

GILBERT LAMASI V. THE REGISTRAR OF TITLES, THE COMMISSIONER OF LANDS, MARK SIKO, ROBERT AFA SAU, EDWARD GADA, EVANS PARI AND DOUGLAS PURUMANA.

High Court of Solomon Islands
(Palmer C.J.)

Civil Case Number 325 of 2003

Hearing: 13th August 2004
Ruling: 16th August 2004

P. Watts for the Applicant
Attorney General for the first and second Respondents – no appearance
R. Ziza for the third to seventh Respondents.

Palmer C.J.: The third to the seventh respondents, Mark Siko, Robert Afa Sau, Edward Gada, Evans Pari and Douglas Purumana, (hereinafter referred to as “the Respondents”) are the registered joint owners of the perpetual estate in parcel number 089-002-3, also described as LR 688 Sidu (hereinafter referred to as “Sidu land”). The area of Sidu land is approximately 3,896 hectares. It was acquired by the Commissioner of Lands on behalf of the Government, from James Sau, Mark Siko and Hugo Turabela, persons identified as the representatives of three landowning ‘groups’, the Rumu, Sasau and Makara, in 1971. It was then transferred to these same three representatives as joint owners sometime in 1973. In or about April 1997 it was further transferred to the Respondents.

The starting point for Sidu land therefore must be that it is registered land and subject to the provisions of the Land and Titles Act (cap. 133) (“LTA”). Section 118 of the LTA guarantees title of the registered holders. To overturn title of the Respondents section 229 of the LTA allows an application to be brought to this Court by way of rectification on the grounds of mistake or fraud. Unless the Applicants can bring their application or claim within the compass of section 229, it is very difficult for such title to be overturned. The other matter which the Applicant has to bear in mind is the time limit which would apply to any claim or action he wishes to commence.

The Applications of the Applicants.

On 5th December 2003, the Applicant commenced action in this court by way of Originating Summons for a number of declarations including relief by way of prerogative writs for orders of certiorari and mandamus. The orders sought were as follows:

“A. (1) Whether non-compliance with the procedures for acquisition as under section 62 LTO (Lands and Titles Ordinance) renders the acquisition and subsequent registration null and void.

(2) Whether the agreement entered into by an officer other than an acquisition officer appointed as under sectionLTO affects the agreement entered into by F. Waleilia and the three registered trustees over SIDU LAND which is LR 688 at Santa Ysabel.

(3) Whether the FITIPOGU Council of Chiefs have rightly dealt with the land as being a customary land by virtue of their determination made on the 22nd day of August 2002.

B. If the answers to questions 1, 2, and 3 above is in the affirmative, then the court is humbly asked to grant declarations that:-

- (i) *the acquisition proceedings culminating in the registration of the 3 trustees namely James Sau, Mark Siho and Hugo Turabel be declared null and void.*
 - (ii) *The land known as SIDU LR 688 be declared as still being a customary land.*
- C. 1. *If the court should find that the acquisition proceedings are ulid then for orders that:-*
- (i) *the certiorari be issued so that the register be removed to court to quash the registration of James Sau, Mark Siho, and Hugo Turabel as the registered owners of SIDU LR 688.*
 - (ii) *The mandamus to compel the Registrar of Titles to rectify the Register and substitute therefore the names of the Representatives of SINAGI-NAMERUFUNEI dan as registered owners of SIDU LR 688."*

The application by Originating Summons is covered under Order 58 of the High Court (Civil Procedure) Rules, 1964 ("the Rules"). It allows declarations to be sought (i) by any person claiming under any will, deed, or other written instrument to apply for a determination of any question of construction arising under the instrument and for a declaration of the rights of such persons; or (ii) by any person claiming any legal or equitable right in a case where the determination of the question depends upon a question of construction of any provision of a written law.

The questions posed for determination in the Originating Summons relate to the propriety or regularity in the actions of the Commissioner of Lands ("the Commissioner") when effecting registration; that the registrations were defective on the grounds of non-compliance with statutory requirements; and that the appointment of the acquisition officer who signed the agreement for the purchase of Sidu land was irregular. The legal hurdle which the Applicant faces by coming through that route relates to the statutory time limit of twelve years set out in the Limitation Act (cap. 18) - section 9(2). I have carefully considered the matters pleaded in the Originating Summons and the document purporting to be a Statement filed under Order 61 rule 2 of the Rules, but there is simply nothing to indicate that the time limit should not be applied to them. The Originating Summons filed 5th December 2003 therefore is fundamentally defective for that reason and cannot be entertained by the court.

If the grounds of fraud or mistake are to be relied on as grounds for unraveling the decisions of the acquisition officer or the Commissioner, then these must be **expressly pleaded**. That has not been done under that application.

There is a further defect to the manner in which the application was lodged. This relates to the relief sought for prerogative writs. The procedure for the issue of prerogative writs is set out under Order 61 of the Rules. Rule 2(1) requires that leave must first be obtained. Rule 2(2) requires that such application shall be made ex parte and accompanied by a statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought, and by affidavits verifying the facts relied on. Whilst the Applicant had filed a Statement purporting to be made under Order 61 Rule 2, it failed to set out the **grounds** on which the application was based. Secondly, no ex parte summons was filed for leave. The only application filed was an application to hear the originating summons filed 12th March 2004. That application therefore was also defective and should not have been entertained as no leave had ever been obtained in the first place to commence proceedings for prerogative orders.

On 7th April 2004, these defects were pointed out to Counsel for the Applicant. The Applicant now seeks leave to commence judicial review proceedings under Order 61 rule 3 based on the grounds of fraud. No accompanying statement however has been filed pursuant to rule 2(2) of Order 61 in support of the application for leave. The previous Statement filed 5th December 2003 cannot be relied on as sufficient as it contains no details of the grounds relied on for the application. The purpose of filing a statement is so that the Applicant can spell out for the benefit of the court, the particulars of the alleged fraud relied on. In the Annual Practice 1961, volume 1, which contains an update of the Rules of the Supreme Court, 1883 at page 451, the learned Authors state:

“When the pleader seeks to avoid the Statute of Limitations by pleading concealed fraud, he must state his case with the utmost particularity, or the pleading may be struck out under O. 25, r. 4, (equivalent to Order 27 rule 4 of the Rules) or under the inherent jurisdiction of the Court.”

No particulars of the concealed fraud have been provided. The application for leave therefore is defective as well to that extent.

Secondly, rule 3 fixes a time limit of six months for applications for prerogative writs. The time limit expired some thirty or so years ago. It appears that the allegations of fraud which the Applicant seeks to rely on were alleged to have been discovered in or about 2001. In any event, he is still required to apply for extension of time. He can only apply for leave after extension had been granted. He has not done that. This application therefore is also premature and defective.

Finally, I pointed out earlier on in this judgment that this case is governed by the provisions of the LTA. Another route which the Applicant could have taken is by Section 229, for rectification of the register on the grounds of fraud or mistake. He has not opted for this route and so there is nothing further to consider.

As far as this application is concerned however, it must be dismissed with costs.

Orders of the Court:

- 1. Dismiss application for leave with costs.**

The Court.