as there was no evidence to support his claim. No counter-claim either for rectification of the land registers was also filed.

### Is the Plaintiff raising the same issues in this case?

The substance of the Plaintiff's case in Civil Case 331 of 2001 is rectification of the registers of the parcel numbers of the Registered Lands on the ground of fraud. Fraud was not pleaded as a defence in the Statement of Defence of the first Defendant in Civil Case 215 of 2001. The first Defendant did not raise either an counter-claim against the Plaintiff for rectification. The issue of fraud therefore was never agitated in CC 215 of 2001.

There can be no basis therefore for arguing that it is an abuse of the court's process or that the Plaintiff in this action is estopped from pursuing his claim for rectification on the ground of fraud (see Wyatt v. Palmer [1889] 2 QB 106, Jonesco v. Beard [1930] AC 298, Charles Bright & Co. Ltd. v. Sellar [1904] 1 KB 6 applied in Garimane Micha v. Samuel Thao and Others CC 18 of 2002 judgment delivered 8<sup>th</sup> April 2002).

### Mistake

In Walter Billy v. Paul Daokalia and Others CAC 1 of 1995 Judgement 27<sup>th</sup> October 1995, the Court of Appeal said at page 20 of its judgment that:

*"The claims of fraud or mistake therefore must necessarily be linked to the time when registration was obtained, made or omitted."*

The mistake alleged in the Plaintiffs Originating Summons therefore must relate directly to the registration of the Registered Lands. Was there such a mistake which resulted in the registration of the Registered Lands in favour of the first Defendant? Has the Plaintiff pointed to a mistake and if so, what is that mistake?

The claim for mistake has been raised in a round about way. The Plaintiff submits that the Commissioner of Lands ("Commissioner") was mistaken due to the omission of the Plaintiff to rectify the claims of the first Defendant that he was the sole surviving owner over the Registered Lands. Unfortunately the nexus fails to connect. There is no evidence to suggest that the Commissioner was mistaken. He had simply done what was required of him to do. The fact that the Plaintiff may have been mistaken does not make the Commissioner a party to that mistake. The Commissioner may have acted on that mistake of the Plaintiff but he was not mistaken. The allegations of mistake therefore have not been made out and must be dismissed.

### Fraud

The classic definition of fraud is contained in *Derry v. Peek (1889) 14 App. Cases 337*:

*"... fraud is proved when it is shown that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false".*

In *Barclays Bank Ltd v. Cole [1966] 3 All E.R. 948* it was defined by Lord Denning as follows:

*" 'Fraud' in ordinary speech means the using of false representations to obtain an unjust advantage: see the definition in the Shorter Oxford English Dictionary. Likewise in law 'fraud' is proved when it is shown that a false representation has been made knowingly or without belief in its truth, or recklessly, careless whether it be true or false."*

These definitions of fraud have been applied in this jurisdiction inter alia in R. v. Customary Land Appeal Court (Western) Ex parte Simi Pitakaka [1985/1986] SILR 69, Taisol Investment Corporation (IS) Limited and Robert Victor Emery and John Sullivan and Another v. Taisol Investment Corporation (IS) Limited and Toshio Hasimoto and David Hayward HC-CC 301 of 1993 and HC-CC 119 of 1993 Judgement delivered 26<sup>th</sup> May 1995, and Reef Pacific Trading Ltd and Joan Marie Meiners v. Price Waterhouse & Others CC 164 judgment delivered 26<sup>th</sup> July 1999 at page 12.

## The Law

The Plaintiff relies on section 229(1) of the Land and Titles Act [Cap. 133] for rectification. I quote:

*“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.”*

Plaintiff submits that rectification should be ordered in respect of this case as the registration of the Registered Lands in favour of the first Defendant had been obtained by fraud.

## The Issue

The issue for determination is whether a false representation had been made knowingly. Plaintiff alleges that Robert Taloaniwaiu had falsely represented that he was the **sole surviving owner** of the Registered Lands. The issues for determination therefore are two-fold: (i) whether a false representation was made and (ii) whether it was made knowingly?

## The representation made.

The evidence adduced regarding whether a representation was made is quite clear. It is not in dispute that the representation made was to the effect that the first Defendant claimed to be **“the only survivor as a sole owner”** over LR 398/LR 401, LR 832, Lot 1 of LR 402, Lot 2 of LR 402, and Lot 5 of LR 402 (these were the lands when registered now known as the Registered Lands). This is evident in the agreement made by the Acquisition Officer, Sethuel Kelly with the first Defendant on 3<sup>rd</sup> February 1982 (see copy annexed as Exhibit “A” to the third affidavit of Henry Ha’aina filed 6<sup>th</sup> May 2002).

## Was the statement made false?

Was the statement made by the first Defendant that he was “the only survivor as a sole owner” false?

Plaintiff relies on a number of evidentiary material in support of his claim that this statement was false. First, Plaintiff relies on what was said by the first Defendant in Local Court Case No. 4 of 1979 heard by the Ugi Local Court on 7<sup>th</sup> August 1979. Parties to that case were the first Defendant Robert Taloaniwaiu as Plaintiff and Joe Konihaka as Defendant. The subject matter of the dispute was the question of ownership over the Registered Lands.

At page 2 of the record of proceedings, Robert Taloaniwaiu states as follows:

*“Other people were here at Pawa. But that’s after my great great grandfathers which I have mentioned. And these are the people whom came from Mwanibata to down at Kakona. .... And they are the only ones that I’m believing to be with me, of owning Parwa land. Igiob got away from me. I reason that he is adopted*

*to Sungasau, Suraikamala and Nanasiabaro were also away, but nothing was paid of their adopters. That's of staying just with their father. And we are the only people who owned Pawa Land."*  
 [Emphasis added]

From what was stated above, it does appear that Robert Taloaniwaiu did concede that there were others with him who claimed ownership of the Registered Lands. These were the descendants of **Sumakia and Karopo**. I quote: "And they are the only ones that I'm believing to me with me, of owning Pawa land." ... "And we are the only people who owned Pawa Land." He did not identify however what rights they had or enjoyed in custom, though he did say they came after his great great grandfathers. There was a clear concession in his statement though that those people were together with him in his claim of ownership over the Registered Lands. I note also that one of the witnesses called in support of his claims of ownership was John Mark Igioa, which tends to support the fact that John Mark Igioa and Robert Taloaniwaiu were acting together in the case. Note John Mark Igioa and the Plaintiff in this case are direct descendants of Sumakia and Karopo.

When his claim that he is "the only survivor as a sole owner" is considered in the backdrop of his statement in Local Court Case No. 4/79, it cannot be true. According to the genealogical table submitted by the Plaintiff, the descendants of Sumakia and Karopo are not confined to John Mark Igioa alone. There were others with them including the Plaintiff (see Exhibit "E" annexed to the first affidavit of Henry Ha'aina filed 28<sup>th</sup> November 2001).

The second piece of evidence relied on by the Plaintiff is contained in the High Court judgement dated 17<sup>th</sup> June 1981 in respect of an appeal over the same case by Joe Konihaka (see *Joe Konihaka v. Robert Taloaniwaiu High Court Customary Land Appeal Case Number 4/81*). At page 1 of the judgment, his Lordship Daly CJ said:

*"In this case Robert Taloaniwaiu (the present Respondent) brought a case in the Ugi Local Court with 2 other plaintiffs against Joe Konihaka (the present appellant). The case was said to concern Pawa Land which is also subject to certain leases namely a lease over LR 398/LR 401 and over LR 402 as shown on plan No. 96/60 entitled Pawa. The contention of the Respondent was and is that the land belonged to his line and therefore the lease money should be paid to him."* [Emphasis added]

Plaintiff submits that the High Court in its judgment did recognize that the claim of the Respondent (Robert Taloaniwaiu) was done on behalf of his line, again supporting the contention of the Plaintiff that the first Defendant was not acting alone and that thereby making the statement of the first Defendant false.

The third piece of evidence relied on were two letters marked as Exhibits "G" and "H" also annexed to the first affidavit of Henry Ha'aina filed 28<sup>th</sup> November 2001. Exhibit "G" was a letter dated 6<sup>th</sup> August 1970 written by the then District Commissioner and addressed to Robert Taloaniwaiu and John Igioa both of Ugi. Exhibit "H" was a letter written by both the first Defendant and John Mark Ikioa (the same person known as "Igioa") to the then Archbishop of Melanesia dated 14<sup>th</sup> April 1975.

Plaintiff submits that the letters support his contention that Robert Taloaniwaiu was not acting alone but together with John Mark Igioa (descendant of Sumakia and Karopo) and that he was acting in his capacity as representative of the Pawa Landholding Tribe. It appears that the Pawa Landholding Tribe consists of the descendants of *Pwaunamao and Kauburamo* and *Sumakia and Karopo*. Again this is also evidence, which supports the Plaintiff's claim that the statement made by the first Defendant was false.

The fourth and final evidence relied on by the Plaintiff was a letter written by the then Acquisition Officer, S Patavaqara to the Permanent Secretary of the Ministry of Agriculture and Lands as it was then

known dated 31<sup>st</sup> August 1979 (Exhibit "A" to the second affidavit of Henry Ha'aina filed 25<sup>th</sup> March 2002). The Acquisition Officer was describing in that letter his observations of his first visit to the site. I quote:

*"I held my first visit with Ugi people who claim to be landowners on the 27/8/79 at Kerepei Clinic. The result was as follows:-*

*About 20 people attended consisting of two prominent groups of claimants, namely Joe Konihaka of Hulihale who claimed the deeds regarding title is already under his name, and Mr Robert Taloaniwaiu of Apaone village representing John Mark Igioa of Suasi village claiming to be the original owners of the registered parcel plus the surrounding customary undeveloped land."* [Emphasis added]

The Plaintiff submits that the correspondence adduced above is again consistent with and supports his contention that Robert Taloaniwaiu was not acting alone but together with John Mark Igioa and again supporting his contention that the statement of the first Defendant was false.

In my respectful view, the evidence adduced is more than sufficient to prove to my entire satisfaction that the first Defendant was not acting alone but together with the descendants of Sumakia and Karopo as joint owners in custom over the Registered Lands. To that extent his claim that he was "the only sole survivor as a sole owner" of the Registered Lands was false.

#### **Was the false representation made knowingly?**

The answer to this question in my respectful view must also be answered in the affirmative. Clearly the first Defendant knew what the truth was about the question of ownership over the Registered Lands. He made the concessions himself in his Statements before the Ugi Local Court in Local Court Case number 4/79 heard on August 7<sup>th</sup> 1979. His Lordship Daly CJ in his judgment in the High Court Customary Land Appeal Case No. 4/81 between Joe Konihaka v. Robert Taloaniwaiu judgment delivered 17<sup>th</sup> June 1981 also formed the view that he was acting on behalf of **his line**. His Lordship could not have made this observation unless it was impressed upon him that this was the stance of the first Defendant in that appeal.

The correspondences (Exhibits "G" and "H" annexed to the first affidavit of Henry Ha'aina filed 28<sup>th</sup> November 2001) both confirm and are consistent with the submission of the Plaintiff that the first Defendant was not acting alone. Exhibit "G" was addressed to both John Mark Igioa and Robert Taloaniwaiu whilst Exhibit "H" was signed by both of them in their capacity as the landowners over the Registered Lands. The Acquisition Officer, S. Patavagara in his letter of 31<sup>st</sup> August 1997 (Exhibit "A" to the second affidavit of Henry Ha'aina) also formed the same view, that the first Defendant was not alone in his claims.

Taking everything into account, I am more than satisfied on the evidence before me that the first Defendant knew that his statement was not true. He knew right from the beginning that there were others involved in the claims of ownership or had similar interests over the Registered Lands. At least he knew that John Mark Igioa was fighting the same court battles with him. The only issue is whether they were acting in their individual capacities and not in any representative capacity. The evidence in my respectful view does not bear this out. There is no evidence to suggest that ownership had been acquired on an individual basis or by private transaction. Rather the evidence is to the contrary, that they had acquired rights by inheritance from their fore fathers, in Robert Taloaniwaiu's case from *Pwaunamao and Kauhuramo* whilst in John Mark Igioa's case from *Sumakia and Karopo*. That implies that they hold interests or have acquired rights by inheritance as members of the tribes or lines, which descended

from those persons. Any other persons who may be descended from those persons it seems would to some extent have some sort of customary right or interest over the said lands, unless for some reasons their rights or interest had been severed in custom.

By purporting to claim that he was the only survivor and sole owner of the Registered Lands, he sought to exclude the rights of others, which from the beginning he had entertained and allowed to pursue their claims together with him. To that extent he had acted fraudulently and his registration as the sole owner over the Registered Lands cannot be allowed to stand. Fraud unravels everything [see *Lazarus Estates Ltd v. Beasley* [1957] 1 All E.R. 341 per Lord Denning at page 345 cited in *R. V. Customary Land Appeal Court (Western)* ex parte *Simi Pitakaka* (1985/1986) SILR 69 at 72].

### **Limitation Period**

Mr. Hou for the Plaintiff submits under this ground that the limitation period shall start to run only from date such fraud was discovered (section 32 of the Limitation Act [Cap. 18]). He submits the fraudulent misrepresentation made by the first Defendant was not discovered until early 1995 when it became obvious to them that the first Defendant was beginning to assert individual ownership over the Registered Lands. It was only then after initiating investigation into the land titles that he realized the lands had been registered in the name of the individual capacity of the first Defendant. Mr. Ashley for the first Defendant has not sought to contest the point and rightly so. I accept submissions of learned Counsel Hou that the limitation period has not expired and to that extent the application for rectification on the grounds of fraud is not time barred.

### **ORDERS OF THE COURT:**

1. Grant declaration that the first Defendant was acting in his capacity as representative of the tribes of *Pwaunamao and Kauburamo and Sumakia and Karopo*, being members of the Pawa Landholding Group.
2. Grant order for rectification of the registers in the Perpetual Estates in Parcel Numbers 251-006-2, 251-006-3, and 251-006-4 by canceling the registration of Robert Taloaniwaiiau as sole owner over those perpetual estates.
3. Direct that the Plaintiff and first Defendant to identify within thirty days, three other members from their tribes, apart from themselves, to be included as the representatives of the Pawa Landholding Group and to be registered as joint owners on the statutory trusts, failing which the matter is to be re-listed in chambers for purposes of determining this issue.
4. Consequentially order that the registers of the said Perpetual Estates to be amended thereby in accordance with order 3 above.
5. Each party to bear their own costs.

**THE COURT.**