

SELWYN H. DIKA –V- DAVID LENGA SOMANA

High Court of Solomon Islands
(Palmer ACJ)

Civil Case No. 256 of 2001

Hearing: 3rd May 2002
Judgment: 19th June 2002

G. Suri for the Plaintiff

C. Ashley for the Defendant

Palmer ACJ: The Plaintiff filed Originating Summons on 24th September 2001. This was amended and an Amended Originating Summons dated 18th April 2002 was subsequently filed seeking determination of the following questions:

1. *Whether the Isabel Local Court decision made in respect of the 1994 Rakata Fish Ground case had declared both the sea and inland boundaries of the Rakata Fish Ground and Land?*
2. *If the answer to Question 1 is in the negative, whether the Isabel Local Court had the jurisdiction to revisit its own decision made in 1994, in respect of the Rakata Fish Ground case between the parties hereto, and to make clarification and declaration thereto as contained in the Land Case No. 8/99 David Lenga v. Casper Bana and Lidi Bako?*
3. *If the answer to question 2 is in the affirmative, whether the recent decision of the Isabel Local Court in the Land Case No. 8/99 David Lenga v. Casper Bana and Lidi Bako delivered on 29th May 2001 has clarified and declared that the boundary dispute between the parties hereto in the 1994 Rakata Fish Ground dispute also extends to the inland boundaries.*
4. *If the answer to either question 1 or 3 is in the affirmative, the Plaintiff seeks a declaration that the inland boundary of the Plaintiff's customary land is from West Bank of Rakata River to the East Bank of Fufuana river on Isabel.*
5. *If the answer to either question 1 or 3 is in the affirmative and insofar as the Defendant has failed to appeal to Isabel CLAC against the Local Court decision delivered on 29th May 2001, the Plaintiff seeks an order that Isabel CLAC issues a Certificate of no appeal under section 10(3) of the Forest Resources and Timber Utilisation Act [Cap. 40].*
6. *Further and/or other Orders as the Court deems meet.*

7. *Costs of and incidental to this application.*"

The Background facts

In 1992, the Plaintiff's clan, the **Mamara Clan** together with two other clans, the **Bulau Clan** and the **Etingi Clan**, commenced a dispute with the Defendant's **Eti Eti Clan** over the Rakata Baitfish sea ground (hereinafter referred to as "the Rakata Baitfish Case") before the Chiefs. No agreement was reached and the dispute was continued in the Isabel Local Court ("ILC"). On 20th – 21st August 1994, the ILC heard the dispute and ruled in favour of the Mamara Clan as follows:

"2. Mamara Clan owns from west bank of Rakata river to east side of Fufuana river, across to Gufuna which share boundary with Etini." (A copy of that decision is attached to the affidavit of Selwyn Dika filed 24th September 2001 and marked as Exhibit 'SD1')

This finding is consistent with what the Local Court said at page 2 of its judgment at paragraph 4:

"The court will now turn to the evidence of the Mamara clan which was represented by Selwyn Dika. Mr. Dika produced his genealogical table together with the map of the disputed area. He told the court that the Mamara traditional boundary is west bank of Rakata to Fufuana River. Within that area they have their tradition places. Kasubao, Tirobangara on the main land and Gufuna. He told the court that the Mamara clan share the ritual practice with Etini clan. They have tribal nuts at Ghozi River. The Tirobanga monument was shared with Etini. The Gufuna was also shared. It had had the boundary with Etini clan."

In the hearing before this court, the Plaintiff produced the same map marked "SD2" apparently used in the Local Court. That sketch map identified the different areas of land claimed by the contesting tribes. No appeal was made in respect of that decision.

Timber Rights Hearing 1995

On 23rd August 1995, a timber rights hearing was convened by the Havulei/Kokota Area Council to consider an application by Eastern Development Enterprises Limited ('EDE Ltd') for grant of timber rights on LR 675 known as the Rakata/Fufuana Land (hereinafter referred to as "LR 675"). This was the same area considered by the ILC in 1994 in the Rakata Baitfish ground dispute. The Mamara Clan's claim was objected to by David Lenga Somana ("Somana") of the Eti Eti Clan. The Area Council heard the objection but ruled in favour of the Mamara Clan. I quote:

“The Area Council having considered the evidence and the documents produced by both Mamara and Eti Eti clans determined that the Mamara clan is entitled to grant timber Rights on the LR 675 Rakata / Fufuana land.” (See Exhibit ‘SD2’ annexed to the same affidavit of Selwyn Dika filed 24th September 2001).

On 12th September 1995, Somana lodged an appeal with the Isabel Customary Land Appeal Court (“Isabel CLAC”). On 28th April 1999 the Isabel CLAC quashed the Area Council determination and directed the parties to take appropriate actions. The matter was appealed to the High Court (see decision of the High Court dated 21st December 1999 in Civil Case Number 276 of 1999 between Selwyn Dika v. David Lenga Somana & Attorney General). The High Court quashed the determination of the Isabel CLAC and ordered that the appeal before the Isabel CLAC to be heard de novo.

Instead of having the matter re-heard by the Isabel CLAC however, Somana filed an application with the Isabel Local Court to deal with his claim. It is not clear under what jurisdiction this was done. It is also not known too under what jurisdiction the Isabel Local Court sought to hear that application! There was no direction from the Isabel CLAC or from the High Court.

The jurisdiction of the Local Court is set out in sections 12, 13 and 14 of the Local Courts Act [Cap. 19] and section 254 of the Land and Titles Act [Cap. 133]. The timber rights hearing which came before the Isabel CLAC had been brought pursuant to section 10 of the Forest Resources and Timber Utilisation Act [Cap. 40]. That Act makes no mention or provision for any determination of the Area Council to be brought before the Local Court. That jurisdiction had been vested in the Isabel CLAC.

If a land dispute is to be referred to the Local Court under the Local Courts Act, then it must first be referred to the Chiefs under Section 12. Obviously that had not been done in this case. The High Court or the Customary Land Appeal Court may also make referrals to the Local Court, but that could only be done under the provisions of the Land and Titles Act (see section 254(2) of the said Act). It is clear therefore that the referral to the Local Court by Somana was done without jurisdiction and therefore invalid.

PREVIOUS DECISIONS

There are a number of previous court decisions touching on LR 675. It is important for purposes of determining the issues raised in this Amended Originating Summons to re-visit them.

Decision No. 1

The first case, which touched on LR 675, was the case between **Joses Lote** (representing the Bulau Clan) **v. Allan Taravolo** of the Mamara Clan, (hereinafter referred to as “the 1981 Case”) before the West Isabel Local Court (“WILC”). That dispute was over lands described as “Suavanao and Papatara – Fa’a”. It appears that Suavanao land was the same land as Rakata Land or LR 675. The WILC ruled in favour of Allan Taravolo. It was appealed against to the Isabel Customary Land Appeal Court (“ICLAC”) who overturned the decision of the WILC and awarded title to Joses Lote.

Decision No. 2

The second case, which also touched on LR 675 was the case between Joses Lote v. David Lenga Soman in 1989. The Isabel Local Court (“ILC”) ruled in favour of Joses Lote. On appeal to the Isabel Customary Land Appeal Court (hereinafter referred to as “the 1989 Case”) the Isabel CLAC varied the decision of the ILC by confining the boundaries of the Bulau Clan from Zuzuao to Pazagere and the boundary of the Mamara Clan as stretching from the west side of Pazagere to Rakata water. It then held that the Eti Eti Clan had rights to use over that part of the land only. This decision is significant because apart from recognizing the claim of the Eti Eti Clan as represented by Soman, it indirectly gave recognition to the claims of ownership of the Mamara Clan without being represented in that case. The decision of the ICLAC read:

“According to custom we believe that the true original boundaries of the land are as follows:

- (1) The Bulau boundary extends from Zuzuao to Pazagere*
- (2) From the west side of Pazagere to Rakata water belongs in custom to Mamara Clan and the Eti Eti Clan have the right to use this part of the land.”*

Decision No. 3

The third decision is the Rakata Baitfish Case. The ILC heard the case and determined as follows:

“This court therefore makes the following decision in default of the defendant:

- 1. The Bulau clan own the Rakata Bait Fish around from Rakata river to Zuzuao point. That is from Rakata river mouth extended northly direction to Tagili reef. From Tagili reef eastly direction to Repana Island southly direction to Zuzuao*

point. Including Papatara farm, Papatara ite including small islands and reefs within the boundary.

2. *Mamara Clan owns from west bank of Rakata river to east side of Fufuana river, across to Gufuna which share boundary with Etini.*
3. *Etini Clan owns from west end of Fufuana river, Varagia river across to Gufuna which share boundary with Mamara Clan.*
4. *This court further order that the adopted daughter of Margaret Made, Hellen Kalabi shall take care of the Mamara land. Until the Mamara Clan originated from Margaret Madi return to Rakata Land. In the event when Helen Kalabi dies, her son Selwyn Dika may take over. The Mamara Clan originated from Margaret Madi are the rightful owner of the Rakata land as described in order two (2) of this decision."*

This decision was challenged in the High Court by Somana in Civil Case Number 21 of 1995 between David Somana v. Joses Lote. Somana sought to argue that the doctrine of res judicata applied to the Rakata Baitfish Case as it sought to re-agitate issues that had already been determined in the 1989 Case. He argued that the Local Court was bound by the decision of the ICLAC in the 1989 Case.

In his judgement delivered on 18th May 1995, Sir John Muria CJ held that the doctrine of res judicata did not apply as the two decisions referred to two different issues or matters. At page 2 of his judgment, his Lordship states:

*"I have considered the evidence contained in the affidavits of the defendant and Selwyn Dika and quite clearly the decision of the CLAC No. 4/89 giving the Plaintiff the right to use the land was over Rakata land which is shown on the maps produced by the plaintiff and defendant as LR 675. That land belongs to the Mamara Clan and the plaintiff was given the right to use part of it between Pazagere to Rakata water. **The maps produced clearly show that the part of the land which the plaintiff had been given the right to use is inland. One only needs to look at the maps again to confirm that.***

The part of the Rakata Land between Pazagere and Rakata Rivers and described as LR 675 is inland which was the subject of the decision in CLAC No. 4/89. Again looking at the maps both submitted by the plaintiff and defendant the land between Pazagere and Rakata River described as LR 23 toward the coast is different from that in LR 675. I have grave doubt that the CLAC Case No. 4/89 was also concerned with the land in LR 23. It will be noted also that LR 23 consists of the area which I have just described and also Papatara Island and the group of islands next to it." [Emphasis mine]

His Lordship then went on to describe the Rakata Baitfish Case as follows:

“The Local Court case No. 4/94 was about claims of the right to the baitfish ground within LR 23 in particular with the area in and around the Rakata Bay. That Local Court case was also concerned with the right to the baitfish ground to the west of the Rakata Bay and North of Rakata Bay to Ghizuriabeana Group.

In the light of the evidence and reading the decisions in the two cases (CLAC Case No. 4/89 and Local Court Case No. 4/94), I cannot help but to conclude that the land in dispute in CLAC and the land in dispute in the Local Court are different. The issues are not the same. It is therefore not surprising that the other clans have disputed the right of the Eti Eti clan to claim the right to the baitfish grounds in question.”

I have taken the time to look at the maps referred to in the judgment of his Lordship Sir John Muria C.J. I have done this on the basis that I can take judicial notice of them as evidence that had been proven, relied on or used by the court in arriving at its decision. The map referred to can be accessed in the affidavit of Joses Lote filed on 16th May 1995 in Civil Case 21 of 1995 as annexure “JL7”. Lote had conveniently identified the different areas of lands in dispute with different colours. At paragraph 12 of his affidavit he describes those lands as follows:

“To clarify which land areas were covered in the land dispute and baitfish claim I prepared a sketch plan of the area extracted from a map (scale 1: 150,000). The green represents the land in dispute in CLAC 4/89. The red represents LR 23 and the blue represents the baitfish ground in Local Court Land Case No. 4/94.”

The part shaded green is the same area shaded orange in the map marked as “SD 2” submitted to the court at the hearing.

The area of the baitfish ground in dispute is coloured blue in the same exhibit. Copies of Exhibit “JL7” can be made available to the parties on request. That primarily was the area, which formed the subject matter of the dispute in the Rakata Baitfish Case. In reaching its decision however, the ILC had to consider the ownership claims of the parties on the mainland itself. Ownership of the baitfish ground obviously was directly linked to ownership of the adjoining customary lands in this particular instant. Hence in determining the ownership of the respective baitfish grounds the ILC was obliged to consider the respective claims of ownership over the land itself. It was in that context that determinations on the different boundaries of the adjoining customary lands were made before any determination on the Rakata Baitfish grounds were made. That was how the decision in respect of the Mamara Clan’s claims were

arrived at. That decision has not been appealed against and therefore is binding on Somana as the representative of the Eti Eti Clan. If he was not happy with that decision he should have appealed it. He did not and is therefore bound by it.

In so far as the Rakata Baitfish Case is concerned therefore, the ILC accepted the submissions of Dika that the traditional customary boundaries of the Mamara Clan over LR 675 stretched from the west bank of Rakata river to the east side of Fufuana river. That being the case, the determination of the Havulei/Kokota Area Council sitting at Toelegu on 23rd August 1993 in respect of the application for grant of timber rights over LR 675, that the persons entitled to grant timber rights was the Mamara Clan, is consistent with the decision of the ILC in the Rakata Baitfish Case. In actual fact, the Havulei/Kokota Area Council and subsequent courts are bound by that decision; i.e. the decision in the Rakata Baitfish Case. The subsequent Isabel Local Court Case Number 8/99 between David Lenga v. Casper Bana and Lidi Bako therefore was ultra vires in that the said court had no jurisdiction to re-open its own case and to make any rulings on it. That power lies with the High Court under its inherent jurisdiction. Only the High Court has original jurisdiction to clarify the previous decision of an inferior tribunal.

Subsequent withdrawal of the appeal to the Isabel CLAC from the Rakata Baitfish Case.

In the decision of this Court dated 21st December 1999, this Court granted order for certiorari to remove the judgment of the ICLAC made on 28th April 1999 removed to this Court and quashed. The Court then directed that the matter be remitted to the ICLAC (differently constituted) to re-determine the appeal of David Somana under section 10(1) of the Forest Resources and Timber Utilisation Act.

By letter dated 8 February 2002 addressed to the Chief Magistrate however (see Exhibit "DLS1" attached to the affidavit of David Lenga Somana filed 26th March 2002), Somana sought to have his appeal withdrawn. I set out in full the contents of that letter, as it is crucial.

"Dear Sir

I refer to the RAKATA/FUFUANA LAND – LR 675/LR 674 David Lenga v. Selwyn Dika and others, Case No: CLAC 1/2000 that I wish to withdraw my appeal as per H/C order Civil Case 276 of 1999.

Secondly, that I wish to request from your good office the issue of Certificate of no appeal, since the Eti eti and Aramara clans have now come to a compromise to Rakata and Fufuana Land issue.

Thank you for your attention.

Yours faithfully,

Chief David Lenga

As a result of that withdrawal, the Clerk to the ICLAC issued a Certificate of No Appeal dated 12th February 2002.

Effect of the withdrawal of Appeal

The withdrawal of the appeal to the ICLAC in respect of CLAC No. 1 of 2000 by Somana and the subsequent issue of a Certificate of No Appeal dated 12th February 2002 by the Clerk to the ICLAC, meant that according to the determination of the Havulei/Kokota Area Council the clan entitled to grant timber rights over LR 675 was the Mamara Clan. This also meant that for purposes of negotiating and entering into a timber rights agreement with EDE Ltd, the tribe duly identified as having the rights to grant such rights is the Mamara Clan. Unfortunately, the said Area Council only partly completed its task. **Whilst identifying the Mamara Clan as the tribe entitled to grant timber rights it did not go on to identify the persons from the Mamara Clan who were entitled to grant the timber rights.** Apart from the key spokesperson, Selwyn Dika assisted at the timber rights hearing by Henry Lidi, no formal identification was made of the representatives of that clan. If there is consensus as to who are the representatives of that clan, then I see no impediment with regards to entering into a timber rights agreement with EDE Ltd, however where there is dispute, then alternative ways may have to be found to have that matter sorted out first before any timber rights agreement are entered into.

Conclusions

The questions raised in the Amended Originating Summons dated 18th April 2002 therefore can be answered as follows.

- 1. Whether the Isabel Local Court decision made in respect of the 1994 Rakata Fish Ground Case had declared both the sea and inland boundaries of the Rakata Fish Ground and Land?*

The answer must be in the affirmative in that the boundary of the Rakata Baitfish Ground was based on the title of ownership of the Mamara Clan over LR 675.

- 2. If the answer to question 1 is in the negative, whether the Isabel Local Court had jurisdiction to revisit its own decision made in 1994, in respect of the Rakata Baitfish Ground case*

between the parties hereto, and to make clarification and declaration thereto as contained in the Land Case No. 8/99 David Lenga v. Casper Bana and Lidi Bako?

The answer to question 1 was in the affirmative and so it is unnecessary to answer question 2. At any rate I have already found in this judgement that the ILC did not have jurisdiction to revisit its own decision. The ILC is not a court of original jurisdiction and therefore does not have power to revisit its own decision when an application is made to it. The power to do so lies with the High Court. That hearing therefore was ultra vires and consequently void.

To that extent, it is unnecessary to answer question 3.

As to question 4, I think for the avoidance of doubt a declaration can be made simply to the effect that as between the Mamara Clan and the Eti Eti Clan, the decision in the Rakata Baitfish Case is binding on the Eti Eti Clan.

On question 5, it is impossible for this court to direct the ICLAC to issue a Certificate of No Appeal in respect of the decision of the ILC dated 29th May 2001 as that court had no jurisdiction to re-visit its own decision. Not only that, but the Clerk to the ICLAC had already issued a Certificate of No Appeal in respect of the appeal against the determination of the Havulei/Kokoto Area Council dated 23rd August 1995. No further directions therefore need be made.

The Plaintiff shall have his costs of and incidental to this application.

ORDERS OF THE COURT:

- 1. Declare that the Isabel Local Court decision in the Rakata Baitfish Case had clearly identified both the inland and sea boundaries of the Mamara Clan as stretching from “... west bank of Rakata river to east side of Fufuana river, across to Gufuna which share boundary with Etini.”**
- 2. Consequentially declare that the Eti Eti Clan is bound by that decision.**
- 3. Declare that the Isabel Local Court Case No. 8/99 between David Lenga Somana v. Casper Bana and Lidi Bako was ultra vires and therefore void.**
- 4. Declare that in so far as the timber rights application of Eastern Development Enterprises Limited over LR 675 is concerned, and that in so far as the appeal to the ICLAC had been withdrawn by the Appellant (David L. Somana) and a Certificate of No Appeal issued by the Clerk to**

the ICLAC dated 12th February 2002, the clan duly identified as being lawfully entitled to grant timber rights over LR 675 is the Mamara Clan.

5. The Plaintiff shall have his costs of and incidental to this application.

THE COURT.