

22 December 1953

JOINT COURT OF THE NEW HEBRIDES.

JUDGMENT

in the matter of Natives of Fila Island

versus

Mr. G.S.S. HILL.

On the 24th day of January, 1930, this Court delivered a judgment ordering the registration of titles to sundry parcels of land and, in the course of that judgment, ordered that there should be assigned to the natives of Fila a reserve known as "Malapua", having an area of approximately 713 acres (less certain roads traversing the reserve).

This present application to the Court, which was heard on the 26th day of November, 1953, is made by Mr. G.S.S. Hill and he asks the Court, under the provisions of paragraph 2 (H) of Article 27 of the Protocol, to modify that earlier judgment insofar as it related to the area and boundaries of that native reserve. The applicant is presently in occupation of (according to him) two hectares of land contained in that native reserve, has entered into an agreement with a native of Fila named Kaltanak with the intention of acquiring a good and indefeasible title to that land, has in fact built himself a house on some part thereof and now asks the Court to modify that earlier judgment by excluding this parcel of land from the native reserve.

In support of his application, the applicant put forward a number of points, but it appears to the Court that there are only two of which specific mention need be made here. The applicant drew attention to a letter addressed by the then members of this Court to the two District Agents on the 19th August, 1950. This letter covered a number of matters, but the relevant part read as follows :-

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"In view of the circumstances stated by you (the District Agents) we agree that this occupation should not be disturbed and that Mr. Hill be permitted to remain in residence. I seems desirable that his use of the land be placed upon a more regular footing than at present, and it is recommended that he should take steps to conclude a formal agreement with the native authority responsible for the administration of the land within the Reserve. The completed agreement to be sent to the Joint Court for confirmation."

The applicant informs the Court that he has spent a considerable sum of money on the house which he has erected and that he would not have spent nearly so much had it not been for the terms in which that letter was framed.

The other point made by the applicant, which was not disputed at the hearing, was that the coast, at the part where is the land presently occupied by the applicant, is subject to erosion by the sea, that he has constructed certain works designed to prevent or minimise such erosion and that, the land surrounding that occupied by him being of lower level, the works carried out by the applicant are in fact beneficial also to some part of the remainder of the native reserve.

The application is opposed by the two District Agents and by the natives of Fila, the latter being represented by the Acting Native Advocate and by the Chief of the village, Kalsakau. The substance of that opposition is that, whilst the opposers do not object to the applicant occupying the two hectares at present, they do not consider that the natives of Fila will have land spare in the future if their population maintains its present rate of increase and that therefore there should be no permanent disposal of any of this reserve. It is to be noted that the two District Agents, as representing the Administration, do not put forward any arguments based on policy, other than, as has been said, that sufficient land should be preserved for native use.

This matter has become difficult mainly because the

applicant has not gone about things in the right way. He should, when he first entered into negotiations with Kaltanak, have sought the approval of the Court. He should have come to the Court saying "I want to acquire this piece of land from Kaltanak, these are the terms which I have agreed with him and the natives, subject to the approval of the Court. May I please proceed ? " Had he done that, the Court would not have been presented with hard and fast terms between the two parties and it would have enabled the applicant, if necessary, to arrange more easily such further terms as the Court might indicate ought to be arranged.

Nevertheless, the Court considers that there are two factors to which it should give full consideration. The first is that the opposition to the application is entirely based on a desire that the amount of land left to the natives of Fila should not be reduced. Rather belatedly, at the hearing, the applicant tentatively made reference to a means of overcoming that point of opposition. The Court feels bound to say that, in principle, a native reserve, once having been created, should not be made subject to reductions or encroachments without extremely sound reasons. However, the second factor does bring into the case somewhat special considerations. The second factor is the letter of the 19th August, 1950 and the Court considers that the terms of that letter could, with some justification, have caused the applicant to anticipate that the Joint Court would grant his application if it were in proper form.

The applicant has followed up his tentative proposal for overcoming the opposition to his application by submitting to the Court the following documents :-

- (a) A Memorandum of Agreement between Fila Kaltanak and George Sidney Hill relating to a parcel of land forming part of registered title No.56 and,
- (b) An undertaking by the applicant, upon the happening of certain events, to make application to this Court to create a native reserve covering the land referred to under (a) above.

The Court, upon lodgment of those documents, has obtained from its Senior Surveyor a report relating to the land the

subject of this application and the land referred to under (a) above. From this report it appears that the land referred to under (a) above is of the same area as the land the subject of this application and is, in fact, of better quality soil. Furthermore, it adjoins land already reserved for the natives of Fila.

Now therefore the Court orders and decides that :

(a) the land shewn on the annexed plan marked "A", having an area of 3 acres 1 rood 24.8 perches (1 hectare, 37 ares and 80 centiares) and forming part of Property No.56 at Shepperd's Hill shall be assigned as a reserve for the natives of Fila;

(b) upon the said native reserve being duly registered in the Registry of Land Titles, the judgment of this Court No.57 dated the 24th January, 1930 shall be amended so as to exclude from the Malapus native reserve (thereby created) the land shewn in the annexed plan marked "B", having an area of 3 acres 1 rood 24.8 perches (1 hectare, 37 ares and 80 centiares) and presently occupied by the applicant;

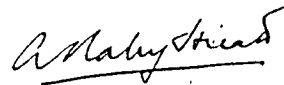
(c) title to the said land presently occupied by the applicant and more particularly described in the last preceding paragraph be registered in the name of the present applicant;

(d) the costs of this application together with all such fees as may be payable in respect of any of the transfers the subject of this Judgment be paid by the applicant.

In conclusion, the Court considers it desirable to stress that, in making the above decision, it has treated this case on its own special and particular merits and such decision will in no way be taken by the Court as having created a precedent which ought to be followed in any future applications for the modification of judgments which created native reserves.


French Judge.


Acting Registrar.


British Judge.