

IN THE SUPREME COURT OF WESTERN SAMOA

HELD AT APIA

C.P. 379/93

BETWEEN: WESTERN SAMOA TRUST ESTATES CORPORATION established under the Western Samoa Trust Estates Corporation Act 1977:

PLAINTIFF

A N D: MOANANU FANO, MAUINATU KOFE, POULI PENITALA, POULI PESEFEA, TOGIA TUGI, IFOPO PEIA, TOGIA IOAPO, VAATIUOLA LAUTOLO MISI, MAFUA SIONE, MULIPOLA PELESI, MULIPOLA SOPA of Mulifanua in their own right and as representatives of all Alii and Faipule and inhabitants of Mulifanua:

FIRST DEFENDANTS

A N D: MANO'O TIOITA, MANO'O OLO, TAITO SOOLEFAI, TAUAITUA MAVAEGA of Samatau in their own right and as representatives of all Alii and Faipule and inhabitants of Samatau:

SECOND DEFENDANTS

Counsel: Mr C.V Alailima for Applicant
Mr P.F Meredith for Respondent

Date of Hearing: 3 December 1993

Date of Decision: 7 December 1993

DECISION OF SAPOLU, CJ

* This is a motion to rescind the interim injunction issued by this Court on 20 October 1993 to restrain the First Defendants from continuing to occupy certain lands known as Olo, Tausagi and Kipi Blocks claimed by the respondent corporation to be within its Mulifanua Plantation.

The first ground of the Applicant's present motion is that the legal descriptions and boundaries of the lands in dispute are not specifically clear and that statements of counsel for the respondent corporation as to the legal descriptions and boundaries of those lands are not evidence.

I think the answer to that is contained in paragraph 4 of the affidavit that was filed by the general manager of the respondent corporation in support of the motion for an interim injunction. In paragraph 4 of his affidavit, the general manager of the respondent corporation refers to the lands in dispute as the lands more particularly described in the schedule to the motion for an interim injunction and in the statement of claim. The said motion and statement of claim contain the legal descriptions which the respondent corporation claims to be in dispute. Those same lands are registered under the name of the respondent corporation. I am of the view that the lands in dispute are sufficiently described and their boundaries sufficiently delineated in those legal descriptions.

As to whether the applicants have knowledge of the boundaries of the lands in dispute, I think that is a matter for the applicants to find out given the present dispute with the respondent corporation. In any event, it appears from the letter dated 22 July 1993 sent by the applicants to the chairman of the board of directors of the respondent corporation and which is exhibit "G" to the affidavit of the general manager of the respondent corporation, that the applicants know that the lands in dispute belong to the respondent corporation.

As to the matters raised in relation to the applicants village people access to their plantations, these are not matters relating to the question of the applicants occupation of the respondent corporation's lands which is the subject of the interim injunction issued. The interim injunction is directed to the applicants' occupation of the disputed lands, their re-entering of the said

lands, and the collection or removal of any produce from the said lands and so on. The question of access by the applicants to their plantations is not really a subject of the interim injunction. It would appear to the Court that this question of access should be a matter for further negotiation between the parties as they see fit taking into consideration the interests and concerns of all concerned including the concerns of the applicants as expressed by their counsel to the Court.

It is hoped that this matter can now be resolved between the parties without the necessity of expensive and drawn out litigation.

In all, the Court is of the view that the motion to rescind the interim injunction should be dismissed. It is accordingly dismissed.

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CHIEF JUSTICE