

**BENJAMIN KIRIMAOMATE'E BOSOKURU, SAUL SAEFASIA AND DAUMUSIA** (as representatives of the owners of the Seanaua Customary Land) -**V-**  
**JERIAL MAEFASIA, UZZIEL ULASI, WILSON ULASI AND HUDSON KWALEA** (representing the owners of the Abunga Customary Land), **FANIDUA KIRIT'E** (representing the owners of Gwaigali Customary Land) **AND CLYDE MALEO'OA** (representing the owners of Faumanisi Customary Land)

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

Civil Case No. 310 of 2002

Date of Hearing: 28<sup>th</sup> April 2003  
 Date of Judgment: 30<sup>th</sup> April 2003

*Mr D. Hou for the Plaintiff*  
*Mr A. Radclyffe for the Defendants*

**JUDGMENT**

**Kabui, J:** This is an application by Summons filed on 7<sup>th</sup> April 2003 by the 3<sup>rd</sup> to the 6<sup>th</sup> Defendants. In fact, this application is in the interest of all the Defendants according to the instruction given to Mr. Radclyffe, Counsel for the all the Defendants. The order sought by this application is one to dismiss the Amended Statement of Claim filed by the Plaintiffs on 10<sup>th</sup> April 2003 as the action commenced by that Writ of Summons is out of time by virtue of section 37(1) of the Limitation Act (Cap. 18), "the Act." Section 37(1) of the Act states-

**"... (1) Where an action is brought in any court after the expiration of the prescribed period, the court shall dismiss the action, unless the court acts under section 39 notwithstanding that that the bar of limitation has not been specifically pleaded as a defence to that action.**

(2)-----  
 (3)-----"

**The Background.**

The Plaintiffs by a Writ of Summons and a Statement of Claim filed on 10<sup>th</sup> March 2003 claimed a declaration that the accepted settlement of the Langa Langa Chiefs dated 20<sup>th</sup> June 1989 was null and void on the ground of fraud particularized in that Statement of Claim. The Plaintiffs also claimed damages for the destruction of garden produce as a result of the Defendants' success in Civil Case No. 212 of 2002. By an amended Statement of Claim filed on 15<sup>th</sup> April 2003, the Plaintiffs alleged that the Plaintiffs had had no knowledge of the hearing conducted by the Langa Langa Chiefs on 20<sup>th</sup> June 1989 and that their determination had not been communicated to the Plaintiffs until sometime in 2002 being the result of the fraud perpetrated by the Defendants against the Plaintiffs.

**The Issue.**

The issue here is whether or not the action brought by the Plaintiffs is statute barred under section 37(1) of the Act as alleged by the Defendants. Counsel for the Defendants, Mr. Radclyffe, argued that whether the time limit was 6 years under section 5 or 12 years under section 10 of the Act was immaterial because in each case, the period since 1989 is 14 years. Counsel for the Plaintiffs, Mr. Hou, on the other hand, argued that the issue raised by Counsel for the Defendants did raise questions of

facts as well as of law and therefore such issues could not be established until the matter went to trial. He argued that the alleged fraud was discovered for the first time in September 2002.

### **The legal position.**

Section 32(1) of the Act defines the word fraud for the purpose of the Act. Section (1) states-  
**"...In this section, "fraud" means a false representation made knowingly, or without honest belief in its truth, or recklessly without care whether it be true or false, and includes such unconscionable or blameworthy act or omission as amounts to fraud in equity.**

Subsection 2 of the Act then states-

**"...Subject to subsection (4) –**

- (a) where a claim in an action or arbitration is based on fraud of the defendant; or**
- (b) where a claim in an action or arbitration is based on any fact relevant to the plaintiff's cause of action which has been deliberately concealed from him by the defendant; or**
- (c) where a claim in an action or arbitration is based on relief from the consequence of a mistake,**

**the prescribed period for such action or arbitration, as the case may be, shall not begin to run until the plaintiff has discovered such fraud, concealment or mistake, or could with reasonable diligence have discovered it..."**

### **Determination of the issue.**

The alleged fraud was formulated in this way as reflected in the amended Statement of Claim. On 13<sup>th</sup> June 1989, the Langa Langa Chiefs conducted a hearing about the boundary between Saenaua and Babalakona land. One of the Plaintiffs, one Benjamin Kirimaoma Te'e, and Bosokuru objected to the hearing being conducted by the Langa Langa Chiefs. The hearing was therefore discontinued. The hearing was never adjourned to any specific date. The fact however is that a hearing did take place on 20<sup>th</sup> June 1989 about which Benjamin Kirimaoma Te'e Bosokuru had not been notified. He therefore did not attend that hearing. Nor did he receive a copy of the determination by the Langa Langa Chiefs. He came to know about the determination of the Langa Langa Chiefs only when he was served with the Court documents in Civil Case No. 212 of 2002. Only then did he realize that the Langa Langa Chiefs had dealt with the boundary between Saenaua land and Babalakona land, including Faumanisi, Abunga Gwainali, Ura, Bokoabu, and Ailali lands on 20<sup>th</sup> June 1989. The persons who represented the Plaintiffs at the Chief's hearing on 20<sup>th</sup> June 1989 were Messrs Maefasia and Ulasi. They were described as persons of Saenaua land, meaning they were members of the Saenaua tribe. However, the Plaintiffs do accept that Maefasia is a member of the Saenaua tribe but not Ulasi. These two persons are the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in this case. The alleged claim by Ulasi that he was a member of the Saenaua tribe as understood by the Langa Langa Chiefs is denied by the Plaintiffs. The Plaintiffs neither accepted him as a member of the Saenaua tribe nor accepted that he and Maefasia had been authorized by them to speak for them at the Chief's hearing on 13<sup>th</sup> June 1989. The Writ of Summons in Civil Case No. 212 of 2002 was served on the Plaintiffs as the Defendants in that case on 25<sup>th</sup> September 2002. The 3<sup>rd</sup> to the 6<sup>th</sup> Defendants are the persons representing the other areas of land affected by the boundary of Saenaua land. The silence over the hearing by the Langa Langa Chiefs on 20<sup>th</sup> June 1989, the omission to let the Plaintiffs have a copy of the determination of the Langa Langa Chiefs which affected their rights to Saenaua land and the Plaintiffs' discovery of their true position more or less by accident on 25<sup>th</sup> September 2002 is the alleged fraud in this case. In the eyes of the Plaintiffs, Messrs Maefasia and Ulasi as Defendants had colluded with the Plaintiffs at the Chief's hearing on 20<sup>th</sup> June

1989 in saying that the boundary of Saenaua land incorrectly intruded into Babalakona land. The accepted settlement being Exhibit HK4 attached to Benjamin Kirimaoma Te'e Bosokuru filed on 10<sup>th</sup> December 2003 speaks for itself on this point. The allegation of fraud is yet to be proved at trial. The point here however is whether there is evidence that the Plaintiffs did know about the Langa Langa Chiefs' hearing on 20<sup>th</sup> June 1989 and that they were aware of the determination of the Chiefs. The answer is clearly in the negative. There is no evidence that the Plaintiffs did know of that hearing and deliberately abstained from attendance or that they had received a copy of the Chiefs' determination soon after the hearing date. The Defendants did not produce that evidence. Mr. Radclyffe did however point to paragraphs 2-5 of the affidavit filed by Benjamin Kirimaoma Te'e Bosokuru cited above in this regard but those paragraphs are only relevant to the hearing on 13<sup>th</sup> June 1989 and not to the hearing on 20<sup>th</sup> June 1989. There is no evidence to show that the Chiefs had notified the Plaintiffs of the date of hearing being 20<sup>th</sup> June 1989. The record of the hearing on 13<sup>th</sup> June 1989 had not been signed by anyone and therefore its correctness is very suspect. In any case, the determination by the Langa Langa Chiefs would not have been binding upon the Plaintiffs because Benjamin Kirimaoma Te'e Bosokuru had objected to the jurisdiction of the Langa Langa Chiefs on 13<sup>th</sup> June 1989 at its first hearing then. I am sure he would have raised the same objection had he attended the hearing on 20<sup>th</sup> June 1989. The cause of action commenced by the Writ of Summons and the Statement of Claim filed in Civil Case No. 212 of 2002 was part of the benefit derived directly from the Langa Langa Chiefs' determination on 20<sup>th</sup> June 1989. The Defendants in that case as Plaintiffs used that determination unfairly against the Defendants now the Plaintiffs and secured injunctive orders against the Plaintiffs. I am satisfied that the Plaintiffs did discover the alleged fraud perpetrated upon them by the Defendants on 25<sup>th</sup> September 2002. This is the date from which the cause of action should begin to run for the purpose of section 32 of the Act. I would therefore refuse the Defendants' application to dismiss the Plaintiffs' Writ of Summons and Statement of Claim on the ground that the Plaintiffs' cause of action is statute barred. The Defendants' application is therefore dismissed. Cost will be cost in the cause.

F.O. Kabui,  
Judge