

## HIGH COURT OF SOLOMON ISLANDS

NOEL NGAUMI (Representing himself and the descendants of  
Kepenu) -V- DANIEL KAURE Anors

CC No. 219 of 2003

Date of hearing: 28 October 2003

Date of Judgment: 28 October 2003

Mr. D. Tigulu for the applicant

Mr. A. Nori for the respondent

*Customary Land* - *claim for damages for trespass – ownership – proper forum  
For hearing of dispute*

*Customary Land* - *jurisdiction of the High Court where ownership rights arise  
for consideration*

*Practice and Procedure* - *permanent injunction – customary land dispute – power in  
court to consider injunction in first instance*

The plaintiff's claim as customary landowners by descent over the northern part of Ontong Java. The defendants are said to be customary landowners of the southern part. The defendants are said to have trespassed onto land of the plaintiffs, damaging their possessions and houses and preventing them from enjoying their land. The plaintiffs claim damages for trespass as well as an permanent injunction to prevent the defendants from continuing the trespass.

- Held: 1. The statement of claim on its face pleads facts about dealings with customary land.
2. The Local Court has exclusive jurisdiction to hear matters involving dealings and disputes with customary land, in accordance with s. 231 (1) of the Land and Titles Act.
3. The High Court may only grant injunctive relief where such relief will aid the exercise by the Local Court of its jurisdiction to decide such disputes.

4. No proceedings have been instituted in the Local Court, so the question of the appropriateness or otherwise, of relief, does not arise

#### Cases cited

Gandly Simbe -v- East Choiseul Area Council – Civil Appeal 8/97 (followed)  
Hyundai -v- Attorney General (1993) CC79/93 (referred to)  
Fugui -v- Solmac Construction. (1982) SILR100 (referred to)

#### Legislation considered

Land and Titles Act (cap 133) s.231 (1)  
Local Courts Act (cap 19) s.12

#### Summons for permanent injunction and damages for trespass

#### Reasons for Decision

The statement of claim recites a claim to ownership to customary land by descent. The plaintiffs further say the defendants, while customary landowners to part of Ontong Java, Malaita Outer Islands, have trespassed and caused damage to the land of the plaintiff. In 1976 the Local Court made a demarcation of the island.

As a consequence of these trespasses the plaintiffs ask this Court for a permanent injunction restraining the defendants, as well damages for trespass in the sum of \$50,000.00.

These issues are clearly ones of fact, and as such must be brought in the tribunal specifically named as the court for disputes of this nature over customary land. The Local Courts Act provide for the jurisdiction of the Court to hear customary land disputes once satisfied of the matters in s.12.

The powers of this court do not extend to hearing claims of this nature in the first instance. This has been argued previously, Hundai's case (2) and Fugui's case (3) are but two examples before the very good exposition in Gandly Simbe's case (1) laid to rest any lingering doubts about jurisdiction over customary land matters.

Mr. Nori, for the defendants, quite rightly objected to the summons. Counsel was not asked to read the material filed by way of affidavit, for the statement of claim, on its face, did not afford this court jurisdiction.

Gandly Simbe (1) per Macpherson JA at 19

*"In providing that a local court is, subject to ss 8E, 8F of the Local Courts Act, to have exclusive jurisdiction in civil proceedings arising in connection with customary land, s 231(1) of the Land and Titles Act does no more than provide for or regulate, within the meaning of Clause 3 (3) of the Schedule 3, the proof or the manner in which and the purposes for which customary law is in this particular, to be recognized and the resolution of conflicts of customary law provided for.*

*There is no justification for regarding s.231 (1) as being in conflict with s.77 (1) of the Constitution and invalid. To the extent that a different view may have been adopted by Commissioner Crome in Fugui -v Solmac Construction Co. Ltd. (1982) SILR 100, 104 the decision should on this point not now be regarded as authoritative."*

To come to court in this fashion is tantamount to regarding Commissioner Crome's view as still available, so that the express requirement to litigate arguments over customary land in the Local Court may be circumvented. The express requirement cannot be circumvented in this way. This dispute cannot be litigated in this court. The Court has no jurisdiction. Section 231 (1) of the Land and Titles Act makes that plain.

I am not satisfied that the matters raised by the Court of Appeal as matters where this Court may, in its discretion consider an injunction to assist the exercise by "the local or customary appeal court of its jurisdiction to decide such disputes" arise.

The Court of Appeal also made it clear that "an injunction of that kind is designed not to facilitate determination of that ownership dispute by trial in the High Court, where there is no jurisdiction..." (Gandly Simbe (1) para 25 at 22)

No proceedings have been instituted in the Local Court at all; hence this Court cannot even consider injunctive proceedings, for such orders are sought by a party to further their own interests, not as a necessary step in existing Local Court proceedings.

To come from Ontong Java in this manner in the face of the jurisdictional hurdle is either an attempt to gain a tactical advantage over the other camp, or a failure to seek proper legal advice.

Order

Summons struck out.

The respondents shall have their costs of the day.

**BROWN PJ**