

DAVID GANIFIRI -v- HANIEL BARAI and JERIMUEL MAENENE

High Court of Solomon Islands

(Muria, Judge)

Civil Case No: 22 of 1991

Hearing: 19 November 1991

Judgement: 5 December 1991

A. Radclyffe for the Plaintiff

J. Remobatu for the Defendant

**MURIA J:** The plaintiff suing on behalf of his line claims against the defendants damages for trespass and injunction preventing the defendants from remaining on Rade Land.

The defendants deny trespassing on Rade Land and ask the court not to issue the injunction sought by the plaintiffs.

The plaintiff's case is that his line is the owner of Nafinua Land, sometimes also called Rade Land. He said the land was bought by his grandfather Manufioa before 1920 and that when his grandfather died the land transferred to his father Justice Ganifiri who died in 1989. He also stated that in 1966 there was a Native Court case between his father and one Maelimani in which the court said that his father was the owner of Nafinua Land and Maelimani was the owner of Fera'abu Land. The plaintiff further stated that the boundary between Fera'abu Land and Nafinua Land is Fera'abu stream or Fera'abu River. He relied on his boundary which was accepted by the CLAC in 1989 in the case between himself and one Mahlon Mauara.

The plaintiff said that the defendants built an iron-roofing house and planted coconuts inside his land. He was not aware that the defendants purchased that part of the land on which they built the house and planted coconuts.

The defendants' case is that they are not trespassing onto the plaintiff's land because the land on which they built the house and planted coconuts is their land which they bought from Maelimani in 1975 for AU\$900.00. Patterson sui who is the son of Maelimani gave evidence for the defendants and stated that he was present when the AU\$900.00 was paid and received by his father.

The defendants also relied on the fact that the only occasions when Maelimani went to court with Ganifiri were in 1966 and 1967 and at no other times. The defendants said that their rights were properly obtained through Maelimani. They relied on the sketch map showing the boundary used and accepted by the Courts in 1966 and 1967.

The defendants agreed they built an iron-roofing house and planted some coconuts around the area where the house was built.

The question is whether the defendants are guilty of trespass. It is therefore necessary to consider whether the portion of land on which the defendants built the house and planted coconuts is within Nafinua Land or within Fera'abu Land. If it is within Fera'abu Land then the defendants are not trespassers as they were given the land through purchase in sum of AU\$900.00 in 1975 by Maelimani who owned Fera'abu. If it is within Nafinua (or Rade) Land then the defendants may be trespassing.

In a case of trespass to land it will only be actionable where the plaintiff has shown that he is in possession of the land or that he is entitled to immediate and exclusive possession as the tort of trespass is basically a violation of the right to possession not of the right of property. However in certain cases actions of trespass can also be used to determine disputed titles or disputed ownership. In the present case, this Court is not concerned with right of ownership.

In the present case, in order to ascertain whether the defendants have built the house and planted coconuts in the plaintiff's land it is necessary to consider the boundary of the plaintiff's land which is Nafinua (also called Rade) Land.

The plaintiff gave evidence that the boundary between his land Nafinua and Fera'abu land is the Fera'abu Stream or Fera'abu River as indicated in his map which map he also relied on at the 1989 CLAC hearing between himself and Mauara. That boundary, he said, was the same boundary as that found by the Native Court in 1966 and High Court in 1967.

The plaintiff's witness Timon Timi gave evidence that the boundary between Rade Land and Fera'abu Land starts at Fera'abu stream extending to Namokeketo Stream and then extends down to Kwaingurunguru River. On the other side, the boundary, he said, extend, from Fera'abu stream to Bulia River.

The defendants called Patterson Sui who is the son of Maelimani who is now deceased. Patterson Sui gave evidence that he was present at the Native Court hearing in 1966 between his father and Justice Ganifiri, the plaintiff's father. He did not, however, attend the High Court hearing in 1967. Patterson Sui gave evidence that there

was no such river or stream as Fera'abu River or Fera'abu Stream. He said even if the High Court in 1967 used the name Fera'abu Stream, he did not know of any such stream. He stated that the boundary of the land sold to the defendants starts at Baolalala and extends to Haumaifi and then to Sasau Stream and then to Bibisu stream and then to Luama River and then to Gilo River and across to Dukuasi and then follow Kwaingurunguru stream and back to Baolalala. He also stated that Nafinua (or Rade) Land is on the other side of the land which his father sold to the defendants.

In court Patterson Sui further stated that he is not related to Mauara against whom the plaintiff went to court in 1989 CLAC. The only time that his father went to court with the plaintiff's father were in 1966 and 1967. He reiterate that in 1966 and 1967 the Native Court and High Court accepted both parties maps showing the boundaries of the land in question.

One of the defendants Hariel Barai gave evidence that he and his brothers bought the land from Maelimani in 1975 for AU\$900.00. He stated that he is related to the plaintiff. He stated that since they lost against Maelimani in 1966 and 1967, he went to Maelimani and asked to buy a piece of land which he bought in 1975. He also stated that although they bought the land in 1975 they did not build on the land until 1984. He also stated that the boundary was that mentioned by Maelimani's son, Patterson Sui.

Counsel for the plaintiff submitted that the 1967 High Court judgement is important and one which cannot now be challenged. Counsel further submitted that the High Court in 1967 referred to the boundary between Fera'abu and Nafinua as Fera'abu Stream.

Counsel for the defendants agreed to the 1967 High Court judgement. But counsel said that on the basis of the 1967 decision, Maelimani was clearly the owner of Fera'abu Land the boundary of which was that as shown on the map produced to the Courts in 1966 and 1967 and as such the land which Maelimani sold to the defendants was the land which Maelimani was entitled to sell as being part of Fera'abu land.

The evidence clearly shows that the two lands, Fera'abu and Nafinua are adjacent to each other. I am satisfied that the boundaries of the two lands as accepted by the Native Court and High Court were those shown in the sketch maps which both parties produced at the 1966 and 1967 hearings. I accept that the parties to the 1966 and 1967 hearings were Maelimani and the plaintiff's father Justice Ganifiri.

On the evidence before this Court, it is perfectly plain that in 1967 the High Court did not hear any argument about the boundaries of Nafinua land and Fera'abu

Land but accepted the boundaries as contained in the sketch maps produced by both parties. There has been suggestion by the plaintiff that the learned Chief Justice in 1967 stated that the boundary between Fera'abu Land and Nafinua Land was Fera'abu Stream. That being the case, Nafinua Land extends to Fera'abu stream. I have the advantage of reading the note of Oral Judgement (Exh.2) of the 1967 proceedings produced by the plaintiff and the records of the evidence and Note of Oral Judgement (Exh.5) also of the 1967 proceedings produced by the defendants. Having read those records together with Exh. 4 which is the certified copy of the map used in the 1967 High Court Appeal Case, CC2/67, I have no hesitation in concluding that the name "Fera'abu Stream" was never used by the learned Chief Justice in 1967. The passage from the 1967 judgement which is relevant reads:

*"The facts are not in dispute. Both parties have put in sketch maps, the land being as yet unsurveyed, which correspond fairly closely and I think there is no confusion in the minds of the parties as to the boundaries of the area of land which is in dispute. It is admitted that the Appellant was, and still is, the owner of Nafinua and that He occupied the land across the boundary stream called Fera'abu by virtue of permission granted to him by a man called Talianga who was a linesman, by a female line by descent, of the Respondent." (underlining is mine).*

The learned Chief Justice was there saying that both parties knew fairly well their boundaries and that Ganifiri occupied the land called Fera'abu and "the boundary stream" referred to in the judgement by the learned Chief Justice cannot be a reference to Fera'abu stream because there was no evidence before the court of such a stream, none that can be gleaned from Exh. 5 and none from exh.4). The learned Chief Justice could not be expected to name the stream "Fera'abu Stream" in his judgement when there was no evidence before him of such a stream. The only sensible conclusion is that the parties at that time knew their boundaries and the stream which separated their lands. They had sketch maps which showed their boundaries and they knew very well what that streams was. From their sketch maps which the Court accepted (which is Exh. 4) there was no such stream as Fera'abu stream.

Thus in so far as the boundary separating Fera'abu land and Nafinua land is concerned I cannot accept that the boundary spoken of by the High Court in 1967 is Fera'abu Stream or Fera'abu River.

The Local Court in 1984 accepted the boundary of Nafinua (or Rade) Land and that boundary clearly resembled the boundary as shown in Exh. 4(which was accepted by the High Court in 1967). In 1988, again the Local Court after another survey of the Rade Land found exactly as the Local Court did in 1984. However, it was the CLAC in

1989 which accepted the plaintiff's boundary. But the proceedings before the CLAC in 1989 was simply in the form of submissions by the appellant who is now the plaintiff and by the Respondent Mahlon Mauara.

The present case is against Haniel barai and Jerimuel Maenene who relied on their rights to the land derived through purchase from Maelimani. The plaintiff admitted the sale by Maelimani to the defendants but he said that the land which the defendants purchased from Maelimani was inside Fera'abu and that the part of the land where they built the house and planted coconuts is inside his land.

The plaintiff must satisfy this court on the evidence that the area where the defendants built the iron roofing house and planted coconuts is within the boundary of Nafinua (or Rade) Land as accepted by the High Court in 1967. Every invasion of another's property, however slight, is a trespass. But the burden is on the plaintiff to prove such invasion of his right in the present case.

The evidence before me shows that the plaintiff accepts the boundaries which the High Court accepted in 1967 in the case between his father and Maelimani over Fera'abu Land. The plaintiff accepts that Maelimani sold a piece of land to the defendants. That piece of land is within Fera'abu land according to the evidence of Maelimani's son, Patterson Sui who witnessed the sale by his father and payment of AU\$900.00 by the defendants. There has never been any challenge to that sale since 1975 nor has there been any further dispute between the plaintiff and Maelimani since 1967. Those evidence are clearly supportive of the defendants rather than the plaintiff and as such I cannot be satisfied that the defendants are trespassing on the plaintiff's land.

The other argument raised by the defendants is that the 1989 case was between the plaintiff and Mahlon Mauara and did not bind the defendants. This is because, judgements in customary land cases are 'judgment inter parties.' In Solomon Islands the authority that judgement in customary land cases are 'judgement inter partes' is the case of *Talasila -v- Paia and Another* [1980-1981] SILR 93. I accept that the 1989 CLAC decision did not bind the defendants in the present case as there is no evidence to sufficiently link Mahlon Mauara and the present defendants. The present defendants purchased the land from Maelimani and as I have already found that the boundaries of Fera'abu land and Nafinua Land were that which the High Court accepted in 1967, these defendants cannot on the evidence before this court, be forced out relying on the 1989 decision from the land which they purchased from Maelimani.

On the evidence before this court, the plaintiff has failed to persuade me that the defendants have committed the tort of trespass as claimed by the plaintiff in his

Statement of Claim. The plaintiff's claims for damages and injunction are therefore refused.

Order: Judgement for the defendants with costs.

(G.J.B. Muria)

JUDGE