

SAMUEL SIUNIELE -v- STEPHEN KORII AND JEHIEL NURARA

High Court of Solomon Islands

(Ward C.J.)

Civil Case No. 76 of 1988

Hearing: 5 November 1990 at Auki

Judgment: 6 November 1990

A. Bowen for the Appellant

J. Muria for the Respondent

WARD CJ: The applicant in this case Samuel Siuniele has died and been replaced by his son Lemuel Liofanua.

It is an application for attachment of the two respondents for contempt of court orders in relation to Lima'abu land.

There were two cases involved. In the first case between Samuel Siuniele and Aloulu, the father of the second respondent, the Tobaita Local Court gave no rights to the second respondent's line at all.

In the second case between Samuel Siuniele and Rufus Rongobaea the father of the second respondent, the Local Court found in favour of Rongobaea but that was reversed on appeal to the Customary Land Appeal Court and that was upheld in the High Court. That decision was that Siuniele's line were the primary owners and Rongobaea's line had secondary rights.

In a protracted series of hearings I have found that the first respondent is in contempt in that he has planted crops outside the area to which he has secondary rights and that the second respondent is in contempt because he has no rights at all and has still planted crops.

Both contempts are clear and have continued but I do not feel in either case, I should imprison either respondent at this stage. I feel the justice of the situation will be met by ordering a financial penalty. In order to assess such a penalty, it is clearly important to know what will happen to the crops already planted because, if they go to the applicant, he will inherit a substantial commercial venture.

The Court has twice sent questions to the Local Court in an attempt to resolve this issue but, despite a great deal of care taken by the Local Court, the answers have not satisfactorily resolved the problem.

However, having considered the matter further, I feel I need not pursue that. Custom only relates to the land planted by the first respondent under the exercise of his secondary rights. I am not considering that land.

The parts for determination by this Court is that planted by the first respondent and his line outside the area of his secondary rights and all the land planted by the second respondent over which he has no customary rights. Therefore, this Court may make an order and is not bound by custom.

I am satisfied, as I have previously said, that each respondent has committed a blatant and deliberate contempt. Each will be fined \$200 and the total fines will go to Lemuel Liofanua's line as compensation. These fines are to be paid to the Magistrates' Court office in Auki within 28 days. Any failure to pay will be a further contempt and will render the respondents liable to imprisonment.

In addition I order that all the crops planted in this contempt shall be left and become the property of Lemuel Liofanua's line. I realise that is of some considerable value and it is for that reason I have ordered such modest fines.

If either respondent or his line remove or otherwise damage those crops, they will be liable to imprisonment and to additional payment both by way of compensation and fine.

The trees involved are, in the case of the first respondent, all those planted outside the land to which he and his line have secondary rights. This clearly includes all the crops planted by Sake and Sale.

In the case of the second respondent, they are all the trees of whatever variety planted by the second respondent or his line anywhere within Lima'abu land.

I make it quite clear again that any attempt by the line of either respondent to damage, remove or crop these trees from today is a contempt and will be treated very severely.

Costs to applicant.

(F.G.R. Ward)
CHIEF JUSTICE