

IN THE HIGH COURT)
OF SOLOMON ISLANDS)

Customary Land Appeal Case No. 30/81

BETWEEN: JASON MATANGANI Appellant

AND: BILLY FAROBO Respondent

JUDGMENT

7 APR 1982

CORAM: The Honourable Mr Justice F. L. Daly, CHIEF JUSTICE

JUDGMENT

On 21st July 1980 the Malaita Local Court heard a claim at Atori concerning SAEFANO Land. The Appellant (Jason MATANGANI) claimed that his father had bought the land from TALISIA in 1936 as a result of an agreement in which TAFULIAE changed hands. His claim was against the Respondents (Billy FAROBO) and TALISIA and NONWAE. The Respondent pleaded NOT LIABLE on the basis that the sale was invalid as the land did not belong to TALISIA but to him. TALISIA and NONWAE both pleaded LIABLE as they accepted that the land belonged to the Respondent and not to TALISIA.

During the course of the Local Court hearing all three defendants gave unsworn statements. They were not cross-examined or questioned by the court.

The case for the Respondent was that the purported sale by TALISIA was invalid as he had no right to sell the land. This was established in 1971 before the Local Court at Faumamanu in case No. 4/71.

The Local Court found for the Respondent. They decided that they could not change the decision of the earlier local court and therefore TALISIA had no right to sell the land. The court held that SAEFANO was the Respondent's land and that TALISIA must refund the 2 TAFULIAE attributable to this land to the Appellant.

The Appellant appealed to the Malaita Customary Land Appeal Court ("the CLAC"). The CLAC had no hesitation in finding that, in view of the earlier decision, they must confirm the decision of the Local Court. The appellant now appeals to this court.

The notice of appeal contained 10 points. By order dated 23rd November 1981 the Registrar of the High Court strike out points 1 to 4 and 9 and 10 inclusive on the basis that they each failed to disclose a reasonable ground of appeal claiming that the decision was erroneous in law or that there was a failure to comply with the procedural requirement of a written law. The appellant asks me to consider these points nevertheless. I shall do so first.

Point 1 refers to the question of whether there was any writing to prove a headman's decision referred to in evidence and a suggestion that there were secret negotiations between the Respondent and Talisia. These are both questions of fact and reveal no question of law. These points are for the two lower courts to consider. The Registrar's decision is upheld.

Point 2 queries the failure of the Respondent to call witnesses from the Latea tribe, who were said to have approved the original sale. This too is a point on the facts rather than law. The Registrar's decision is upheld.

Point 3 makes a point in relation to an earlier sale by Talisia: a point of fact. The Registrar's decision is upheld.

Point 4 refers to the record of the Local Court which it is said was not kept properly. This may amount to a point of procedure so I will quash the Registrar's order that this point be struck out. The point made is that the Clerk of the court was poor in English and that as a result some evidence showing that the Respondent was related to Talisia was not recorded. It is a very difficult job to keep a full court record as anyone who tries to do so will find out. The important thing is that the sense of the evidence is recorded rather than every word. The record of the Local Court is full and would appear to be well taken. If a party feels that something in particular should be written down, he can ask that this be done. However in this case, as the local court was bound by the earlier decision as to the owner of SAEFANOA land, it is difficult to see how this particular evidence would have made any difference. There is no substance in this point which is dismissed.

Point 9 queries the finding in view of the fact that there was no land proof or evidence as to customary rights. This too may amount to a question of law so I will quash the Registrar's ruling. However in this case these matters had been dealt with in the earlier case so there was no need to deal with them again. The point is rejected.

Point 10: This returns to the Latea clan leaders and the thirty five year's possession by the Respondent and his father. Again points of fact. The Registrar's decision is upheld.

The remaining points are as follows:-

Point 5 asks if a defendant who had pleaded liable may give evidence as a witness for the other defendant. The short answer is, yes. Therefore there was nothing wrong with this procedure. This point is rejected.

Points 6 and 8 refer to the court's permitting the defendants to give unsworn statements. As the CLAC rightly pointed out, this was incorrect procedure for a civil case. However in view of the nature of this case and the decision I do not consider that this error in procedure can have affected the result of the case. This point is rejected as it was by the CLAC.

Point 7 refers to what happened during the deliberations of the local court. Present at these deliberations, I was told, were two area constables. They should not have been present. The President and members should always discuss the case in private. The clerk may be present and give advice on law or procedure or may refresh the court's memory of what is in the record and write the courts decision down. But if it is not necessary for him to do any of these things then he, too, should not be present. He should only give advice on the above matters and never say how he thinks the case should be decided. That is for the members alone. In this case it was said that the clerk read out a letter from the President of Malaita Local Court saying that the case had already been decided and could not be changed. This was entirely correct and it was proper

for the clerk to give such advice. However if such a letter was in existence it would have been better if it had been read out in open court so that the parties could have commented upon it. There were then two procedural errors at this stage:

- (a) in the area constable being present; and
- (b) in a letter being read which was not produced in open court.

However these matters too could not be said to have affected the result. In view of the earlier case the Local Court had no alternative but to decide in favour of the Respondent. Equally both the CLAC and this court have no alternative but to dismiss appeals against that decision.

I should add that I have sympathy with the Appellant whose father brought land in good faith and who held the land for 35 years without challenge in court. But according to the lower courts there is no way in custom for him to be permitted to keep the land. The custom is a matter for those courts and this court must apply the custom which they find to exist.

Appeal dismissed. No order as to costs.

25th March 1982

F. L. Daly
(F. L. Daly)
CHIEF JUSTICE

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