

**CLAC (M)**  
**AUKI**

29.09.99

**MD/CLAC/2/98**

**BETWEEN:**           **GABRIEL LAUMANI**  
                                  **DANIEL FANAKUI**  
                                  Appellants

**AND:**                   **JACK SANIEL**               First Respondent  
                                  **JOSEPH SULIMAE**        Second Respondent

**RE: BOSOMAE LAND.**

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**J U D G M E N T**

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The Appellants Gabriel Laumani and Daniel Fanakui have lodged this appeal against the decision of Local Court delivered on the 30<sup>th</sup> of March, 1998. The Local court decided that the second Respondent Joseph Sulimae has the primary ownership of Lagwae Langi customary land and has full rights to sell Bosomae Land. It is this part of the decision the Appellants have lodged this appeal.

Before we deal with the appeal substantive, it is note worthy to mention that the first Respondent Jack Saniel is a purchaser of Bosomae land for value from the second Respondent Joseph Sulimae. Bosomae is a parcel of land situated inside much bigger land commonly referred to as Lagwae Langi. Therefore the first Respondent's right to own Bosomae land depends on the question of who is the rightful owner of Lagwae Langi customary land.

On the appeal substantive points 1 and 1(a), the Appellants submitted that traditional means of solving disputes including chiefs' settlement have not been exhausted before the case was heard by the Local Court.

The Appellants did not specify what other forms of traditional means of solving disputes. We understand that one form of traditional dispute settlement is chiefs' settlement. The Local Court Act Cap 19 makes provisions for chiefs' settlement.

The Local Court Act provides under, "Section 12(1) Notwithstanding anything contained in this Act or in any other law, no Local Court shall have jurisdiction to hear and determine any customary land dispute unless it is satisfied that -

- (a) the parties to the dispute had referred the dispute to the chiefs;
- (b) all traditional means of solving the dispute have been exhausted; and
- (c) no decision wholly acceptable to both parties has been made by the chiefs in connection with the dispute.

(2) It shall be sufficient evidence that the requirements of paragraphs (a) and (c) of subsection (1) have been fulfilled if the party referring the dispute to the Local Court produces to the Local Court a certificate, as prescribed in Form 1 of the Schedule, containing the required particulars and signed by two or more of the chiefs to whom the dispute had been referred.

The unaccepted settlement LC3 dated 5/2/97 states that chiefs did not convene as parties to the dispute refused to attend the chiefs' settlement. The Local Court findings show that indeed, the Bosomae land dispute was referred to the chiefs of West Fataleka for a period of six months. During that period parties have failed to turn up or refused the chiefs to settle their land dispute. Therefore chiefs could not possibly reach a settlement.

Upon these facts, this court finds that the requirements of section 12(1) and (2) have been complied with by the chiefs and Local Court. To put simply, the dispute was referred to the west Fataleka House of chiefs and the chiefs made every attempt to have this land dispute settled.

We do not believe that the Appellants were never summoned nor notified. Certainly a period of six months is more than sufficient time to summon or notify the parties to attend the hearing. We dismiss appeal points 1 and 1(a).

On appeal points 2 and 2(a) the Appellants raised the issue of proving custom sites especially tambu sites to connect the discoverer. The Second respondent's evidence at page 2 and 6 of the records show that his discoverer was Gwatanga and principal tambu site was Laliagwe.

The Local Court finding was consistent with evidence produced before it.

The Appellants trace their descent to Akwarara who is placed by the Second Respondent as his sixth generation man. Akwarara would not therefore be a discoverer but a descendant of Gwatanga. The Local Court findings are consistent with evidence produced also for the Appellant and Local Court was not wrong when it found Gwatanga as the discoverer of Lagwae Langi land. We dismiss appeal points 2 and 2(a).

On appeal point 3(a) and (b) the Appellants argued that the Local Court misdirected itself in its findings as to the discoverer and ancestor of Lagwae Langi land.

The Appellants traced their ancestry to Akwarara whom the Second Respondent claim to have descended from Gwatanga the Second Respondent's discoverer.

We have checked the Local Court findings and this court is convinced that Akwarara is a true man of Lagwae Langi. The Appellants claim that, Akwarara is their ancestor and discoverer of Lagwae Langi cannot be sustained from the evidence recorded in the Local Court proceedings. To claim Akwarara as a discoverer would not be justifiable as he is placed by the Second Respondent as his sixth generation man. We are satisfied that the Local Court did not misdirect itself in its findings. The Local Court was right in finding that Gwatanga is the discoverer of Lagwae Langi land and Akwarara is the Second Respondent's man from Lagwae Langi. Appeal points 3 (a) and (b) dismissed.

On appeal points 4 (a) and (b) the Appellants question the manner in which the survey was conducted. The Appellants told the court that only one member and court clerk carried out the survey and the vice president stayed behind in the village. We have checked the survey report and we are satisfied that the court clerk properly recorded the sites and land proofs they saw on the land. The fact that some of the court members did not take part in the survey did not make the survey report unfair or biased.

The survey was conducted to allow parties to show sites or proofs of what they have told the court in their testimonies. We are satisfied that the Local Court decision was based on the survey report dated 23/3/98. Appeal points 4 (a) and (b) dismissed.

Point 5 (a) and (b) relates to the issue of unfairness and the likelihood of bias. There is no evidence before this court to prove that the Respondent's party was seen with the court officials having conversation in the night at Gwanatafu village. It is not challenged that both parties agreed for the court officials to spend the night at an Anglican Father's house after the survey. There is no evidence to suggest that the Anglican Father is related to the Respondents. We find that this allegation cannot be sustained.

The Appellant further allege that on the 30<sup>th</sup> of March, 1998 the Respondent's spokesman Primo Ofatalau told one Timothy Taloikwai that the Respondents have won the case. This conversation took place about 6 am before the decision was delivered that day. The Appellant called Timothy Taloikwai to prove this allegation. He told the court about seen the Respondents with court officials at the MDA Rest House and the vice president was seen at the road side betelnut vending area accepting shilling from the Respondents spokesman. The Respondents spokesman told the court that he was not in Auki at 6 o'clock in the morning of the 30/3/98. Infact he was on a truck coming from his village to Auki. It was impossible and not true for him to be with the court justices at MDA Rest House that early morning. He told the court that he did not at anytime met the vice president and gave him money. The roadside betelnut vending area is a public place and if there was such a meeting the witness Timothy Taloikwai failed to apprehend him or failed to confront him.

This Court find that there is no ring of truth in this allegation and we dismiss it.

The Appellant argued that it was unfair for the Second Respondent to go to Honiara without having to wait for the decision which was to be delivered that day 30/3/98. This Court was told that the Second Respondent left for Honiara that day because his child who attends a school in Honiara was sick. He had arranged with the spokesman to receive the judgement on his behalf. We find that there is nothing wrong with such an arrangement. A properly appointed or authorised agent or representative can act and receive or obtain judicial decisions in the absence of his principal.

Appeal points 5 (a) and (b) are therefore dismissed.

### **DECREE:**

1. The Appellants appeal is dismissed.
2. Local Court decision is upheld.
3. The Second Respondent Joseph Sulimae and his line are the primary owners of Lagwae Langi customary land and therefore he is entitle to sell Bosomae parcel of land to the first Respondent Jack Saniel.
4. The Appellants Gabriel Laumani and Daniel Fanakui has the right to harvest or use their properties on Lagwae Langi. Any development they have to obtain permission from the primary owners.

Dated at Auki the 29<sup>th</sup> day of September, 1999.

KAIA (P) .....

DAKA (VP) .....

LEA'AFUNA (M) *Hanifan* .....

WATE (M) *6/20/02* .....

TOATA (M) *John* .....

KOARU (PM) *John* .....