

CUSTOMARY LAND APPEAL COURT

DISPUTE - URAGHAI LAND

No. 5/82

BETWEEN: ELIEL TAGOTADE Appellant
AND: CLEMENT REINUNU Respondent

J U G M E N T

This is an appeal against the decision of Tangarare Local Court in case No 1/82 on Uraghai Land. Briefly Uraghai Land is within the jurisdiction of West Talise Local Court and Tangarare Court was able to hear the matter by warrant of variation dated. 30/10/81

The appellant submits 5 grounds of appeal and we shall consider them one at a time. However we first remind ourselves that this is an appellant court and the burden to prove their points rests mainly on the appellant's side. It is his entire duty to tell us and prove what he alleges wrong which the court below may have fail to do which as a result thereof had arrived at a wrong decision. This standard of proof is that which applicable in civil cases. If he does not reach that standard then a verdict upholding the Local Courts decision must be returned.

We now turn to the appeal points and consider them in the following order point 2, point 4, point 5, point 1 and point 3.

In point 2 the allegations were:-

- a) that court failed to observe the miles of court;
- b) that the court did not interpret the Law; and
- c) that court was not independent in its authority to make decision.

These are all points of Law and if proved the consequential effects would result in a verdict reversing the decision of the Local Court. However the Customary Land Appeal Court (a the CLAC) has carefully considered these and can find no evidence which support or may have supported or implied that the court below had failed to comply with the rules of court or did not interpret any particular law which could have applied during the proceeding before the Local Court or affects the independence of its authority. There was no reference either by the respondent's side which could have cause the CLAC property assess such reference.

The CLAC therefore finds that this point fails and is therefore rejected.

In point 4 the appellants contend that the decision is ambiguous in that it failed to make a clear decision as required by law, determines who owns the particular land in dispute.

Again there is no reference so substantive other than a mere expression of dissatisfaction by the appellants' side. These seem to the CLAC that nothing is wrong with the wording of the decision nor the implications in the light of the judgment they made. It is neither an ambiguous decision as it clearly determines that the owner of the land belonged to the plaintiff and that Defendant (now the present appellant) may use or enjoy using the land only by the consent of the plaintiff. The CLAC has also carefully considered this point and finds the opinion of the appellant and his witnesses wrong. This point also fails and is therefore rejected.

In point 5, the appellant says he has a lot of points yet to submit. Neither during the period of pendency of this appeal nor during the proceeding does the appellant submit any further points. The CLAC has carefully considered this point and that it discloses no appeal point but merely a reference to a lot of appeal points which was yet to have been submitted. Those points have not been so submitted. The wordings of point No 5 do not constitute a ground of appeal and that even if it had been, there is no evidence to support it. The CLAC therefore disallows this point and rejects it.

We turn to point No. 1. The appellant contends that the Local Court failed to give proper consideration to customary evidence produced before it. The CLAC has carefully considered this point and found that in the Court below there was substantive evidence on the tambu sibs also mentioned in this court. Mr Reinunu's contention as to ownership is by right of his occupation for about 40 years on the land and it is on that basis that the court below made this award. There is nothing in the judgment below that indicates that some consideration has been given to issues of custom, heritage and properties, despite evidence about them. With respect, we find that no proper consideration was given by the lower court on these matters thus resulting in wrong findings. We therefore allow this point to succeed. In so doing we must consider these custom matters.

Firstly, the appellant contends that they have tambu places at Pelopelo for the Tavulikene and Salotokili for the Chercher. This is supported by a number of his witnesses. Respondent denied this. However there are witnesses who supported him and there are others who contradict him. For instance the tambu place at Salotokiki is strongly denied by the respondent and RW6 while RW5 who is a direct descendant of Strac admits that the Tambu place at Salotokiki is Lakuiki's by history. A contraction on matters in custom as to credibility thus the CLAC believe that Lakuili line of which the appellant is a member has tambu places at Salotokiki and Pelopelo.

It may be that Kakau line has other properties in that land e.g. coconuts, or any other properties which the acquire or developed during this recent occupation, however it may have been those would not render them to have the title of the land. It seems to the CLAC that there was no feasts or money made or given by the Respondents side on their arrival to occupy the land albeit members of Kakau line. In the absence of those we further believe the Appellant.

Respondent contends the recent return of Eliel to that area. This as, was explained by appellant, is a return to repasses what had long ago been his property and those tambu places confirmed that explanation.

Again on the question of boundary appellant contends that this land is bordered by Kakau lands along Kolomatoba and Kusali. The respondent's side contends that this is part of the land belonging to Kakau line stretching from Beku to Kerana and Kakaha inclusive. The CLAC has carefully considered this and disbelieve the respondent. If Respondent is right then it is a breach is custom for a man if another line to place his tambu place in a land which is not owned by his line. Thus the boundary of the land is as specified by the appellant (see appendix attach hereto). This CLAC therefore allows this point to succeed.

Having arrived at that it may be needless to comment on point No 3. However, may to a certain degree worlt which to comment thereon.

This point alleges admission by the Clerk and the President of the court below that appellant lost the case because of his case being heard in one sitting which another dispute which he is also involved in which concerns a land also belonging to a member of his line, who won the case. The only evidence on this comes from appellant himself and there is no other evidence which directly challenge, that evidence. Be it may not, but one could argue that the improper consideration would also confirm such on allegation, we are therefore of that opinion. Perhaps we must comment that in order for the public to have confidence in our system we should all discharge our judicial duties without fear and prejudice and only on these lines will we maintain a sound reputation.

The CLAC therefore makes the following decree

DECREE

- 1) That this appeal is allowed and the decision of Tangarare Local Court in case No 1/82 is reversed.
- 2) That the title of the land specified in the sketch attach hereto or otherwise known as Kakauha which is deem to include Chaghai in vested on Eliel Tagotada and members of his line.

- 3) That Clement Reinunu's properties thereon or those of members of his line shall remain their properties until the end of their economic life.
- 4) That no further developments shall be made by Reinunu and members of his line except on Eliel consent.
- 5) That Reinunu do refund \$100 being cost.

Dated the 1.11.82