

**HAMUEL -v- W. GEORGE, B. GEORGE, N. HOU, L. ODO,
T. GEORGE, A.G. OLIDELE, R. IRO AND G. MAELALO**

High Court of Solomon Islands
(Awich, Commissioner)
Civil case No. 204 of 1995
Hearing: 24 November 1995
Judgment: 30 November 1995

P. Lavery for Applicant
A. Nori for Respondents

Awich, Commissioner: This is a judgment in motion application filed on 18 July 1995 and presented by learned counsel Mr. Lavery for the applicant, Hemuel Hanite'e. It sought attachment order to commit to prison 8 respondents. The eight were named as, Hedley George, Benjamin George, Nelson Hou, Linsey Odo, Timi George, Anthony George Olidele, Rancy Iro and George Maelelo. The application is based on the order of Customary Land Appeal Court at Malaita in case No. 2 of 1984. The order was embodied in the judgment of the CLAC dated 13th day of March 1985. It was a judgment in dispute over customary land known as Ulo'one, the parties were Hamuel Hanite'e, the applicant and Hedley George the first respondent. The Court was informed from the bar that Hedley George has passed away. The application was proceeded with against the remaining seven respondents who are his children and relatives. Their actions cited as acts of contempt, were based on their claim of right to the land, through George the deceased.

The applicants' case is that on 13.3.85 the Customary Land Appeal Court at Malaita allowed his appeal, deciding that the respondent (George) and his line had no interest in Ulo'one; he Hanite'e was the primary owner. Since then George and relatives and some of their wives have wrongfully trespassed onto the said land. The incidents of trespass occurred on several occasions. In February 1985 the applicants entered the land and cut down crops. In March 1987 they entered the land and threatened Hanite'e and his brother, John Uhimomi with rifle. Between November and December 1994 they entered, removed stones from the land and built a bakery. In February 1995 they entered and cleared bush on the land. These incidents were enumerated in the affidavits of the respondent filed on 18th July 1995, and of his sons, Philip Rahe filed on 18 June 1995. Both affidavits did not have the date on which they were sworn. Learned counsel Mr. Nori for the respondents adopted a magnanimous view about them; he did not take issue on the point. In future that may not be the case and the issue may have to be decided with the possible result that such affidavit may be struck off with result to the fate of the whole application.

In reply the respondents admit some of the incidents of entering referred to by the applicant, but dispute the land areas and in some cases, the dates. About the first incident they say it occurred in 1983, before the case was taken to local court and so the order of the CLAC on 13.3.85 was not in existence then. The second incident, they say occurred about March 1987, about Torowala and Pwapwalaha land, and the person in the incident was one John Uhimoru, not cited in this case. They say that Torowala land has since been decided upon by Chiefs and given to the family of the late George, effectively to the respondents. About the third

incident, the respondents say they removed stones from Tataha Point on Fanalei, a different area of land, and finally that bush was cleared on Pwapwalaha land. In short the respondents say whatever they were alleged to have done on Ulo'one so as to constitute trespass and therefore the alleged contempt of court, occurred on lands other than Ulo'one land, the subject matter of the judgment of CLAC dated 13.3.85 and the subject of this contempt application.

Contempt of court proceedings in civil case is now well established to be quasi criminal. In establishing civil contempt the standard of proof must be beyond reasonable doubt (see *Dean v Dean* [1978] 1FLR517. Some important rules in the law of evidence in criminal cases, are however, not applicable, for example, the law of evidence in criminal cases, requiring disallowing self incriminating evidence and in hearsay do not apply in civil case contempt proceedings. In this case, from the affidavit evidence I have stated above for both sides, it is clear that the differences, in the two versions are so great that, even in an ordinary civil case, the differences would now have to be resolved by either cross-examination or further evidence to establish, even on balance of probability, the dates, the loci of the incidents and at least in one incident, whether the incident of threat involved John Uhimoru and not the applicant. The court finds that there has not been sufficient proof to establish the incidents of contempt. The application for contempt is dismissed with costs in favour of the respondents.

There is need to state a few points that have arisen in this application. The dismissal of this application does not have the consequence of giving the late George and now his relatives who claim through him, any right over Ulo'one land. That land remains the property of Hamuel Hanite'e as decided by CLAC at Malaita on 13.3.85. According to that judgment, late Hadley George, through his father Timothy George and his relatives claiming through him have right over land known as Ulo'ofa. Where Ulo'ofa is has to be clearly established, possibly by Chiefs or the local court. Ulo'one, over which the CLAC decided that Hanite'e is the holder of primary customary right was described in the CLAC's judgment at paragraph 3 in these words:

"It is clear that the piece of land in dispute is only some two acres in extent. It is the land upon which the local school once stood and is only part of Ulo'one land."

From that, it is clear that the CLAC did not decide that the whole of what they regarded as Ulo'one land belongs to Hanite'e. Whatever the local court perceived as the extent of the land in dispute might be, the CLAC confirmed right of the applicant only in respect of that part of Ulo'one that the court described in paragraph 3 of the judgement, which area I have stated above. If any contempt proceedings are to be brought to court, the incident alleged to be contempt must be shown to have occurred within that area only. It appears to me that if there are disputes over the rest of the area, the proper course of action is to take it to the local court, and to ask that court to define the boundary.

It must be borne in mind that the purpose of contempt proceedings founded on civil judgment order of the court is to coerce the contemnor to comply or face contempt sentence of fine or committal to prison. The court will usually be more inclined to find sufficient proof of contempt where the judgment order, the subject of the

contempt application, endorsed with penalty clause, has been served on the respondent. Moreover, contempt order is discretionary; the court may refuse to commit the contemnor to prison even if there has been sufficient proof, should the court be of the view that there are other courses of action which are likely to produce compliance. In this case, the ever looming issue seems to be the uncertainty of the boundary of that part of Ulo'one land that the CLAC decided Hamuel Hanite'e has primary right over. Counsels may well consider the possible courses of action open to resolve that issue, if permanent solution of the dispute is the desired goal.

Dated this 30th day of November 1995 at Honiara.

(Sam Awich)
COMMISSIONER