JUDGMENT

This is an appeal against the decision of Tasimboko Local Court Case No.1/82.

At the outset we remind ourself that the duty to convince this tribunal that the Court below is wrong in its decision, rests entirely on the Appellant. The standard of which proof is that which also apply in all other civil cases. If the appellant fails to satisfy this tribunal to that standard, then a verdict upholding the decision of the court below must be returned.

The appellant lodged five appeal points and we shall consider them one at a time.

Point No.1.

In this point the appellant argued the breadfruit tree and the ngalinut tree upon which present respondent relied in the Local Court could not be found and therefore non-existence, thus implies false assertion. Yet, the Local Court still believe this and decided in favour of Gusa's boundary. In response Lanetelia for the respondent argued that the bread fruit and ngalinut trees have now been non existent because of the fairly recent developments being carried out by the appellant's side. However their position is towards the Tiviale river from the alleged Kabi. The Customary Land Appeal Court (the CLAC) has carefully considered this and disbelieve the appellant's arguement. We say this because the present subject matter is on the specification of boundary of the land given by Gusa's side to Raigela's side for beating drums and Appellants side claim a very much bigger portion of land which also include a portion of land adjacent to the portion specified by Local Courts decision which Gusa's side alleged was wrongful sold by Poe to Raigela's side in 1970 after Raigela's side lost the title to Gusa in 1968. The fact that appellant's side went to Poe to buy that portion merely confirm that any land given for the beating of drum would not have included the land they may have bought from Poe. Thus, the gift they may have right to its title must be smaller than what they are now claiming and cannot include the land they would have bought from Poe. The land which appellant claims covers a very big area of land and covers nearly the whole land which Gusa's side own including their tambu places. We therefore reject this point.

Point No.2.

In this point the appellant argues that the land which the Local Court specified as the land given by Gusa's side to Raigela's side for the beating drum is so small compared with the beating drum and the food involved.

In reply Lanetelia for the respondent says that there was no food involved. He knew only about beating drums. The CLAC has carefully considered this point and we disbelieve the appellant. The 1968 proceeding which contains the arguement on this transaction did not refer to any food together with the beating drum. The 1968 case referred to Puti's side cutting (making) two beating drums and there is no mention of food given by Raigela's side to Gusa's side. We disbelieve Raigela on this account of food. If Puti knew that together with the making of the beating drums food and may be money were given he would have told the court in 1968. The appellant cannot decide now and tell us that food was also given because if he so decide then Puti was

Point No.3.

In this point the appellant argued that all his properties are outside the area of land sepcified by the Local Court. Thus the land given to them by Gusa's side could not be that small as Local Court specified. Lanetelia's reply base on the fact that those properties were only developed during the last 14 years since the 1968 case; and the only properties his ancestors passed down were the beetle nuts and coconut in the portion. We have seen for ourselves that there is a cattle fence as well as coconut trees. We have also seen that there are coconut trees which are very tall which in our view are more than 14 years old.

The CLAC has carefully considered this and finds that these trees though outside the boundary of Local court cannot be in Raigelas land because of the reasons we discussed earlier in point No.1. However, they could have been planted on the implied authority of the chief of Gusa's land and line. The existence of those older coconut trees cannot be questioned. By and in custom the chief who had called those of other line to reside and are given a portion of land within his land has a chieftain duty towards them. It is not enough to give to them a piece of land only where they would toil and live. His duty would also to see that they are safe and secure from their enemies and he would be their immediate source of help in times of trouble and peril. The land we saw is mostly covered with wet ground. The chief cannot in custom refuse to meet the needs of the new occupants. The duty of care expected from him is a chieftain duty and must be seen to have been discharged.

It is highly likely as there is nothing direct on the existence of those old coconuts that they could have been planted on an implied consent of the Nekama chiefs.

We find that this point cannot prevail and therefore it is rejected.

Point No.4.

In this point the appellant argued that the boundary was held null and void also by this court last year when he appealed against the spearline out on 27.10.80.

It seems that Gusas side specified this same boundary after the 1980 although there was no official request and record of it. The appellant bases that the fact the CLAC held the case in 1980 null and void also extend to this specification. Perhaps we need only to turn to the High Court wordings of its judgments as the CLAC decision was subsequently appealled against by the present respondent. We quote the relevant part of the High Court's judgment.

"The CLAC refused to hear the case itself and decided that

indeed the Local Court decision should be declared null and void as the case had already been decided in 1968 by a court of competent jurisdiction. The issues said the CLAC between the parties were res judicata.

It seems to me, with respect that perhaps the CLAC were using rather stronger terms than were necessary. The Local Court did have a new issue to decide, that is, was the sale by POE of any effect. They decided that it was not and held themselves bound by the earlier decision. They were quite right to do so and rather than to say that that decision was null and void, it would have been sufficient if the CLAC had dismissed the appeal and permitted the decision to stand. But the final effect of the two orders is the same".

As far as this point is concern the CLAC decision in 1981 was not conclusive. On appeal to High Court, the High court ruled that it would have been sufficient to dismissed the appeal then before the CLAC and thus subsequently made an order for Local Court to establish the boundary they referred to in their 1981 proceeding. This present appeal is an appeal against the Local Courts decision on the formal establishment of the boundary. We therefore reject this point as it also fails.

Point No.5.

This point based an arguement that Poe was closely related to Tangitogha than Gusa and therefore they had only acted to redeem the land in 1970 purchase. It also accused the Local Court of failing to establish Gusa's and Poe's relationship to Tangitogha.

There is insufficient evidence by the appellant on this and most evidence adduced in support of the point is irrelavant.

There is no record of 1970 proceeding between Gusa and Poe available to this court. However Gusa informed that before the court decided their case Poe died, and no one took his place or acted on his behalf, and the court did finish of the case. Perhaps we need to comment that if the present appellant dissatisfie[illegible] with the decision of the case between Gusa and Poe if ever there was a decision, he should have then appealed against. It is no good waiting for 12 years before referring it to court. We therefore also reject this point as it also fails.

We therefore further comment that on inspection of the land we find that much of the land is wet and would not be suitable for human habitation. For reasons we mentioned in point No.2 we believe that custom does recognize that man would not survive in a land which is both small and unsuitable for human habitant.

We therefore make the following decree.

DECREE

1) That the appeal is dismissed and Local Courts decision upheld.

2) That Raigela and members of his line has right of occupation and use subject to Gusa's consent according to custom, (and that Gusa as was ordered in 1968 has the duty of care towards Raigela, Puri and members of their line).

3) That properties on the lands outside this boundary and within Gusa's land remain the properties of Raigela and members of his line until the end of their economic age.

4) No order as to cost.

Dated. 1.11.82.

Stanley Sagoregana
Savino Laugana
D. Alebua
R. Ria.
Chaku

Joses W Sanga.