

K. MASDEA, R. MAKA, D. MAELASI -v- P.T. BOE, P. AKWASITALOA G. ASHLEY, A. KAKALUAE

High Court of Solomon Islands
(Muria, CJ.)
Civil case No. 336 of 1995
Hearing: 9 November 1995
Judgment: 13 November 1995

P. Tegavota for Applicants

MURIA CJ: The applicant has sought leave to issue proceedings to quash the Local Court's decision dated 1 May 1995 although the actual Judgement and Decree were signed on 2 May 1995 in a matter of *Patrick Taloboe and Pio Akwasitaloa -v- George Ashley and Ashley Kakaluae*, Land Case No.794 Local Court. The decision of the Local Court made on 1 May 1995 basically affirmed the decision of the Court in 1936.

The actual decision of the Local Court is that:

"The court dismissed the claim and upheld the decision of 1936 case."

On 31 July 1995, an appeal to the CLAC against the Local Court's decision was filed by Patrick Taloboe. No hearing has been fixed for the appeal yet.

The applicants in the present case now before the Court were neither parties to the 1936 nor the 1995 Local Court proceedings. They said, through their counsel, that they are a new party to the claim over the ownership of Basikana Island. They said that the Local Court had no jurisdiction to hear the case in the first place and so, there is no decision to appeal against to the CLAC.

I set out the 1936 decision of the Court signed by the Deputy Commissioner's Court for the Western Pacific: It reads:

"Judgement: The Court finds that both the plaintiffs and the defendants have equal rights and title to the land and to the reefs of Basikana Island. The Court gives judgement accordingly that the title of ownership to Basikana Island and the reefs therefore shall be vested equally in IRABUA of Faka Island of the one part and KALUAE KAIVITI and KWAKWARI of Adagege Island of the other part. The Court further orders that costs be divided as £1.90 to the plaintiffsand £1.5.0 (Hearing £1 & Judgement 5/-) to the defendants."

In the 1995 Local Court proceedings, the plaintiffs gave the outline of their case, at the end of which, the defendants objected to the court proceeding with the case on the basis that the 1936

case had already decided the question of ownership over Basikana Island between the same parties. The defendants contended that the matter was *res judicata* and as such they refused to participate further with the hearing.

The record appears to have shown that the Local Court had accepted the defendants objection and decided to stop the case before the plaintiffs or the defendants could proceed to give evidence. The Local Court then simply dismissed the plaintiffs case and affirmed the 1936 decision.

The applicants in this case have come to this Court asking that they be granted leave to take out proceedings to quash the Local Court's decision. The argument in support is that the Local Court should not have entertained the matter in the first place even to hearing the plaintiffs assertion and the defendants objection. I feel the applicants argument here amounts to no more than a complaint that the case ought not to have been brought to the Local Court in the first place. If that is so, then the present proceedings for the issue of a prerogative order is in my view inappropriate.

The Local Court did what it was expected to do. It allowed the plaintiffs and defendants to say what they wanted and then decided that it should stop the case since it was the same matter involving the same parties in 1936. It then reiterated that the 1936 decision still stands.

In those circumstances, I cannot see how it can be said that the Local Court erred in what it did since it obviously recognised the matter was *res judicata* and stopped proceeding further with the case. That is the decision properly made by the Local Court and which in my view can only be challenged through the normal statutory right of appeal and not by prerogative writs.

The other matter that concerns me is the right of the applicants to bring these proceedings. They have no interest in the 1936 case nor in the 1995 Local Court hearing. As such I do not see how they can justify their coming to this Court seeking to issue proceedings for a prerogative order against the decision of the Local Court in this case.

For all those reasons the application for leave is refused.

(G.J.B. Muria)
CHIEF JUSTICE