

MAXWELL SIMI KERA v. THE ATTORNEY GENERAL, RAGOSO, VIURU, TONA,
ALU, BOSO

High Court of Solomon Islands
(Ward C.J.)

Civil Case 208 of 1989

Hearing: 9 March 1990

Judgment: 20 March 1990

P. Tegavota for the Plaintiff

R. Teutao for the Attorney General

J. Muria for the Second, Third, Fourth, Fifth and Sixth Defen-
dants

WARD CJ: The applicant seeks certain declarations in relation to the transfer of title in the perpetual estate in Parcel number 079-006-2/3/4 to the second to sixth respondents.

The background to the case reveals an extraordinary state of affairs.

One Gordon Rence was appointed as Commissioner of Lands with effect from 9th July 1985 by the Public Service Commission.

By a letter dated 25th November 1987 he informed the Ministry of the Public Service that he wished to resign from the Public Service immediately. That letter was received by the Ministry on 27th November and a reply was sent on 15th December accepting his resignation and saying that the Ministry had waived the requirement of three months notice and accepted one month expiring on 25th December 1987.

Despite this all being apparently at Mr Rence's request, he did not stop work and remained in his office until the second

week in February 1988 at which point he was ordered to vacate his office and his keys seized.

On 23 February 1988, by gazette notice 56/89, Mr Josiah Riogano was appointed as Commissioner of Lands and the appointment of Mr Rence was cancelled with effect from 8th February. That notice was signed by the Chairman of the Public Service Commission.

The transfer documents of the land in question were signed by him as Commissioner of Lands on 5th February 188 and give rise to the matter before the Court today.

On those facts, the applicant seeks a declarations as follows -

- "1. A declaration that the former Commissioner of Lands, Mr Gordon Rence, upon his resignation which took effect on the 25th of december 1987, as approved by the Ministry of Public Service had ceased to a Commissioner of Lands on that date.
2. A declaration that after the 25th of December 1987, the said Gordon Rence could not exercise any power as a Commissioner of Lands under the Land and Titles Act.
3. A declaration that the perpetual estate transfer document signed by the said Gordon Rence on the 5th of February 1988 purporting to transfer perpetual estate in Parcel No. 079-006-4 as a Commissioner of Lands to the 2nd, 3rd, 4th, 5th, and the 6th respondents be held null and void and order be made for the rectification of the said perpetual estate by cancelling the said transfer instrument and the names of the 2nd, 3rd, 4th, 5th and 6th respondents from the said perpetual estate register and reverting the said property back to the Commissioner of Lands.
4. A declaration that as from the 25th of December 1987, the said Gordon Rence was occupying the office of the Commissioner of Lands not as a Commissioner of Lands as he had already resigned from his post on the 25th of December 1987."

It is difficult to see what interest the applicant Mr Kera has in this matter but no issue on locus appears to be taken by the respondents.

I can deal with the matter very shortly.

The office of Commissioner of Lands is a public office. By section 116 the power to appoint and to remove persons from such offices is vested in the Public Service Commission.

Whether or not the Ministry of the Public Service accepted his resignation, his appointment to the post could only be terminated by the Commission. The only evidence of that is the Gazette Notice of the cancellation of that appointment from 8th February. Until that time he was still appointed as Commissioner of Lands and could carry out his functions under the Land and Titles Act.

I decline to make the declarations sought in paragraphs 1 and 2.

I cannot make the declaration in paragraph 3 and the additional order is outside my power when an application is made under O.58 r.1.

I feel that disposes of the matter. The question posed in the fourth paragraph raises further issues which affect Mr Rence and the Public Service and which I am not willing in my discretion to resolve at the application of a person with no recognisable interest in the matter.

Costs to the respondents.

(F.G.R. Ward)
CHIEF JUSTICE