

STEPHEN ABAETA'ANIFELO (REPRESENTING THE DAU TRIBE) -V- ZEPHANIAH KINISITA

High Court of Solomon Islands
(Palmer ACJ)

Civil Case No. 131 of 2002

Hearing: Tuesday 23rd July 2002
Judgment: Friday 26th July 2002

P. Watts for the Applicant

A. Radcliffe for the Respondent

Palmer ACJ: This is an application by Originating Summons filed 22nd May 2002 for the following orders:

1. *That the High Court Ruling in the Customary Land Appeal Case No. 3 of 1982, in favour of Zephaniah Kinisita as having primary rights over Dau Land does not operate as an estoppel as against Jason Frank's tribe from instigating proceedings in the chief's tribunal to determine primary ownership over Dau land as between Jason Frank's line (i.e. Dau tribe and Kinisita's line (i.e. Rafea tribe).*
2. *That the Applicant comply with the provision of the Local Court Amendment Act section 8 D (1) (Cap. 19) Revised laws, and refer the matter to a Chieives' hearing by Chieives within that locality.*
3. *That the Defendant meets the cost of this application."*

The Applicant relies on the affidavit of Stephen Abaeta'anifelo filed 22nd May 2002 in support of his application. Basically, the affidavit evidence showed that there were two earlier court decisions, which impinge on the Dau customary land. The Applicant relies on the first court decision, **Native Land Appeal Case No. 7 of 1969 between Jason Frank and Diotee**, which awarded ownership of Dau customary land in favour of Jason Frank (father of Applicant) [see copy of map and decree of the Court appended as "Exhibit SA 1" to the affidavit of Stephen Abaeta'anifelo]. The portion awarded in favour of Jason Frank is the part marked as "Dau" in the map.

In 1981 a second court decision was made, this time between **Kinisita and Orkeley Ramolelea**, in **Customary Land Appeal Court Case No. 3 of 1982** (note Ramolelea is the son of Diotee). It appears that Kinisita's claim in that case was that he owned the

whole area of land known as Dau land, including Moru Moru and Aba. The Local Court had awarded Dau Land (on the bush side) in favour of Kinisita whilst the sea side area Moru Moru and Aba Lands in favour of Ramolelea. Kinisita appealed to the Customary Land Appeal Court which overturned the decision of the Local Court and substituted a finding that the whole land areas of Dau, Moru Moru and Aba belonged to him. This was upheld on appeal to the High Court.

So what we have thus are two valid decisions investing title over Dau land to two different groups or tribes, Abaeta'anifelo's tribe and Kinisita's tribe. It also appears that these two tribes or groups of people are yet to have their claims over the said Dau land finally determined as between them.

The Issue

The issue thus appears to be a very simple one. Abaeta'anifelo had sought to commence a customary land dispute against Kinisita under section 12(1) of the Local Court's Act [Cap. 19]. The Chiefs in his area however, for one reason or another had declined to hear and determine his dispute. The reason given it seems was that the dispute was *res judicata*.

Respectfully, I do not think the Chiefs need concern themselves with the question of *res judicata*. That is a question of law which the parties themselves can raise either during the hearing of the Chiefs itself or take it up before this court. Until that matter is formally raised before the Chiefs, they are obliged to consider the dispute under section 12(1) of the Local Courts Act [Cap. 19]. The Chiefs however cannot prejudge the issue without first hearing it, unless of-course, if there had been a ruling to that effect by this court.

The Orders Sought

Paragraph 1 of the orders sought in the Originating Summons seeks a declaration to the effect that the High Court decision in Customary Land Appeal Case No. 3/82 between Okole Ramolelea and Kinisita does not operate as an estoppel as against Jason Frank's tribe from instigating proceedings in the Chief's tribunal in respect of a land dispute with Kinisita. Respectfully, such declaration can only be made if the issue of *res judicata* had first been formally raised and determined as between the parties. It assumes that the issue of *res judicata* is a live issue as between the parties to this dispute. Unfortunately, apart from the refusal of the Chiefs to hear this dispute, there is no evidence to suggest that the Respondent is of the same view. It seems that the problem is more of a misunderstanding or lack of proper understanding by the Chiefs on the meaning of *res judicata*.

The doctrine of *res judicata* simply means that a person cannot re-open or re-agitate a case which he has had finally determined against him on the merits as against another party (see *Talasasa v. Paia and Another* (1980/81) SILR 93 at 100). So, in respect of the Customary Land Appeal Case No. 3/82, it must be shown that Abaeta'anifelo was a party to that case, or is of the same tribe or line as Ramolelea and therefore bound by that decision. If not, the doctrine of *res judicata* cannot apply. If, as claimed by Mr. Watts, that Abaeta'anifelo is not of the same tribe or line as Ramolelea, then there is no legal impediment for him to take a customary land dispute case against Kinisita before the Chiefs. This however has not been formally raised and therefore not necessary to make any ruling on it. To that extent I do not think I can issue any declaration to that effect, other than to say that unless there is any determination on the issue of *res judicata*, the Chiefs are obliged to hear the Applicant's dispute.

As to paragraph 2 of the order sought, I think it is also unnecessary as really the problem is not with the Applicant but with the Chiefs who had refused to hear his dispute. Issuing a declaration therefore in respect of the Applicant would be pointless, as correctly submitted by learned Counsel Mr. Radclyffe. The correct person(s) who ought to have been joined in this Originating Summons are the Chiefs who had refused to hear the dispute of the Applicant. It is not that they had made any decision, rather it is that they had declined to carry out their duty as prescribed under section 12(1) of the Local Court Act, to hear a dispute and therefore can be compelled to do so by an order of mandamus.

Whilst the orders sought therefore should be refused, this judgment hopefully has cleared the air for the Chiefs to proceed with the dispute unless otherwise directed.

The issue of costs in any event must be borne by the Applicant.

ORDERS OF THE COURT

1. Refuse orders sought in the Originating Summons filed 22nd May 2002.
2. The Applicant to bear the costs of the Respondent.

THE COURT