

**CUSTOMARY LAND APPEALCOURT (M)
AUKI
08.05.98**

MD/CLAC/8/97

BETWEEN: CLEMENT SAOMAE

Appellant

AND: MISIAKU

Respondent

RE: SULIDODO/MANAU LAND



JUDGMENT

The Appellant Clement Saomae has appealed against the decision of Local Court in LC9/96 delivered on the 30th of May, 1997. The decision of Local Court was that,

“Misi Aku and Jeffrey Loemae Diaufoa and clans owned Sulidodo/Manaua customary land including the disputed parcel of land Saeote’e in Sulidodo/Manaua customary land boundary. Mr Tim Iama’a may go back to his mother land Ora’a and Clement Saomae may have beneficial right to use his ngali nut trees in Saeote’e disputed area.”

Before this Court deal with the substantive grounds of appeal, it is convenient to briefly outline the facts that gave rise to this appeal. The dispute started over Saeote’e parcel of land situated within Sulidodo/Manaua land.

Initially the Radekwai chiefs heard the dispute in 1993, however the settlement was incomplete. Eventually a settlement was reached by the chiefs in 1996.

That settlement have been unaccepted enabled the Local Court to hear the land dispute. The Respondent's claim before the Local Court was that Manaua is a land within Sulidodo customary land which he claimed to be owned by himself and his tribe. The Local Court upheld the Respondent's claim.

There is one important matter which has been overlooked by the chiefs and the Local Court all along. The Appellant Clement Saomae has remained silent without giving a scintilla of evidence. This is not a criminal case where the constitution of Solomon Islands protects or allows the right to remain silent. This is a civil claim, a claim for land ownership where a litigant must personally justify or prove by oral testimony or documentary evidence his cause of action or defence thereto. He must personally prove his geneology, tambu sites and spearline. Therefore the right to remain silent has no basis in civil law.

In this appeal we note that the Appellant engaged Tim Iama'a as a spokesman in the Local Court. Iama'a gave evidence in Court and the Appellant did not Iama'a's evidence to a lesser extent supports the Appellant, but most of it is, his own claim for Gwaunau customary land. The spokesman is not a party to this appeal and therefore his evidence may not carry much weight in deciding the outcome of this appeal. Indeed, this Court appreciate comments made on appeal by Mr. Jeffrey Loemae (Respondent's brother) as to the interest of Mr. Iama'a.

Of course this Court can easily dispose of this appeal without affording an opportunity to the Appellant a hearing, however that course may not be seen as fair and just. A proper course would be to allow the Appellant to give evidence before the Local Court. The Appellant must testify to what extent his interest are in Sulidodo, Manaua, Gwaunau and Saeote'e lands. He must also produce his own geneology to justify his interests. And if necessary a land survey or land proof would also be conducted.

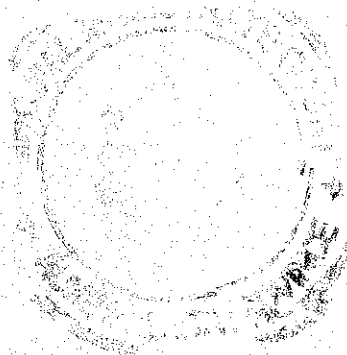
The decision in this appeal must therefore be stayed until the Local Court completes the referral.

INTERIM ORDER

1. Decision in this appeal is stayed.
2. The same Local Court shall hear evidence from the Appellant on the points raised above in this ruling and subject to its decision in case 9/96 may make any finding if necessary.
3. Evidence from the Appellant and any finding of the Local Court shall be received into this Court as part of case 9/96 on appeal and subject to be determined by this Court
4. Costs in the Cause.

Dated at Auki the day of 1998

KAIA (P)
WATE (M)
DAKA (M)
SANAU (M)
LEAFANUA (M)
SIHIU (M)
TEOSI (M)
KOARU (PM/CLERK).



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