MANEDAO & OTHERS -v- ROROI & OTHERS

High Court of Solomon Islands
(Palmer J.)
Land Appeal Case No. 2 of 1993
Hearing: 21 July 1993
Judgment: 11 August 1993

T. Kama for Appellant
A. Radclyffe for the Respondent

PALMER J: On the 25th of May 1992, the Central Magistrate's Court (CMC) delivered its judgement in favour of the First Respondents. The Appellants therefore appealed under section 65(2), (3) and (4) of the Land and Titles Act (Cap 93).

The grounds of appeal are:

1. *"That the learned Magistrate had erred in law in hearing evidence in customary ownership in the appeal before him as he has no Jurisdiction to determine ownership of customary land.*

2. *That the learned Magistrate had erred in law in his determination of the appeal by the following:*

   (a) he accepted that the Acquisition officer had the Jurisdiction to determine ownership of customary land;

   (b) he accepted that the Acquisition officer had the Jurisdiction to consider evidence in custom;

   (c) he failed to take into account in his determination pending land dispute between the Appellants and the First Respondents;

   (d) he refused to accept evidence that the Appellants had a decision by the Bugotu Chiefs in respect of the same customary land and records of titles in part of the same customary land;

(e) he accepted that the Acquisition officer had a discretion and the Acquisition officer had validly and properly exercised that Jurisdiction when he refused to accept the Bugotu Chiefs in respect of the same land;

3. The learned Magistrate erred when he accepted the Acquisition officer's findings on ownership of customary land where the Acquisition officer has no Jurisdiction to determine ownership in customary land as a local court.

4. The finding of the Magistrate is against the weight of the evidence before the Acquisition officer."

Pursuant to section 60 of the Land and Titles Act an Acquisition Officer was appointed as the Agent of the Provincial Secretary of the Isabel Province for the purpose of acquiring customary land at Konide, Hograno, Isabel Province. The land was required for an Area Health Centre and was to be leased from the Lessors by the Provincial Assembly.

On the 6th of June 1991 the Acquisition Officer made his determination. I quote:

> *"With these facts, have at this date 6th of June 1991 at Buala, now decided that the Faofago Clan is the owner of the Konide Acquired land for Area Health Centre, Hograno."*

On the 26th of July 1991 the current Appellant appealed to the Central Magistrate's Court under section 65(1) of the Land and Titles Act. That appeal was dismissed by the Central Magistrate's Court.

The statute law which deals with the purchase or lease of customary land by private treaty is to be found in Part V of the Land and Titles Act. Division 1 Of Part V is headed 'Purchase or Lease of Customary Land?

Section 59 states:

> *"Notwithstanding any current customary usage prohibiting or restricting such transaction, customary land may be sold or leased to the Commissioner in accordance with the provisions of this Division."*

It is important to bear in mind the customary context within which customary land is being sold or leased when considering the provisions of Part V of the Land and Titles Act. When one uses the words 'Vendor' and 'Leassor' to describe the sale or lease of

customary land it is important not to be carried away by the English usage of these words.

The word 'Vendor' is described in essence as a seller. But when one looks at the sale of say real property under a contract, then the seller (Vendor) is obliged to show a good title to the interest of which he has contracted to sell. In the Customary context there is no title deed or land register within which evidence of such good title can be manifestly seen. The requirement however in my view is the same. The person purporting to sell or lease the land to be acquired must show a good title.

In the customary context, when one talkes about a good title, in most instances one in basically talking about ownership. So if someone wants to find out if a person has a good title over customary land, the most effective way of ascertaining that is to find out who is the owner. In other words, find the owner and you find a good title.

So a person who wishes to sell or to lease customary land to the Commissioner of Lands or as in this case the Provincial Secretary, must show that he is the owner of that customary land.

I say this with due respects to Mr. Kama's submission in which he stated that rights to sell are not necessarily the same as rights of ownership and that basically what is required under the Provisions of Part V is for a determination on Vendors and Lessors rights but not necessarily on questions of ownership. The case he was referring to in support of this proposition was I think the case of *Lilo -v- Panda* and *Lilo -v- Ghotokera 19980 / 19981 SILR 155.*

There is one other point which convinces me that the findings of the Acquisition Officer must necessarily mean findings as to ownership in custom of the customary land. And this is that on completion of the acquisition procedures and the implementation part of the agreement as stipulated in the Act, there is a transfer of rights in the case of a purchase and in the case of a lease a legally binding relationship is subsequently entered into to the exclusion of all others.

The process of acquisition is started off first by the Acquisition Officer demarcating the boundaries of the land on the ground or upon a map or plan in such a manner as to bring them to the notice of the persons affected. (Section 61(a)).

The Acquisition Officer also enters into a "written agreement for the purchase or lease of the land required with the persons who purport to be the owners or with the duly authorised representative of such owners." (Section 61(b)).

It is important to bear in mind that these requirements are done before any public hearings are conducted by the Acquisition Officer. It is logical and plain common sense therefore that the agreement made under section 61(b) should be with persons who 'purport to be the owners or with the duly authorised representative of such owners.' At that stage of the proceedings it is not known yet who indeed are the true owners of that customary land.

Following those requirements, the Acquisition Officer then publishes a notice -

" *(a) of the agreement made under section 61(b),*

(b) of the arrangements made for a public hearing by him in the area to decide any claims -

(i) that the vendors or lessors named in such agreement are not the owners, or

(ii) that such vendors or lessors do not have the right to sell or lease the land and to receive the purchase money or rent, and

(c) requiring such vendors or lessors and the claimants, if any, to attend." (Section 62)

Under section 63, if there are no claimants, then he shall record that fact. (Section 63(a)). If there are claimants, "he shall hear their claims and determine the identity of the persons who have the right to sell or lease the land and receive the purchase money or rent."

Where there are claimants, there are three things that the Acquisition Officer is required to make a decision on as stated above.

In deciding whether the vendors or lessors are not the owner, it presupposes that the Acquisition Officer would be able in that process to identify who the owners of that land to be acquired would be. For how could the Acquisition Officer determine whether the vendors or lessors are not the owners and I add my emphasis, the true owners of the customary land, but by first or during that hearing, identifying who the true owners are. And similarly how could he know whether the vendors or lessors do not have the right to sell or lease the land and to receive the purchase money or rent but by first identifying, or during that hearing, identify who the persons who have the rights to sell or lease the land. Where there are no claimants then the answer is foregone.

But where there are claimants, he has to hear their claims as well and then to make a determination as to the identity of the persons who have the right to sell or lease the land. A determination requires an active and a purposeful application of ones mind to the claims or issues before one so that a meaningful decision can be made.

A determination as to the identity of the persons who have the right to sell or lease the customary land and receive the purchase money or rent basically boils down to the question of ownership. This is something peculiar to customary rights and ownership.

This is the very reason why the evidence and submissions that came before the Acquisition Officer essentially related directly to the question of ownership of that customary land. It is inevitable that this should be so, for customary rights intrinsically stem from customary ownership.

The parties in this case were aware of that and so addressed the Acquisition Officer along those lines. They were both given equal opportunities to do that. The decision of the Acquisition Officer was also along the same lines, identifying the Faofago Clan as the rightful owner of the Konide land, and thus the rightful person who have the right to sell or lease the land and receive the purchase money or rent.

So although section 63(b) makes reference only to a determination on the identity of the persons who have the right to sell or lease the land and receive the purchase money or rent, such determination is possible only by addressing at the same time the question of ownership.

The Acquisition Officer therefore is not only empowered but obliged to hear customary evidence and to make a finding as to the ownership of the customary land. For only by doing that is he able to identify the persons who have the right to sell or lease the land and receive the purchase money or rent. Customary rights as I have said arise from customary ownership.

Learned Counsel for the First Respondent is correct in pointing out that Section 231(1)(a) of the Land and Titles Act grants jurisdiction to the Acquisition Officer to deal with such matters arising in connection with Customary land.

Grounds 2(a) and (b) must therefore be dismissed.

Inrespect of ground (1), it is not disputed that certain witnesses gave evidence pertaining to Customary ownership before the lower court. In fact a total of six witnesses were called by the Appellant as compared to only two from the 1st Respondent. The Acquisition Officer also gave evidence.

However, in order to understand the reason why the learned magistrate allowed those witnesses to give evidence one needs to refer to his judgement at page 3 in which he made the following explanation.

> *"When I first set to hear this appeal at the Magistrate's Court Central in Honiara on 3rd December 1991 there was no record of the acquisition hearing available in court except the summary of his finding. In this respect I allowed the appellant's witness to relate their custom history regarding their claim of ownership of the land in question. Despite objection raised by Michael Evo, spokesman for the respondent tribe in this court on the ground that the witness is repeating what had been said in the acquisition hearing. I over ruled the objection and insisted to hear this witness and others for the purpose of comparing their evidence in custom whether the Acquisition Officer had properly considered them.*
>
> *The full record of the acquisition hearing was later presented to court prior to the adjournment of this case to be heard here at Buala.*
>
> *I have heard the witnesses of both parties and in particular the Koramata witnesses and upon comparing their evidence with the ones adduced in the acquisition hearing I find them to be the same. Now the question I have to decide here is whether the Acquisition Officer had properly considered the real evidence adduced by the Koramata Clan before him. The Acquisition Officer during the hearing had heard custom facts and then consider them and I read his ruling. I am satisfied as I find that he had considered all the custom facts and made his ruling accordingly. Thus, I am satisfied that the acquisition Officer had properly considered the Koramata Clan's custom evidence."*

At the appeal hearing in the Central Magistrate Central, one of the grounds of appeal of the same Appellant was:

> *".....That Acquisition Officer's conduct of the hearing was not done properly, as to its best, and as such the very basic or real evidence produced by my clan at the hearing, were just being ignored or not taken into consideration, as real facts in the case."*

In his explanation just quoted the learned Magistrate did not have the records of proceedings of the Acquisition Officer available at the commencement of the hearing. He needed to be satisfied that the evidence and submissions on custom were actually considered by the Acquisition Officer. When the records were available he was able to make a comparison and come to the conclusion that they were basically the same.

The evidences he heard were not for purposes of determining customary ownership. But if one wants to make a comparison in terms of presentation, the Appellant certainly would appear to be in a such more advantageous position with six witnesses against only two from the 1st Respondent.

Accordingly, ground (1) of this appeal must also fail.

Inrespect of ground 2(c), the fact that there is a pending land dispute in my view is immaterial. The submission of Mr. Kama inrespect of this is that the Local Courts or the Chiefs have the specialised knowledge in dealing with questions of ownership of customary land and accordingly the Magistrate should have I suppose, stayed the proceedings and allowed the pending land dispute to be sorted out through the normal court processes which had the relevant jurisdiction.

With due respects, the learned Magistrate's jurisdiction covers 'any act or determination of the Acquisition Officer' which any person may be aggrieved at. A pending land dispute will make little difference to the proceedings. Both parties have submitted themselves to the jurisdiction of the Acquisition Officer. They have been given equal opportunities to present their case. They have so done, after which a determination has been made. A pending land dispute will not impinge in any way on what the learned Magistrate is required to do under section 65(1). That ground is dismissed too.

I now turn to ground 2(d).

Records of titles over land which form part of the same customary land and copies of decisions of the Bugotu Chiefs inrespect of the same customary land are only of persuasive authority. Unless those decisions of the Bugotu Chiefs have been recorded and registered as Local Court decisions, they are not binding. Further, those decisions are made inter parties, whereas in acquisition proceedings, all claims are dealt with by the Acquisition Officer.

There is evidence to show that the Acquisition Officer did consider those decisions. He however ruled otherwise. There was clearly evidence for the Acquisition Officer to base his decision on. The learned Magistrate accepted this. Both are not bound by those decisions. Accordingly this ground too fails.

Ground 2(e) must also fail for the same reasons. The Acquisition Officer had properly exercised his discretion within the jurisdiction as expressly granted under the Land and Titles Act. The learned Magistrate made the same finding.

Ground 3 has already been dealt with and must be dismissed. Section 231(1)(a) grants jurisdiction to the Acquisition Officer to determine matters affecting or arising in connection with customary land where there is provision that expressly cater for it under the Act.

Ground (4) must also fail. Section 65(2) and (3) state and I quote:

> *"(2) Any person who is aggrieved by the order or decision of the Magistrate's Court and desires to question it on the ground that it is erroneous in point of law or in holding that the interests of the appellant have not been substantially prejudiced by failure to comply with the procedural requirements of this Division, may within three months of the date of the order or decision appeal to the High Court.*
>
> *(3) The High Court may, if satisfied that the order or decision is erroneous in point of law or that the interests of the appellant have been substantially prejudiced by failure to comply with the procedural requirements of this Division, make such order as it considers just."*

This court has no jurisdiction to substitute its own view of the facts as opposed to that found by the Acquisition officer. Accordingly it has no jurisdiction to make any rulings as to the findings of facts of the Acquisition Officer and whether the weight attached was unfounded. He alone has the jurisdiction to do that and also is in a much better position to do that. ***(See Lilo -v- Panda & Lilo -v- Ghotokera 1980/1981 SILR 155 at page 168)*** The question therefore of whether the finding of the learned Magistrate is against the weight of the evidence before the Acquisition Officer is outside the ambit of this courts powers on appeal.

The appeal is dismissed and the costs of this application is to be borne by the Appellant.

(A.R. Palmer)
JUDGE