

SURA (As Representative of her Line) -v- NIALANI

High Court of Solomon Islands

(Muria ACJ)

Civil Case No. 155 of 1991

Hearing: 26 May 1992

Judgment: 18 June 1992

A. Radclyffe for the Plaintiff

A. Nori for the Defendant

MURIA ACJ: The plaintiff in this case sues on behalf of her line and claims damages for trespass to and injunction restraining the defendant and his family from remaining on Peronikura Land.

The defendant denied the claims and in his defence he says that the plaintiff and her line are not the owner of Peronikura land. The defendant further says that he bought the land from the rightful owner of the land whom he says was Giapoa and as such he cannot be a trespasser.

The plaintiff's case is that she and her line are the owner of Peronikura land and that Giapoa (now deceased) who sold the land to the defendant had no right in the land. The plaintiff says he knew of the sale by Giapoa to the defendant but that she refused to attend the feast in 1983 marking the sale because she always maintained that Giapoa had no right to the land and so he should not sell the land. As a result of the sale the dispute between the plaintiff and Giapoa ensued and eventually after the effect of Cyclone Namu had settled down, the Chiefs heard the dispute in 1987 between the plaintiff and Giapoa. In their decision the chiefs decided that the land belong to the plaintiff and her tribe.

Following the chiefs' hearing the plaintiff issued notices to the defendant to vacate the land. The defendant, however, did not leave the land.

Giapoa and the defendant then took the matter to the Local Court but the case was dismissed by the Local Court on 18/7/90 for non-attendance by Giapoa and defendant.

The defendant on the other hand maintains that he bought the land from Giapoa in accordance with custom and that the sale was properly concluded. He has been living on the land since 1979 and no complaints has ever been raised against him. So, the defendant said, he committed no trespass.

The tort of trespass to land is concerned with the interference of a person's possessory right to his land. I have said in *Ganifiri -v- Barai and Maenene Civil Case No. 22 of 1991 H.C. (Judgment given on 5 December 1991)* that:

*"In a case of trespass to land it will only be actionable where the plaintiff has shown that he is in possession of the land or that he is entitled to immediate and exclusive possession as the tort of trespass is basically a violation of the right to possession, not of the right of property. However in certain cases actions of trespass can also be used to determine disputed titles or disputed ownership."*

In *Ganifiri's* case, ownership was not in issue. What was in issue was which side of the land the alleged trespass occurred. The ownership question had already been established by the Local Court in 1966 and confirmed by the High Court in 1967. The defendants in *Ganifiri's* case obtained their title to the land from one Maelimani whose ownership over the land had not been challenged. The plaintiff's claims in *Ganifiri's* case were dismissed.

In the present case, the evidence shows that the defendant has been living on the land since 1979. He was allowed to do so by Giapoa. It is also clear from the evidence that as a result of the defendant being allowed into the land by Giapoa, a dispute arose between the plaintiff and Giapoa. The plaintiff disputed Giapoa's right over the land. The evidence shows, and I accept, that even before 1983 the plaintiff had already disputed Giapoa's right over the land.

It is also obvious from the evidence that despite the plaintiff's dispute over Giapoa's right to sell the land to the defendant, Giapoa went ahead and sold the land in 1983. Giapoa's action led to the plaintiff referring the matter to the Chiefs in 1986. In 1987 it was decided by the Chiefs that the plaintiff was the rightful owner of Peronikura land and not Giapoa.

The Chiefs' decision was challenged in the Local Court by Giapoa and there is evidence that he had the backing of the defendant. However, on 18 July 1990 the Local Court struck out Giapoa's claim, and confirmed the Chiefs' decision that Desy Sura (the plaintiff in this case) was the rightful owner of Peronikura land.

Mr Nori argued that the defendant has validly acquired his rights over the land through Giapoa and for the plaintiff to establish trespass on her land she must show

conclusively that she is the owner of the land and not Giapoa.

Mr Radclyffe, on the other hand submitted that the plaintiff need not prove her ownership conclusively. Counsel further argued that if the plaintiff is the owner of the land the defendant could not have obtained a good title from Giapoa.

Counsel for the plaintiff further contended that the defendant could not rely on his claim as a bona fide purchaser as he knew about the plaintiff's dispute against Giapoa over the ownership of the land even before the 1983 transaction between Giapoa and himself.

It is not disputed that on 28 September 1987 the Chiefs heard the dispute between the plaintiff and Giapoa over the ownership of Peronikura land and the decision was made on 10 October 1987 when it was decided that the plaintiff was the rightful owner of Peronikura land. It is also not disputed that the defendant has been living inside Peronikura land, although at one stage he was suggesting that the name of the land was Oba. The suggestion by Counsel for the defendant is that the defendant cannot be a trespasser because of his occupation of the land through a valid purchase transaction with Giapoa.

It cannot be doubted that the plaintiff, even if she has not been occupying the land herself, her tribe who owned the land with her, has been in possession of the land. However even if the plaintiff has not been in possession of the land, by virtue of the Chief's decision granting the ownership of the land to her and her tribe, she is entitled to immediate possession of the land. Therefore, in my judgment, the plaintiff has established her right of possession over Peronikura land entitling her to sue for trespass. The plaintiff does not have to prove her title conclusively. As long as her right to possession has been interfered with the plaintiff can bring an action for trespass.

As to the validity of the 1983 sale to the defendant, the position of Giapoa before the 1987 Chiefs' decision must be considered. Although disputes had already been made with Giapoa over the ownership of the land even before 1983, there was no decision made between Giapoa and the plaintiff as to who in custom owns Peronikura land until 10 October 1987. The position must therefore be that before the 10 October 1987, both Giapoa and the plaintiff had competing claims of ownership right over Peronikura land. Thus despite the existence of the dispute over ownership of the land between Giapoa and the plaintiff, it cannot be said that Giapoa had no authority to permit the defendant to occupy that part of the land in question. However, whether Giapoa could actually proceed and sell the land is another matter altogether.

In this case we are concerned with the occupation by the defendant of the

plaintiff's land. I say the plaintiff's land because unless there is anything to the contrary, the Chiefs have clearly decided that the land in question belongs to the plaintiff. The right of ownership or title over the land is a matter which obviously is of relevance as it provides the party who has such right or title with a defence to an action of trespass. Right of ownership or title is also relevant where the defendant disputes the exclusiveness of the plaintiff's possession.

On the evidence I find the defendant has been occupying the plaintiff's land since 1979 with the permission of Giapoa whose right of ownership over the land then had not yet been decided nor that of the plaintiff. Thus the entry by the defendant onto the land prior to the Chiefs' decision in 1987 could not be said to be without authority.

In 10 October 1987, the ownership of the land had been given to the plaintiff. That decision granting the right of ownership over the land was made by the Chiefs. Thus I do not have to decide on the issue of ownership of the land we are dealing with here. As a matter of law this Court has no power to decide on the question of ownership of a customary land. The law gives the power to do so to the Chiefs, Local Courts and Customary Land Appeal Courts. This Court therefore must accept the unchallenged decision on the question of ownership of customary land of any of the abovementioned authorities.

In this case the Chiefs' decision of 10 October 1987 had been confirmed by the Local Court on 18 July 1990 after striking out Giapoa's claim of ownership over Peronikura land. There has not been any further challenge to the plaintiff's right of ownership and so the Chiefs' decision granting that right to the plaintiff must stand and this Court must accept it as conclusive evidence of the plaintiff's right of ownership unless there is shown good reason why it should not be accepted.

Parliament passed the law in 1985 empowering the Chiefs to hear and determine issues over customary land, including question of ownership. Parliament considered it appropriate that such persons should decide on such matters. It will be absurd to suggest that Chiefs' decision over customary land cannot be recognised by this Court or any Court particularly where the Chiefs have made their decision in the exercise of their lawful authority conferred on them by the Local Courts (Amendment) Act 1985.

The Chiefs' decisions over customary land properly reached must and will be respected by the courts subject of course to successful challenges made to such decisions.

I therefore cannot accept the suggestion by Counsel for the defendant that this Court cannot accept the Chiefs' decision as conclusive on the right of ownership over

the land in question. As I have accepted that the right of ownership over Peronikura land had been clearly and conclusively decided by the Chiefs in favour of the plaintiff, the lawful authority from whom permission should be sought before entry or occupation of Peronikura land as from 18 July 1990 must therefore be the plaintiff. The defendant's right acquired through purchase from Giapoa, although confers on him the right to occupy the land until 10 October 1987, it cannot provide him with a defence to the plaintiff's action of trespass. The period of such trespass, must I feel, commence on 18 July 1990 and not the date of the original entry.

The defendant therefore by his continued occupation of the plaintiff's land since 18 July 1990 has committed the tort of trespass.

Before I leave this matter I add as an observation on the use of an action for trespass to land to recover the plaintiff's property. This practice has grown on the increase. Action of trespass to land is not a means of recovering the plaintiff's property, and that the remedies of damages and/or an injunction will not suffice to restore possession of the land to the plaintiff especially in cases where the defendant is in possession of the land. This is so especially where a defendant has come into possession of the plaintiff's land by other means than by committing trespass. An action of ejectment would be more useful.

The plaintiff's claim for damages for trespass and injunction must succeed with damages to be assessed but limited to \$5,000.00. The injunction granted is in the following term:-

**The defendant and his family be restrained from continuing to remain on the plaintiff's land known as Peronikura Land.**

Costs to the plaintiff.

(G.J.B. Muria)  
ACTING CHIEF JUSTICE