

JOHN LETIA TA'ANI & OTHERS -v- DOROTHY HUGILL ANOTHER

High Court of Solomon Islands

(Muria CJ.)

Civil Case No. 137 of 1993

Hearing: 14 March 1994

Judgment: 29 March 1994

A. Radclyffe for Plaintiff

T. Kama for the Defendant

MURIA CJ: The plaintiffs claim possession of Block 8 in Parcel No. 192-009-40 against the First Defendant as well as damages for trespass. In addition the plaintiff has also sought an injunction against the First Defendant, her family or agents from remaining on Block 8.

As against the Second Defendant, the plaintiff claim an order for possession of Block 9, damages for trespass and an injunction restraining the Second Defendant his family, agents from remaining in the said Block and for the removal of the buildings he has erected on the said block of land.

In the course of the hearing it is clear that the plaintiffs are also seeking to prevent the First Defendant from occupying Block 7 of the said land. This claim has not been included in the Statement of Claim filed against the Defendants. In response, however, the First Defendant said that she was entitled to Blocks 1,7,8 & 9.

It has not been disputed that the First Defendant is the daughter of the late Simon Koru and late Tibina. After Tibina passed away, Simon Koru was remarried to late Tangaua. The

late Simon Koru and late Tangaua had a daughter named Ramaua (now deceased also).

It is also not disputed that Blocks 7 and 8 were allocated to the late Simon Koru and when he died they came under his late wife's name, Tangaua. It is further also not disputed that the First Defendant has been living in the said Blocks of land belonging to her father and step mother for more than 13 years now and there was no problem with that until just recently when the trustees demanded that she must vacate the Blocks of land.

According to the trustees, the First Defendant should vacate Blocks 7,8 & 9 and each of those Blocks should be respectively given to Agatha (First Defendant's sister), Pamela Ritang and Baurerei's children. The plaintiffs stated that the First Defendant's allocated Block is Block 3 which it was said was her Block as her share for being a member of the Matangare Dancing Group which raised funds to purchase parcel No. 192-009-40.

When one looks at Exhibit. 2 Block 1 is in D. Tokaibure's name, Block 3 is in T. Ioteba's name, Blocks 7 and 8 are in Tangaua's name and Block 9 is in Baurerei's name. The First Defendant claims that Block 1 is hers and that Tokaibure was only looking after it when she was in New Zealand.

There was no suggestion that Block 3 was looked after by Ioteba for the First Defendant. The First Defendant denied being allocated Block 3. So that despite what Mr. Michael Kabatikua said in court about Block 3 being allocated to the 1st Defendant, I must find that on the evidence is in Ioteba's name and not the First Defendant's.

Similarly I have heard no evidence from Tokaibure or from the trustees that block 1 was allocated to the First Defendant and that Tokaibure was only looking after it for her. Only

the First Defendant said that Block 1 was allocated to her and that Tokaibure was only looking after it for her when she was in New Zealand. That being the case, I am not prepared to say that Mr. Tokaibure's name as appearing against Block 1 was only for the purpose of looking after that Block as a caretaker. Until the contrary is shown, Block 1 is held against Tokaibure's name.

In so far Blocks 1 and 3 are concerned, the First Defendant may very well find that she is in a rather difficult position to assert any effective claim of entitlement over those Blocks. I say that with no conclusive view since the evidence needed to do so was lacking.

Before I deal with Blocks 7 and 8, I feel I can dispose of the consideration of Block 9 first which is the Block against which Baurerei's name appears. On the evidence, I accept that Block 9 was also originally given to the late Simon Koru (the First Defendant's father).

In his evidence, Michael Kabatikua said that it was at a meeting in March 1993, that the First Defendant was informed that Block 9 should be given to Baurerei's children. In her evidence the First Defendant agreed that after her father's death Blocks 7 and 8 were under her late step-mother's name and Block 9 was under Baurerei's name and who is now in Kiribati.

There was suggestion that the First Defendant has been depriving Baurerei's children of the use of their father's Block. But the evidence did not really support that suggestion. In fact in her evidence, the First Defendant stated that her brother, Baurerei gave her authority to look after his Block of land. She also stated that Baurerei's children could go and occupy the land. The authority to look after Baurerei's Block of land is contained in a letter dated 3 December 1992, Exhibit 5.

What is interesting to note is that the trustees, plaintiffs, gave Block 9 to Baurerei. It is Baurerei's Block of land and he has all the authority over his Block of land. As he is in Kiribati, he gave the authority to his sisters (1st Defendant and Agatha) "to look after and be responsible for my block and no body else." With that authority the 1st Defendant has been occupying, looking after and responsible for Block 9. With that authority also, she brought in the 2nd Defendant to assist her in looking after Block 9.

The Plaintiff trustees accept that Baurerei owns Block 9. No challenge was made to the authority (Exhibit 5) to the 1st Defendant to be responsible for taking care of that Block of land. Yet the Plaintiff trustees insist that 1st Defendant and 2nd Defendant are trespassing and should vacate that Block of land. That cannot be right. But that is not surprising because Michael Kabatikua himself admitted that they (the trustees) did not force the 1st Defendant out from the land and that she could stay on the land provided she removed the 2nd Defendant out from Block 9, to give room for Baurerei's children. There is no clearer motive for the action against the Defendants here than that given by one of the Plaintiff trustees himself.

In those circumstances I cannot see how the plaintiff's claim against the 1st and 2nd Defendant in respect of Block 9 can succeed.

In so far as Blocks 7 and 8 are concerned, the 1st Defendant is really claiming her right to those pieces of land through her father. She had been living on those Blocks of land for over 13 years now with no adverse complaints until recently.

The Plaintiff trustees argued that just because her father died gave her no right to assume her father's rights in the blocks of land. They argued that, the trustees would have

to decide who should take over the deceased's blocks of land. With respect, I feel that such an unqualified power (if there was any) would highly produce harsh and repressive consequences.

It may mean that the children of a deceased who have been living on a Block of land with their father for, say, 20 years may suddenly find themselves dispossessed of their father's land in the exercise of the trustees' power to choose who should inherit the deceased's land. I doubt very much if such was a power intended to be given to the trustees in this case.

Turning again to the 1st Defendant, she is one of the surviving issues of the late Simon Koru. Do the trustees have the power to turn her out of her late father's land which she has been occupying for about 13 years? I think the answer to that question turns on the nature of the powers given to the trustees on appointment.

The trustees in this case were appointed at a meeting. So far as it can be gleaned from the evidence, their power and so their duty is to allocate the Blocks of land to people who are entitled to the land.

There is nothing that is shown to the Court as to the extent of the trustees' powers over a Block of land after it was allocated. Therefore the only power that the trustees have here is to see that the land was divided into 34 Blocks and to allocate those Blocks to those who are entitled to be given the blocks. The trustees hold the land in question on trust for the beneficial owners who are the members of the Matangare Group. That in my view is a simple trust or bare trust.

Mr. Kotema Beia who gave evidence pointed out that he was one of the original trustees and they were appointed to hold the land for the members of the Group until each of the owners

of the Blocks registers his or her block with the Registrar of Titles. In view of the nature of the appointment of the trustees and nature of their powers, I feel Mr. Beia's contention holds truth. The letter from the trustees dated 2nd May 1980 to the Solomon Government. (Exhibit 2) and the Survey Plan (Exhibit 6) lend support to the position as contented by Mr. Beia.

That being the case, Blocks 7, 8 and 9 were allocated to Simon Koru (Deceased) and had all the preparation been completed when he was still alive, then those Blocks would have been registered in his name. Unfortunately he died before that could be done. Consequently one of the Blocks, that is Block 9 was allocated to his son Baurerei.

The other two are still in the name of the late Simon Koru's deceased wife, Tangaua.

While the trustees have the power to allocate Blocks 7 and 8, I feel that it would only be fair and proper that they be given to the children of the late Simon Koru to whom the land had already been allocated originally. One of those children is the 1st Defendant who has been living on the land for about 13 years already.

Even if the trustees are not prepared to exercise their power to allocate the land to the children including the 1st Defendant of the late Simon Koru, the Court is entitled to interfere and order that the 1st Defendant and other children of the late Simon Koru should be given the right to own, occupy and use Blocks 7 and 8 and the same applies to Block 9. The Court has the power to interfere as a measure of control by the Court over the exercise of the discretionary power by the trustees, particularly where the trustees have acted capriciously or where the trustees failed or refused to exercise their discretionary power or where the trustees improperly exercised their discretionary power. It was

explained in *Re Manisty's Settlement* [193] 2 ALLER 1203, 1210 that an improper exercise of a power for trustees to act capriciously where they act "for reasons which could be said to be irrational, perverse, or irrelevant to any sensible expectation of the settler; for example, if they chose a beneficiary by height or complexion or by the irrelevant fact that he was a resident of Greater London."

One of the reasons for seeking to throw the 1st Defendant out of the land is because, it was said, she failed to help with the opening of the Community hall. The other reason as I have already found is because she brought the 2nd Defendant to live on Block 9. The evidence of Michael Kabatikua clearly acknowledged that the 1st Defendant was entitled to stay on the land, and no doubt, because she was a contributor to the purchasing of the land. Yet the Plaintiff trustees chose to exercise their discretionary power to remove the 1st Defendant from the land for reasons which are in my view improper and unsound. That was not exercising a sound discretion.

Therefore under the circumstances as I have found it would not be right for the Plaintiff trustees to deprive the 1st Defendant of her entitlement to live, occupy and use Blocks 7 and 8 together with the other off-springs of the late Simon Koru.

I make it clear that the Court is not saying that Blocks 7 and 8 are necessarily to be allocated to the 1st Defendant. The power to allocate rests in the trustees. What the Court has found is that the 1st Defendant as one of the issues of the late Simon Koru to whom the land were originally allocated, is entitled to enjoy the right to occupy and use the said land together with the other children of the late Simon Koru.

For all those reasons, the claims by the Plaintiffs against both the 1st and 2nd Defendant are dismissed with costs.

(G.J.B. Muria)
CHIEF JUSTICE