JOINT COURT OF THE NEW HEBRIDES

SAM KALWASE — APPELLANT

v.

MULEK — RESPONDENT

JUDGMENT

This is an appeal from a decision of the Native Court, Southern District, whereby it was held that the Appellant had no rights over certain lands the object of the proceedings.

Briefly the facts are as follows :

Proceedings were instituted by the Respondent, MULEK, in the Native Court on his own behalf and on behalf of his family and tribe for a declaration that the Appellant, SAM KALWASE, had no interest in certain lands in Tanna. There was agreement between the parties as to the boundaries of the land, a large tract lying immediately to the South East of the village of EMPAKLAPEN. The Appellant contended that he had inherited the land and that he alone was entitled to it.

In what was a most careful and painstaking examination of the case the President reduced the issue initially to two points : (a) had the Appellant any legal right to the land ; (b) if so, to what extent.

The claim of the Respondent and those he represented was based on inheritance. Respondent claimed that he was the lawful inheritor of the lands of NINGORO to whom he had been given by his father, NURWERIAN, of the NANTALIAXMAN tribe. By being given by his father to NINGORO he acquired all the rights of a son. This contention was not contested by the Appellant, and the Appellant did not appear really to be claiming any of MULEK's land.

The part of the land which appeared to be in dispute was that of which the Native Court found JOEL WEIWEI to be in occupation.

It was common case that the title to that piece of land stemmed from one, YAKOTA. On behalf of JOEL WEIWEI it was established by an agreed and exhibited family tree that YAKOTA had a son, YAHILU, and that YAHILU had an adopted son, YAWHENEN. This son, YAWHENEN, married one CLARA, and JOEL WEIWEI was their child. It might be mentioned that YAHILU had another son, GAELI, but this son was given for adoption by YAHILU to a brother of his, also called GAELI. There would thus appear to be no difficulty in tracing the title of YAKOTA to JOEL WEIWEI, but the Appellant maintained that it was not so simple as it appeared. He maintained that YAKOTA was murdered. As a result his two sons, YAHILU and GAELI, and his daughter, NATUKA, left the land. They were looked after by a family in Whitesands and a son of that family, VAILI, married NATUKA. Of this union the Appellant was born. The two brothers, YAHILU and GAELI, after certain travelling abroad, returned to their lands where they married. There, YAHILU adopted YAWHENEN, and gave his son, GAELI, to his brother, GAELI.

YAWHENEN married CLARA but, according to the Appellant, he divorced her two weeks after the marriage.

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YAHILU, according to the Appellant, fearing that his family was not multiplying, sent for his sister, NATUKA, and her son, the Appellant. YAHILU told them that if YAWHENEN and GAELI died without issue the Appellant was to inherit the land. Appellant maintained that JOEL WEIWEI was born after YAWHENEN divorced CLARA, and was looked after by one BUREBAR and NURWERIAN, the father of MULEK. His contention was that JOEL WEIWEI was not the male issue of YAWHENEN and therefore had no title to the land, whereas he had, by reason of the expressed wish or intention of YAHILU.

The Court below held that the Appellant had no right to the land and on the Appeal before this Court the Native Advocate, on behalf of the Appellant, argued against this decision on the evidence adduced in the Court below. He contended that having regard to the wellknown desire of the New Hebrideans to have children to succeed them (a fact evidenced by their disposition to adopt a son solely for that purpose) it is inconceivable that YAWHENEN would have divorced CLARA two weeks after the marriage were it not for the fact that she was pregnant by another man. He asked the Court to hold JOEL WEIWEI was illegitimate and without any right to inherit, and that as PETER the only other son of YAWHENEN was dead he, the Appellant, was the rightful heir to YAHILU by reason of his verbal disposition. Alternatively, the Native Advocate asked the Court, in the event of it holding against him on this, to award compensation to the Appellant for having to leave these lands, occupation of which he had had for about thirty years.

Maître de PREVILLE, learned Counsel for the Respondent, referred to the evidence of the Appellant in the Court below to the effect that after JOEL WEIWEI was born YAWHENEN asked to have him. He said it was inconceivable that YAWHENEN, who had remarried, would wish to have the illegitimate son of his first wife. He contended that JOEL WEIWEI was YAWHENEN's lawful son and therefore entitled to inherit. Learned Counsel for the Respondent opposed any suggestion of compensation to the Appellant, maintaining that he never had any right to be on the land save by virtue of the permission to be so given by the Big Men of the area.

It was common case in the Court below that only in the most unlikely cases could a person inherit through female ancestors. Indeed, it was not really contended that the Appellant had any rights by reason of his mother being YAHILU's sister. His claim rested squarely on what he alleged YAHILU said to his mother and him when they went to live with YAHILU. This story the President of the Native Court and the Assessors, all New Hebrideans drawn from the area, rejected and, in the opinion of this Court, correctly so. Nothing that has been argued before us inclines us to differ from the clearly reasoned judgment of the President of the lower Court given after a meticulous examination of all the facts, and nothing has been said before us to justify the award of compensation to the Appellant.

The Appeal is dismissed.

DATED at Vila the fourth day of June, 1968 ./.

French Judge

Registrar

British Judge