GEORGE TETEA -v- ELIZABETH HARANI

In the High Court of Solomon Islands

(Muria J.)

Land Appeal Case No. 8 of 1990

Hearing: 15 October 1991

Judgment: 16 October 1991

A.H. Nori for Appellant

R.H. Teutao for Respondent

MURIA J: This is an appeal against the decision of the Central Islands Customary Land Appeal Court on the Ravirongo Land.

The appellant's grounds of appeal are:

1. *That the CLAC erred in procedure in failing to enquire into the question of bias raised by the Appellant at the said court hearing: and*

2. *That the CLAC erred in upholding the decision of a biased tribunal.*

The dispute over the said Land between the appellant and the Respondent first came before the Chiefs Hearing at Bereniga Village, in Savo on 25th November 1986. The Chiefs decided in favour of the Appellant. The Respondent then brought the case against the Appellant to the Savo Local Court on 24th August 1988. The Local Court decided in favour of the Respondent on 28th August 1988.

The Appellant being aggrieved of the decision of the Local Court appealed to the CLAC for Central Islands. The record shows that the Appellant submitted 31 points of

appeal. For the purpose of the present proceedings, point 7 is of material concern as it alleged that the Presidents involvement in sitting as a President of the Local Court at the time of the hearing in the Local Court was unfair. The record shows that the Appellant actually objected to the President sitting as a member of the Local Court when the Court sat at Panuela Village on 24th August 1988. The record shows:

"*Court:* *Any objection to the Court Party?*

George: *I object the Court President. Grounds of objection is as follows:*

I suspect that the President will be in favour of the plaintiff.

Court: *Defendant Mr. George doesn't prove his grounds for objecting the President, so S. Wasuni (President) will sit at this hearing.....*"

The Local Court then proceeded with the hearing with Mr. S. Wasuni sitting as President. The court decided in favour of the plaintiff who is now the Respondent.

In point 7 of his appeal to the CLAC the Appellant stated:

"*7. he involvement of the president in the hearing was unfair. Before the hearing the President told my witness not to tell the truth in court.....*"

At the hearing before the CLAC 14th September 1990 the Appellant reiterated his 31 points of appeal. In so far as point 7 is concerned, the Appellant made the following submission to the Court:

"*President told my witness Robert Kemakeza not to tell the truth in court. President's son will soon marry respondent's daughter. I object to his sitting at the hearing. I produce letter. I object at the Local Court.*"

Obviously, the Appellant has had very strong views against the President's involvement in the dispute over Ravirongo Land.

In support of his appeal before this court the Appellant gave evidence and called two other witnesses, one of whom was the secretary to the Chiefs Hearing on 25th November, 1986.

In evidence before this Court, the Appellant said that on 24th June 1986 he met the Respondent who was clearing the bush and asked her to stop. The Appellant said, in response the Respondent said that she was told to clear the bush by the President of the Local Court, Mr. Wasuni. The Appellant further stated that it was planned between the Respondent and the President that her son would marry the President's daughter and would live on the land.

Gabriel Goala also gave evidence to support the Appellant's story of meeting the Respondent clearing the land and the ensuing conversation. I treat this witness's evidence with caution as he is the brother of the Appellant.

The Appellant's third witness was Thomas Turasi who was the secretary to the Chiefs hearing on 25th November 1986. Mr Turasi's evidence was that at the Chief's Hearing, the Respondent told the Chiefson the question of surveying the land that she did not know anything about the land and that Mr Wasuni (the President) and one Nicholas Muni were the ones who knew all about the land.

The Respondent on the other hand denied the suggestion that she cleared the land on the instruction from the President. She denied arranging with the President that her son would marry the President's daughter and that the President would help her with her case over the said land. She denied the allegation given by Mr. Thomas Turasi regarding the survey of the land.

The President, Mr. Wasuni, was called by the Respondent and he gave evidence that he never told the Respondent to clear the land. He denied any suggestion of offering any assistance to the Respondent. Mr Wasuni denied any arrangement with the Respondent over the marriage of his daughter to the Respondent's son. Mr. Wasuni called that marriage "a marriage in the bush" because he had never wanted his daughter to marry

the Respondent's son.

The Respondent's son, Robert Zave, gave evidence that he first met the President's daughter in late 1987 and that it was in June or July 1988 that other people knew about their friendship. The payment of bride prize and custom marriage did not take place until November 1988 after the Local court hearing.

Mr. Nori for the Appellant submitted that the case must be viewed objectively based on the test in *Kevesi -v- Talasasa* (1983) SILR 87 where the cases of *Wauo and Anor -v- Mafuara and Anor* (CLAC Case No. 3/81) and *Dilangaimae -v- Kwaisulia* (CLAC No. 16/81) were cited. I note that in the cases cited, the appellants raised objections to the partiality of members of the court. The cases of *Wauo* and *Dilangaimae* are authorities for the proposition that where a party successfully maintains that a breach of the impartiality rule has occurred in the Local Court, then it is incumbent on the CLAC to remit the case for rehearing to the Local Court before a court differently constituted. However, all the three cases expressed the test to be an objective one, that is, **whether there would be an appearance of partiality to a reasonable and fair-minded observer.** On this test, Counsel for the Appellant submitted that the Local Court with the President sitting as a member, would no longer be in a position to fairly decide on the case, as it gave an appearance that the Respondent would be favoured. I feel there is force in counsel's submission.

The Appellant was not going to sleep with his objection of the President sitting, so he came to Honiara and informed the court clerk of his objection personally. Later on 5th July, 1988 he followed up his objection in a letter sent to the Local Court Clerk. At the actual hearing before the Local Court on 24th August, the Appellant again raised his objection to the President sitting.

The next question is that having raised the objection on the ground of bias, did the courts below consider the objection properly? I say 'properly' because the allegation of bias is a serious allegation and one which affects the core of the administration of justice. As such the consideration to be given by the court to such an allegation must not be

casually or lightly done.

Mr. Teutao for the Respondent accepted and very properly so, the test as submitted by Mr. Nori. Mr Teutao, however, submitted that the main argument by the Appellant centres on the marriage arrangement between the Respondent's son and the President's daughter giving rise to the appearance of bias. But this, Counsel says, could not be said to given any cause for concern of bias since the President was not aware of his daughter's son and that when he found out he was not happy about it. Further, Counsel argued, the marriage was not properly done in custom until sometime in November 1988, well after the Local Court hearing. This could not properly give rise to any suspicion of bias on the part of the President.

I have already stated what the appropriate test was in a case where an allegation of bias is raised and that the test was an objective one. Do the facts give rise to a suspicion of injustice in this case.

The overall guiding principles when considering, any breach of the rule of impartiality is section 10(8) of the Constitution which provides:

> *"10(8) Any court or other adjudicating authority prescribed by law for the determination of the existence of extent of any civil right or obligation shall be established or recognised by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, that person shall be given a fair hearing within a reasonable time."*

The Constitution places the burden on the court or the adjudicating authority that it "shall be independent and impartial" and that any person before such court or adjudicating authority "shall be given a fair hearing." The decisions in *Wauo -v- Mafuara* (CLAC case No. 3 of 1981), *Dilangaimae -v- Kwaisulia* (CLAC No. 16 of 1981), *Kamai -v- Aldo* (CLAC No. 17 of 1982), *Kevesi -v- Talasasa* (1983) SILR 87, *Manedetea -v- Kulagoe* (1984) SILR 20 and *Rade and Soso -v- Sautuana* (1985-86) SILR 55 are all of considerable persuasive authorities as to the meaning of an independent and impartial court or adjudicating authority under section 10(8) of the Constitution.

I have considered the facts as canvassed by the parties and their witnesses in this appeal. I bear in mind that the allegation is a serious one touching the independence and impartiality of the courts. But I am also mindful that in a setting of a real Solomon Islands society, the question of marriage and its relationship to land are very often connected and in some areas intertwined. Bearing all those in mind, I feel the facts in the this case may well give cause for concern as to the allegation of partiality on the part of the President, even if there was no actual bias.

The allegation of bias having been raised, what should the courts below do? In *Kuka -v- Ini Paia.* (CLAC No. 5 of 1984), Daly CJ following his earlier decision in *Irobasi -v-Auhere* (CLAC No. 3 of 1984) said when considering an allegation of bias:

> *"an appellant who seeks to make such allegation must first prove, on the balance of probabilities, that such facts are correct, that is, of course, the facts which support the allegation."*

It would appear that Daly CJ, although urging the appellant to prove the allegation of bias, it seems he was also saying that the Court would have to consider the facts alleged and satisfy itself on the balance of probabilities.

In *George Waneai -v- George Linganafelo* (CLAC Case No. 6 of 1990) Ward CJ, when considering allegation of bias against the President put it succinctly what the court should do:

> *"Where an objection is raised the Court must hear the objection and investigate it as far as they consider necessary and then, on the matters before them, make a decision. If that procedure is followed this Court will be reluctant to interfere unless the decision is plainly wrong."*

It will be observed that the court is duty bound to hear the objection and investigate it. This entails the procedure that should be followed. The court must look into the allegation of bias and as far as necessary consider evidence both from the objector and the Respondent and any other person including the person against whom the objection is raised who may assist the court in ascertaining the validity of the objection.

In the present case, the Appellant raised the objection before the Local court. The record shows that the Appellant did raise the objection and the 'Court' considers it saying that the Defendant George Tetea (now the Appellant) did not prove his grounds for objecting the President and so the President would sit as President at the hearing. The President gave evidence in this appeal and said in Chief:

"At the Local Court hearing I sat as President.

George objected to my sitting as a Court President.

Court Clerk asked both parties if they objected to the members.

George objected. Court Clerk wrote down the objections.

Court Clerk considered the objection and said I could still sit.

I was in Court when George objected. He said I will favour Harani (Respondent).

There were other objections or comments made by George but the Court Clerk wrote those down."

In cross-examination, by Mr. Nori, the President said:

"The letter of objection George wrote was sent to the Court Clerk.

The Court Clerk said that the objection was not sufficient to disqualify me from sitting."

When answering questions from the Court the President said;

"All of us Court Members including the Court Clerk sat at the front when George raised objection.

Court Clerk wrote down what was said

He consulted each of us and made the announcement that I could still sit as President"

There are two striking features in what the President said in evidence. Firstly, the Appellant raised the objections in writing and orally in Court. According to the President there were other objections or comments made by the Appellant and which were recorded by the Court Clerk. There was no mention in the Local Court record of the contents of the letter of objection, let alone mentioning that there was such a letter of objection. There was no record of the other objections or comments raised by the Appellant. The record taken by the Court Clerk showed that there was only very little said by the Appellant, when the President who was sitting in court, said that the Appellant made more objections or comments which is contrary to what appears on the record. Secondly, it appears that it was the Court Clerk who decided on the objection raised by the Appellant. The Court Clerk in a Local Court is not a member of the Court unlike that of the CLAC. I accept the President's evidence of what transpired in court on 24th August 1988 and it reflects a very unsatisfactory way of dealing with a serious objection raised by the Appellant. The Local Court did not properly consider the objection. Worst still, it was the Court Clerk who appeared to have made the decision that the President should sit. That, in my judgement is not a proper consideration by the court of the objection raised by the Appellant.

Before the CLAC the Appellant again raised the allegation of bias on the part of the President of the Local Court. The Appellant stated in the CLAC in point 7 of his appeal points that the President told his witness Robert Kemakeza not to tell the truth in court and that the President's daughter would marry the Respondent's son; that he objected to his sitting at the hearing; that he produced a letter of objection as well as made oral objection at the hearing but the Local Court Clerk permitted the President to sit. In point 31, the Appellant stated when he and Respondent had a row, the Respondent said the Chiefs would help her and that the Local Court would help her because the Local Court President would favour her since his daughter would marry her son. That infact came true, the Appellant said.

On the undisputed evidence before this court, the Respondent son and President's daughter were married in custom after the Local Court hearing in August 1988 and that they have since been living on the land in question with the Respondent.

At the hearing the CLAC questioned the Appellant and despite asking 32 questions, never asked the Appellant anything at all about the allegation of bias raised in his appeal points 7 and 31.

The Respondent in reply to point 7 simply said, that "the Appellant should stress that allegation in the Local Court and that she believed the allegation was not true."

In its judgment, the CLAC said in relation to the allegation of bias:

> *"In point 7 he alleged the involvement of the President was unfair. He has all the right to object this and to convince the Local Court that his objection is valid, he was unable to convince the Local Court and so his objection was rejected."*

With respect, that cannot be said to be a proper consideration of the allegation of bias raised in the appeal points of the Appellant. What the CLAC was saying, in effect, was that the Appellant should convince the Local Court of the allegation and as he was unable to convince the Local Court his objection was rejected - Tough luck! The CLAC never considered at all the points raised by the Appellant on the question of bias and made absolutely no comment on it. That cannot be what Ward CJ meant when he said in *George Waneai's* case (Supra) that "When the objection is raised the Court must hear the objection and investigate it as far as necessary." This is my view is an inexcusable failure on the part of the CLAC to properly and adequately consider the serious allegation of bias raised by the Appellant. That failure by the CLAC is an error in point of procedure of failing to comply with a procedural requirement of a written law, namely section 10(8) of the constitution which requires all civil courts to "independent and impartial".

The failure of both the Local Court and CLAC to properly deal with the objection in this case leave me with no alternative but to send it back to the Local Court.

The Appeal is allowed.

I order the case be remitted to be tried by the Savo Local Court differently constituted.

(G.J.B. Muria)

JUDGE