

MALAITA CUSTOMARY LAND APPEAL COURT

RE: SULUATOLI/LUMALAO LAND

B E T W E E N

GEORGE LINGANAFELO

Appellant

A N D

GEORGE WANEAI GANITA

Respondent

Before: 1. Joseph Kaia                      President  
          2. Daniel Baetalua  
          3. Selwyn Kwaiifi  
          4. Adam Kwaeria  
          5. R D Chetwynd                      Clerk

J U D G E M E N T

In this case the Appellant George Linganafelo Appeals against the order made by Local Court on 21/10/88. The Appeal points were lodged in December 1988. Points 1 to 6 inclusive and 12 were based on fact, Points 8, 9, 10 and 11 were based on procedures. Point 7 was unfortunately missed of the typed copy sent to both parties. Point 7 was about boundaries. This appeal was allowed to proceed as it was not felt that the Respondent would be prejudiced by this omission and that both parties would be able to fully argue the point, especially on a survey. The case was heard on Monday 11th December and the survey took place a week later on 18th December.

The survey party followed the boundary delineated on the Appellant's map. The party did not survey the Respondent's land because it was quite apparent that the Appellant claimed no part of the land called Suluatoli. He (the Appellant) said that Suluatoli and Lumalao were two separate lands. This was the extent of his Appeal and this being so this Court did not feel it necessary to survey Suluatoli Land.

During the survey the Appellant was able to show the court his tambu places inside Lumalao Land. The Respondent was unable to show any tambu places of his inside Lumalao Land.

This Court has also reviewed the evidence before the L/C and heard submissions from both parties. We feel that the L/C erred in accepting evidence from the Respondent and other witnesses about the Appellant's geneology. This Court feels that the Appellant knows his geneology and the L/C should have accepted his evidence in preference to the Respondents. If it had done it would have come to the conclusion that the Appellant is from a Male line and the Respondent is female line. The Respondent admits he is from a female line. This being so this court is bound to follow Malaitan custom in saying that the owner of Lumalao Land is the Appellant's line. We are not asked by the Appellant to make any decision about Suluatoli Land.

All the evidence points to the fact that the Appellant's line are the owners of Lumalao Land and we therefore set aside the L/C's decision.

The order of this court is that the Appellant's line are the owners of Lumalao Land as shown on the Appellant's map. The Respondent has no rights over Lumalao Land.

The boundaries are as shown on the Appellant's map namely; on the West the Diula Stream and Bilithau Stream to the Kaorara'a boundary stone, then south easterly along the hill ridge to the Fata tree, then Northwards to the Looninisu Stream until it cuts the main pathway to Uala Land, from that point North East to the Dinalea Stream until it meets the Mathaua river.

This court stresses that it has made no order affecting Suluatoli Land but that any order made by the L/C affecting that land has been set aside.

This court also agrees that the Appellant should be entitled to costs. The Respondent is ordered to pay \$100 survey fee, \$100 filing fee and \$240 copying charges to the Magistrate's Court at Auki within 3 months. \$150 paid by the Appellant to the Court for security of costs will be returned to him forthwith.

If the Appellant has any further claim for costs these are reserved to the Clerk of the CLAC and should be submitted to him in writing within 28 days. The Respondent will be told of the claim and invited to give his comments as to whether those costs will be accepted.

Both parties are reminded that they have the right to Appeal to the High Court within 3 months. The time for the Appeal starts from the time they receive a copy of this Judgement. Both parties are required to advise the Clerk to CLAC of the date they received the Judgement filing which they will be deemed to have received the Judgement on the seventh day after it was posted to them.

(Signed): R D Chetwynd  
Joseph Kaia  
Daniel Baetalua  
Selwyn Kwaiifi  
Adam Kwaeria

COPY ONLY

I certify this to  
be a true copy of  
the original

