

MERLE AQORAU -v- TERRY TALASASA AND OLLIE TALASASA

High Court of Solomon Islands  
(Muria, CJ.)

Civil Case No. 90 of 1994

Hearing: 12th May 1995

Judgment: 15th June 1995

P. Lavery for Plaintiff

A. Radclyffe for Defendant

MURIA CJ This is an application for an interim injunction brought by the Plaintiff to restrain the defendants, their servants or agents from entering upon Sisiata Land for any purpose whatsoever and in particular to cease and desist from constructing a building thereon.

On 3 June 1994 an application for injunction brought by the plaintiff in exactly the same term was refused by the Court. The present application has been brought because the plaintiff now says that there have been further constructions of buildings in the said area by the defendants.

In the course of argument Counsel for the plaintiff conceded that any order made should not restrict the defendants' right to use the coastal road which is also used by the public in and around the area. Counsel also conceded that the map attached to the application was not suitable for the purpose of the order sought.

Counsel for the plaintiff also stated that it was not the intention of the plaintiff to evict the defendants from the land but rather to stop the defendants from constructing houses on the land next to the area where they are presently residing. That land, says the plaintiff, is Sisiata Land which she claims to be hers.

The defendants on the other hand argued that the land where they are residing and building their houses is inside Kazukuru Left Hand which had already been decided by the

Courts as belonging to them. As such the plaintiff does not have any right in the area she now claims.

The principles governing the issue of injunction have already been authoritatively laid down by the Courts and I am not going to repeat them here. I need only point out that that once an injunction has been granted, any disobedience of it will result in a liability to attachment and imprisonment. This is why the terms contained in the injunction must be precise. This was pointed out in *Cape Esperance Company Ltd & Others -v- Success Company Limited & Another (1994) Civil Appeal No. 7 of 1994 (C.A)*, (judgment delivered on 20 June 1995) where the Court said:

*"Since disobedience to an injunction entails a liability to attachment and imprisonment, it is essential that any order be expressed in terms making it clear from the beginning precisely what it is that those affected by it may or may not do".*

That being so, it must also be pointed out that a party seeking injunction must define clearly and precisely the area, where the injunction sought is over lands, to be covered by the order. Failure to do so would result in the applicant running the risk of his application being refused on the ground of ambiguity. But not only that such an application would suffer the fate of ambiguity, it would also create unnecessary risk of unintentional breach of the order by the respondent if such order is made.

It is not at all surprising that Mr. Radclyffe strongly opposed the application in this case. Not only that any restraining order sought in this case against the defendants would affect their right to use a public road, the area of the land which the plaintiff said was Sisiata Land had not been clearly delineated, a fact which the plaintiff by her Counsel conceded in Court. There is a sketch map which the plaintiff referred to, but that sketch map is clearly unsatisfactory for the purpose of an injunction order. It shows the land claimed by the plaintiff as sisiata Land bounded inland by the Munda Airfield and two parallel lines, one to the west and the other to the East. There are no clear indications as to whether the points where the parallel lines end represent particular physical features on the land itself so as to make it clearer where the boundaries are.

Inside the same land is the area of land used by the defendants to plant coconuts (and as the court had heard) since 1972 and build houses which were marked on the sketch map. There are also houses shown on the sketch map and marked "MA" which are the plaintiff's and her relatives' houses. It is shown also that between the plaintiff's houses and those of the defendants' children's houses there is a dotted line. The dotted lines are said to

be a fence erected by the defendants. All these developments are inside the land which the plaintiff says is Sisiata Land. As the plaintiff now says that she does not wish to evict the defendants, where, as far as on the sketch map is concerned, is the area to which the defendants should be restrained from entering? This unfortunately is far from being certain and would therefore be not right for the court to issue an injunction which lacks clarity and which will be incapable of being enforced with certainty.

There is also a further difficulty raised in this case. The plaintiff now says that she does not wish to evict the defendants but only to stop them from planting new coconuts and building houses in the area concerned. Yet, that is the same area which the plaintiff now seeks to restrain the defendants from entering. The plaintiff deposed that the area she now claims is the same area where the defendants had planted coconuts in 1972 and had built their houses. If the plaintiff does not intend to evict the defendants from the same area, then it cannot be comprehended as to why she now seeks an order from the court to restrain the defendants from entering the very same area of land. The effect of such an order is to make the defendants stay out of the land.

On the best view for the plaintiff, the court is being asked to issue an order restraining the defendants from entering the land now that the Chiefs have decided that she has right of ownership in the land in question. While on the basis of the Chiefs' decision, there is material before the Court upon which the plaintiff can be said to appear to have some legal rights in the land, the difficulties raised in the present application and to which I have already alluded remained unresolved. They too, just as much as showing an apparent legal interest in the land, bear heavily in the mind of the Court when exercising its discretion in an application for an injunction.

The question which will be ultimately decided by the Court is whether the plaintiff should be entitled to a permanent injunction against the defendants in this case. That, of course, entails a conclusive finding by the Court that the Gumi Gemu Tribe represented by the plaintiff is the owner of the land in question. That is the serious issue to be decided on in this case as far as I can see. But before that can be resolved, it would not be proper to issue an injunction as requested against the defendants who since 1972 have been occupying and using the land in question and whom the plaintiff now says that she does not intend to evict.

The other point raised by Mr Radclyffe is on the interpretation of section 8D of the Local Court Act (As Amended). I do not think I should deal with that point in this application as it challenges the effectiveness of the chiefs' decision which may very well affect the

substantive issue to be tried later in the main action. One of the parties may wish to challenge the Chief's decision. That is a matter for the parties to decide.

It seems to me that the proper course to take in this case is to have the matter proceeded with in the usual manner as soon as possible.

Having considered the application, I must, in the circumstances as I have found, refuse the application.

The plaintiff to pay the defendants' costs in the cause.

(Sir John Muria)  
CHIEF JUSTICE