

PAUL TAFEA AND OTHERS -V- WILSON NE'E, ATTORNEY GENERAL
(Claimant)
(1st 2nd Defendant)

HIGH COURT OF SOLOMON ISLANDS
(BROWN J)
Civil Case No.382 of 2017

Date of Hearing: 23 March 2018
Date of Judgment: 15 June 2018

M. Tagini for Claimant
R. Tovosia for 1st defendant
A. S. Poa for Attorney General

Rectification of Land Registry on basis of mistake or fraud.

Brown J:

Before addressing the issue raised by the claimants, going to the purported forgery of the signature of Peter Ne'e to at least one of the subdivision requests, the Court sets out part of the 2nd defendant Defence to the Claim, dealing with the subdivisions and mutations of earlier parcel numbers.

“5. On 9th July 1993, a transfer instrument was lodged at the Registrar of Title's Office and subsequently PN 171-002-18 was registered as joint ownership in the names of the trustees listed in paragraph 4 above.

6. Sometimes in 2003, PN 171-002-18 was subdivided (“1st subdivision”) which led to the creation of the following parcel numbers: PN.171—002-27 and PN 171-002-28. The Second Defendant denies receiving any letter of objections in relation to this subdivision, as pleaded in paragraph 10, 11 and 12 of the statement of case and further states that this subdivision was done in good faith.

7. On 22nd April 2003, both PN 171-002-27 and PN 171.002-8 were registered in the joint names of Peter Tafea Ne'e; Wilson Ne'e; Alvin Indukelema and Jack Sipisoa.

8. On 5th April 005, PN 171-002-18 was further subdivided (“2nd subdivision”) and parcel numbers PN 171-002-38 and PN 171-002-39 were created. Both parcel numbers were registered in the joint names of Peter Tafea Ne’e, Wilson Ne’e. Alvin Indukelema and Jack Sipisoa o 15 April 2005.

9. Following the death of the registered joint owners, on 27th April 2012 both PN 171-002-38 and PN 171-002-39 were registered in the name of First Defendant, the surviving joint owner. The Second Defendant denies any mistake in facilitating this transfer.

10. On 16th May 2012, the First Defendant applied to subdivide PN 171-002-27. This application was lodged at the Registrar of Titles Office on 23rd May 2012 and subsequently parcel number PN 171-002-31 and PN 171-002-32 were created and registered in the name of the First Defendant.

11. On 19th June 2012, PN 171-002-31 was transferred by the First Defendant to the Commissioner of Land (for and on behalf of the Government) for a consideration of \$1,600,000.00.

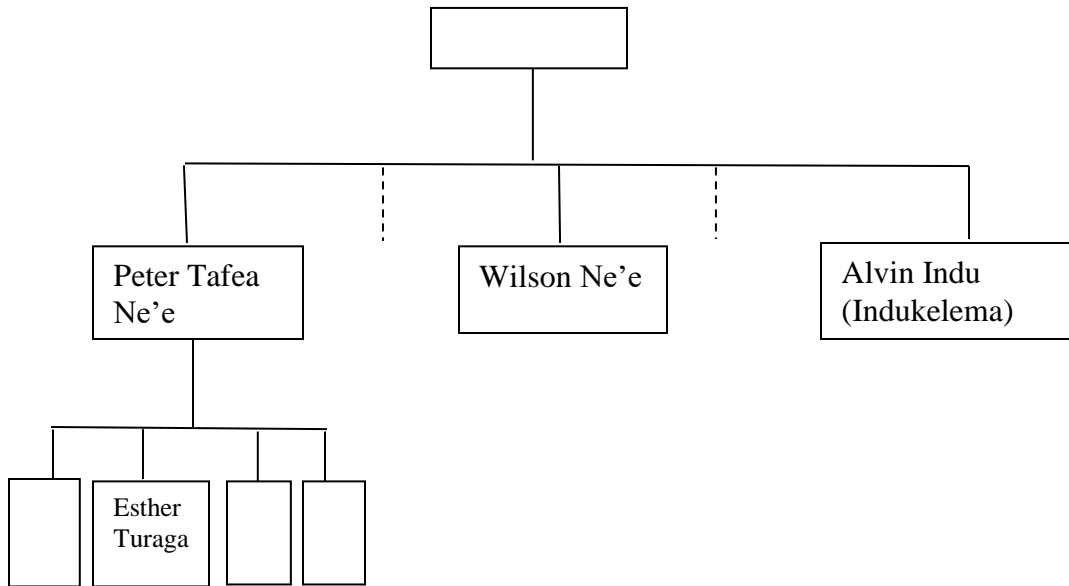
12. The Second Defendant deny that the Claimant is entitled to the reliefs and/or orders sought in the Claim on the basis of section 8 of the Land and Titles Act [Cap 133] in that the Second Defendant’s actions or conduct in facilitating the transfer of the disputed lands to name of the First Defendant by them were done in good faith and in the performance, or purportedly performance, of their functions and duties under the Act and are, therefore, not liable to any action, liability or claim in respect of their actions.”

It can be seen the Registrar of Titles denies receiving the letters of objection to the subdivision (touched on above) and states the subdivision was done in good faith.

The documents, the letters of objection postdate the actual subdivision and creation of fresh parcel numbers by some 4 years. On mutation, following subdivision, PN 171-002-18 two parcels were created, PN 171-002-27 and PN 171-002-28. Both were registered in the joint names of Peter Tafea Ne’e, Wilson Ne’e, Alvin Indukelema and Jack Sipisoa c/o P. O. Box 46 Auki Malaita Province on the 2 December 1992. On the registration of the statutory declaration to those named declarants as transferees of the Perpetual estate in the PN 171-002-18 by transfer from the Commissioner pursuant to S.122(1) of the Act (Cap.93), the court accepts on balance, such transfer by evidence

of the certified copy of the statutory declaration as it affects the registered parcel. At that time on the 1 July 1993, by S.122(2)(c) the obligations of the transferees were set out in the statutory declaration (as evidence by Exhibit “ET-1”) and subject to the statutory trusts expressed or implied by s.195 of the Act (Cap 93).

The claimants rely on the supporting sworn statement by Esther Turaga who deposes, uncontradicted to the following family genealogy.



By Exhibit “ET-3”, an Instructions to Survey Form was given the Surveyor General from named Alvin Indukelema, Wilson Ne’e and Peter Ne’e. The purpose stated on the request for survey was:

“A collective idea by the titles holders that the area should be share equally as indicated in the drawing attached e.g. Peter and Wilson Ne’e to held owners from Peg no 6 to peg 15 and back meeting South Road whilst Alvin Indukelema from peg 6 to peg 15 upwards inland (Nadaifin Village).”

The signature of the 3 names persons appear to be those signatures of the 3 declarants named in the statutory declaration. The fact of the signature of Peter Ne’e was later denied. By her statement Esther Turaga recounts her father, Peter Ne’e saying *“I did not sign any land document to effect the subdivisions, my brothers must have done that on their own”*. To support this recollection, she has annexed (“ET-10”) a copy letter dated 29 March 2007

addressed to the Commissioner of Lands for attention Mr. Pinita. Omitting formal parts, the letter said, for reason,

“Re. Subdivision of Ambu land on Lot LR 944/PN 171-002-18

The following are reasons for my disapproval to the subdivision of the said land on PN 171-002-18:

- 1. The parties or person signatory to the land have at no time agreed to any subdivision.*
- 2. My signatory assumed as pertaining to giving my approval to the subdivision had been forged by the person (A. Indukelema,) who intends on the subdivision. Although I wish not to seek legal advise on this, any documents bearing my signature and agreeing and or authorizing any subdivision is forged and taken away without my consent.*
- 3. That Mr. Wilson Ne’e who has also signed the documents relating to the subdivision had done so upon sighting my signature without known facts of its legitimacy. His signature was endorsed upon false facts relayed to him by Mr. Alvin Indukelema. (Please refer to letter from Mr. Wilson Ne’e).*
- 4. Base on the facts presented above and the manner in which the documents have been falsified, I am objection to the proposed subdivision and any registration of the subdivision land.*

Trust that you will act accordingly to my concerns, by copy of this letter the Registrar of Titles is also informed.

Regards

Yours faithfully

Peter Tafea Ne’e (Mr)”

The letter of Wilson Ne’e of the same date said,

“Re: Subdivision of Ambu land on LR 944/PN-171-002-18

With reference to the above I write to informally advise your good office of my objections to the intended subdivision of the above said land.

Documents signed earlier relating to my approval and endorsement and authorization of the subdivision as evident by my signature on those have been done from false facts presented before me by Mr. Alvin Indukelema.

I had signed the documents upon citing the signature of Mr. Peter Tafea Ne’e., my elder brother on the assumption of him personally authorizing such division. I have only learnt very lately that the signatures have been forged. On that regards I am very lately that the signatures have been forged. On

that regards I am formally rejected any proposed subdivision of the above and disclaim any documents relating to this matter that bears my signature.

Thank you very much for your understanding.

Regards

Yours faithfully

Wilson Ne'e"

This claim stems from the subdivision of particular registered land into various parcel numbers, one of which, PN 171-002-31 was sold back to the Commissioner of Lands for purposes connected with the Ministry of Police and Justice for the consideration of \$1.600m in 2012. The claimants acknowledge receipt of \$300k of that money but say such moneys paid were disproportionate to their proper share of any proceeds.

The case is that the subdivisions of the original land grant, PN 171-002-18 was done by fraud and /or mistake, contrary to trusts declared by Statutory declaration signed under S.174(3) of the Land and Titles Act (Cap 93) (Vol IV-Laws of the British Solomon Islands Protectorate (as amended) 1969.

Exhibit "ET-1 to the sworn statement of Esther Turaga dated 22 August 2017 was as follows;

"Statutory Declaration by Joint Owners

We Peter Tafea Ne'e - self-employed farmer of Ambu Village

Wilson Ne'e - Solomon Airlines, P. O. Box 223 Honiara and

Alvin Indukelema – P. O. Box G8, Honiara

So Solemnly and sincerely declare follows:-

- 1. This declaration is made for the purpose of section 174(3) of the lands and titles Act (Cap.93).*
- 2. We have made an agreement with the Premier of Malaita Province acting on behalf of the Provincial Government to enquire a Perpetual Estate title in respect of a parcel of land know as part of Ambu land and registered as parcel number 171-002-18 and as referred to as LR 944.*

3. *We understand that as a result of this agreement and operation of part v, division 1(one) of the lands and titles Act, the land is to be registered and transferred back to us, as trustees for the Ne'e and Indukelema's family land holding group.*
4. *All the beneficial interests in the said land, the subject of this declaration are to be held by all the members of the Ne'e and Indukelema's family land holding group, and such beneficial interests are held in accordance with the current customary usage of the Ne'e and Indukelema's family land holding group.*
5. *We have consulted all persons beneficially interested in the land concerning the Agreement and those person entitled to the major portion of the beneficial interest are in favour of the transaction.*

And we make this solemn declaration conscientiously believing the same to be true and by virtue of the statutory declaration Act, 1835.

Declared at Auki - signed

This 1st day of July - signed

1993.

Before me

- signed

Commissioner of Oaths

Certificate of Publicity

I certify that this Declaration was made in public at Auki Court House on this day of July 1993 during which a public Meeting was held of which and its purpose reasonable notice had being given the neighbourhood of the land concerning and that the declaration was the made it such public meeting in the presence of 50 persons.”

By stamp endorsed on the reverse side of the declaration, this 2 page instrument was shown to be a copy of or extract from the Land Register as it affects PN 171-002-18. For that parcel no. (also reference LR 944) had by first registration under part V, Division 1 of the Act (Cap.93) become registered in the name of the Premier.

The Court is faced with the assertion of Wilson Ne'e in his letter of 29 March 2007 that his brother's signature, (on which he had relied back in 2003 when the subdivision was proposed), had, on the basis of his brother Peter's statement in which he had resiled from his act of signature, been forged and consequently both he and his brother now resile from their act in seeking the earlier subdivision. For Wilson Ne'e does not deny his signature to the first subdivision proposal, rather he says if I had known my brother Peter's signature was forged, I would not have signed. Both the internal and external inconsistency of this assertion by Wilson Ne'e satisfies the court such assertions of the 29 March 2007 are not made out.

For by subsequent Instruction to Survey Form (Exhibit "ET-13") the same Wilson Ne'e (the surviving registered owner) seeks a survey of PN 171-002-027 (on behalf of trustees) dated 13 April 2012. In support, a letter of Bridge Lawyers (Andrew Nori, principal partner) earlier dated 14 December 2011 shows the lawyers to be ostensibly acting for the "surviving owner, Wilson Ne'e" (Exhibit "ET-13")

"Re: Police House Project-Land sale (Kwaibala)

We write to inform you that we are the lawyers dealing with the registration and all other legal matters relating to the land compromised in Parcel No. 171-002-27 situate at Kwaibala near Auki. The land was jointly owned by Wilson Ne'e, Peter Tafea Ne'e (d) and Alvin Idukelema (d). Both Tafea Ne'e and Idukelema have died.

By operation of law the PE now vests in the surviving owner, Wilson Ne'e.

We confirm that Wilson Ne'e has the legal authority to sell portion of the land and to deal with the funds received as he considers fit, taking into account the usual customary obligations that are expected of him by his other clansmen.

Yours faithfully

Bridge lawyers

Andrew G.h Nori

Principal Partner"

There is no need to critically consider the attempt by Wilson Ne'e to recant his earlier request for subdivision of PN 171-002-018 to be discontinued, for this later evidence coupled with the fact that the two parcel numbers created by the mutations of PN 171-002-018 were in his name as one of the joint owners, satisfies the Court that the credibility of the 1st defendant Wilson Ne'e, with respect to his attempted denial of the veracity of the earlier request for subdivision, is undermined. When the court looks at the various signatures for instance, on the statutory declaration of trust and the request for subdivision, seemingly the same, Wilson Ne'es earlier attempt to resile from the fact of his subdivision request for PN 171-002-018 is not credible.

It is not necessary for the court to attempt to glean why Wilson Ne'e wrote those letters of the 29 March 2007 (Peter Ne'e was described as a self-employed farmer while Wilson Ne'e appears to have been an employee of Solomon Airlines, presumed literate and perhaps the originator of the documents) since his subsequent actions wholly are at odds with the intent of his letter of the 29 March 2007. At that time it may be accepted both brothers were colluding in the request to have the earlier subdivision set aside.

It is accepted all other registered owners of the Lands in PN 171-002-27 and PN 171-002-28 had passed away when Wilson Ne'e, the surviving joint owner became the sole registered owner of the current parcels created by mutation of PN 171-002-28 into PN 171-002-38 and PN 171-002-39. The Registrar of Titles recorded such deaths on 27 April 2012 and the fact of such deaths is undisputed. What is disputed is made plain by the claimant's statement of case, at paragraph 14.

“ On 1st about 27th April 2012 the First defendant as surviving joint owner of the disputed lands transferred the interests of the late Peter Tafea Ne'e and Alvin Indu in all the sub-divided plots within the disputed lands to himself. The transfer was done by mistake.

Particulars of mistakes

- a) *The claimants and other member of the families of Tafea and Indukelema did not consent to the transfer to the First defendant solely;*
- b) *The transfers were done contrary to the terms of the Statutory Declaration pleaded in paragraph 8 in respect of PE: 171-002-18;*
- c) *The transfer ought not have been considered in light of the letter by the said Peter Tafea Ne'e which was also supported by the latter by the First defendant."*

By S.200 of the now Land and Titles Act (Cap. 133)

"200. -(1) Where a registered interest in land is owned jointly the joint owners shall hold on the statutory trusts.

(2) Where two or more persons are joint owners of a registered interest in land –

- a) *A disposition of the interest shall be made only by all the joint owners; and*
- b) *On the death of a joint owner the interest shall vest in the surviving owner or owners."*

The Claimant's case of "transfer", to the surviving registered owner is not made out on the facts. The copy Perpetual Estate Register (Exhibit "ET-6" and "ET-7") shows registration of Wilson Ne'e by nature of instrument – registration of death of (other) joint owners in both PN 171-002-38 and PN 171-002-39 on 27 April 2012.

Registration was made in accordance with the Land and Titles Act (Cap 133), S.200 (2) (b) and may not be said to have been effected by mistake of the Registrar. No transfer instrument was registered nor was a "transfer" effected, rather the interest passed by devolution of law in terms of Section 200 of the Act. Not only does the registered owner hold on the statutory trusts *"but he remains bound by the trusts expressed in his earlier statutory declaration at the time the land was transferred by the Premier.* Such trusts devolve upon him and he is responsible to account for his actions to all those beneficially entitled, not to just his own direct family, rather to all in terms of the declaration, for the responsibility of the deceased trustees pass to him by survivorship.

The court is not satisfied the claim of fraud going to the initial subdivision of PN 171-002-018 as pleaded in the statement of case has been made out for the reasons given. The court is also not satisfied there has been any "mistake" in terms of the registration of the surviving owner, Wilson Ne'e as the owner of the lands in all these parcels.

In the civil appeal of *SMM Solomons anors v Axiom KB Ltd anors*¹ the Court of Appeal again reaffirmed the indefeasibility principle as fundamental to the structure of the Land and Titles Act. The court went on to opine about the necessity for caution and strict compliance with Part V Division 1 of the Act.

“384. There is good reason for strict compliance with Part V Division 1. When in the particular case of customary land, there is a failure on the scale of the present case to observe the requirements, there is a real risk that many of the landowners may not agree, yet their wishes may not have been properly solicited or considered. Some may remain unaware of the suggested change from customary to registered land or the consequences until it has happened. Is it seriously to be suggested that they should be deprived of rights to their land by a stealthy imposition of an indefeasible title? What is certain in the Land and Titles Act is that, once registration has properly taken place, it will not be possible ever to revert to customary land and ...”

The land in this proceeding is registered land. It became registered in the early 1990’s. There cannot be an issue with the process after this length of time. What is apparent from the statement of Ester Turaga is that the perception of the nature of the land on which they continue to reside remains based in custom. She says, at 20 of the sworn statement;

“20. Based on the foregoing I fear that the First Respondent will not give us our fathers share and given he does not live in Ambu land, he does not care. I also fear that by selling to a third party, he will be shrinking land that is jointly owned by us. Furthermore, I have a permanent house in PN 171-002-38, my other sister’s house and my brothers commercial building and our late father’s grave and that of my first born child are all in PN 171-002-39.”

The Court of Appeal comments are applicable to registered land after the event, as can be shown here where the land has, by the succeeding generation been treated as communal land according to their custom yet conflict has arisen. Registration in these circumstances merely gives rise to disputes in other ways.

¹ Civil Appeal no. 34 of 2014

“14. Sometime in 2012 I found out that the First respondent had sold a portion of land within the Ambu land to the Misistry of Police and Justice. Again, neither I nor any other member of our family was invited to discuss the sale. Although we later agreed the disbursement of the proceeds were grossly unfair as my family was only paid \$300,000 out of \$ 1.6 m received by the First respondent. Now shown ...

15. Sometime in early 2017 I again heard that the first respondent was in negotiation with the Solomon Islands Electricity Authority to purchase another part of Ambu land. The area is quite big and my father had his coconut plantation in it. I hear the First respondent is going to sell it for more than \$1m dollars again. Now shown to ...”

The claim may be seen to be one for resolution pursuant to the underlying premise in the statutory declaration, set out in paragraphs 3 & 4.

“3. We understand that as a result of this agreement and operation of Part V division 1 (one) of the lands and titles Act, the land is to be registered and transferred back to us, as trustees for the Ne’es and Indukelema’s family landholding group.

4. All the beneficial interests in the said land, the subject of this declaration are to be held by all the members of the Ne’es and Indukelema’s family land holding group, and such beneficial interests are held in accordance with the current customary usage of the Ne’es and Indukelema’s family landholding group.”

Where time has passed since the trusts were expressed, and when the phrase *“family landholding group”* obviously attaches to the phrase, *“current customary usage”* there is a dichotomy apparent for once registered, the land cannot be treated as customary land.

The surviving registered owner is empowered to sell land in accordance with the statutory trust powers set out in S. 214 of the Act, *“as may be requisite for giving effect to the rights of the persons beneficially interested in the interest”*.

Those persons *“beneficially interested”* in the proceeds of sale or whether any sale may be effected are those of the *“family landholding group”*. The determination of those to be deemed to fall within the description either now or at the time of the statutory declaration, is a matter for another tribunal determinative of custom and not for this court. No such determination may be presumed from this claim. The intent of the

Land and Titles Act for an adjudicatory process before registration of customary land rather reflects the need to be extraordinarily careful when declarations of trust in favour of particular persons or classes of persons are envisaged, as in this case for disputation may be expected to follow when trustees presume to exercise the statutory trusts, especially after such a length of time when families grow, mutate or become blended with others having different customary rights of inheritance.

For all these reasons, rectification of the register is refused and no restraining orders in the courts discretion will issue. The proceeding is dismissed. The defendants shall have their costs of the proceeding.

BROWN J