

CUSTOMARY LAND APPEAL COURT  
(MALAITTA)  
AUKI  
24 - 8 - 96

CLAC NO. 17/95

BETWEEN: EMILIO LIIOUOU - Appellant

AND: JOHN SARUHOHOLA - Respondent

RE: PAUHU LAND (PWAULIWE LAND)

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J U D G E M E N T

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The Appellant Emilio Liiouou has lodged this appeal against the decision of the Local Court given on the 4th of December, 1995. The Local Court upheld the decision of the chiefs dated the 10th - 12th of July, 1991.

Before this court deal with the appeal proper, we would make a mention of it here, the manner in which the Appellant presented his appeal.

There are about 18 points of appeal and some were marked alphabetically from A to G which were eventually amended and numbered as seven to thirteen. It became very confusion when the Appellant started amending, deleting and substituting his appeal points. It became even more confusing when the Appellant started reading from his appeal points, then break of and read from other hand written papers, then come back again to the appeal points.

Although the Appellant is not a lawyer, it is important to know that this court had seen and heard ordinary people appear before it, and presented their appeal in a logical manner. It is therefore the duty of the Appellant to assist the court by presenting his appeal in a manner that can be understood by the court. The way the Appellant presented his appeal is very unusual. We mention this point because in future, it is important to seek legal advice if parties to a dispute do not know how to draft their appeal points and how to present the appeal before the court.

We now deal with the appeal proper. Appeal points one, four and thirteen deal with the conduct of Local Court justices during the court hearing and the survey proceedings.

The Appellant has raised serious allegations about the conduct of the Local Court members in his submissions, however he has not produced any evidence to prove that the conduct of the Local Court members were biased and unfair, and in the circumstances they were not acting judicially to the extent that their conduct resulted in a miscarriage of justice. The Local Court justices and the clerk denied any extra judicial activities. The Local Court clerk Lucian Kebai gave a statement on the 25th of January, 1996 after the Appellant complained to the Chief Justice about the conduct of the members. The signed statement stated that,

"These Local Court members were not blood related to neither plaintiff nor defendant. The court Vice President Anthony Ramoi was not known blood related to John Saruhohola or Emilio Liiouou Ara or good friends to them. This Local Court only upheld the decision given by the chiefs panel of the area...."

The Vice President Anthony Ramoi also gave a statement on the 26th of January, 1996 and in his statement he said,

"The only objection made was against Mr. Mariano Wateliu in which an explanation and objector Mr. John Saruhohola was satisfied. Sir, we had made our decision directly on the evidence produced in court by both parties. .... Finally I must assure you that we made our decision to the best of our ability with honesty. "

These statements reflect that there were no impropriety in the court proceedings and the Appellant's allegations falls short of any substantive evidence to prove that the justices acted improperly.

We are satisfied that the justices acted properly and there was no miscarriage of justice. We therefore dismiss appeal points 1, 4 and 13.

As to appeal point two the Appellant wrongly stated the Local Court decision. The Local Court judgement page 26 last paragraph stated that,

"From his geneology first which Emilio Liiouou produced, Mamauniore brother of Poroapalolo both in the 3rd in the generation and 14th in Exhibit 3, Mamauniore left Pwau/Liwe land for 22 generations and returned only on negotiation for the Rural Service Project of Liwe which cause this dispute. "

This finding is supported by the evidence of the Respondent at page 3 and all the Respondent's witnesses. It appears that the Local Court accepted the Respondent's evidence and rejected the Appellant's evidence. This is a matter entirely up to the judicial discretion of the Local Court. We therefore find that, there was no error made by the Local Court, when it accepted the Respondent's evidence.

We dismiss point two of the appeal.

Appeal point three questions the reasons for the Local Court's decision in accepting the chiefs settlement. Again the Appellant has misled this court by stating in his appeal submissions that the chiefs settlement and the Local Court decision stated that the Respondent John Saruhohola, his witnesses and their tribes are the rightful owners of Pwau/Liwe land.

This is clearly misleading because the chiefs settlement and the Local Court decision stated that "John Saruhohola is the true landowner and has full right on Pwau/Liwe disputed land." The records do not state that the witnesses and their tribes will also own Pwau/Liwe land. We dismiss appeal point three as been misleading and ill-conceived.

Appeal point four has been earlier dealt with. Appeal point five in essence states that the Respondent in his evidence misled the court by saying that the Appellant's ancestors came from Makira. This court does not believe that the evidence is misleading.

The Respondent gave his evidence on oath and it was for the Local Court to accept or reject that evidence. We have checked the records and we find that the Local Court did not err in making that finding. We reject appeal point five. Appeal points 6, 10, 15 and 16 deal with the survey of the disputed land. This court note that initially the chiefs surveyed this disputed Pwahu land in July, 1996 and the Local Court also surveyed it in 1995. The surveys were conducted firstly by chiefs who have custom knowledge of the land in dispute and then secondly by the Local Court which is an independent judicial body. The Local Court survey report dated the 28th of November, 1995 indicate that the court was shown the spearline, sacred sites for shark worshipping and graves of ancestors. We find that the survey was done properly and we accept the survey report of the Local Court dated 28th of November, 1995. We dismiss appeal points 6, 10, 15 and 16 respectively.

As the appeal point seven we accept that two unrelated geneologies cannot own the same land together, however the Local Court found that the Respondent John Saruhohola own Pwahu land and not the Appellant Emilio. It is not correct for the Appellant to suggest in his appeal that Pwahu land may have been owned by two unrelated geneologies originally. This point is disallowed.

Point 8 of the appeal states that the Local Court erred in upholding the chiefs decision which was inconsistent with the Land Acquisition Officer's decision in 1988 and which was confirmed by the Magistrates Court in 1989. It is clear that the Respondent was not a party to the acquisition proceedings in 1988 and the acquisition appeal to the Magistrates Court in 1989. The Respondent instituted his proceedings before the chiefs in 1991 against the Appellant. We find that the Local did not err when they upheld the chiefs decision.

Appeal point 8 is rejected. Appeal point 9 raised the issue of acquisition proceedings in 1988. We dismiss that point for the reasons we have stated in appeal point 8.

As to appeal point 11 the Appellant argued that the chiefs decision was unfair. It must be understood that the chiefs decision is contained in an unaccepted settlement form (LC3). This is the legal requirement i.e where parties do not accept the chiefs settlement, then that settlement must be filled in an unaccepted settlement form and filed with the Local Court. This point is misconceived and we dismiss it.

Appeal point 12 again raised the issue of acquisition proceedings in 1988. That point is dismissed for the same reasons as in point 8.

Appeal point 17 is a repetition of chiefs decision in 1991 and Local Court decision in 1995 and survey proceedings. We dismiss this point for the reasons we have stated earlier.

The court cannot find appeal point 14 in the records and appeal point 18 has been abandoned and we do not give our decision on those points.

**DECREE:**

1. The Appellant Emilio Liouou's appeal is dismissed in its entirety.
2. The Local Court decision in CC 2/95 in which it upheld the chiefs decision is confirmed.
3. The Respondent John Saruhohola is the owner of Pwahu land.

Dated at Auki the 24th August, 1996.

JOSEPH KAIA (P)  
ADAM KWAERIA (VP)  
GEORGE WATE (M)  
SHEMUEL WALANIHOUM (M)  
RODDY KOARU (PM).