

SITTING AT THE MAGISTRATE'S COURT, HONIARA

DATE: 21ST MARCH 1984

APPELLANT: JOEL KIKOLO

RESPONDENT: JOSEPH KANAI

IN THE MATTER OF: RAUKAI Paddock LAND
ON APPEAL FROM MARAU BIRAU LONGU VALASI LOCAL COURT

JUDGMENT

This Judgment deals with a parcel of land called RAUKAI Paddock. Both parties agree the area in the plans they produced. This land was owned by Paewa. Paewa adopted Joe Morovo. Paewa's mother was getting too old and Ema Korasiara was brought over from Malaita to take the place of Paewa's mother. Joe Morovo married Kigeresi and they had Joel Kikolo the appellant. Kigeresi was from Fiji, she died, and he married again to Ema. They had five children. Ema's sister is Tatao, who is Joseph Kanai's mother.

According to the custom of Malaita and Marau the man is the head of line or clan. As KIKOLO is the first~~st~~ born of Joe Morovo he is the rightful owner of this Paddock. We have heard from Joseph that half of the land was planted and half used for gardening. When Joe Morovo started to plant the gardening half he was stopped by Tatao on at least two occasions. We accept that an agreement was then made between Joe, Tatao and Ema that that half of the Paddock would be used only for the children of Tatao and Ema, not Joel. This is a similar finding to the Local Court that an agreement was made. The Local Court having made this finding ordered that Joel was not to take back this area of land which was bound by the agreement. Joel now appeals against this decision. Appeal point

- 1) The Local Court did not order that Joseph should take over the whole of the Paddock, it only ordered that Joel should not take back the half given for Ema's and Tatao's children.
- 2) The effect of the order by the Local Court preserves the position as stated by both parties, that is, Joel retains one half of the Paddock and, Tatao and Ema's children have the benefit of the other half.
- 3) This is really a general point of appeal and we have already indicated our findings and we are satisfied that an agreement did take place.

The only other point of appeal is reference to Ema declaring herself to be a false witness. She was called before the Local Court. The appellatant had an opportunity to question her at that stage and could call evidence in rebuttal. This was not done in the Local Court nor has any evidence been produced before this Court.

DECREE

That RAUKAI Paddock is split into two areas. That one area is the sole property of Joel KIKOLO, and that the other area is that set aside by agreement for the use of Ema and Tatao's children. We order that Joel shall not take back that area of land so set aside which will remain in the ownership of the children of Ema and Tatao one of whom is the respondent.

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S. SAGAREGAMA

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S. LAKAMA

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V. BORUDORU

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T. OLI

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JKR. STANFORD-SMITH