Between: JOHN SESELE — **Appellant**

And: ADRIAN NORUA — **Respondent**

High Court of Solomon Islands
(Palmer J.)

Land Appeal Case: 3 of 1993
Hearing: 11 September 1995
Judgment: 27 October 1995

F. Waleilia for Appellant
T. Kama for Respondent

Palmer J: It is pertinent in my view to trace the short history of the claim or the dispute of the parties as it originated with the Chiefs under the Local Court (Amendment) Act of 1985, right through to this Court, before the grounds of appeal should be addressed, for the reason that by the time the land dispute had reached the Guadalcanal Customary Land Appeal Court (CP/CLAC) the original claim as filed with the chiefs appears to have undergone some dramatic changes. This may or may not, have some bearing on the outcome of this appeal and to any appropriate orders that may be considered (if any).

A copy of the Chief's Records of Proceedings and decision has been obtained from the Local Court File Records, and judicial notice is taken of this. At page 1 of the Records (dated 28 June 1989), at the fourth paragraph, the Claimant, Tubara, *(who has since been replaced by the current Respondent at his death),* explained that his claim was in respect of KOMUPAPARA LAND; that it belonged to him, and not to John Sesele.

The case then proceeded on that footing before the Chiefs, as shown in the Records, but had to be adjourned to enable the Claimant to call further witnesses in support of his claim. The Records showed that the proceedings were resumed on the 27th of September, 1989. After the hearing, the Chief's adjourned to a later date to give their decision. In its decision, the Chief's gave judgment in

favour of the Defendant, stating that: *"Komupapara Land therefore belongs to Sesele in the sense that he performed traditional obligation in looking after the land after the death of Selevae junior."* ***(see page 5 of the Records, last paragraph).***

Also, in the Unaccepted Settlement Form normally completed and forwarded to the Local Court whenever a dispute was filed to be heard, at part 5 of the Form, under the heading *"Description of the nature of the dispute"*, the following was again recorded:

> *"The Complainant (Tubara) disputed that the above land belongs to him, ...".*

At part 7 of the same Form, the decision of the Chiefs was reiterated;

> *".... The decision therefore was in favour of John Sesele who truly own Komupapara Land ...."*

Proceedings in the Local Court

A copy of the Record of Proceedings in the Guadalcanal Local Court Case No. 2/92, is again taken judicial notice of. When the matter came before the Local Court on the 11th of September, 1992, the former Plaintiff in the Chief's hearing had by then been replaced by his brother, Adrian Norua. The matter in dispute was correctly recorded in page 1, as a dispute over Komupapara Land. However, by the time Adrian Norua had given his evidence before the Local Court, his claim appears to have undergone a change from a direct claim of ownership over Komupapara Land, to a dispute of boundaries it seems between Komupapara Land on one hand and Vavatu and Koivo Land of the other part. See paragraph (i) and (ii) of page 1 of the Records:

> *"I appeal against the chief's decision. Komupapara Land boundary. Between Komupapara land and Vavatu-Koivo land.*
>
> *I appeal on the following grounds, the ownership of part Vavatu land known as Koivo land being transferred."*

See also paragraph (i), at page 2 of the Records:

> *".... Defendant and others told me that from Koivo to Vavatu land is owned by my section. The other half to the coastal side is owned by Defendant himself."*

Again at para. (iv), same page:

> *"Defendant failed to show the boundary of Komupapare and Vavatu Koivo land. This made the dispute again."*

Also refer para. (vi), same page:

> *"The main dispute here is for the boundary but not the whole land. The boundary is not straight according to our understanding."*

The same point was made under cross-examination, first by the Defendant,

> *"Q. Why you claim Vavatu and Koivo Land"*
> *A. I only claim boundary."*

By the Court:

> *"Q. What the problem with boundary?*
> *A. He (Defendant) went over my boundary.*
> *Q. Why do you dispute Defendant of the boundary?*
> *A. He went over to my area.*
> *Q. Where is the boundary?*
> *A. From Kukuro to Bukonipaeni. "*

The witnesses called by the plaintiff also said something similar relating to the boundaries.

When the Defendant gave evidence, however, he maintained his claim of ownership over Komupapara Land. In response to questions from the court though, he did make some references to some boundaries. At page 8 of the Records of Proceedings, he was asked:

> *"Q. You know the boundary at Kukuro?*
> *A. True boundary should start at Kukuro to Betini."*

Further down the page, he was asked,

> *"Q. What think about boundary from Kukuro to Berakde river?*
> *A. Not true boundary.*

Q. *Boundary you know started where and ended where"*

A. *Luvunitila to Betini."*

When the judgment of the Local Court was given, this is what it says at paragraph (ii), of page 1 of the judgment:

> *"As we can see it the dispute here is mainly concerning the boundary of Koivo, Komupapara and Vavatu Lands."*

The court then went on to identify, what the plaintiff claims, was the boundary.

> *The plaintiff in his statement said that the boundary should be from Kukuro to the Berande River."*

Whilst the defendant's claim, they assert, was that it ran from Luvunatila to Betini.

On the face of the records, of the Local Court's judgment, it would seem that the Local Court had diverted from its original jurisdiction and duty, to hear and deal with the *"dispute"* that had been originally referred to the Chiefs; which dispute was on the **question of ownership of Komupapara Land**, and that it had digressed to deal merely with questions of boundaries between the three customary lands mentioned above. Though it is noted that the Local Court did deal with the question of ownership over Komupapara Land but did not include it in its decision.

> *"**DECISION***
> *Being satisfied with the ownership of the blocks named above this then have no doubt but to accept the boundary claim by the Defendant which is from Luvunitila to Betini we then refused the boundary of the Plaintiff which is from Kukuro to the Berande river.*
>
> *The rightful boundary declared by this Court is from Luvunitila to Betini."*

The Local Court may have been side-tracked to some extent by the way the plaintiff had presented his evidence before the court. The court however, must be always vigilant to ensure that it actually deals with the *"dispute"* that had been referred to the Chiefs. The reason is fairly obvious. The jurisdiction of the Local Court is activated by the subject-matter of that *"dispute"*. The Local Court

therefore, in as far as it is possible, should confine itself to the subject-matter surrounding that dispute, and not digress.

Of-course cases will arise which necessitate the determination of side issues. What is important however to always bear in mind is that the court does not get so taken up with the side issues so that it relegates the main issue which it was supposed to deal with within its jurisdiction, to a lesser status. The subject-matter of the dispute before it must always be kept at the fore-front.

Regrettably, that would appear to be so in the circumstances of this case, although as I pointed out, the court did make some sort of finding regarding the ownership of Komupapara Land. The relevant part in the judgment can be found at page 1, last paragraph:

> *"According to statements and evidences presented before this Court by the Plaintiff and his witnesses and the Defendant and his witnesses, this Court came to confirm that originally Komupapara Land is owned by John Sesele ...."*

Unfortunately, that finding was not incorporated in the *"decision"* part of the judgment, and would tend to show that the Local Court had side-tracked in its duty to ascertain the real dispute before it.

The Local Court was not asked to deal with the question of boundaries between Koivo, Komupapara and Vavatu. It may indeed have transpired that in seeking to determine the question of ownership over Komupapara Land, it was obliged to determine the boundaries between the above three lands. However, what it should have done in that regard then, was to identify the boundaries of Komupapara Land as claimed by the plaintiff on one hand, and by the defendant on the other hand. What must be borne in mind is that the issue of the boundaries between the above three lands was never brought to the attention of the Chiefs as would have been required by the Local Court (Amendment) Act, and to that extent, the action of the Local Court in seeking to deal with that question would appear to be ultra vires its jurisdiction. However, I make no concluded opinion on that point, until it is formally raised and argued at another time.

Proceedings in the G/CLAC

By the time the matter came before the G/CLAC, the error had been compounded, and perpetrated. In the Records of Proceedings of the G/CLAC, the Appellant (Adrian Norua) based his submissions, on the issue of the boundaries between those three lands. When he was asked at page 4 of the Records of Proceedings by the Court,

"Q. Do you claim Komupapara land?

A. No, I only claim Koivo and Vavatu."

His answer showed that somehow his claim had been amended so that it would appear that he had abandoned his original claim.

The G/CLAC also appears to have been completely mis-led, if not, substantially, because at paragraph (ii) of page 1 of the judgment, it had this to say:

> *"The main issue in this case is the boundaries of the named lands." (These were as referred to at paragraph (i) of the judgment, Komupapara, Koivo and Vavatu lands).*

After dealing with the various appeal points raised, the Court quashed the decision of the Local Court and substituted its judgment as follows:

> *"The boundary of Koivo and Vavatu awarded to the appellant begins at Semara right down to Luvunatila."*

Again, as in the Local Court judgment, the question of ownership over Komupapara Land was not included in the decision of the court. I do note however, that that issue was dealt with under the first appeal ground, and found against the Respondent *(John Sesele).* And so indirectly, it may be said that the G/CLAC did actually deal with the question of ownership over Komupapara Land. On that basis I will now deal with the various grounds of appeal raised.

GROUND 1. "IT WRONGLY RELIED ON THE EVIDENCE OF JUSTICE SHADRACK PALUA WHOSE EVIDENCE WAS NOT TESTED IN CROSS EXAMINATION."

The appellant argues that the court should not have relied on the personal knowledge of Justice Shadrack Palua, *(a member of the Guadalcanal Customary Land Appeal Court)* in circumstances where his personal knowledge amounted to evidence which was material to the case, and where he had not been sworn as a witness, and his evidence tested under cross-examination. *(See "Phipson on Evidence" 12th Edition paragraphs 47 and 48).* Further, in those material circumstances, Shadrack Palua should have excused himself from continuing to sit as a member of that court, or be disqualified.

In dealing with this ground, first, the personal knowledge of Shadrack Palua alleged to have been relied on as evidence by the G/CLAC must be identified. In his submissions, Mr Waleilia referred to a number of paragraphs at page 8 of the judgment of the G/CLAC. The relevant paragraphs read:

> *This Court has the privilege and advantage of having a member namely Shadrack Palua who had been once the President of the Tasimboko Local Court in the late 70's and dealt with the boundary of these lands in Court.*
>
> *According to Mr. Palua the first case was held in 1975 between John Sesele the respondent and one Vagha Versus one Vurini. The dispute according to Mr. Palua was about the boundary of Komupapara and Koivo. It was determined by the Tasimboko Local Court that the boundary of the lands was started at Golu to Luvunatila.*
>
> *The boundary was cut and witnessed by the contesting parties. This case was referred to in the local court records at page two at paragraph one.*
>
> *In 1976 according to Mr. Palua another dispute came between Ben Lenda from Norua's tribe and one David Neka about the boundary of Koivo and Vavatu. It was decided in that case that the boundary of Koivo and Vavatu began at Semara right down to Tenavuti near Lot 7 in which Golu land is located. (See sketch map exh. 'E'). Thus we accept as we found from the local knowledge of Mr. Palua who had dealt with the same lands is that Komupapara and Koivo have a boundary beginning at Golu to Luvunatila. Likewise we accept that Koivo and Vavatu have a boundary which begins at Semara down to Tenavuti near Golu, in Lot 7. Therefore we accept that the boundary of Vavatu and Koivo to Komupapara begins at Semara right down to Luvunatila at the Mberande river. We allow this point.*

As can be seen from the quotation above, the personal knowledge referred to by the appellant as evidence, related to Mr Palua's knowledge of two Local Court cases held in 1975 and 1976 of which it appears he had presided over in one as the President of that Local Court and in the other, may be also as President, if not, as one of the members of the court. Now, this type of knowledge can be distinguishable to some extent, on the basis that it can be easily verified by comparing it with the actual judgments of those two Local court cases. Those judgments in turn of those two Local court cases can be taken judicial notice of by the G/CLAC. To that extent, strictly speaking, such knowledge would not fall under the category of evidence which would need to be tested by cross-examination, as submitted by Mr Waleilia.

The question as to whether it was wrong to rely on such knowledge therefore would be dependant more on the accuracy of that personal knowledge as compared with the contents of the actual judgments themselves. What the G/CLAC therefore should have done in those circumstances would have been to obtain copies of the judgments of those cases, and verify the personal knowledge of Shadrack Palua.

As can be noted in the quotation above, two Local Court cases were referred to and relied on by the G/CLAC. I will consider these next.

Local Court Case No. 32/76

This was the first case referred to in the judgment of the G/CLAC; between Samuel Vuruni (plaintiff), and John Sesele and Vagha (defendants). The claim of the plaintiff was that the defendants had been using his land (a copy of that judgment is contained in the bundle of documents marked Exhibit "1"). In its judgment, the Local Court stated:

> *"The Court examined this case there was no proval evidence. So the court told them to look after their own boundary. Vuruni's line, they have to look after Vaebubuni's Land (also known as Vaebuburu land) and Vaga and Sesele have to look after Vaga's boundary."*

Unfortunately, the boundaries of the two lands referred to were not defined in the judgment. We do know that at least one of the Lands was called VAEBUBUNI or VAEBUBURU. This was the land claimed by the plaintiff to be his. The name of the defendant's land on the other hand was not stated. There is however, a copy of an affidavit also included in the bundle of documents marked as 'Exhibit 1', sworn by the same President of the Local Court (Shadrack Palua) who presided over the same case, dated the 19th of October, 1984, in which he referred to, in paragraph 2 of the affidavit, the name of the land claimed by the defendant as, KOMUPAPARA LAND.

What seems to have happened regarding the boundaries of the two lands in the above case is that, the boundaries being well known to the parties, were taken for granted. Unfortunately, the judgment of the Local Court itself did not clarify the dispute between the parties on the question of the boundaries of their lands. The court simply pointed out that the claim of the plaintiff was not proven on the evidence before it. The court then ruled that each party was to look after its own boundary. What those boundaries however, were not described in the judgment.

What could have been done in the above circumstances is for Shadrack Palua to stand down from sitting as a member of the G/CLAC and be required to give evidence on oath as to the question of

the boundaries. The difficulty we have here is that at the hearing itself, it appears that it was not anticipated that Shadrack Palua's personal knowledge would have been relied on by the G/CLAC in its deliberations. It only became aware of the personal knowledge of Shadrack Palua after the hearing itself, when they had adjourned to consider their judgment. In that case, what the G/CLAC should have done would be to require that copies of the judgments in those two cases to be taken judicial notice of and the personal knowledge of Shadrack Palua verified.

The other alternative approach would have been to require that Shadrack Palua stand down as a member of the G/CLAC and be required to give evidence on oath.

In the above judgment of the Local Court, there was some suggestion that the boundary of Sesele and Vagha may have been the correct boundary. Unfortunately, there is no boundary description of the customary lands of the parties and so it is not easy to verify the personal knowledge of Shadrack Palua.

WAS SHADRACK PALUA'S KNOWLEDGE AS RELIED ON BY THE G/CLAC ACCURATE?

The knowledge relied on regarding the first case, consisted of the following:

(1) That the case was held in 1975;
(2) That the parties were, John Sesele and Vagha -v- Vuruni;
(3) That the dispute was about the boundary of Komupapara and Koivo Lands;
(4) That the decision of the Local Court was that the boundary started at Golu to Luvunatila.

In contrast, the records of the judgment in that case showed the following:

(1) That case was not heard in 1975, but on the 6th of October 1976;

(2) The names of the parties was correct as above;

(3) The dispute was about the boundary of Komupapara Land and Vaebubuni or Vaebuburu Land.

(4) The decision in essence was to the effect that each party should look after their own lands.

From the above, we can see that two crucial errors were contained in the personal knowledge of Shadrack Palua. First, the names of the Lands in dispute were not the same. Shadrack Palua only got one name correct; which was Komupapara. The other land was Vaebubuni, or Vaebuburu, not Koivo. This error is material to the issue before the G/CLAC because the location of those two lands with respect to Komupapara Land is different. Vaebuburu Land is to the north of Komupapara Land, whilst Koivo is to the south. If there is to be any boundary dispute then it would lie on the northern boundary of Komupapara Land, bordering Vaebubuni Land. That would be on the opposite end of the boundary referred to by Shadrack Palua; at Golu to Luvunatila.

The second material error is that there is no mention or reference in the judgment of the Local Court to a boundary as starting at Golu to Luvunatila.

The reliance therefore of the G/CLAC on the inaccurate and therefore erroneous knowledge of Shadrack Palua renders their finding also erroneous and subsequently should not be allowed to stand.

CONCLUSION ON

GROUND 1.

On one hand, it is correct to say that the knowledge of Shadrack Palua should have been tested under cross-examination, and that had it been so subjected, then may be the blatant errors could easily have been pointed out. On the other hand, such knowledge as already indicated could easily have been taken judicial notice of by the court, rather than saying that it was relying on the personal knowledge of Shadrack Palua as to the judgment in that case. It is not a good practice for courts to be content with the personal knowledge of one of its members in such circumstances, and not take the time to obtain copies of the judgments referred to and cross-check that knowledge. It may not matter so much where the issues are simple, and the judgment clear and recent. But where the issues are not as clear cut and where the judgment was given a long time back, then the court should take the precautionary measure of obtaining copies of that judgment.

Ground 1 therefore should be upheld, first on the ground that Shadrack Palua should have been subjected to cross-examination. Secondly, even if he had been so subjected, in the circumstances of this case where the issues on the boundary are so vague and ambiguous, it is my view that other relevant witnesses would have been required to be called to give evidence on those points.

But even if it could be said that it was not necessary to subject Shadrack Palua to cross-examination on the ground that his knowledge can be taken judicial notice of, with respect it was grossly inaccurate.

GROUND 2. **"IT SHOULD NOT HAVE RELIED ON THE ADVICE OF JUSTICE SHADRACK PALUA IN LIEU OF THE OFFICIAL RECORDS OF EARLIER LOCALS COURT PROCEEDINGS BETWEEN THE APPELLANT AND ONE VARUNI."**

This ground indirectly has been dealt with under ground 1 above. The official records of the Local Court Case No. 32/76 have shown that there were blatant errors in the knowledge of Shadrack Palua which the G/CLAC have sought to rely on.

This appeal point therefore raises a very valid point which should be heeded for future reference. Unless the court is satisfied that the knowledge of one of its members of a previous court judgment is 100% accurate, then it should refrain from considering it further until copies of the previous court judgment is made available. This appeal point too should be upheld.

GROUND 3. **"IT WRONGLY PLACED UNDUE RELIANCE ON A DECISION OF THE TASIMBOKO LOCAL COURT WHICH DEALT WITH DIFFERENT ISSUES BETWEEN DIFFERENT PARTIES."**

In view of the court's ruling in the above two appeal points, it would be unnecessary to deal with this point. Nevertheless, since it has been argued as a separate case and for the sake of completeness, I will deal with it anyway. First, we will consider the question of the parties. The parties in the Local Court Case No. 32/76 were: *John Sesele & Vagha v. Vuruni.* We know that John Sesele is the same person in this appeal proceedings. There is little evidence however, regarding the relationship of Vuruni to Adrian Norua in these proceedings. This vital question was never addressed by the

G/CLAC when it should have so done. The significance of this point is that, provided that the issues are also the same, then the doctrine of *res judicata* would apply.

Secondly, the question of the issues raised in that case appear to be different to the present case, in that, the issue in that case was more on the question of the boundaries between Komupapara Land and Vaebubuni or Vaebuburu Land. In contrast, the real or original issue as between the parties to this appeal was on the question of the ownership of Komupapara Land. But even when amended, it was on the question of the boundaries between two other completely different lands; Vavatu and Koivo. In that respect, that decision of the Local Court would not be binding on the G/CLAC, though it may consider it to assist it in making its own decision on the evidence before it.

WAS UNDUE RELIANCE PLACED ON THE DECISION OF THAT LOCAL COURT?

At the last paragraph, of page 8, the court made the following statement:

> *"Thus we accept as we found from the local knowledge of Mr Palua who had dealt with the same lands is that Komupapara and Koivo have a boundary beginning at Golu to Luvunatila. Likewise we accept that Koivo and Vavatu have a boundary which begins at Semara down to Tenavuti near Golu in Lot 7. Therefore we accept that the boundary of Vavatu and Koivo to Komupapara begins at Semara right down to Luvunatila at the Mberande river. We allow this point."*

From the above quotation, it can be seen that the court did accept the personal knowledge of Shadrack Palua as accurate and relied on it to clinch the decision on the boundary in favour of Norua. But as already pointed out, that knowledge was fraught with inconsistencies and errors. I am satisfied that the court did place undue reliance on that decision, in circumstances where it was wrong to do so. This appeal point too therefore is upheld.

GROUND 4. **"IT WRONGLY RELIED ON THE ADVICE OR EVIDENCE OF MR JUSTICE SHADRACK PALUA WHO WAS BIASED IN THE CIRCUMSTANCES."**

With respect to the submissions of Mr Waleilia, of Counsel for the Appellant, I am not satisfied that it had been shown to my satisfaction that Justice Shadrack Palua was biased in the circumstances. His actions could as easily have been committed through ignorance and inadvertence and the court not fully, appreciating the depth of the consequences of relying on such personal knowledge.

GROUND 5 & 6.

Grounds 5 and 6 have been abandoned and therefore need not be addressed.

GROUND 7. "THE CUSTOMARY LAND APPEAL COURT WRONGLY ACCEPTED NEW GROUNDS OF APPEAL OUTSIDE THE TIME LIMIT PERMITTED BY SECTION 231B OF THE LAND AND TITLES ACT."

This ground raises the question whether new grounds of appeal could be accepted outside of the time limits prescribed under section 231 B of the Lands and Titles Act. The interpretation of that section has been well established by previous cases, *(see Seselono -v- Kikiolo (1982) SILR 15; Patatoa -v- Talauai (1983) SILR 112),* and has not been disputed by Mr Kama, of Counsel for the Respondent. Mr Kama's submission on this point however is that, the new ground of appeal referred to by Mr Waleilia, is not in fact a new ground, but a clarification of ground 2 (see page 2 and 3 of the judgment, in particular the paragraph marked ground 2.2).

WAS GROUND 2(2) A NEW GROUND OF APPEAL?

Ground 2(1) as originally filed within the time limits under section 231B of the Land and Titles Act, stated:

> *"That the local court erred in failing to address my complaint about the Chiefs being biased."*

Ground 2(2) which was accepted on the day of the hearing itself stated:

> *"That the local court erred in upholding such a biased decision."*

The question for determination here is whether ground 2(2) is more or less the same thing as ground 2(1). With respect, the answer must be in the affirmative. Ground 2(2) is stating nothing more than the obvious. Whereas the allegation raised in ground 2(1) is that there had been a failure on the part of the Local Court to address the appellant's complaint about the Chiefs being biased, ground 2(2) states that as a result of that failure it follows that the local court erred in upholding such a biased decision. Ground 2(2) therefore cannot stand on its own. It is dependent on ground 2(1). It stands or falls on the determination of the court pursuant to ground 2(1). It is my concluded view accordingly that ground 2(2) is not a new ground of appeal, but a mere extension of ground 2(1). It merely clarifies the position regarding ground 2(1). So even if ground 2(2) had not been included as part of ground 2(1), it would not have made any difference.

This appeal ground must accordingly be dismissed.

GROUND 8. **"THE CUSTOMARY LAND APPEAL/COURT WRONGFULLY ADDRESSED THE DECISION OF THE CHIEFS WHICH PRIMA FACIE DID NOT INFLUENCE THE DECISION OF THE TASIMBOKO LOCAL COURT AS TO THE REAL ISSUES IN CONTENTION."**

This ground has been conceded by Mr Kama and so to that extent it would not be necessary to consider it. However, even if the Chief's decision was biased, the hearing before the Local court was a hearing de novo, and so would not have made any difference. Further, there doesn't appear to be any evidence of any objections raised against any of the Chiefs at the hearing. If there had been any concerns about biasedness then it should have been raised then.

GROUND 9. **"THERE WAS NO EVIDENCE UPON WHICH THE CUSTOMARY LAND APPEAL COURT WOULD DRAW ITS CONCLUSION AS TO THE CORRECT BOUNDARY BETWEEN KOIVO, VAVATU AND KOMUPAPARA LANDS AND ACCORDINGLY THE COURTS DECISION IS ULTRA VIRES ITS JURISDICTION."**

This is quite an important appeal ground and so we will consider it in some detail. First we will consider the evidence (if any) that was available before the G/CLAC.

(i) **The personal knowledge of Shadrack Palua relied on by the G/CLAC.**

This knowledge was composed almost entirely of the purported judgments of two Local Court cases held in 1975 or 1976. The first Local Court case referred to was between Sesele and Vagha, against Vuruni. The second case was between Ben Lenda and David Neka.

In the former case, the accuracy of the knowledge of Shadrack Palua had been canvassed in depth under grounds 1 and 2, and its reliability ruled upon. Accordingly it is not necessary to repeat that here.

As regards the second case, no copies of the judgment in that case have been filed and a search for the file has not produced any positive results. That personal knowledge of Shadrack Palua therefore should have been subjected to cross-examination, and further evidence adduced from relevant parties and persons involved in that dispute to verify the knowledge of Shadrack Palua. To that extent he should have been disqualified from further adjudicating in and sitting as one of the members of that G/CLAC.

The status of the personal knowledge of Shadrack Palua therefore can be viewed as unsatisfactory and hence should not have been relied on.

(ii) Evidence of ownership of the lands in dispute and whether it assists in the determination of the questions of the boundaries.

The thrust of Mr Kama's submissions under ground 9 is that the question of ownership, is closely related to the issue of the boundaries, and that therefore any determinations on the ownership of those lands would provide sufficient evidence for the court to make a finding on the correct boundary.

(a) Some background information to the question of ownership.

It is pertinent in my view to trace the question of ownership as it originated with the Chiefs under the Local Court (Amendment) Act, 1985.

CHIEFS HEARING AND LOCAL COURT

In the Chief's hearing, the decision was made that Komupapara Land was owned by the Appellant, John Sesele. Unfortunately, the boundaries of that land was never delineated. With respect, this was a most crucial failure, and I wish to place on record here for future purposes that Chief's hearings dealing with disputes on land should as a matter of practice also have the boundaries claimed by the parties clearly described and put down in writing or on a sketch map.

By the time the matter came before the Local Court, the question of ownership of Komupapara Land had become entangled with the question of the boundaries of Koivo and Vavatu Lands.

A number of observations however can be made at this point:

(i) According to Sesele, the area of the land in dispute is part of a bigger land area called Komupapara.

(ii) In contrast, Norua claims that the area of land in dispute is called Koivo and is part of a bigger land called Vavatu.

For ease of reference I will refer to that land in dispute as Koivo Land.

It now appears that the actual area of land which late Tubara originally opened a dispute with Sesele was infact over the piece of land called Koivo. However, in the Chief's hearing he merely referred to it as Komupapara Land.

In the Local Court, Norua (brother of Tubara and the new representative of Tubara's Line) clarified that he did not wish to dispute the rest of Komupapara Land but only that area which was allegedly transferred pursuant to a traditional feast (involving the killing of pigs) to honour the death of Selevae, to Sesele; and this area of land he claimed to be called Koivo, and part of Vavatu Land.

The Local Court then made a number of findings as follows:

> *"According to statements and evidences presented before this Court by the Plaintiff and his witness and the defendant and his witnesses, this court came to confirm that originally Komupapara Land is owned by John Sesele and Vagha whereas Kukuro land is owned by Cecil Manegoli. Koivo Land was used to be Selevae's Land but being transferred to John Sesele after the death of Selevae because he made a custom ceremony by killing pigs during the burial of the late Selevae.*
>
> *We then also satisfied that Vavatu Land is owned by David Neka in which the plaintiff (Adrian Norua) is to be under his care."*

What is regrettable about the above findings of the Local Court is that it failed to describe in writing, or identify on a sketch map, the boundaries of the above lands.

However, having said that, I do note that the Local Court did make a finding on the boundary based on its earlier findings of ownership of Koivo Land, in favour of Sesele.

> *"Being satisfied with ownership of the blocks named above this court then have no doubt but to accept the boundary claim by the defendant which is from Luvunitila to Betini we then refused the boundary of the Plaintiff which is from Kukuro to the Berande river."*

GUADALCANAL/CLAC.

When the matter came before the G/CLAC, a number of appeal points were raised by Norua challenging the alleged transfer and ownership of Koivo Land from Selevae to Sesele. Ground 1 of Norua's appeal challenged the basis of that transfer as having been performed through the holding of a traditional feast by Sesele in custom, involving the killing of pigs. That court considered the reasons in the decisions of the Chief's hearing and the Local Court, as to how Selevae's Land had been transferred and acquired by Sesele. It is pertinent to note that it appears not to be disputed by

both parties that Koivo Land was owned by Selevae. The G/CLAC then found on the evidence before it, that the Chiefs and the Local Court had awarded ownership of Komupapara Land to Sesele, on the ground that he had performed a traditional feast involving the killing of pigs, at the death of Selevae.

When Sesele made his submissions in the G/CLAC, however, he denied ever holding such feast involving the killing of pigs. The court accordingly ruled, that the Local Court had committed an error in awarding ownership to Sesele through that customary practice, and upheld the appeal of Norua on this point.

The court then went on to consider another pertinent point raised in ground 4 of Norua's appeal. This appeal point is also related to the question of ownership. Norua's claim was that he was a direct descendant of Selevae, and therefore the rightful heir, or successor, to Selevae, on the question of ownership of Koivo Land. In support of his claim he filed inter alia, a family tree *(Exhibit "B" to the judgment of the G/CLAC)*, purporting to show his direct relationship with Selevae. The court found in favour of Norua on this point.

> *"On this basis we accept that the appellant is a direct descendant of the late Selevae and we also accept that the lower court was wrong in outweighing the customary identity of the appellant. We therefore allow this point."*

As an aside however, I wish to point out that the finding of that court that Norua was a direct descendant would not appear to be correct, for the following reason. If one examines that family tree closely, it will be seen that Norua was not directly descended from Selevae. It is more correct to describe their relationship as being descended from a common ancestor. According to that family tree, Norua and Selevae were descended from two sisters; BULAVE and BITIATHUA respectively. Those two sisters in turn were descended from a common ancestor, BUNGUTIA. It may be arguable therefore whether a person directly descended from Selevae according to that family tree may have a better title or right of ownership than Norua. Also there is no evidence to show how Norua's rights (if any) may have been transferred to him from Selevae. These questions however, may have to be

left to another day for the appropriate courts to deal with. For the purposes of this appeal, I accept the unchallenged findings of the G/CLAC as correct.

Two observations can be made regarding the findings of that court in favour of Norua under grounds 1 and 4 of his appeal. First, the court found that the basis for the transfer was non-existent. There was no traditional feast held involving the killing of pigs, conducted by Sesele. It follows accordingly, that no transfer could have been effected.

Secondly, as the "direct descendant" of Selevae, and bearing in mind that there is no dispute as to Selevae's title to Koivo Land as the owner, it follows that he had a better right to that land than Sesele; and as asserted by him, that Koivo Land and Vavatu Land were owned by his line *(see page 3 of the Records of Proceedings under ground 5 and para. 4 of the Local Court Judgment).*

From this premise of a better claim to Koivo Land, Mr Kama submits that it follows that the question of the boundary dispute was a foregone conclusion. With respect, this proposition does appear attractive, however, it contains one major flaw. That flaw stems from the very fact that right from the beginning, the boundaries of Komupapara Land and Koivo Land were never delineated on a sketch map or in the judgments of the lower courts. Had that been done, it would have been clear to the court what the boundaries of the Lands claimed by the parties were and, it would have indeed been a foregone conclusion, once the question of ownership had been determined.

In this case, the fact that ownership of Koivo Land had been granted in favour of Norua does not in my view, necessarily mean that his boundary description can be accepted conclusively, as the correct boundary. It will be noted that in the Local Court, it had not only ruled that Koivo Land had been transferred to Sesele, but that the correct boundary was from Luvunatila to Betini. In the G/CLAC, part of the boundary claimed by Norua ran from Luvunatila to Golu. In his evidence on oath before this court, Norua stated and did show on a sketch map, forming part of the Bundle of Documents marked as Exhibit "1", the location of the places called "Golu" and "Betini". His identification of those two crucial places showed them to be more or less on the same spot. This is quite significant because if they are but the same place but with different names, then there would

appear to be no cause for a boundary dispute, because both parties are agreed on that crucial boundary.

Further, as already pointed out, the exact boundary description of Koivo Land had never been delineated on a sketch map, or in the judgment of the courts below. And to add to all these, the descriptions of the boundaries in the lower courts have not been all that consistent. In the Local Court, when Norua was asked by the court as to the boundary, he answered:

> *"From Kukuro to Bukonipaeni" (see page 3 of the Records of Proceedings of the Local Court).*

This description as clearly shown on the sketch map attached to the Bundle of Documents marked Exhibit "1", by Norua himself, is different from the boundary claimed by him in the G/CLAC as from, Luvunatila to Golu. With respect, the above confusions would have been easily sorted out had the parties delineated clearly the boundaries of their respective lands in the first place.

For the above reasons, I am not satisfied that the determination of the question of ownership of Koivo Land in favour of Norua, provided sufficient evidence to enable the G/CLAC to make a proper finding on the correct boundary in this dispute.

(iii) **Evidence on references to Golu.**

Mr Waleilia asserts that references to "Golu" were being made for the first time in the G/CLAC and therefore amounted to fresh evidence being introduced. According to the principle enunciated in Temasuu -v- Taupongi (1983) SILR 103 at p.105, second to the last paragraph, leave should have been first obtained from the court before such evidence could be introduced. Did this reference to "Golu" in the G/CLAC amount to new evidence being introduced? As a reference to a boundary mark of Koivo Land, Yes. In the Local Court, however, the boundary claimed by Norua was from Kukuro

to the Berande River. No mention was made of a boundary mark at to Golu. However, indirectly there were references to "Golu" in the Plaintiff's witness, Fred Tharogia's evidence. There was a reference in that witnesses evidence to a land called Golu and a boundary mark or place also called Golu. The link (if any) to Norua's claim of "Golu" in the Local Court as a boundary mark was not made known to that court. Accordingly, the submissions of Mr Waleilia on this point would be correct and the proper course of action would have been to exclude references to Golu as a boundary mark.

If I am wrong on that, then the alternative argument raised by Mr Waleilia is that the references to "Golu" in the judgment of the G/CLAC, was so fraught with inconsistencies anyway, that it should not have been relied on. Mr Waleilia pointed out that in the 1976 Local Court case (between John Sesele & Vagha -v- Vuruni) relied on by the G/CLAC, there was no mention in that court's judgment that the boundary of the lands in dispute in that case was from Golu to Luvunatila. Shadrack Palua, a member of the Local Court in that 1976 case and also a member of the G/CLAC in this dispute, confirmed on evidence before this court that he had never heard the word "Golu" mentioned in the hearing in 1976. However, when this is contrasted with the personal knowledge of Shadrack Palua as relied on by the G/CLAC, it is obvious that there was a clear discrepancy. In the third paragraph of page 8 of the G/CLAC's judgment it said:

> *"It was determined by the Tasimboko Local Court that the boundary of the lands was started at Golu to Luvanatila."*

With respect, this was clearly incorrect. So even if the references to "Golu" can be accepted as evidence, they are so fraught with gross inconsistencies as to be reliable, and accordingly should be excluded as well on that ground.

ADMISSIBILITY OF EXHIBIT "B"

Exhibit "B" was the family tree of Norua submitted to the G/CLAC. Mr Waleilia contends that this amounted to new evidence and should not have been admitted without the leave of the court pursuant to Temasuu's case (ibid). With respect, this is not so. There was clear evidence before the

Local Court at paragraph 4 of Page 1 of the Records of Proceedings, in which Adrian Norua specifically stated that he was a descendant of Selevae.

"I am a descendant of Selevae."

The admission of the family tree therefore was not new evidence but evidence to clarify and explain further the claim of Norua made in the Local Court as to being a descendant of Selevae.

SKETCH MAP - EXHIBIT "E"

This sketch map was produced in support of the references to a 1976 case between Ben Lenda -v- David Neka. It was claimed by Shadrack Palua that it was decided in that case that the boundary of Koivo and Vavatu began at Semara right down to Tenavuti, in which Golu Land was located. However, for the same reasons already stated earlier, this evidence should have been excluded, if not, little reliance should have been placed on it.

In concluding under ground 9, whatever evidence there was before the G/CLAC, was either so vague and ambiguous, or so fraught with inconsistencies, that it would not be in the interest of justice to allow that courts findings on the boundary to remain.

ORDER OF THE COURT

In view of the various deficiencies observed in this judgment, the appropriate orders of the court would be to have the decision of the G/CLAC quashed in toto, and the dispute remitted to the Guadalcanal Local Court for a hearing de novo.

When the matter comes before the Local Court, a number of matters should be noted.

(i) It is important to bear in mind that the original dispute which came before the Chiefs pursuant to the Local Court (Amendment) Act, was on the question of ownership over Komupapara Land. In the Chief's hearing, the plaintiff (Tubara, later replaced by Norua), claimed that Komupapara Land belonged to him. Unfortunately, the boundary of Komupapara Land as claimed by the plaintiff was not marked out on a sketch map, or its description set down in writing. Also, the chief's did not delineate the boundary of Komupapara Land as awarded to Sesele. In the Local Court and the G/CLAC, the plaintiff/appellant seems to have restricted his claim to that portion of the land now known as Koivo Land. At first it might appear that this was now a new claim over a new area of land, but as pointed out earlier, the true position regarding this land is that it would appear to be the same piece of land referred to the Chiefs for their determination, but that the plaintiff now calls it by a different name, and claiming that it is part of the bigger land known as Vavatu Land, whilst the defendant maintains that it is part of Komupapara Land.

The parties therefore in my view should each submit sketch maps clearly setting out in full the boundaries of those lands which they claim ownership over. Norua therefore should mark out clearly the boundaries of Vavatu land and the boundary of Koivo Land, (which he claims inside that Vavatu Land). Likewise, Sesele should mark out clearly the boundaries of Komupapara Land as he claims it and identify too the boundaries of Koivo Land within that land. When the Local Court and the G/CLAC come to make their decision, they should include in their judgment the boundary of Komupapara Land or Koivo Land as awarded to the winning party. If the boundaries of other lands, like Vavatu Land, should become overlapped with the question of ownership of Komupapara Land, then its boundaries should be made clear where appropriate.

It is vital in my view that the question of boundaries is considered within the context of the original issue as referred to the Chiefs under the Local Court (Amendment) Act.

ORDERS OF THE COURT:

1. Appeal allowed;

2. Orders of the G/CLAC set aside;

3. Remit the matter to the same Local Court or a differently constituted Local Court for a hearing *de novo;*

4. Each party to bear their own costs.

ALBERT R. PALMER

A. R. PALMER

JUDGE