**JOHN PALM HAUNUNUMANIA -v- MOFFAT PEHOWA AND MARTIN UWOMAE**

**High Court of Solomon Islands**
**(Muria, CJ.)**
**Civil Case No. 122 of 1992**

Hearing: 13th September 1995
Judgment: 17th October 1995

**A. Radclyffe for the Plaintiff**
**P. Lavery for the Defendants**

MURIA CJ: This is a claim by the plaintiff against the defendants based on trespass, a claim which the defendants deny. It is necessary to briefly set out the fact before proceeding further with this case.

The plaintiff and defendants both come from the island of Ugi in the Makira/Ulawa Province. The plaintiff represents his Clan, the Pehuaraouou clan and the defendants represent their clan, the Sumenuouou Clan, in these proceedings which concern **Arona Land.**

There is clearly a long standing dispute over Arona Land between the two parties. The parties first went before the Ulawa Local Court on 11 December 1980 in Case No. 4/80 which was decided in favour of the defendants. As a result of an appeal to the Customary Land Appeal Court on 21 June 1982 the case was remitted to the Bauro Local Court to hear the case which was duly heard. The Bauro Local Court on 17 December 1982 decided in favour of the defendants. The plaintiff again appealed to the CLAC which on 18 November 1983 allowed the appeal. There was no appeal to the High Court against the CLAC decision of 18 November 1983 ("the 1983 CLAC decision")

The present proceedings have been brought by the plaintiff relying upon the 1983 CLAC decision.

The allegations in support of the plaintiff's claim for trespass are firstly, that the defendants and members of their clan had since 1987 planted new coconuts within the boundaries of the plaintiff's land and secondly, that the defendants in 1991 built a house on the plaintiff's land. Both alleged actions by the defendants were said to be carried out without the plaintiff's permission and as such it was a contravention of the 1983 CLAC decision.

I feel it is important to consider the 1983 CLAC decision and its effect on the present claim by the plaintiff. However before I do that, I shall point out the facts which are not in dispute in this case.

It is not in dispute that the defendants had planted coconuts and built a house in area of land as stated by the plaintiff. Martin Uwomae, one of the defendants, frankly said so in court. He said in cross-examination:

*"It is true we planted some new coconuts but they were inside our land."*

Later he added:

*"I know Korengahutohuto Land. It is my land. We planted coconuts there and they were pulled out by the plaintiff. We planted coconuts on our own land.*

*True, I built a house on the same land. It is my land."*

That portion of the defendant's evidence is clearly the summary of the defence position in the present case. To this I shall return later in this judgment.

The other fact, also not in dispute, is that the two parties in this case have a history of argument over the land in question which led to the various court proceedings, both in the Local Court and CLAC. It is further not in dispute that despite the CLAC's advice to the parties to consult with each other in order to resolve the boundaries of their respective areas of land, no such consultation has ever occurred. The only explanation given by the parties was that they had not been able to consult with each other on the question of the boundaries of their land because of the continuous animosity between them.

It is also to be noted that the parties have agreed that each of them have land rights in their respective areas of land within the Arona Land. The CLAC clearly recognised this as can be seen from it's decision. It is the extent of each parties area of land that had not been defined by the court but rather left that to the parties to consult with each other on it with a view to ascertaining the boundaries of each party's area of land. However, as I have already mentioned, no such consultation ever occurred for the reason also already mentioned.

The point of contention between the parties, therefore, is the boundary between the land belonging to the plaintiff and that of the defendants. The defendants agreed they had

planted new coconuts and built a house on the land in question but stated that those were done within the land in which they have primary rights. The plaintiff on the other land insisted that the planting of new coconuts and building of a house were done outside the defendants' land and as such it was inside the plaintiff's land.

The evidence for plaintiff comes from the plaintiff himself and Nathaniel Waena. Both witnesses gave evidence that the boundary between the plaintiff's and defendants' land was marked by a line of coconut trees with "X" marked on each one of those coconut trees. The defendants strongly opposed the plaintiff's suggestion on the boundary line.

I must point out that the evidence adduced both by the plaintiff and defendants as to the precise location of the boundary separating the two areas of land had not been very helpful. The Plaintiff sought to rely on a sketch map which was said to be used in the CLAC hearing. However that clearly cannot be correct since the sketch map used in CLAC was marked as Exhibit "A". The sketch map produced by the plaintiff in this case did not show that it was the same Exhibit "A" as that used in the CLAC hearing. Further, Mr Waena in cross-examination agreed that the sketch map was not the one used in the CLAC which had small coconut trees included in that sketch map. Mr Waena stated that the present sketch map was prepared by the plaintiff for use in these present proceedings and that it only depicts the extent of the boundary.

John Palm Haununumania's evidence shows that he drew the sketch map after the 1983 case yet he claimed that the said sketch map was used in the 1983 CLAC hearing. In fact he said in evidence that he and his relatives made the sketch map in 1992 when he reported an alleged criminal trespass by the defendants to the police.

Not surprisingly the defendants have disputed the correctness of the plaintiff's sketch map. They relied on a map which was used in the 1983 CLAC case which showed the area of the their land. Again that map had not been produced in these proceedings. The production of the maps used in the 1983 CLAC case would have assisted the court, at least, in ascertaining the locations of the area of land belonging to the parties.

For some unknown reason neither of the parties was prepared to produce to the court the Exhibit "A" which was used in the 1983 CLAC hearing. The plaintiff, in particular, bears the onus of doing so especially as the CLAC had clearly pointed out that his clan "have primary rights over ARONA Land as defined in Exhibit A....." It is his claim and he carries the burden of establishing it with relevant facts.

Again Martin Uwomae put the extent of the defendant's land as one mile from a stone near the sea to a big stone in the bush. How can I be sure of that? Without any clear evidence to support the defendants' assertion, it is impossible for the court to ascertain the extent of the defendants' land as claimed either.

The court is left wondering in this case as to the extent of the land belong to the plaintiff as well as that of the defendants. Equally the court has been left with a guess - work as to the boundary separating the plaintiff's land from that of the defendants. The court cannot do that. It is for the parties to the proceedings who must put before the court clear and cogent evidence in support of their claims. Failure to do so would result in the risk of the claims being thrown out.

This is a claim for damages for trespass to land and an injunction against the defendants. The fact of the trespass must be proved. This in turn requires that the plaintiff proves that the defendants had entered his land without permission. It is therefore further necessary to ascertain the boundary where the defendants' land ends and where the plaintiff's land begins. In this case, I am far from satisfied with the evidence in this regard.

The acquittal of the defendant and his relatives of the charge of criminal trespass in the Local Court in 1992 was no surprise at all. That was a criminal case but nevertheless the fact of the trespass had not been established simply because of the uncertainty of the boundary separating the complainant's land from that of the defendants.

Perhaps the solution to this boundary dispute is to adhere to the advice given by the CLAC that the parties consult with each other in order to define the extent of the area where each of them have primary or secondary rights. If by reason of animosity the parties are not able to discuss the question of the boundaries, then appropriate order should be sought to have the CLAC decision complied with. The question of boundary had not been decided on by the CLAC and it is pertinent that this should be ascertained otherwise the two parties will continue to be in conflict with each other due to the uncertainty of the extent of their land.

In the present circumstances the claim for damages for trespass cannot be maintained. The claims for injunction and declaration also cannot be maintained. Accordingly the plaintiff's claim is dismissed with costs.

**(Sir John Muria)**
**CHIEF JUSTICE**