

IN THE MALAITA CUSTOMARY LAND APPEAL COURT

ADAKOA LAND

BETWEEN Billy Farobo Appellant
AND Rocky Risa Respondant

At Auki 12/12/89 Before:

Joseph Kaia
Michael Daka
Daniel Baetalua
Selwyn Kwanafi
Adam Kwaria



JUDGEMENT

This case raises a point of Res Judicata. In 1968 the L/C sitting at Faumanamu heard a case where the Plaintiff was Nowae and the Defendant was Ramitolo. There is no dispute before this court that that is correct.

Both parties to this Appeal agree that according to the 1968 case Adakoa Land was awarded to Ramitolo. The Respondent says that the 1968 Decision was wrong. That is not an argument that can be decided by this court today. That Decision can only be challenged in the proper way. The proper way would have been to lodge an Appeal against the L/C. This should have been done in 1968. Despite what the L/C in April 1988 say, No Appeal was lodged. A witness to the proceedings in 1968 tried to lodge an Appeal. He was not entitled to do so because he was not a party to the case. A fee was paid by this witness but that had no effect. The L/C went wrong in 1988 by deciding that an Appeal had been lodged. No Appeal against the 1968 Decision was lodged.

As a result the 1968 Decision is binding. Neither this court nor the L/C can charge it.

This court is bound by the Decision which says in 1968 the owner of Adakoa Land was Ramitolo. That dispute was between Nowae and Ramitolo.

In this case the Respondent agrees that he is the same line as Nowae. He is bound by that Decision in 1968.

The Appellant says he bought the land from Ramitolo in 1971. Although today the Respondent says that this is not so, that argument was not raised in the Local Court. The Local Court heard evidence from Soia, one of Ramitolo's sons. That evidence was not challenged so far as the sale was concerned. The Respondent in the L/C also accepted that the Appellant bought the land in 1971. He mentions this several times in his evidence to the Local Court. He cannot now change his evidence and say Billy Farobo did not buy the land. He was asked today if he had evidence about this and said that he himself would give evidence. If he believed that the sale was a sham a false hood

JUDGEMENT (contd.)

he should have said so in the L/C in 1988. He cannot say so now. The situation now is that Billy Farobo (the Appellant) claims through the line of Ramitolo by purchase. The dispute before the court today is the same dispute as was heard in 1968. This court, as indicated earlier, is Bound by the 1968 Decision. The L/C in 1988 should have been bound by that Decision and should have ~~required~~ to hear the case.

The Appeal is allowed and the Decision of the L/C on 18th April 1988 is quashed.

This court has no need to make any order because the 1968 Decision is still good. However for the sake of clarity this court will say that in 1968 Adakoa Land was awarded to Ramitolo. In 1971 the Appellant purchased that Land. He is the legitamate owner of Adakoa Land. As the Appellant purchased the land he is bound by the Decision of the Local Court in 1968. The only other point that this court has to consider is the question of costs.

Normally the succesful Appellant would be entitled to costs. However in this case the Appellant commenced proceedings in the L/C. He choose to do so, he could and should have relied on the 1968 Decision. The choice was his and he must bear the consequences so far as costs are concerned.

We will make no order for costs save that the Appellant is to pay the filing fee of \$100 and the copying and typing fees of \$235.

The parties are reminded that if they wish they may Appeal to the High Court against the Decision of this court. They must do so within 3 months of today's date.

R D CHETWYND	(signed)
JOSEPH KALA	"
MICHAEL DAKA	"
DANIEL BAETALUA	"
SELWYN KWAIPI	"
ADAM KWAERIA	"

Dated 12th December 1989.

certified to use as true copies of the original judgement

