IN THE WESTERN MAGISTRATES COURT

CC no. 56/2001

Civil Jurisdiction

IN THE MATTER OF: **PART V OF LAND AND TITLES ACT (Cap 133)**

And:

IN THE MATTER OF: **ACQUISITION OF LINGANA LAND**

BETWEEN:	1.	**TERRY TALASASA**	**Appellants**
	2.	**RONALD BEI TALASASA**	
	3.	**IAN TALASASA**	
And:	1.	**REX BIKU**	**Respondents**
	2.	**MERLE AQORAO**	
	3.	**ACQUISITION OFFICER**	

JUDGMENT

This is an appeal against the decision of the Acquisition officer on the upper Kekehe land Munda or a portion of land known as Lingana land (herein after referred *"Lingana Land"*).

The grounds of appeal relied on by the appellant are:-

(1) That the Acquisition proceeding which was alleged to have been conducted on 13th September 2001 at Munda was a fake proceeding and never properly conducted. The applicants were never properly informed of the exact time and date.

(2) That the 2nd defendant was bias in his decision. He is a personal acquaintance of the first defendant. The second defendant should never have been appointed to deal with the said acquisition.

(3) That the land in question has been a subject of past litigation and should never have been a subject of any acquisition proceedings.

Brief Background

By notice of appointment dated 25th June 2001, the Provincial Secretary – Western appointed James Nage as the Acquisition Officer for the purpose of acquiring customary land at Munda, New Georgia, Western Province on the interest of Ronnie & Roslyn Kidoe for commercial/industrial and other related activities. His appointment was made pursuant to section 61(2) of the Land and Title Act (Cap 133)(herein after referred to "the Act")

On the 6th August 2001, the Acquisition officer made an Agreement with Rex Biku and Merle Aqorau who claim to represent the ownership of the piece of land subject to the Acquisition.

And on 13th September 2001, at the public hearing, the Acquisition officer determined and recorded that there was no claim against the agreement he had made with Rex Biku and Merle Aqorau on 6th August 2001.

It is from the agreement and determination of the Acquisition officer that the Appellants appeal to this court.

Before dealing with the points of appeal it is important to decide on an issue relates to High Court cases referred to by the parties. This is so, as it concerns the area or location of the land subject to this appeal.

The appellant submitted that the ownership of the land has been determined by the High Court and they referred to ***Jacob Zinihite v Edward Biku Native land appeal case No. 9 of 1971(Unreported)*** and ***Edward Biku V Jacob Zinihite & Milton Talasasa Native Land Appeal No. 8 of 1972.***

They argued that the area and ownership of the land subject to this acquisition is within area of the land determined in the decision of the above cases. They are the primary owners while the respondent has the secondary right.

The first Respondent in his reply submitted that the High Court cases referred to by the appellants concern or relates to the land called "Konoki" alone and does not cover Lingana land.

I have pursued the record of the Judgments referred by the parties and satisfy that the Lingana land is within the area determined in the decision of the High Court in Native Land Appeals cases No: 9 of 1971 and Case No: 8 of 1972.

Ground One

The issue, which the appellant seek to raise in this ground, relates to fact and law or procedure ie: the manner in which the Acquisition officer conducted the Acquisition.

The appellants submitted that they became aware of this acquisition, by a notice of public hearing of any claim on or against the agreement made between the Acquisition officer with Rex Biku and Merle Aqorau who claim to represent the ownership of the Lingana Land.

The first Appellant picked a copy of the notice and went to the Acquisition Officer at Kokeqelo, Munda and raised his objection and claim to him. He also handed to him a copy of decision of the High Court case Native Land case No. 9 of 1971. In raising the objection and claim he also requested that the public hearing scheduled for 6th September 2001 be conducted at Lambete Court house.
On the 6th September 2001, the first appellant and others went to the courthouse but the public hearing did not proceed. Again on 12th September 2001, the hearing did not proceed, as some chiefs from Rendova used the courthouse at Lambete. And the appellant and his group went home.

It was on the 13th September 2001, the first appellant's sister Mrs. June Talasasa informed him that the public hearing was conducted that very day and had concluded.

Upon that, the first Appellant went again and protested to the Acquisition officer. The Acquisition just laughed and told the first appellant to appeal to Magistrate's court.

In support of the appeal the Appellants called June Talasasa Ziru who gave evidence on what had happened on 12th and 13th September 2001.

In her evidence Mrs. June Talasasa Ziru said that she learnt of the Acquisition public hearing for 12th September 2001 from her brother who is the first Respondent. On the 12th September 2001, she went to the public hearing at Lambete court house, but there was no hearing as the venue intended for was public hearing was occupied by chiefs from Rendova.

On the next day hearing 13th September 2001 she was at old terminal building at Lambete, Munda with her cousin, Rex Wickham and Dr. Ziru. As they sat there, she saw James Nage (Acquisition Officer), Rex Biku, Merle Aqorau and

Ronnie Kidoe walked pass toward the court house. Upon seeing them, she thought it might be the day for the public hearing of Lingana land. Accompanied by Rex Wickham and Sanga, they followed the respondents to the courthouse. On their way, she sent her cousin to call for Bei Talasasa and continued walking to the courthouse. On arrival there, she saw the Acquisition officer and the respondents coming out from the courthouse. Mrs. Ziru enquired about what had happened and John Talasasa told her that the acquisition hearing had just completed.

John Talasasa shook hands with Rex Wickham and advised him not to follow the appellants, as he is the successor. An argument erupted between Mrs. June Talasasa Ziru and John Talasasa and Ronnie Kidoe over the manner of the public hearing.

In his submission the second appellant submitted that the Appellants intended to attend the hearing and relied on the letter of objection handed to the Acquisition officer by the first appellants. Their objection has two fold: (i) Claim or objection to the land concerned being acquired and (ii) objection of the Mr. James Nage for being appointed as acquisition officer. The appellants were aware of the schedule hearing on 6th September and 12th September 2001 other than the one purported to be held on 13th September 2001.

The duties of the Acquisition officer are set out in Part V of the said Act. Under section 62 of the Act, he is required inter alia, to "make to written agreement for the purchases or lease of the land required for with the persons who purport to be the owners or with the duly authorized representative of such owners". This was done as appeared to what purported to be the record of proceeding made by the Acquisition Officer. The persons he identified were the first and second Respondents. Section 63 requires him to publicize by way of written notice in such matter as he considered to be adequate or most affective for the purpose of bringing to the attention of persons affected details inter alia, of that agreement and of another for public hearing which would be held to hear any contrary claim.

The issue is whether a public hearing was held on 13th September 2001 and if so whether a notice for public hearing was published as requires under Section 63 (b) of the Act.

An Acquisition public hearing is quasi- judicial proceeding. Such, therefore required a record of proceeding and obviously for the full compliance of section 63 and 64 of the Act. Non-compliance may render the process declared invalid.

The record of proceeding made available to the court is typed on a ¾ page (A4 size paper) and consists of four (4) paragraphs.

> Para. 1 relates to the appointment and the purpose of acquisition ie: commercial, industrial and residential and other related activities.
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> Para. 2 make reference to an agreement with Rex Biku and Merle Aqorau (Mrs) who claim to represent the ownership of Lingana land.
>
> Para. 3 make reference to the postponement of the public hearing of 6th September to 12th September and 13th September 2001.
>
> And para. 4 make reference to the hearing purported to be held on 13th September 2001 and determination of no claim.

A record of proceeding is important in the Acquisition process as Section 64 of the Act requires inter alia, that *"**if there is no claim he shall record in writing that fact and date of such record or determination of the claim**"*. Also Section 65 of the Act requires such or similar record in writing. The brief outline above is not satisfactory. And cannot be taken as record of proceeding or report of this acquisition.
What the Acquisition officer may also relied on as his record in Form CL 5 and CL 6 and dated 13th September 2001 are not a record of proceeding but notices as required by Section 65(d) of the Act.
It is my view that the above or what purport to be the record of proceeding of Acquisition is not record of proceeding, but merely a brief outline of what had happened during the acquisition process.

The notices appointed the public hearing was to be held on 6th September 2001, at 9am ***at Kekehe area or on the site.*** However, the brief record or report of the Acquisition Officer stated the other venue i.e.: ***Lambete courthouse.***
There was no public hearing held on that day at either places although the parties went or gathered at Lambete courthouse. It was on the 13th September 2001 Lambete courthouse that the Acquisition determined that there were no claims.

The other notices for public hearing of any claim against the agreement made with the two respondents, and as published in Form CL3 (not dated) and Form CL 4 to the Respondents dated 6th August 2001, also stated that *"he wish to hold a public hearing on 6th September 2001 at 9am at Kekehe Area (site)"*

But the brief record or what purported to be the record of proceeding stated:

"On Thursday 13/9/2001, at 10 o'clock am we resumed to the court house to conduct the public hearing. Although the notice of the hearing on 13/9/2001 were fully addressed to the two parties (Rex Biku's party), Ronald Bei Talasasa (JNR) were not present, Ronald submitted his objection two weeks before hearing to me....."

There is no evidence before this court to suggest that a notice for the hearing on 13th September 2001 at Lambtete courthouse was published as required by Section 63 of the Act.

The lack of notices for the hearing on 13th September 2001 and proper record of proceeding clearly shows that the acquisition officer did not comply the requirement of Sections 62, 63 and 64 of the Act.

Ground 1 should allowed:

Ground Two (2)

On this ground, the appellant submitted that the Acquisition officer was biased in his decision, as he is a personal acquaintance of the respondents. The Acquisition officer and first respondent have known each other during the handling the money for Ziata Land when the former was with the Lands office in Honiara.

In support of this allegation the appellants refer to the evidence of June Talasasa Ziru, when respondents walked together to Lambete Courthouse to the purported hearing on 13th September 2001 and Acquisition officer determined that there was no claim against his earlier agreement with the respondents for the lease of Lingana Land.

In his submission, the Acquisition officer said that the Lands Office in Honiara handled the Ziata land issue when he had already suspended and left the office.

Justice must not only be done, but must seen to be done. If there is a real likelihood of bias on part of the court, or quasi-judicial body, for that matter, the Acquisition officer, justice cannot really seen to be done, then a decision of the Acquisition officer must surely fall.

As has been held by courts in this country, the test must be one of a ***"real likelihood of bias"*** according to a right-minded person. Such is something more than mere suspicion of on part of the court or quasi-judicial body.

In this case it was submitted that the first Respondent and the Acquisition officer have known each other when the latter was working in the lands office in Honiara and handled the Ziata land money.
Appellants also relied on the evidence of June Talasasa Ziru that the Respondents was walking together to the Lambete Court house the time the purported public hearing was held on 13th September 2001.

There is no evidence before the court to establish to link the respondents with the Ziata land money. The suspicion here relates to the evidence that the Respondents walked together towards the Lambete court and then a few minutes later they were seen coming out together from the courthouse.

Had this walking together to Lambete courthouse for the public hearing, can be argued that a reasonable by-stander seeing that happened could feel a sense of grievance and that there is a possibly of a real likelihood of basis on part of the Acquisition officer. It is my view that such is the positive of this case.

Ground 2 also is allowed.

Ground three.

The basic argument advanced by the appellants is that the land in question has been the subject of past litigations and should never be subject of Acquisition proceedings.

It can be acknowledged that the land in question has been subject to past litigations. Such litigations related to the determination of customary ownerships and other interest of the land concerned.
I cannot agree with the argument that this customary land should never be subject to any Acquisition proceedings. Acquisition is a process or matter to acquire interest of the customary land. There is nothing wrong to acquire interest on the land concern, provided it falls or within the purpose provided under Part V of the Act. This ground is misconceived and must fail.

Ground 3 is dismissed.

Having ruled on the points of appeal I must also address an issue, which relates to the Acquisition process on part or with the power of Provincial Secretary under Part V of the Act. It has settled in the case ***Jack Sipisoa v Acquisition Officer & other; HC Land Case No. 8/96 (unreported)*** that Sections 59 and 60(A) (Sections 60 and 61(2) (Revised Law) of the Act must be read together. The intention is for the Provincial Assembly to acquire customary land only for

it's own purposes and none other or not available at large. What is clear in this acquisition process is for a lease of the Lingana for commercial/industrial and related activities to private individuals
There is no evidence to suggest the wish of Western Provincial Assembly to acquire Lingana land within the meaning of section 61(2) of the Act; as such the acquisition procedure is null and void, therefore invalid.

Order

1. Appeal is therefore allowed

2. Quash Agreement of 6th August 2001 and order or determination of the Acquisition Officer of 13th September 2001.

3. Parties to bear their own costs in this appeal.

Leonard R. Maina
Principal Magistrate

Date: 22nd February 2002

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