

CLEMENT KOLA -v- MARTIN GORISO & GELA LOCAL COURT

High Court of Solomon Islands

(Ward C.J.)

Civil Case No. 10 of 1991

Hearing: 8 April 1991

Judgment: 24 April 1991

A. Radclyffe for the Applicant

M. Samuel for the Respondent

WARD CJ: This is an application for an order of certiorari to set aside the decision of the Gela Local Court made in a case between the present applicant and the first respondent over ownership of Ngalisoiso land. The Second respondent has not appeared. The Local Court sat on Nagotano Island in May 1983. There is a dispute over the date, but I am satisfied it was heard on or about the 13th and 14th and not on the date shown on the record namely 23rd.

It is agreed by both parties here that, when the decision was given, it went in favour of Clement Kola and against Martin Goriso. At that point Kola left and the respondent claims that the court then realised it had made a mistake and "corrected" the decision by revising it. This is not admitted by Kola.

It is also agreed that a day or two later the court clerk at that time, Michael Geremate, wrote to Kola saying the decision had been wrongly announced and asking him to return to court with his witnesses. That was, one must comment, a strange request if, as Geremate now claims, the justices corrected the decision at the time "under oath". Kola ignored the request and commenced to use the land in accordance with the decision he had heard.

In 1987 Goriso wanted to take Kola to the court for trespass. It appeared from a letter from the Local Court clerk in Honiara, Eddie Muna, that the record showed the result had been in favour of Goriso.

That record has now been produced as having "statements" by the two remaining members of the local court, apparently confirming the change of decision. I have heard those two justices giving evidence and both deny any change in the decision. I have as

a result very grave misgivings as to the genuineness of the record or those statements or the truthfulness of the clerk, Michael Geremate.

However, I do not need to decide the matter further.

The court is faced with two of the three justices (the third having since died) saying the decision went one way and the apparent record (albeit unsigned by the justices) giving the opposite result. There is insufficient material for the court to decide which side is speaking the truth.

I grant certiorari and order the decision of the Gela Local Court be transferred to this court to be quashed. I order the Gela Local Court rehear the issue with a fresh panel of justices.

No order for costs.

(F.G.R. Ward)
CHIEF JUSTICE