IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
HELD AT LAKATORO, MALEKULA

CIVIL APPEAL CASE NO. 1 OF 1998

(Appellate Jurisdiction)

BETWEEN: LEONARD BILL

Appellant

AND: FAMILY CYRUS, FAMILY EPHRAIM AND FAMILY JORETHY

Respondents

Date of Hearing: 11 June, 2001, 1.30pm
Coram: Before Mr Justice Oliver A. Saksak
Clerk: Ms Wendy Wanemay

Parties: The Parties are not represented by Legal Counsel. The Court hears Nicky Bill as spokesman for the Appellant and Iven Cyrus as Spokesman for the Respondents

JUDGEMENT

In 1997 the Respondents as Plaintiffs issued proceedings in the Magistrate's Court against the Appellant as Defendant as Civil Case No. 9 of 1997. The Plaintiff's claim is stated as "Claim Project blong Buluk". It is dated 11th April 1997.

The Magistrate's Court heard the case on 11th August 1997. The actual date given in the records of proceedings is 11/8/96 which is the wrong date in my view. The Court made the following Orders:-

"(1). All parties are restrained from killing cattle that do not belong to them.

(2). All parties are permitted to develop the project and have the right to be on the land and making business for cattle grazing.

(3). Anyone disobeying these orders shall be held and prosecuted for Contempt of Court Order".

The Defendant appealed on 14th August, 1997, some three days later. The Court treats his letter of 14th August 1997 as both the Notice and Grounds of Appeal. He divides his grounds into two categories. Firstly as against the manner or procedure in which the Court dealt with him during the hearing as follows:-

"1. Judge hemi givim me short time nomo blong me givim toktok blong me.

2. Judge hemi no askem any question lon me.

3. Judge hemi no givim anytime blong 5 witness blong me oli givim toktok.

4. Judge hemi hariap tumas mekem hemi no make wan full hearing long case ia before hemi givim decision.

5. Judge hemi no toktok long statement blong me nating we givim long hem".

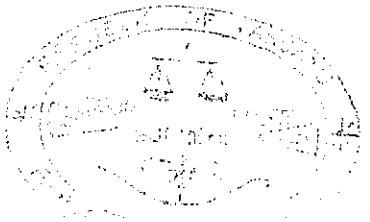
Secondly, as against the decision:-

"1. Judge hemi saybai mifala go work bakegen olsem wan community.

2. Me no happy long hem from before panis ya hemi no wan community fence hemi blong mi nomo".

The Court heard submissions from the Spokesman for the Appellant and from Ivan Cyrus as Spokesman for the Respondents in reply. I was referred to the records of proceedings in the Magistrate's Court. There is no doubt that both parties were heard by the Court. But it is also clear that such hearing was not a trial. It appears to me that Mr Cyrus did not know what the Respondents was claiming in the Magistrate's Court. Looking at the summons dated 11th April 1997 under the "Statement blong Claim" it is stated – "Claim Project blong Buluk".

From the record, the Plaintiffs claimed for the fence. In answer to the claim, the Defendant denied that the fence belonged to the Plaintiffs. At that point it should have been obvious to the Learned Magistrate that the issue of ownership was in dispute. As such the appropriate course of action was to allow witnesses to be called and heard to prove ownership. It is clear to me from records that witnesses were not called or heard. Mr Cyrus conceded that he too had witnesses available and he did not remember them being called to testify as to ownership of the fence. Therefore when the Learned Magistrate made an order permitting all parties to develop the project and to have a right to be on the land without first enabling the relevant evidence to prove ownership, I agree that it was the wrong thing to do.



It appears to me that when the appellant alleges that the Court did not give him sufficient time to hear his case he means that he was not tried by the calling of witnesses to adduce the necessary evidence to prove or disprove the claim. In that regard I agree with his submissions.

As regards the decision of the Court, the Court did not say that the fence belonged to the community. But that is a necessary implication from the reading of Order (2) of the Orders. In the absence of proper reasons given for the Orders the Appellant is entitled to hold such a view. And the Court agrees with that view.

Under those given circumstances it is my view that this appeal should be allowed and I accordingly rule so.

The Appellant asks that the whole Orders should be set aside. The Court does not agree. Only the Second Order will be set aside. The first and third orders will remain in place to protect the cattle. It has been accepted by the appellant that some cattle in the fence belong to the Respondents. It is the ownership of the fence that is in dispute. That issue is still to be determined by the Court. As the claim was filed in the Magistrate's Court I shall refer the matter back to the Court below to hold a proper trial as to ownership of the fence. And I so Order.

There will be no order as to costs.

Dated at Lakatoro this 11th day of June, 2001.

BY THE COURT

.....

OLIVER A. SAKSAK
Judge