

JEHIEL LIFUASI -v-STEPHEN DANITOFEA & OTHERS

High Court of Solomon Islands

(Palmer J.)

Civil Case No. 66 of 1992

Hearing: 10 December 1992 at Auki

Judgment: 8 January 1993

P. Tegavota for Plaintiff

First and Second Defendants in person

PALMER J.: By summons dated 23 November 1992 the Plaintiff seeks to enter judgment on the grounds that the defence filed is not a good defence.

The claim in essence is that the Plaintiffs are the lawful owners of Takiibakwa Land and that there has been constant interference over the land by the Defendants and members of their line.

The history of dispute over the Takiibakwa land go as far back as 1954. Without repeating the details of previous court cases and the parties involved over the land, I am satisfied that it has been established beyond a shadow of a doubt that any litigation over ownership of Takiibakwa land between the First Defendant, Stephen Danitofea and his line and the Fourth Defendant, Kanabaea and his line are res judicata the decisions of 1954 and 1979 respectively.

In the 1954 case, the First Defendant is of the same line as the losing party, whilst the Plaintiff is a descendant of the winning party.

In the 1979 case the Fourth Defendant lost a case in the Local Court over the same land. The winning party was Tabania, a member of the Plaintiff's line.

The First and Fourth Defendants clearly acknowledge that they are bound by those decisions. At paragraph 7 of the Statement of Defence it states:

"The 1991 High Court ruling CC 160/90 HC clearly bars Stephen Danitofea and Kanabaea and the lines they represent from claiming any rights within the areas of the 1954 and 1979 cases and under the same judgment bound

from interfering with any developments the plaintiffs or any members of his line may wish to make "

It would seem to be an added surplusage for this Court to issue an injunction against these two Defendants as their rights have already been clearly defined and any interferences can be taken up as a criminal offence or as a Contempt of Court.

Nevertheless if the Plaintiff should think that an injunction would be more effective, then that injunction is granted as sought. There is in essence no defence to the claim, but an admission. There have been allegations of interference which are denied by the Defendants. However I am satisfied that it would not be improper to impose an injunction.

Stephen Danitofea and Kanabaea and their respective lines are accordingly restrained from interfering with the Plaintiff and his line's use of Takiibakwa land.

No order for costs.

As to the Third Defendant's position, it appears that he is a direct descendant of the person referred to as Daefa in the Court Case in 1954 who was granted rights of usage to his line. In Ward CJ judgment in the case of *Lifuasi -v- Danitofea Civil Case 160/90 unreported judgment given on the 19 August 1991, at page 3 paragraph 3*, he makes mention of Daefa's position. I quote:

"In his ruling, the Deputy Commissioner referred to Daefa and a number of others. However, they were not parties to the case and that part of his decision is clearly obiter. Thus those parties are not bound. It has been stated many times by the Courts that these cases are inter partes. In this case that means the matter is settled between the applicant and his line and the respondent and his line. It does not bind others who may have a claim and they can, if their case has not been before a court previously, bring a claim."

This statement by Ward CJ would seem to state the correct position of Daega and his line; and that is, that he is of a different line to the First Defendant. Accordingly he would be entitled to bring a claim against the Plaintiff and I am aware he has done that.

I am satisfied accordingly that he has disclosed a good defence to this case and the judgment sought is denied.

No order for costs.

The defence set up by Eddie Dolaiano is similar to the Third Defendants. The Statement of Defence filed indicates that he is of a different line to the First and Fourth Defendants and therefore also entitled to bring a claim.

But even if he is of the same line as the Plaintiff he would not be debarred from having any of his customary rights within his line been declared by a Local Court. Further it would not be proper to issue an injunction against such a member within the Plaintiff's line. If there are problems then those should be sorted out within the Tribe or line.

Accordingly the judgment sought against him is also denied.

No order for costs.

The defendants in this case now are Eddie Dolaiano and Frank Daega. I make a point here that Mr Stephen Danitofea can not represent these two Defendants. They must either appear on their own or seek the services of a solicitor.

No order for costs.

(A. R. Palmer)

JUDGE