

MAFU LAND PURCHASE CO-OPERATIVE SOCIETY LTD -v- JOE GOUNAILA,
EZIKIEL TELEFANAGENI AND KAYUKEN LTD

High Court of Solomon Islands

(Muria J.)

Civil Case No. 229 of 1991

Hearing: 10 February 1992 at Auki

Judgment: 11 February 1992

P. Tegavota for the Applicant

First and Second Respondents in person

Third Respondent did not appear and was unrepresented

MURIA J. The application is and it is not disputed that it is a registered co-operative society established pursuant to the provisions of the Co-operative Societies Act. The first and second respondents who appeared in court also did not dispute that the applicant is the registered owner of the Fixed-Term Estate in LR 43, Parcel No. 184-008-1 nor did they dispute that the area leased by the applicant to the third respondent is within Parcel No. 184-008-1. Further there is no dispute that the applicant had been receiving rental payments from the third respondent for three years until further rental payments due were withheld by the third respondent on 29 August 1991 in response to the letter from the then solicitor for the first respondent. The third respondent has not paid the applicant any rental since then and consequently the applicant issued these proceedings.

The applicant seeks the following declarations:-

- "1. That LR 43 or Fixed Term Estate Parcel Number 184-008-1 is not customary land and therefore can not be subject to any customary land dispute court proceedings.
2. That the land case between Joe Gounaila and Ezekiel Telefanageni Land Case No. 3 of 1990 or any decisions thereof

whether from the Local Court, Customary Land Appeal Court or the High Court does not affect the registered title of the applicant over his Fixed Term Estate Parcel Number 184-008-1.

3. That the applicant is entitled to lease its Fixed Term Estate in Parcel Number 184-008-1 and is further entitled to be paid rental payments for such lease and that the 1st and 2nd respondents do not have the right to stop the applicant from leasing the said property or preventing the 3rd respondent from paying the rental payments to the applicant or claiming any rental payments payable for the lease of the said property.
4. That the 3rd respondent be ordered to pay the rental payments to the applicant for the renewal of the lease over Manaba Log Pond."

Declaration is a discretionary remedy which is granted in respect of a legal right that has been disturbed. See *Llanduduo Urban District Council -v-Woods* [1899] 2 Ch. 705.

In the present case, it is clear that the applicant is the registered owner of the Fixed Term title in LR43 Parcel No. 184-008-1 and as Mr Tegavota submitted, it can lease it or do anything it wants with the land subject only to the provisions of the Land Titles Act. Section 133(1) of the Act provides:-

"(1) Subject to the provisions of this Act and of any other written law, the owner of an estate, other than the Commissioner, may lease the land comprised in that estate or part of it to any person for a definite term or for a period which though indefinite may be determined by the lessor or the lessee, and subject to such conditions as the lessor may think fit"

Pursuant to its registered title over the said land, the applicant leased part of it to the third respondent for a period of three years at the rental of \$.70 per square metre payable quarterly or \$14,210.00 per annum payable quarterly. That lease was agreed to by the third respondent to enable it to use the part of the land for log pond, sawmill, workshop and camp for its workers at Mana'aba.

The evidence shows that there has been no complaint raised about that lease until it was expired. The complaints from the first and second respondents arose when a renewal of that lease was made. The first and second respondents' complaint, however, is not that the applicant has no right to lease the area of the land concerned. They complain about the boundaries being different from that which they knew of in the past. They also complain that the Malaita Provincial Assembly did not notify them

before it transferred the land to the applicant so that they could be notified of any customary reserved areas if any, within the land. Such objections clearly cannot operate to affect the applicant's legal title over the land and the time to raise such objections is long gone. The legal rights of the applicant over the land has been settled and that under section 133 of the Land and Titles Act it has a right to lease part of it to the third respondent.

Unfortunately, the applicant could not continue with its revised lease agreement with the third respondent due to the respondents' objections through a letter written by the first respondent's solicitor on 29 August 1991. The letter also resulted in the third respondent withholding rental payments being made to the applicant. That I find is a clear disturbance of the applicant's legal rights over the land.

Thus I make the declaration sought in paragraph 1 that the land comprised in Parcel No. 184-008-1 in LR 43 is not a customary land and cannot be subject to any customary land proceedings.

There is evidence that the first respondent had previously taken the second respondent to court in a CLAC hearing in Case No. 3 of 1990 over Taloa'anga Land which is a piece of land said to be within the applicant's registered land. I have not heard sufficient evidence to enable me to ascertain exactly as to the extent of the boundaries of Taloa'anga Land and as such I decline to make the declaration sought in paragraph 2.

The declaration sought in paragraph 3 is closely connected with that of the first paragraph and I make the declaration sought in paragraph 3.

The fourth declaration sought suggests that the revised lease has already been in force between the applicant and the third respondent. That revised lease is exhibited to Charles Bona's affidavit and it shows that in Clauses 3 and 4 there are blank spaces. It also appears that it has been signed on behalf of the Society but has not been signed by the third respondent. The reasons for the blank spaces left unfilled and the third

respondent not signing the revised lease agreement has not been made clear to the Court. It may be that the parties to the agreement are still waiting the outcome of the first and second respondents' objections. I do not know. As such I feel I am not in a position to make the declaration sought in paragraph 4 and I so decline.

Although the applicant has only succeeded in part I feel the applicant has demonstrated that its legal rights over the area of land concerned have been unnecessarily obstructed or disturbed and has had to come to this Court to have it made clear to the respondents. In those circumstances I order all the three respondents must pay the applicant's costs.

(G.J.B. Muria)

JUDGE