ISABEL CUSTOMARY
LAND APPEAL COURT

CLAC CASE NO. 18/98

IN THE MATTER OF KOLOSORI CUSTOMARY LAND

AND IN

BETWEEN:	WILLIE DENIMANA	1st Appellant
	MARTIN TANGO	2nd Appellant
AND	JOSEPH MAJORA	1st Respondent
	REUBEN GANIA	2nd Respondent

JUDGEMENT

This is an appeal against the decision of the Isabel Local Court, Land Case No. 2 of 1998, dated the 23rd day of June 1998, to the Isabel Customary Land Appeal Court concerning land known as Kolosori Land.

We remind ourselves that it is the duty of the appellant to establish before this court on the balance of probability the grounds alleged to be erroneous in law or in fact or out weighing the weight of evidence in the local court. Unless and until that is done, the appeal will not be allowed.

We now turn to the grounds of this appeal taking point by point.

GROUND 1

The first ground of appeal is in the following terms, "that the Local Court was wrong in awarding Kolosori land to both parties in that it failed to consider the importance of customary feasting to acquire land according to Isabel custom.

The Second ground and the third grounds are not any different in their context as they are all directed towards the conclusion made by the Local Court in the light of various feasts made by the respective parties to various people.

On that footing we propose to deal with this appeal as one ground of appeal.

Apart from the local court record, this Court have the benefit of a High Court Judgement - Hugo Bugoro -v Martin Tango and Willie Denimana - land appeal case No.5 & 6 of 1995. This was an appeal from the decision of a Magistrate who heard the appeal from the decision of an Acquisition officer.

On the question as to whether the feast given to Nelson Tatari was given on behalf of Silas Tango himself or was given by both Silas, Dennis and Paul.

The High Court dealt with this question at same length. It considered the decision of the Gao/Bugotu Native Court case No. 1/67 together with the evidence obtained by the acquisition officer at the acquisition hearing on the 3rd October 1992 and 30th October 1992.

It was concluded by the High Court in the above case at page 13 that the purchase had been made by the three brothers jointly, for Palmer J said the following:-
"What is quite clear to me, and obvious to the learned Magistrate as well, was that there was evidence on which the acquisition officer could base his finding or conclusion on, that the purchase had been made by the three brothers jointly, and that it was not an unreasonable conclusion. The learned Magistrate correctly decline to intervene in that finding and so do I".

The decision of the Local Court Case no. 2/98 did not make any conclusion as to whether the purchase was made by the three brothers jointly.

It is clear that the respondent in this case was not a direct descendent of one of the three brothers and that might be the reason why the Local Court did not find it relevant to make that conclusion."

This point is important because of the conclusion made by the High Court in High Court Case no. 6 of 1995 at page 16 when Palmer J said:-

> "The inheritance of the children in respect of the said land however, did not descend matrilineally, it came directly from their fathers, Silas, Dennis and Paul, unless there was an automatic transfer of their land right to their wives on marriage".
>
> "The clear finding by the acquisition officer and learned Magistrate on the evidence available before them was that the land had been bought by the three brothers.
>
> It would be more correct therefore to describe ownership as vesting in the three brothers and devolving upon their children on their death. To that extent, I feel obliged to change the names of the three tribes, and replace them with the names of the clans of Silas, Dennis and Paul".

The appellant in this case is the son of Silas Tango and takes direct from his father.

The respondent in this case may be able to be benefited if and only if he is a descendant from one of the three brothers.

From the evidence and genealogy, there is no dispute that the respondent is the descendant of Diana Oe (being one of the sisters of the three brothers.

As such he cannot take through the descendant of one of her brothers.

The respondent's claim in this case was not based from the descendants of one of the three brothers but from a feast made to Anika Tai, the sister of Nelson Tatari who originally gave the land to Silas Tango. The feast was made (according to Paul Fota jr) by Dennis Hathatono on the 30th December 1989. on behalf of his female line.

This would only be proper if the land was never as yet transferred to Silas and his two brothers according to the feast dated 13th January 1954.

This cannot be so as the decision of the Native Court between N. Tatari and Silas Tango was in favour of Silas Tango over the validity of customary purchase. Thus at the time of the feast given to Anika Tai, the land the subject of the purchase was not within the power of Anika Tai to give, for one cannot give what one does not have.

Further in custom Nelson Tatari would have called his sister or at least informed her and showed her the purchase price for the land from the three brothers.

From the above conclusions, we allowed this appeal, and make the following orders:-

1. The decision of the local court made on the 23rd of June 1998 is quashed in so far as it gives equal right to the respondent who is not one of a direct descendant of the three brothers.

2. That Martin Tango has the right to own the land Kolosori being one of the descendent of one of the three brothers.

President: George Caulton

Members: 1. Paul Kokomana
2. Philemon Konakile
3. Alfred Koli

Magistrate/Secretary Nelson Laurere

Dated this 28th day of April 1999.

Right of appeal to the High Court within 3 months from today.