

WILSON PHILIP SAGEVAKA (representing the Sinagi Tribe) **-V-**
ALLAN GAGAHA AND CHRISTIAN NAGIRO (representing the
Rurughu Tribe)

HIGH COURT OF SOLOMON ISLANDS
(KABUI, J.).

Civil Case No. 227 of 2002

Date of Hearing: 15th November 2002

Date of Judgment: 20th November 2002

Mr G. Suri for the Applicant

Mrs M. Samuel for the Respondent

JUDGMENT

Kabui, J. By an Originating Summons filed on 7th October 2002, the Applicant poses the following questions to be determined by the Court-

1. whether the findings and recommendations of the Judge Philips land enquiry made in 1924 constitutes a legal and valid decision in respect of land from Tahanatetu to east Kolourungu and all Islands in the Austria sound to the most of the South Channel?.
2. if the answer is in the affirmative, whether the findings and recommendations of Judge Philips land enquiry is legally binding on the Respondents and their Rurughu tribe?.
3. further and other orders as the Court deems meet.
4. costs of and incidental to this application.

1.and 2. are the questions to be determined by the Court.

The Ysabel Local Court Decision

The facts of this case are brief and not in dispute. On 28th May 2001, the Ysabel Local Court decided that Allan Gagaha of Rurughu Clan the Respondent was the owner in custom of the area of land between Kolourungu to Sukikelehi. The Applicant had not appealed the decision of the Ysabel Local Court. Instead, the Applicant decided to seek the determination of two questions, which if answered in the affirmative, would clearly undermine the decision of the Ysabel Local Court. By the date the Originating Summons was filed, the Applicant was well out of time to appeal against the decision of the Ysabel

Local Court. The correct step the Applicant should have taken was to appeal against the decision of the Ysabel Local Court. If the Ysabel Customary Land Appeal Court still rules against the Applicant, then he may appeal to the High Court on a point of law being question 1 posed in the Originating Summons. By coming to the High Court in this way is no more than coming through the backdoor in an attempt to topple the decision of the Ysabel Local Court. The Applicant by sitting on his right to appeal for 3 months until that period of time expired without an appeal has lost his chance to question the correctness of the decision of the Ysabel Local Court. The decision of the Ysabel Local Court still therefore stands high and tall. I would not hesitate to dismiss the Applicant's Originating Summons on this basis. Lest I be wrong in my view, I will now proceed to deal with the Originating Summons.

The Originating Summons

The additional facts are these. Under the provisions of the then (Waste and Vacant) Regulations, 1900, large tracks of land in the then British Solomon Islands Protectorate came under the occupation of Levers Pacific Limited from its predecessor, Pacific Islands Company. This was done by way of issuing out certificates of occupation. Several tracks of land were affected. Some were on Ysabel. Natives in those days claimed that the tracks of land under certificates of occupation were not waste and vacant as those tracks of land were in fact occupied by natives. One of the tracks of land that was affected was Pearson land and Islands at Austria Sound on Ysabel. These claims became Native Claims 30-37 and 55 for the Judge Philips Inquiry in 1923 to 1924. Judge Philips had been commissioned by the then Acting Resident Commissioner to inquire into Native Claims that certain tracks of land that were affected by certificates of occupation were not waste and vacant land but were in fact occupied by natives. Native Claim 37 having been inquired into, Judge Philips found that three groups of people inhabited Pearson land and the Islands at Austria Sound on Ysabel. They were the Hugo Rarata group, the Edmund Bako group and the Thogokama natives. The Applicant claims that the Sinagi tribe was represented at the Judge Philips Inquiry and the record clearly shows that that tribe owned the land from Tohanatetu to Kolourungu and the surrounding Islands in the Austria Sound. That area of land was also clearly marked by boundaries.

The legal effect of the Judge Philips recommendations

Counsel for the Respondent rightly conceded the validity of the Judge Philips recommendations and the binding effect of them upon the parties to the Inquiry. Counsel however posed three questions to be answered. The first was what was the purpose of the Inquiry? Second, who were the parties to the Inquiry? Third, who were the parties to be bound by the findings and recommendations of the Inquiry? In answer to the first question, Counsel said that the purpose of the Inquiry was to find out whether the area covered by Native Claim 37 was waste and vacant land or not. The answer was that it was not. The area of land was occupied by three groups of people. Counsel said that the purpose of the Inquiry was not to determine the customary ownership of land

between the occupying natives of the area covered by Native Claim 37. I think Counsel was correct in saying this because the recommendation to this effect was duly published in the Western Pacific High Commission Gazette on Thursday 11th February 1926. Recommendation 8 relating to Native Claim 37 stated-

...”That the whole of the disputed land be declared to be native land and be withdrawn from the said certificate”...

That recommendation speaks for itself. It says nothing about the ownership of the area of land as between the natives. Determination of conflicting interests between the natives was not the function of the Inquiry. A great deal of evidence might have been given as to customary occupation, but that was not intended to determine who owned what and how much as between the occupying natives at that time. So, I do not think the record of the Inquiry can be taken as the conclusive evidence of ownership by individual tribes occupying that area of land. At page 192 of the record of Inquiry is this paragraph in the following terms-

...”The native evidence at the inquiry showed that the claim of the clan represented by Demund Bako to the native ownership of this area was well recognized by the local natives”...

The conclusion reached was at page 193 of the record of Inquiry in the following terms-

...”In consequence, I am satisfied that the native story of occupation and use of these lands in 1902 and since is a true one”...

The result of this finding was recommendation 8 cited above that the whole of the disputed land be declared to be native land and withdrawn from the certificate of occupation. There may well be evidential value in the record of the Inquiry but that is not conclusive evidence of ownership by the late Bako's clan of the area of land concerned. Recommendation 8 by Judge Philips is no bar against future claims by persons who believe they have better claims in custom. Levers Pacific Limited and the Claimants were the parties to the Inquiry. This is the answer to the second question posed by Counsel for the Respondent. The findings of Judge Philips are therefore binding upon those parties only and do not bind others who were not parties to the Inquiry. This is the answer to the third question posed by Counsel for the Respondent. I therefore answer question 1 in the affirmative. Counsel for the Respondent did not dispute this conclusion. I answer question 2 in the negative. The Applicant will bear the cost of this application.

F.O. Kabui
Judge