

CUSTOMARY LAND APPEAL COURT (MALAITA)

AUKI

02-06-99

MD/CLAC/4/97



BETWEEN:

JONATHAN RUA

OLIFOA'A

-

Appellants

AND:

OLIGA

RINALDO SAEMI

-

Respondents

RE: SUBEAIANO/FULIABU LAND

JUDGMENT

The appellants Jonathan Rua and Olifoa'a having been agrieved by the decision of Local Court land case No 3/96 appealed to this Court. In the Local Court the respondents were awarded Fuliabu land as previous decided by LAC/4/76.

The appellants have filed two grounds of appeal. Appeal point 1(a),(b) and (c) raise similar issues and this Court will deal with them together. The main arguement of the appellant is that Local Court was wrong in upholding a previous case MD/LAC/4/76 between Oliga - v - Gua. The appellants are new party, and that case cannot bind them against Oliga nor Gua.

We have checked the Local Court handbook at page 11 Rule 19 which provides,

"A Local Court cannot change the decision given in another Local Court, Magistrate's Court, Customary land Appeal Court or High Court. Neither can it change a decision given by itself already. This includes land cases."

This is a rule of practice more allied with judicial precedents. The Local Court was correct to apply the practice rule. It applied it not on the basis that the appellant is a new party, but on the basis that evidence adduced before it by the respondent was consistent with his previous claim and therefore the Local Court was bound by LAC/4/76. If the appellants evidence was strong, certainly the Local Court could have been persuaded to find infavour of the new party, the appellants. The decision in LAC/4/76 does not bind the appellants however in considering the evidence on the entire case the appellants' claim cannot be sustained. The appellants' claim Subeaiano which covers Fuliabu as decreed in LAC 4/76. The tambu sites which the appellants purported to show were claimed by Oliga in 1976. Boundaries which the respondent claimed in 1976 in respect of Fuliabu land are claimed by appellants as Subeaiano. The appellants have attempted to show that Fuliabu does not exist; clearly the claim for Subeaiano was not consistent with previously documented evidence.

The appellant further submitted that the respondent's geneology given in 1973 is inconsistent with his latest given in 3/96. We have checked the geneology given in 27/73 and the respondent traces it ancestry to Buli who came from Subea to stay at Fuliabu and begat Ote'e

Basilia
Manabu
Iliomea
Madioa
Ilisau
Robo
Ukaula (1)
Oliga
Ukaula (II)
Namosau (f)

In 3/96 the respondent again traced his geneology to Buli as his discoverer of Fuliabu land. This geneology is more than one line, it includes names of more than one child born from a male line and also includes names of females. The fact that the respondent added some more names to his geneology does not necessarily mean that it is inconsistent. Indeed he had clearly identified his discoverer Buli whom he claims to be the first man to worship in Fuliabu land. This is not inconsistent when dealing with claims of customary land ownership. On that basis appeal points 1 (a), (b) and (c) are dismissed.

On appeal point 2(a), (b) and (c) the appellants submitted that Local Court was wrong in fact and law to give primary ownership of Fuliabu land to Alfred Kiki and clan due to inconsistent geneology, no survey was done and no supportive evidence.

This Court has dealt with the issue of geneologies of 27/73 and 3/96 not inconsistent.

The evidence before the Local Court show that respondent obtained a bank loan (DBSI) of \$20,000.00 for his cocoa project and further loan of \$78,000.00 for cattle project on 40 acres of Fuliabu land. The appellants did not object to the development bank to stop the loan. And it is clear from the evidence before the Local Court that the appellants do not have such property or project development on the land they claim to be Subeaiano.

On the question of survey, the Local Court did survey Subeaiano/Fuliabu land as shown in survey report dated 28/4/97. The appellant argued that the Local Court did not enter the tambu sites during the survey. They stood in front of the sites talked about each sites and continued the survey.

The appellant was the plaintiff and it is his duty to prove his case on the civil burden of proof. If he was absolutely certain that those were his sites he would have invited Local Court to enter each site and explained what was in them. Moreso showed the remains of his ancestors in the sites. It is clear, the survey report contains evidence for the respondent and very little can be said or discovered for the appellant. It is fair to say that the appellants have failed to prove their ancestral sites. The appellant cannot blame the Local Court for his failure to prove his claim.

This Court note that Local Court assessed all the evidence in its findings at pages 32 - 35. Evidence of each witness had been summarised in each findings. Upon those evidence and findings the Local Court was able to conclude that Oliga is the owner of Fuliabu land. This conclusion is clearly supported by evidence and this Court cannot interfere. Appeal points 2 (a), (b) and (c) are dismissed.

DECREE

1. Appellants appeal dismissed in its entirety.
2. Local Court decision in land case 3/96 is upheld.
3. Costs awarded to respondents.

Dated at Auki the 02nd day of June 1999.

Coram: Kaia
Lea'afuna
Sihiu
Sanau
Wate
Koaru (PM)

All signed.