JERIMIEL MAELIBINA -v- FATAKALUA

High Court of Solomon Islands
(Muria CJ.)
Civil Case No. 106 of 1992
Hearing: 22 June 1993
Judgment: 30 August 1993

M.B. Samuel for Applicant
C. Tagaraniana for the Respondent

MURIA CJ: This is an application to attach the Respondent for contempt of court.

The case for the applicant is that the Respondent had defied the decision of the Customary Land Appeal Court where it was said to have stated that if the Respondent wished to carry out any new development in Ote'e land he must obtain permission from the Applicant. According to the Applicant the Respondent had breached the CLAC decision by extending his village to allow other people to come and settle on the land with him, continuing to clear new areas for gardening, planting coconuts and cocoa, running piggery projects and running a small trade store. All of these were said to be carried out inside Ote'e Land.

I shall turn to the CLAC decision which the Respondent was said to have breached. Before I do that let me say a word or two on the question of non-compliance with orders of the courts.

Contempt of court consisting of deliberate acts in defiance of an order of the court is a very serious matter. Disobedience of a court order is an act by the contemnor showing that he is not prepared to recognise and accept the authority of the court. Such a conduct by the contemnor is dangerous since it brings into an ordered community the risk of lawlessness and disrespect to the courts as the recognised forum for the peaceful settlement of disputes and maintenance of law and order. *See Hitukera -v-Hyundai, civil case No. 132 1992 and Rasi -v- Dhora Sawmilling Company Limited and others, civil case No. 264 of 1992.*

I make mention in particular that in Solomon Islands, a lot of these allegations of non-compliance with orders of the courts arose out of customary land disputes, in respect of which courts made decisions or orders. In this regard, it is particularly important that decisions of the courts in relation to land matters must be observed and orders resulting therefrom be complied with to avoid escalation of ill-feelings between the parties.

Having said all that, I now turn to the decision of the CLAC in question. That decision was given by the Malaita CLAC on 9 March 1991 whereby it dismissed Fatakalua's appeal against the Local Court's decision. The decree of the CLAC is in the following terms:

> *"Appeal dismissed. The Respondent Maelibina has primary rights over Ote'e Land. The Appellant Fatakalua may continue to cultivate his existing garden land and development inside Ote'e land, but may only carry out new development with the permission of the Respondent Maelibina."*

It is relevant to consider how the CLAC had reached that decision. It is not necessary to go through in details the reasons for judgment of the CLAC in order to see how the decision was made. It is sufficient to note that the CLAC had to consider eleven (11) points of appeal submitted to it by the Appellant Fatakalua (now Respondent) before it issued its Decree.

For the purposes of relevancy to the issue of contempt now raised in this court, I think it is necessary to note in particular the comments of the CLAC regarding the evidence establishing that Maelibina was first to settle on the Ote'e land and that Fatakalua came later.

It is also relevant to note the CLAC's comments as to the spearlines of the land. On the evidence before the CLAC, both Fatakalua and Maelibina described the boundaries of Ote'e land in similar terms. They both came from the same line. They both came from the bush at a place called Ulukwai and went to settle at Ote'e land. The only difference was that Maelibina was first to settle on the land and Fatakalua came later.

It is also worth noting the decision of the Local Court from which Fatakalua appealed to the CLAC. The decision of the Local Court reads:

> *"Therefore the court proves that Maelibina is the first man and Fatakalua is the second. The court says that those of Maelibina's female lines and male lines have right to use the land of Ote'e Land with Fatakalua's male lines and female lines have right to use the Ote'e land. Any pieces of land given by Maelibina's line and*

Fatakalua's female lines remain theirs. The court ask both parties to work together in this Ote'e Land."

The Local Court's decision was clearly reflective of the type of resolution of a customary land dispute where both parties had been found to be of the same line but had come to settle on the same land at different points in time. It will be observed that the Local Court did not use the words "primary rights," as the CLAC had done. I think in customary land case, the courts must be cautious when using the terms such as "primary rights" and "secondary rights". In some cases the use of such words creates more divisions among the parties to a customary land dispute than resolving the real issues in the disputes.

How are these considerations relevant to the contempt issue here concerned us? The relevance is obvious. The Respondent had been alleged to have breached the CLAC decision which upheld the Local Court's decision and the circumstances giving rise to the decisions of those courts that 'Maelibina was the first man and Fatakalua was the second man' must be relevant, if not only to ascertaining the Respondent's position.

Now I turn to the evidence adduced in this court in this case. I should say, that the allegations against the Respondent really came from the Applicant's witness Sam Dick (the Applicant's son).

The evidence of Sam Dick was that he lived in Ote'e Land and had been put in-charge by his father, the Applicant. While he was on the land, he saw the Respondent built new houses. He further stated that the Respondent also had been planting coconuts and cocoa on the land and carried out a piggery project as well as running a small trade store.

Sam Dick gave evidence also that the planting of coconuts and coconuts started in 1981. The piggery project, the witness stated, started in 1982. The trade store, he said, was set up after the High Court case (which on the record was 3/9/81).

On the allegation of making new gardens, Sam Dick stated that the Respondent cleared new areas and made new gardens. Although he agreed that the Respondent could make gardens in Ote'e land, he said the gardens which the Respondent recently made were new ones on new areas.

According to Sam Dick, all that the Respondent was alleged to have done on the land were "new development" and would require permission from his (Dick's) father or from him since his father had put him in-charge. Further he stated that no permission was

ever given either by his father or himself to the Respondent to carry out those "new development".

The Respondent stated he did not build new houses in new areas but only rebuilding and maintaining his and his families houses. He said only his brother built a new leaf-house. However, all these were done inside the area of his old village.

The Respondent also denied planting new coconuts or cocoa. He said that he is maintaining his existing coconuts. However the Respondent's witness, Stanley Afutana stated that the Respondent planted new coconuts but in the area around his house.

The Respondent denied making new gardens in new areas and stated that the new gardens which he made were inside the areas where his old gardens were. He denied cutting down new forests for gardening. Further the Respondent denied carrying out a trade store. He said what he had was a canteen for his family. He further denied carrying out piggery projects. Although there were pigs in the village, the Applicant's son also had pigs in the village and they could be his as well.

Mr. Tagaraniana submitted on behalf of the Respondent that his client had not carried out any "*new development*" inside Ote'e land. Hence the question turned on the meaning of the words "*new development*" in the order.

In the context of customary land, 'development' may take the form of cutting down or planting trees, as in *Tagotada -v- Reinunu (1984) SILR 24* or making gardens, as in *Gusa -v- Raigela (1983) SILR 166.* I would also add that erection of houses and establishment of commercial projects, whether on large or on small scale, on the land may amount to development. In that regard, the Respondent in this case had carried out 'development' on the land when he planted his coconuts and cocoa, built houses, ran a canteen and made gardens. However such 'developments' did not amount to contempt unless they were done in defiance of the order of the CLAC.

The order with which we are now concerned, speaks of *'new development'* which the Respondent may only carry out inside Ote'e Land with the permission of the Applicant. This however must be considered in the light of the order of the CLAC. In terms of that order the Respondent "*may continue to cultivate his existing garden land and development inside Ote'e Land.*"

Two matters stand out under the CLAC order. Firstly, Fatakalua is allowed to cultivate his existing *garden land.* The Applicant's case is that the Respondent had cleared new areas for gardening. The Respondent stated that he cultivated gardens but he did so inside his old garden land. The difficulty faced by the Applicant is that of establishing

to the satisfaction of the court the extent of the Respondent's "existing garden land", as envisaged by the order of the CLAC. Is the areas cleared by the Respondent to make new gardens within or outside his existing "garden land?" That has not been established by the Applicant, upon whom the burden lies.

The Argument implicit on behalf of Applicant is that the Respondent should only continue to cultivate his existing gardens and not to make new ones. That means each time the Respondent wants to make a new garden he must seek the permission of the Applicant otherwise he would have to continue using the same garden over and over again.

I do not think the CLAC's decision can be given such restrictive interpretation as it would unfairly result in oppressive consequences on the Respondent.

The CLAC, in my view, very properly made the order enabling the Respondent to continue to cultivate his existing "garden land" inside Ote'e land. The CLAC never said that the Respondent may only cultivate his existing garden but rather existing "garden land" which is a wider concept than that contended by the Applicant. The wider meaning to be given to the expression "garden land" in the CLAC decision is in line with the decision of the Local Court which allowed the Respondent's male and female lines to "have right to use Ote'e Land" and that any pieces of land given to Maelibina's and Fatakalua's lines remain theirs.

Secondly, the Respondent is allowed to maintain his existing "*development*" inside Ote'e Land. The emphasis here is "new development". The evidence however on the alleged 'new development' have not been very clear.

The Applicant's evidence was that the Respondent planted coconuts and cocoa since 1987, operated piggery projects and a small trade store on the land, and clear new areas for gardening.

As to the allegation of clearing new areas, for gardening, I have already said any new clearing for gardening done within the Respondent's existing "garden land" cannot be in breach of the CLAC decision unless such new clearing is proved to be outside the Respondent's existing 'garden land'. In the present case this court cannot be satisfied on the evidence that the Applicant's complaint in this respect has been made out.

On the Applicant's complaint relating to the planting of cocoa and coconuts, the Applicant himself gave very little evidence to support his complaint. He left Ote'e Land in 1985 and have since been living on Guadalcanal. The Applicant, however,

called his son, Sam Dick who has been living on the land all the time to give evidence in support of his allegation of contempt.

I have already referred to the evidence of Sam Dick earlier. In so far as his evidence on the planting of coconuts and cocoa, Mr. Dick appeared to be uncertain as to when exactly the Respondent had started planting those crops. In his affidavit, Mr Dick stated that Respondent started planting coconuts and cocoa since 1987 but in his evidence on oath, he stated that the Respondent started planting coconuts and cocoa since 1981. The Respondent maintained that he did not plant any new coconuts or cocoa but that he was only maintaining his existing coconuts and cocoa.

Mr. Afutana gave evidence and stated that the Respondent had planted coconuts and cocoa only around his house. The evidence did not show that these were not part of the Respondent's existing development. I bear in mind that Mr. Afutana had lived away from his home in Malaita since 1989. This accounts for the fact that he said he saw coconuts planted around the Respondent's house but did not know when they were actually planted. The court is left with the uncertainty as to when the coconuts and cocoa were planted and also with the uncertainty of whether the Respondent had actually planted new coconuts and cocoa apart from those he had planted before the decision of the CLAC.

I feel the other hurdle which the Applicant has not got over is to establish to the entire satisfaction of the court that the alleged coconuts and cocoa said to be planted by the Respondent were not part of the Respondent's 'existing development' in terms of the CLAC decision. The court cannot, therefore, be absolutely sure whether those coconuts and cocoa were not part of the Respondent's 'existing development'. The Applicant's claim in this respect is therefore not made out to the satisfaction of the court.

The Applicant's other claims of running a trade store and a piggery project by the Respondent, I am afraid, have also run into the same fate. No satisfactory evidence had been adduced to establish that these were 'new development'.

Even if, as the Applicant stated, the trade store started after the High Court case which was in September 1981 and the piggery project was started in 1982, the court would also have to bear in mind the evidence adduced by the Respondent that he did not have a trade store but only a small family canteen in their house which the family had been using even before the High Court case. As to the piggery project, the Respondent denied establishing any such project. The Respondent gave evidence that the pigs in the area belong to the Applicant's son, Sam Dick. On the burden of proof required of the Applicant in this case, I cannot be sure, so that I am satisfied that the Applicant had made out his claims.

The Applicant's claim that the Respondent had extended his village on the land and allowing other people to come and live with him, had not been substantiated. There is no evidence to show that this had ever been done. It is an allegation without substance, at least, not that the court was ever told. I reject that claim also.

Contempt of court is an offence of a criminal nature which may result in the contemnor being sent to prison. It is for that reason that a complaint of Contempt of Court must be proved on the same standard of proof as that of a criminal offence, that is, proof beyond reasonable doubt. See *Hitukera -v- Hyundai & Another and Rasi -v- Dhora Sawmilling Company Limited and others.*

In the present case the evidence do not satisfy the court to the required standard. The onus is on the Applicant who has not discharged it as required of him.

In the circumstances, the court cannot be satisfied that the Respondent had committed a contempt of court and I must find him not guilty of the contempt as alleged.

(G.J.B. Muria)
CHIEF JUSTICE