

ROBERT TEAL PULE
(Representing the KAKAU TRIBE)

V.

ALFRED RIA
(Representing the GAUBATA TRIBE)

And

ISHMAEL KAMEDA

JSR LIBRARY

SEP 27 1995

PACIFIC COLLECTION

High Court of Solomon Islands

(Palmer J.)

Civil Case No. 239 of 1995

Hearing: 25 September 1995

Judgment:

T. Kama for Applicant

A. Radclyffe for Respondent

PALMER J: The Applicant, Robert Teal Pule, seeks orders, inter alia, for certiorari to have the determination of the Ngella Chiefs made on 12 May 1995, regarding the question of "rightful primary landowners" over MBIKE ISLAND, LR 208, Parcel No. 169-001-1 removed to this court and quashed.

Mbike Island is registered land under the Land and Titles Act (Cap. 93). The perpetual estate therefore is held by the Commissioner of Lands.

It is the intention of the Commissioner of Lands to return the island to the former or original customary landowners, as a matter of Government Policy. One would have thought that this would be a simple exercise, with the Commissioner of Lands retracing his rights of ownership over the said island, to the original title deeds from which his right of ownership had been derived. Instead he thought it appropriate to have the matter referred to the Chiefs of the area to make a determination which will assist him in identifying the former landowners.

Accordingly, on or about 15 March 1995, the Commissioner of Lands wrote a letter to Rev. Alfred Ria, (the First Respondent) informing him that the question of "rightful primary landowners" had been referred to the Chiefs (a copy of that letter is annexed to the affidavit of Robert Teal Pule and marked "RTP5").

The Chiefs of Ngella duly convened and made a determination in favour of the First Respondent on 12 May 1995. This is the decision for which the Appellant now makes this application for orders of certiorari.

It is my view that this application can be shortly disposed of. One of the distinguishing features of the remedy of certiorari is that it lies to bring up to the court and quash something which is a determination or a decision affecting the rights of others. See *Regina -v- Macfarlane* (1923) 32 CLR 581, and *Regina -v- St. Lawrence's Hospital Statutory Visitors ex p. Pritchard* [1953] 1 WLR 1158 at 1166.

In the particular facts of this case, the determination by the Ngella Chiefs cannot amount to a determination or decision which would affect the rights of others. The Ngella Chiefs had been asked by the Commissioner of Lands to perform a particular task, and then report back to him. The decision of the Ngella Chiefs is not binding on anyone. It does not bind the parties nor the Commissioner of Lands. Also it was not initiated under any Act of Parliament as in the case of a Land dispute under the Local Court (Amendment) Act of 1985. It was merely done at the instigation of the Commissioner of Lands. The person who will make the final decision or determination that will affect the rights of others in this case, is the Commissioner of Lands; not the Ngella Chiefs. The determination of the Ngella Chiefs with respect, can be compared to a mere report or recommendation. The Ngella Chiefs make their determination, then forward it to the Commissioner of Lands, who will consider it before making his decision. To that extent, the determination of the Ngella Chiefs cannot be subject to orders of certiorari, and this application with respect has been misconceived.

For the above reasons, the Notice of motion seeking orders inter alia that the determination of the Ngella Chiefs made on 12 May 1995 be removed to this court and quashed is refused.

ORDERS:

1. Application is refused;
2. Costs of the First and Second Respondents to be paid by the Applicant.

ALBERT R. PALMER

A. R. PALMER

JUDGE