

JOHN BAPTIST MANUMATE and BERNADO SEVUNAGI (Appellants)

VIRISILIO TAGARAKAMANA and MARESELIANO NAUMATE (Respondents)
and BAKO LIVURUKA

CLAC NO. of 1983

Appeal Points:

1. The President and members of the Tangarare Local Court were bribed with one pig, one custom money called "Malona" and \$12.00 cash by Virisilio Tagarakamana and Mareseliano Naumate and Bako Livuruka.

There was clear personal financial gains to the President and members of the Tangarare Local Court hearing the case in question. The pig, custom money and \$12.00 cash were paid over immediately after the judgement was delivered by the President of the Court.

Although the payment was made after the President gave out the decision, preparation and other arrangement of the payment were made well in advance and the Court members were well aware of the existence of the payment. This is shown by the fact that the pig, custom money and \$12.00 cash was handed over immediately after the decision was given. Other people attending the hearing were still present when the payment was made to the court members including the President.

The payment of one pig, a custom money and \$12.00 cash was quite striking act of generosity which no doubt affected the outcome of the case. Those who saw what took place had expressed concern that "something odd" had happened.

2. The President and Members stayed and had discussions with the respondents in the course of the hearing of the case.

Prior to the hearing the Area Constable warned both sides to the case not to have talks with the court members. The respondents fed the court members. The respondents had discussions with the court members at night and the respondents also went to sleep in the same house where the court members slept.

We (appellants) followed what the Area Constable said. We stayed at different villages and attended the court hearing at the place for the hearing. The hearing took place at the respondents' village.

This close contact between the court members and the respondents creates a 'bias' situation in the case.

3. Two pieces of papers - A person named Maretiniano Piri who is not a member of the court nor a party to the dispute but has close connection with the respondents, handed two pieces of papers to the President of the Local Court during the hearing.

Piri stayed with the Court members all the time during the case. He, Piri, also was among those who retired with the President and other court members at the end of the hearing to consider the judgement of the court.

Piri was a former President of Tangarare Local Court and it is very improper for him to give notes to court members during the case.

We (appellants) believe that Piri's position (sitting with Court members) and his conduct (handing notes to President of the Local Court) greatly prejudiced the result of the case.

4. Discussions between court members and others who were not members of the court - As soon as both parties to the dispute finished giving their stories, the President and other members of the court had discussions with other people who were not members of the Court over the case. In about five (5) minutes the President gave the decision in favour of the respondents. Among those non-members of the Court who discussed the case with court members were Maretiniano Piri and Dominiko Voki.

We (appellants) believe that such a procedure is not proper and as such it is irregular.

5. The decision delivered by the President of the Local Court was in fact based on discussion between the court members and others referred to in paragraph (4) above and completely disregarded evidence given in Court.
6. The decision of the Local Court is not supported by the weight of the evidence.

The stories told by the respondents were not sufficient and did not show how they own "Labungasi" land. The respondents did not have any witness to support their stories. When cross-examined they could not explain matters of vital importance - ("tsalavi mabulu" at Tsiogi, "sulina" (bones) of Livuruka, and where others of their ancestor's went).

7. Previous case over the same land - In the past a dispute over the land was heard before a custom court (presided by custom elders). The respondents relied on a geneology completely different from the geneology relied on in the present case. In both cases the respondents were said to be landowners in the disputed area.

This is rather odd where a customary landowner relied on one version of geneology at one time and adjudged to be owner of the land and then on a subsequent case over the same land that same landowner relied on a completely

different version of geneology and still adjudged to be the owner of that same land.

Also one of the respondents in the present case namely, BAKO LIVURUKA earlier on in 1973 joined with the appellants in demanding VIRISILIO TAGARAKAMANA the other respondent in the present case to pay the sum of \$4,500.00 to the owners of the land in question before the said Virisilio Tagarakamana could proceed with his cattle project on the said land. The owners of the land were said to be the appellants. It was Bako Livuruka who put down the sum to be \$4,500.00. In the present case, the appellants cross-examined Bako on that incident but he could not give sufficient explanation as to why he now joined with the other two respondents against the appellants.

8. It is well understood in the community concerned that the respondents do not have any right of ownership over any land within the "Kavimarao" area. The first two respondents have rights to own land at places called "Tomino" and "Kolokavo" further towards the South West Guadalcanal.

It was the tribes of the appellants whose ancestors first came to "Kavimarao" and settled on all parts of Kavimarao including the area known as "Labungasi". The respondents had just come in and settled at Labungasi.

CONCLUSION:

In the light of the circumstances surrounding the hearing in the Local Court and in the light of all that have been said in this appeal, the Customary Land Appeal Court should reverse the decision of the Tangarare Local Court and found in favour of the appellants; and give such other orders as the court may seem just.

The respondents to pay the costs as well.

x JOHN BATSITA MANUMATE

x Berenado SEVU