

RE: KONIDE LAND

KORAMATA CLAN - VS - 1. LAND ACQUISITION

OFFICER AND

2. FAFAGO CLAN. ←

Appeal against the Land Acquisition Officer.

This is an appeal under S65 of the Land and Titles Act against the determination of the land acquisition officer in relation to a piece of land known Konide.

The right of appeal and the powers of this court are set out in section 65 (1) of the Land and titles Act.

Section 65 (1) of the Act reads -

Any person who is aggrieved by any act or determination of the acquisition officer may within three months from the date of the record or determination appeal to a magistrate's court and such court may make such order as it considers just.

On 21st May 1991 the acquisition officer Joseph Pinita made an agreement for the lease of Konide land with the lessor the Koramata clan represented by William Manedao, Hilton Gatho, Joseph Richard Tugumana and Nelson Eleme.

In accordance with the procedure laid down by Part V of the Land and Titles Act a public hearing was held at Kaevanga on the 4th and 5th June 1991. At this hearing the acquisition officer heard claim by Droman Roroi an appointed spokesman for the Fafago clan and on 1st July 1991 the acquisition officer handed down his decision that the Fafago clan is the rightful owner of the Konide land.

It is against that determination that the Koramata clan appeals to this court.

The Koramata clan appeals on the following grounds:-

1. That the land acquisition officer's conduct of the hearing was not done properly in that their real evidence were just ignored or not taken into consideration;
2. The acquisition officer failed to accept the Bugotu chiefs decision that the Koramata clan is the rightful owner of Konide land.

3. That the acquisition officer transported the Fafago clan spokesman Dromand Roroi in an outboat motor from Kaevanga to Buala and believed by the Koramata clan were soliciting an independence decision.
4. There was no mention of one Eleme's mother comes from Lonahaja by the Fafago clan, but was said by an independent witness who does not belong to Fafago clan.
5. The acquisition officer's decision may have been politically interfered with due to these simple factors:
 - (a) Our two Provincial Assembly members are active supporters of three (3) other parties including Fafago clan in all previous customary land disputes, in fact both play an important role in the 4 parties.
6. That the acquisition officer is a close relative of one of the two honourable members wife who comes from Makira Province.

I shall address ground 1 and 2 together.

The appellant's spokesman Charles Vasethe argues that the acquisition officer's conduct of the hearing was not done properly on the basis that he had ignored and not even taking into consideration the real evidence of the Koramata clan adduced in the hearing. He further argues that the acquisition officer has failed to recognize and accept the ownership of the Koramata tribe of the land in question awarded by the Bugotu chiefs.

When I first set to hear this appeal at the Magistrate's Court Central in Honiara on 3rd Dec. 1991 there was no record of the acquisition hearing available in court except the summary of his finding. In this respect I allowed the appellant's witness to relate their custom history regarding their claim of ownership of the land in question. Despite objection raised by Michael Evo, spokesman for the respondent tribe in this court on the ground that the witness is repeating what had been said in the acquisition hearing I overruled the objection and insisted to hear this witness and others for the purpose of assessing their evidence in custom whether the acquisition officer had properly considered them.

The full record of the acquisition hearing was later presented to court prior to the adjournment of this case to be heard here at Buala.

I have heard the witnesses of both parties and in particular the Koramata witnesses and upon comparing their evidence with the ones adduced in the acquisition hearing

I find them to be the same. Now the question I have to decide here is whether the acquisition officer had properly considered the real evidence adduced by the Koramata clan before him. The acquisition officer during the hearing had heard custom facts and then considered them and as I read his ruling I am satisfied as I find that he had considered all the custom facts and made his ruling accordingly. Thus, I am satisfied that the acquisition officer had properly considered the Koramata clan's custom evidence.

In respect of the Bugotu chiefs decision which the appellant alleged that the acquisition officer failed to accept, I must say here that an acquisition officer's dealing with a disputed land matter is not subject to any ruling, in this case the chiefs decision.

The Land and Titles Act gives power to an acquisition officer to hear claims about any customary land that is acquired for whatever purposes and then makes his ruling. In the present case the acquisition officer is not binding by the Bugotu chiefs decision. Whereby he has to give his decision in favour of the Koramata just because the Bugotu chiefs had earlier ruled so. He may do so or otherwise. In the acquisition hearing he had properly exercised his discretion to reject the ownership of the Koramata clan previously awarded by the Bugotu chiefs, which in his opinion was not just.

From the evidence I heard I accept that the Fafago clan had tabu places in the land in question. The Koramata clan admits that it has no tabu place in the land. It claims however, that the land was theirs for gardening. I further find on the evidence and accept that the Koramata came into the land when christianity first introduced on Isabel. Two of the Koramata witnesses who are from the Fafago clan confirmed that there was a clam shell in the land. (In court there was no mention of clam shell by the two Koramata witnesses but it was said by Cecil Kusapa, (police officer) an interpreter for Koramata tribe.)
in his own word - The correct word is "Thua".
This was the clam shell claimed by the Fafago clan as one of their tabu places in the land in question.

There is no mention of this clam shell by the Koramata witnesses other than the two witnesses I referred to.

The appellant side also tendered a file of documents exh. 'A' as further proof of their ownership.

The documents are about a lease agreement signed between the Koramata clan by Fr. James Vasethe and William Manedao and the Commissioner of lands on a piece or plot of land called, Kolotubi.

This land is located far from Konide and doesnot claim by the Fafago clan.

All and all Iam satisfied that the acquisition officer had properly considered the custom evidence of the Koramata clan and made his ruling accordingly. Thus, grounds 1 and 2 of the appeal failed.

Ground 3 of the appeal is allegation of bias on a pre-determined decision on the ground that the acquisition officer had transported the Fafago clan's spokesman Dromand Roroi after the hearing to Buala whilst the decision was yet to be announced.

The acquisition officer doesnot deny transporting Roroi to Buala after the hearing and by then his decision was yet to be handed down. However, he told court that he had brought it before the attention of the contesting parties that he is asked by Roroi if he could come with him and his driver to Buala where he was residing. According to the acquisition officer which is not disputed, the parties agreed that he can transport Roroi to Buala. *denied by Koramata*

I must say here that any person in this case the acquisition officer or any judge dealing with any matter in any legal proceeding must disassociate himself from the parties involved or any person who has interest in the matter. Whilst I accept that the accompanying of the acquisition officer by one of the parties was wrong especially when the officer's decision was yet to be made, the fact that the parties gave their consents that Roroi can accompany the A.O. back to Buala is in my opinion justify the action made by the acquisition officer.

I find 3rd ground also failed.

Ground 5 of the appeal is a complaint about the mention of one Eleme's mother in the proceeding. It is alaged by the appellant that the mention of the name was not said by any witness from the Fafago clan but rather by an independant witness. The acquisition officer told court or confirmed that the witness who mentioned Eleme's mother was a witness he had called by himself.

I must say here that there is nothing wrong in any court proceedings if the tribunal wishes to call any witness by its own motion to give evidence on a certain matter or matters or in the case of custom issues to give his custom knowledge about the matter involved. I find nothing wrong about the acquisition officer calling the independant witness and therefore this ground also failed.

I would address ground 5 and 6 together.

It is alleged by the appellant that the decision made by the acquisition officer was influenced by two politicians namely Stanley Vuhamana and George Kaepada.

The appellant told court that these politicians are active supporters of other three parties including the Fafago clan in all previous customary land disputes and that the acquisition officer is a close relative of one the named politicians wife.

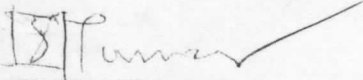
The acquisition officer denies being influenced by these politicians. He does not deny that he is related to the concerned wife whose name is not mentioned. The appellant alleges that the acquisition officer had at times spent nights at the home of these Honourable members but I find no evidence to that effect.

I find no merit in these grounds of appeal.

I find no evidence supporting these allegations. The allegation as I find is merely suspicion and accordingly grounds 5 and 6 also failed.

Thus, I dismissed this appeal and uphold the acquisition officer's ruling that the Fafago clan is the rightful owner of the Konide land.

I make no order as to costs and any party or any person who aggrieved by my decision may appeal to the High Court on the grounds set out in S65 (2) of the Land and Titles Act within 3 months from today.


EDDIE MUNA

Magistrate (Central)

25th May, 1992.