

IN THE MALAITA LOCAL COURT

LAND CASE NO: 4/98

DATE: 5th July 1999

ADAKOA SEAFRONT DISPUTE

Name of land in Dispute:

Name of Plaintiff: BILLY FAROBO



VRS.

Name of Defendants: 1) THOMA AFU OF KWAI ISLAND, EAST MALAITA
2) SAMSON LOLO, AGRICULTURE & LANDS P.O BOX G13

DECREE

JUDGMENT/COURT FINDING.

The matter was heard by the Malaita Local Court at Auki on the 5th of July, 1999 and followed on through the week except Wednesday 7th of July, 1999. The onus of prove is on the plaintiff Billy Farobo. The plaintiff in order to prove his case produced to the Court documents which marked Exhibits PFF 1, 2, 3, 4, 5, 6, 7, 8. Plaintiff than gave a sworn evidence. The evidences of the plaintiff are as follows: That the plaintiff in this matter was a purchaser of the (one) part of Latea land from the owner Ramoitolo. The plaintiff claims that the Sea front is part of Latea land. Plaintiff refer to support this statement in Exhibit PFF 1, of the High Court judgment on 27th November 1992 of an appeal between Fulibae tribe -v- Farobo and Clerk civil case no. 254 of 1991. The plaintiff strongly challenged that the defendants were the same parties who had been before the Local Court hearing on 25/5/98. We see the plaintiff's view as the matter should be regarded as "res judicata." In that view we see that Malaita Local Court in 1968 made a decision, we quote "Adakoa land belongs to Ramoitolo, the Fulibae tribe accordingly is bound by that decision" end of quote. Exhibit PFF 1. Plaintiff argued further that when the matter was referred to the House of Chiefs, numerous dates were given to the Defendants to attend but rather failed. On the last occasion when the house of chiefs gave their decision without the defendants presence. Refer to Exhibit^s 2 and 3. The plaintiff than went into a business by setting a company know as S.I. Dolphin Centre. Then into the business with Cema. The Defendants then went to the FLB and adviced them that the Adakoa Sea

front is under dispute. A letter was written to the plaintiff dated 13/10/98 Exhibit PFF 5.

The plaintiff further stated that the Aquisition Officer's decision was also quashed by the Principal Magistrate Auki when the defendant had appeal on the ground that they were not present when the Aquisition gave his decision. Refer to Exhibit PFF 6, PFF 7.

Plaintiff then claim that the defendants sung their praise that they had won the Adakoa Sea front. This had made him to see a private Lawyer who was Sollaw. His Lawyer wrote a letter dated 16/05/98 to the defendant, Samson Lolo stating that the quashing of the decision was only for the Acquisition decision that was made in his (defendant) absence. Exhibit PFF 8.

In cross examination, the nature we can derive was all related to the case of 1968 between Ramoitolo and Alasa'a.

In one of the cross examination questions defendant asked why the decision of the acquisition was quashed by the Principal Magistrate. The plaintiff then replied that the acquisition did not follow the procedures.

One can ask what is the intention of the question. We term to believe that the intention was to establish a picture that the plaintiff should not be the so called owner of the Sea front as part of the land of Latea.

We can not find any facts to weigh as evidence in the cross examination.

That could have been the problem because the plaintiff too had not put an evidence that may have led to questions in the cross examination.

We shall draw our inferences to that effect when we consider the evidence in chief of the defendant(s) and their witness.

The only crucial question is, we quote, "the Sea front in dispute. In 1968 until today any development you had made after your purchase" end of quote. Answer - Quote, "there were no disputes until when I went into business with SI Dolphin Centre and Cema at the Sea front," end of quote.

The plaintiff then summarise his side of story by referring the Court to the High Court decision we presumed to be in Exhibit PFF 1.

The defendants to prove their part, called one witness namely Sade Uilae. Before the witness is called spokesman for the defendant Thomas Afu addressed the Court with a sworn evidence the importance of the seafront. Produced to Court exhibit DF 1 Civil Case no. 8/65 between Alasa'a -v- Ramoitolo. Defendant confirmed that this matter was not of the Seafront rather of the boundary of Latea and Fairu. He then referred the Court to page 8 of the Exhibit where a map of Latea and Hulubae land was sketched.

This we do not wish to consider because, it is not the issue this Court sits to determine. We do not think it is wise for us to consider the cross examination questions because the issues in the evidence in chief are not

relevant to the issues we are looking for.

We shall now look at the evidence of the defendant's witness.

We were all of the view that the witness was giving his sworn evidence to the contrary. He was however asked by the Court as to if he understands what he is in the Court for, yet he related the story that also not according to the main issues of the Sea front.

He was emphasizing ^{21/2} alot on the fishing ground.

We agreed that there is no point having the witness evidences to be considered. The witness however has the right to be called as a witness and say what he wishes to say.

It is the duty of this Court to determine the creditability of the witness. We shall now weigh the evidences before this Court. But before we do that we shall refer back to the defendant's Lawyer Exhibit DF 5 letter dated 18/6/99 Mr. Reginal Teutao.

The nature of the letter was that the chiefs had ignored the principle of "Estoppel." He further apply that to the Local Court in which this Court now he meant the ignorance may apply by. Or ignore the pricipile.

In the letter he referred to the case of 1968 there was a Local Court decision on Adakoa land between Nouwae and Ramoitolo.

We agreed to the Counqsel that there was a case of the above characters and of 1968 but fall short to fallow the 1968 case in contrary to ^{the} land case no. 29/68 of Fasifou land within the land originally owned by Ramoitolo.

We could be in a better position to see our short fallness had it been for the copy of decision in 1968 is attached as confirmed been attached by the Counsel. We will take it from here to believe that the matter as stated above in 1968 was only heard by the Local Court in determining the land areas of Latea and Fulibae.

The issue before this Court is to consider the owner of the Seafront. We can conclude that the principle of estoppel is applied to the dispute (of) over the land. And could not apply to the dispute of the Sea front. In the High Court of S.I. Case no. 254 of 1991 Fulibae Tribe -vs- Farobo and Clerk to Malaita Customary Land Appeal Court. His Lordship Justice Palmer states, Quote. " dispute in 1968.....there is a boundary that divides the ownership of land between Nowae Doe and Ramoitolo" end of quote.

There is no evidence by both parties to prove to this Court the owner of the Sea front.

The plaintiff had failed to satisfy us to the balance of probability.

The defendant had also failed to discredit the evidence that the plaintiff may have grounded himself on.

If this is the case then what shall we do now to give at least a decision?

In this matter we were of the view that since the parties have related very much their own ground to believe as evidence to the owning of the Sea front to the documents which mainly of the land, we will have to consider that in the like of the Sea that adjacent to the land.

The common understanding of both parties is the land and its territory were not in dispute. Even if one wants to dispute, it would not gone to any effect. Simply of the fact that the motion of land dispute between these two parties before this Court had been "res judicata." And is binding on both parties and any related member of the parties.

In the High Court of Solomon Islands, Land Appeal Case No. 4 of 1993, Combined Fera Group and three Others -vs- the Attorney General, his Lordship Justice Palmer, when he considered the definition of "Customary Land" as defined under the IFA Cap 93 said: We quote, "The definition of land includes "Land covered by water. A similar definition is used in English Acts and a number of authorities deal with the point.

I do not cite them individually but the general thrust is that land covered by water does not include the sea bed. On a consideration of these authorities it is clear that the essence of the definition is the word land and that is used as the opposite to sea. Thus areas covered by lakes or rivers may be included as land whilst the tidal stretches of rivers will not. Similarly, if a man excavates his land and allows the sea to flood the excavated area, it does not by that cease to be land....." end of quote.

The crucial question this Court has to determine therefore is whose land does the Sea front adjacent to?

It is obvious that there was no dispute over the land. To conclude to the contrary, Adakoa is adjacent to the Sea front does bearing in mind the issue is only on the Sea front.

Judgment now is as follows, having considered the defendants' submission it is proper for us to define this judgment as follows. Defendants were so concern over the area for the sustainable living that could not be in a way to the best interest of them and their children. Defendants on the other hand does not object to any bisness that may have or have been established provided they are consulted. Having said that, we see no real point the defendants were arguing on, rather, their complain is only that they were not consulted. Plaintiff as we have stated earlier did not satisfy this Court on the balance of probabilities.

DECISION:

The Sea front as far as we had considered is adjacent to the land of Latea of which Ramoitolo is the sole owner.

Because Billy Farobo had purchased a part of the land of Latea to which is adjacent to the Sea front indispute we agreed to give the decision to Billy Farobo. In that Billy Farobo has the right to claim and own the Sea front. Billy Farobo is the owner of the Sea front. We do not consider the fishing grounds nor do we give any orders on the fishing grounds.

Parties to meet their own costs.

Right of Appeal against this decision 3 months from this date the 9th of July 1999. Parties are reminded that the period for lodging of an appeal expires on the 9th of October, 1999.

Judgment read to parties.

Time: 1.55 p.m before Judgment is read.

Date: 9th July 1999

President: Where is the spokesman for the defendants.

Lolo: He had gone home. I can stand by myself.

Court: Parties were related to their right for appeal. The period of 3 months.

Court officials:

John Still Meke VP

Anseto Po'oa CJ

N. Osifelo CJ

Bo^b Feratalia Court Clerk

