IADA TUTUE & OTHERS –V- ROBERT NOGA

HIGH COURT OF SOLOMON ISLANDS
(PALMER ACJ)

LAND APPEAL CASE NUMBER 8 OF 1999

HEARING: 20 SEPTEMBER 2001
JUDGMENT: 18th FEBRUARY 2002

D. Hou for the Appellants
A. Nori for the Respondents

Palmer ACJ: The dispute in this appeal is over ownership rights in custom over Raunivana Land, Ngella Island. The Appellants claim rights of ownership, which derive from the Hogokiki Tribe. They claim the Hogokiki Tribe was the original landowner and that they had bought the land in custom from them. The Respondent on the other hand claim ownership rights which derive from the Gaobata Tribe.

The Ngella Local Court heard the dispute on 21st May 1998. At the end of the hearing, the court said:

> *"Judgment will then be sent to you through these addresses."*

There was no mention in the court proceedings that the parties agreed to this decision, though one can only presume that when the court announced that decision, (that judgment will be delivered through the mail), no objection was raised. A number of things need to be pointed out regarding this approach. **I do not know how this practice by the local courts in sending out decisions came about, but this practice must now be stopped. The Local Courts and Customary Land Appeal Courts must make decision immediately after the hearing and before dispersing. It is their duty and responsibility to retire after the proceedings, take time together and discuss the case that has been heard before making a decision the next day or as soon as thereafter.**

In this particular instance, it is not known when the Ngella Local Court made the decision. It is also not known when the decision was signed, sealed and posted to the parties. That is the responsibility of the Local Court Clerk, to ensure that the decision had been made and duly dispatched to the parties. I note the Local Court Clerk made no affidavit to that effect. That with respect is a fundamental defect, which goes to the root of this appeal. Section 10(9) of the Constitution requires that except with the consent of the parties any decision of the court is to be made in public. Where it had been agreed to be delivered by mail, care and accuracy must be exercised as the rights of the parties to appeal are determined by this simple but vital process. It is also important to bear in mind, that in such instances, the judgments must be sent by registered mail or hand delivered where that is possible. The failure to attend to detail regarding these necessary matters has resulted in confusion and as a consequence this appeal. A number of affidavits have been filed deposing to a number of matters regarding delivery of judgment. I have considered carefully the affidavit evidence of Joel Kila filed 30 August 1999 and 27th September 1999, affidavit of Douglas Laukiki filed 23rd September 1999, affidavit of Thomas Kama filed 27th September 1999 and affidavit of Brotley Ori filed 27th September 1999. The issue for determination before the Central Islands Customary Land

Appeal Court was the question, when judgment was made or delivered. There are two obvious instances in this case when judgment is deemed made or delivered. The first instance is the date judgment is pronounced in open court before all the parties. I would assume that all the parties would have been informed of the date of decision in open court. The second situation is where it was agreed to have the judgment delivered by post. There are two possible dates for consideration; date judgment is posted or date judgment is received in the normal course of delivery. I have already pointed out in this judgment that the normal way in which such judgments ought to be posted is by registered mail. This would ensure that judgements posted are kept track of. The date of judgment when sent by post would simply be the date it is received in the normal course of delivery by mail.

Unfortunately, in the circumstances of this case, delivery of judgment was not even as agreed upon by the parties. There is no evidence to suggest or show that notice had been given to the parties that the judgment was to be collected from the Local Court Clerk. The Local Court Clerk did not even file any affidavit to indicate what was done regarding delivery of judgment. That with respect is unsatisfactory.

There is some sort of certification by another Officer (late James Ilifanoa) from the Magistrate's Court Office (Central) dated 2nd November 1998, four months after the purported date of delivery to the parties, that he gave copies to the parties. I find that certification to be irregular and also unsatisfactory. I accept submissions of learned Counsel Mr. Hou that such certification cannot be accepted as admissible evidence on the grounds that it was not made contemporaneously and that he cannot be said to have been under duty other than as an administrative officer handing out copies to the parties (see Cross on Evidence 3rd Edition at page 793 and Smith v. Blakey (1867) LR 2 QB 326). The person who had duty to deliver copies of the judgments to the parties was the court clerk himself (Bobby Feratelia). Even if the certification by late Ilifanoa could be accepted, it did not identify who received copies of the judgment. I do note the affidavit of Douglas Laukiki does indicate that judgment may have been given to one Joel Kila on the 3rd July 1998. Joel Kila however denies this in his affidavits of 30th August 1999 and 27th September 1999.

The only matter, which can be gleaned as certain from the affidavit evidence, was that Appellants received a copy of the judgment on or about 19th July 1998. That piece of evidence has been virtually unchallenged. Even in the affidavit evidence of Douglas Laukiki, the most he could say was that other persons collected the judgment from the Central Magistrate's Court but not any of the named Appellants. He did not know or say when the Appellants received their copy of the judgement. The effective date of delivery of the judgment therefore was 19th July 1998 and not 3rd July 1998.

I am satisfied the Central Islands Customary Land Appeal Court committed an error of law in accepting the date of 3rd July 1998 when there was no basis for that in law or fact. The evidence before the court pointed overwhelmingly to the date of 19th July 1998 as the date on which judgment was received by the Appellants and therefore to be taken as date on which judgment was delivered. Appeal must be allowed. Order of the Central Islands Customary Land Appeal Court dated 4th October 1999 is quashed. The Notice of Appeal of the Appellant filed 19th October 1998 was accordingly filed within time and ought to be listed for hearing by the Central Islands Customary Land Appeal Court at its next sessions. Each party to bear their own costs in this appeal.

ORDERS OF THE COURT:

1. **Uphold appeal.**

2. **Quash order of the Central Islands Customary Land Appeal Court dated 4th October 1999.**

3. **Rule that the Notice of Appeal filed 19th October 1998 was filed within time and therefore should be listed for hearing before the Central Islands Customary Land Appeal Court in its next sessions.**

4. **Each party to bear their own costs in this appeal.**

THE COURT.