

CUSTOMARY LAND APPEAL COURT (M)
AUKI
28.05.99.



MD/CLAC3/98

BETWEEN: LEONARD NANAIMAE
 JOSEPH KOBUSU - Appellants

AND: THOMAS NGWASIMAELE
 OKALE RAMOLELEA - Respondents

RE: RATANI/FAUBAKO LAND

J U D G M E N T

The Appellants Leonard Nanaimae and Joseph Kobusu appealed against the decision of Local Court in land case no. 4/97 dated the 17th of September, 1997. In that case the Local Court decreed that,

" Mr Thomas has the right of ownership over the Ratani within Faubako and Court dismissed Plaintiff's claim of denying Thomas, right or ownership of Ratani being a reward given to Maeau (m)."

Appeal points 1 and 2 deals with the procedures of chiefs settlement and Local Court in particular parties to a dispute. We have checked the unaccepted settlement dated 4th of May, 1996 which lists Okale Ramolelea as a witness for Respondent Ngwasimaele. In the Local Court proceedings he was named as second defendant although the summons issued by the Court did not name him as a party. The decision did not name him as a beneficiary. We find that this was an error and this Court delete Okale Ramolelea as a defendant in Local Court proceedings. Appeal points 1 and 2 are allowed.

Appeal points 3,4,5,6,7,8,9 and 10 raises serious errors about Local Court proceedings, Local Court findings, the application of customs to land ownership and conducting of land survey.

Upon reading of Local Court records this Court find that the Local Court failed to properly weigh the evidence received before it. The appellants called 3 witnesses and evidence of PW3 John Dali who is a descendant of Niubo was never considered. This witness evidence is important because Niubo gave the reward (foca) to Respondent's devil Maeau for killing the giants at Aebusu land. The reward given to Maeau were in terms of pigs, bettel nuts, leaves, red money and food and this was later exchanged for a parcel of land.

The custom relating to such exchange was given as evidence however the Local Court failed to consider the customs. This is indeed a serious error made by the Local Court.

On further reading of the Local Court records the appellant Leonard Nanaimae's name appears as defence witness one (DW1). On record his evidence appears at page 18 - 20. It is clear that the Local Court has wrongly recorded the names of the witnesses and parties to this case. Such careless mistakes should not be allowed to happen in court proceedings.

We further note that Local Court did not carryout a proper survey or land proof of Ratani land. The Local Court survey report show that the parties gave different names of lands, streams and tambu sites which confused the Local Court, hence it abandoned the survey.


In looking at the entire case, this Court is satisfied that Local Court did not conduct the proceedings fairly and this may have affected the decision of the Court. We allow grounds 3,4,5,6,7,8,9 and 10.

DECREE:

1. Appellants appeal allowed.
2. Local Court decision set aside.
3. Case remitted to Local Court for rehearing before separately constituted court with same court fees.

Dated at Auki the 28th day of May 1999.

CORAM:

Kaia 

Kwaeria 

Daka 

Lea'afuna 

Wate 


Pm(m).