JUDGMENT

Tahea appeal to the Central Islands Customary Land Appeal Court against the decision of the Bellona Local Court made on the 28th April 1983.

He submitted only 2 grounds of his appeal. In his first ground namely:-

1 a & b. He argued that the Local Court adjourned the hearing from 21/4/83 as the respondent's witness was sick until the 25th April 1983. However the court proceeded to his wife's bed when she was sick and took her evidence.

It was not wrong that the court moved to her bed side to take her evidence which was willingly given. So long as the whole court i.e. all the members of the Local Court were there and the hearing was within the area of it's jurisdiction.

1 c. Tahea argued that his two witness were in Honiara and therefore they were expelled by the Court on the ground that they were too far away.

On the evidence before this court, there was no application to the Local Court for an adjournment to enable the two witness to arrive at Bellona to give evidence. No evidence of short notice. It is the responsibility of the party calling the witness to meet the expences of it's own witness.

We can not therefore allow ground one.

GROUND 2: This ground deals with the history of the disputed land until disputed in the Local Court.

The appellant submitted that this particular point was submitted on his 2nd ground of his appeal again the decision of the Local Court in it's finding of evidence. Albeit unclear it is, it is a point submitted by a villager with a very limited knowledge of how to put on paper his grounds in a language alien to himself. This is the contention he made before the Customary Land Appeal Court.

The Customary Land Appeal Court has carefully considered this contention against the judgment recorded by the Lower Court.

The Customary Land Appeal Court finds that the Lower Court has not given proper consideration on the case before it, and have allowed the appeal. The court has therefore allowed itself to hear evidence in support of the appeal.

Turning to the case before this tribunal. There is no dispute that the disputed land was one of those land which were secret land but were made freeby Moa in 1938. There is no dispute that Tangoeha was the father-in-law of Tahea. There is no dispute that the resondent's father (Nahum Tamua) was Tahea's brother-in-law as he was married to Mangienga the daughter of Tangoeha. There is no dispute that the land in question was given to Tahea and his family by Tangoeha. The reason for doing so was because Tahea and his wife came from East to the West of the Island intending permanently to settle with Tangoeha.

The issue before this court are:-

(1) When Tangoeha gave Hutuna to Tahea and his wife, has he got the right to do so?

(2) When the land was given was it permanently given

(3) When Nahum Tamua took the land back, was it the whole area including Hutuna that was taken back, or only the fallow garden above Hutuna.

(4) If Nahum Tamua took the whole land including Hutuna back, has he got the right to do so.

The Customary Land Appeal Court has carefully considered the evidence inregard to these questions.

Tahea in his evidence said that two pieces of land were previously given to his wife but they return them. When Hutuna was given to his wife, they decided to keep it. They used the land and there was no dispute by anybody. A child was born and another was burried within the disputed area but there was no dispute. In the Bellona custom one cannot deliver a child and burry his dead within somebody else's land.

The RESPONDENT said that there was no dispute because at that time the land was still Tahea's ownership. He said that the land was of his father being the first to brush it after it was Tabu free.

2. When the land was given, was it permanently given. On this question, there was no evidence that it was or it was not. There was no condition given as to whether or not the land was liable to be returned. Nothing was made known to Tahea's family. The Respondent said that the land was given when Tahea came to the West intending to live in the West permanently.

3. On the evidence before this court Hutuna land was given by Tangoeha before the fallow garden above it was given by the Respondent's father. Because of the arguement between the Respondent's Father and Tahea, the land was taken back The Respondent said that the whole land was taken back but the appellant argued that only the fallow garden which was given by the Respondent's father was taken back. There was no reason given for taking the land back. It only becomes clear that the land was taken back because Tahea intended to go back to the East.

4. Had Nahum Tamua got the right to retake the land. Even if the land was given by him to Tahea's family for the reason only that Tahea decided to go back.

The Customary Land Appeal Court carefully considered the answers to these qustions and found that Tangoeha has got the right to give the land. There was no dispute when Tahea use the land. Particularly when the respondent said that there was no dispute when Tahea burry his dead and deliver his child within the disputed land when he has still got the ownership given to him by Tangoeha

2. When the land was given, we believe that it was permanently given as it was known that Tahea came to the West to permanently live with his father in-law Tangoeha. The land was permanently given to his daughter by Tangoeha as he loved his daughter.

3. When Nahum Tamua took back the land, we believe that he only took back the land which was given by himself to Tahea. There was no reason given as to why Hutuna was taken back. We only know that it was taken back because Tahea decided to return to the East. We do not accept that reason for taking back the land that was given by Tangoeha

We find that Nahum Tamua has no right to retake the land that was given by Tangoeha to his loved daughter.

DECREE

1. Decision of the Bellona Local Court dated the 28th April 1983 is reversed.

2. Hutuna land given to Tahea.

3. Security for cost to be refunded.

PRESIDENT: FR. S. BALEA

MEMBERS: JASON SANGA
GORDEN MOA
JOHN PLANT HOKA

MAGISTRATE/SECRETARY: NELSON LAURERE

If you want to appeal to the High Court you may do so within Three (3) months from today.

(N.LAURERE)

Dated this 12th day of June, 1985.