

ALAMOA MIMIDI -v- GABRIEL RAMO

High Court of Solomon Islands

(Palmer J.)

Civil Case No. 311 of 1992

Hearing: 17 February 1994

Judgment: 2 March 1994

T. Kama for Plaintiff

R. Teutao for the Defendant

PALMER J: By an originating summons filed on the 13th of October 1992 the Plaintiff in this case seeks the following declarations:

- "1. *That the ownership of Manaoba customary Land in the entire Manaoba Island of Malaita Province, inclusive of Lolo and Su'uwalo customary land had been adjudged the Plaintiff, and his descendants in the customary Land Dispute case No. 8 of 1970 on the 10th day of March, 1970.*

2. *That the following land dispute cases decision:-*
 - (a) *the chiefs decision dated 30th August, 1988 between Paul Maenu and Gabriel Ramo;*

 - (b) *the Malaita local Court Land Case No. 6 of 1989 decision of 11th September, 1989 between Paul Maenu and Gabriel Ramo*

 - (c) *and the Malaita Customary Land Appeal Court Case No. 6 of 1989 decision of 12th November, 1990 between Gabriel Ramo and Paul Maenu'u.*

in as far as the interest of the descendants of Mimidi represented by the Plaintiff, in land, were res judicata."

This case is quite simple. It turns on a question of fact. What was the decision of the Malaita Local Court in respect of a customary land dispute case between the late Mimidi

and Lamani held on the 10th March 1970, as to the area of land that was in dispute called **BUIRAKWAENA**. The Plaintiff claims that that land called Buirakwaena meant the whole island of Manaoba. In the affidavit in support filed on the 13th of October 1992 at paragraph 3 she deposed:

"My father had on 10th day of March, 1970 claimed ownership of the whole of Manaoba Island against the late Lamani Ramo of Hatodea Village, North East Malaita. On the same day the Malaita local Court adjudged that Mimidi was the owner of Manaoba land which literally means the whole Island of Manaoba. Annexed hereto and marked 'A' is a certified copy of the Malaita Local Court decision dated the 10th day of March, 1970."

In his defence, the Defendant argued that the Local Court decision of the 10th of March 1970 was in respect of a specific land area on Manaoba Island called **BUIRAKWAENA**.

The Plaintiff and the Defendant have each given evidence about what they understand the local Court records of 1970 were about. The Malaita Local Court had also been directed by this court under section 231(2) of the Land and Titles Act to make findings on four questions referred to it in respect of **BUIRAKWAENA** land and Lolo Land. The findings of the Malaita Local Court dated the 2nd of April 1993 have been submitted to this court.

A summons however had been filed by the Plaintiff on the 21st of July 1993 seeking orders to appeal against those findings, or for the Malaita Customary Land Appeal Court to review the Local Court's findings. This court has heard submissions on this summons from both parties, but has reserved its decision if any, to be given together with the final judgement in respect of this application under the originating summons.

I do not need to dwell on the legal niceties of the principle of res - judicata, as this is well understood by the parties. Put simply, whatever decision was made by the Malaita Local Court on the 10th of March 1970 is binding on the parties, their privies and successors. This is not disputed by the parties in this case. The dispute lies in what the Local Court actually decided on the 10th of March 1970, as to the area of the land called **Buirakwaena**.

First, let me make it very clear that this court is not seeking to make any new decision, nor seeking to substitute or vary, the decision of the Local Court of the 10th of March 1970. This Court is as interested and as concerned as the parties to ascertain what the Local Court decided. Sad to say, it is not as easy, nor as clear to find out. It is unfortunate that that Local Court took for granted that some twenty years later, the

successors and other interested persons, would be able to identify what land was in dispute.

None of the Local Court justices, nor the original parties are alive today to confirm what land area was Buirakwaena or its boundaries.

The relevant parts of the Local Court's record of proceedings reads:

"Statement of Claim Mimidi v's Lamani

I here brought Lamani because he wishes to take offer (sic) my land called Buirakwaena.

Plea: Note (sic) Liable

I was very sorry for my people because (sic) Lamani want to take offer all their paddocks in my Land. Because I am the owner and I new (sic) nothing about Lamani.

...They liave (sic) at Buirakwaena. They made one Decorated house. Then Fiuramao and Kaleofa liave already at Walo and Afeau liaved at Ferataa. Talau liaved at Ole."

Under cross-examination by late Lamani at question 3, he asked:

Q. "Why Karian the pagan priest over(sic) sacrifice to my place called Lolo?

A. Note (sic) Lolo but Kaori the other Realation (sic) note (sic) yours."

Under cross-examination by late Mimidi at question 1 it reads:

"Is this people where did they buried their relations heads at Lolo or where?

A. They buried at Ferataa.

Q3: Did your man called Ganiofa where did they buried at Lolo or Ferataa?

A: They buried him at Ferataa."

From the above record of proceedings, there are several places that were clearly identified. One is Buirakwaena, where a decorated house was built; two, there is a place called Walo, three, a place called Ole; four, there is a place called Lolo; and five, there seems to be also another place called Kaori, but I am not sure if this referred to the same place as Lolo, but called Kaori instead, by late Mimidi, or is the name of the tambu place of late Mimidi. And we know of course that Ferataa and Su'u are names of places on two separate islands off Manaoba Island.

Walo and Lolo have been marked on the map, submitted as an exhibit to this court.

Mr Ramo has also sought to identify the land called Buirakwaena on that same map. That area however is disputed by the Plaintiff.

In order to assist the Court as to the determination of whether Buirakwaena land meant Manaoba Island or not, four questions were referred to the Malaita Local Court to make findings on. These are:

- (i) *Were Buirakwaena and Lolo lands adjacent to each other, and shared a common boundary?; or,*
- (ii) *Were Buirakwaena and Lolo lands two separate blocks of land?; or,*
- (iii) *Is Buirakwaena land a smaller block of land inside Lolo land?; or*
- (iv) *Is Lolo land a smaller block inside Buirakwaena land?*

After hearing the evidence of both parties the Local Court carried out a brief survey, after which a decision was given on the following day. The finding of the Local Court was that, Buirakwaena land was a smaller block of land inside Lolo land.

On retrospect I can accept that to some extent the questions posed for the Local court to consider were inappropriate. The reason being that the Local Court was asked to consider two land areas, Buirakwaena and Lolo. This may have confused the issue slightly. The land area that we are directly concerned about for the purposes of this application is **BUIRAKWAENA** land; not Lolo land. The issue of Lolo land will only become relevant after the land area of **BUIRAKWAENA** land is identified.

The whole issue is confusing to some extent because in the affidavit in support of the originating summons, the Plaintiff originally claimed that Buirakwaena land referred to the whole of Manaoba Island. In the Local Court hearing in April of 1993, this was changed to a boundary from Lofotamasi to Darikokola.

The records of the Local Court proceedings on the 10th of March 1970 and its decision do not assist either in clarifying matters.

However, there are certain viable conclusions that can be arrived at in my view.

First, the way the records of the proceedings make references to Buirakwaena and other place names, in my view point more to a piece of land on Manaoba Island rather than a reference to the whole island. The name Buirakwaena is referred to more as a separate piece of land to the other place names.

This brings up the second point in the record of proceedings in which twice, the late Mimidi had asked the late Ramo about a place called Lolo. This in my view supports the version of the Defendant in this case that there is a separate piece of land called Lolo, and that there is also a separate piece of land called Buirakwaena on Manaoba Island.

The third important point can be seen in the decision of that Local Court which reads:

"Mimidi is the owner of that land area at Manaoba. If anybody wishes to work on any land he should ask Mimidi first."

It is possible to interpret this decision as referring to all the land area at Manaoba Island. However, when put in the context of the whole record of proceedings, that interpretation in my view does not seem to fit in. In the Statement of Claim it refers to Buirakwaena land. If it had been the island of Manaoba in dispute, why didn't it say so? It would have been a simple matter to say that the ownership over Manaoba Island was in dispute.

Secondly, the reference in the decision to the land area at Manaoba must necessarily mean, Buirakwaena land, to maintain consistency in the whole record of proceedings. With respect to the submissions of Mr Kama, I am unable to accept that the reference to Buirakwaena land meant Manaoba Island. I am satisfied on the balance of probabilities that Buirakwaena land was a separate piece of land on Manaoba Island.

The boundary of Buirakwaena land unfortunately had not been delineated, and this has been the cause of all the problem. It was not done in the Local Court hearing of the 10th March 1970.

In the Local Court hearing on the 1st of April 1993 we know that it was put by the Plaintiffs that their boundary stretched from Lofotomasi to Darikokola. This however, was not accepted by that Local Court. Instead, it accepted the submissions of the Defendant that Buirakwaena land was about half (1/2) an acre in size.

I have considered the question whether to accept this finding by the Local Court as final. The Plaintiff has made extensive submissions under the summons filed on the 21st of July 1993 as to why this Court should not accept that finding as reliable, but should rather allow an appeal to be lodged to the Malaita Customary Land Appeal Court, or, for a review to be done by that same Court.

There is one outstanding feature in the finding of the Local Court which needs to be highlighted. This is that the finding of that Local Court as to the land area (size) of Buirakwaena Land has been made between the parties for the first time. It was never done in the 1970 Local Court hearing, or if it was done, it was not recorded, and it was that simple omission which has given rise to this subsequent litigation.

Accordingly, it would not be fair if that finding should be incorporated into an Order of this Court without giving an opportunity to the parties to exercise their rights of appeal under the Land and Titles Act in respect of that point ; this is the question in respect of the boundaries of Buirakwaena land. Until that question is finally determined in custom, according to the current court procedures, this Court is unable to make any authoritative ruling as to the question of res-judicata. Despite having heard the submissions of the parties and the findings of the Malaita Local Court, I am not satisfied I can make a conclusive finding as to the land area of Buirakwaena Land.

I stated earlier on that the question of res judicata is really a non-issue. The issue is the defined area of Buirakwaena land. Once the area of Buirakwaena land is delineated, then that block of land is res-judicata as between the late Lamani and Mimidi, and as between the parties in this case, and Paul Maenu'u and Gabriel Ramo; since Paul Maenu'u's claim is made under late Mimidi's rights.

In respect of the declarations sought under the Originating Summons therefore, this court's ruling is that the land dispute brought before and heard by the Local Court on the 10th of March 1970, was not in respect of ownership over Manaoba Island, but about a specific land area called Buirakwaena.

The question as to whether the area of Buirakwaena land stretches right up to the boundary at Lofotamasi to Darikokola, or is only a small land area about half (1/2) an acre in size, in my view is best left to the Local Court and the Customary Land Appeal Court's to make a final determination in custom.

I have already indicated that it does appear that Lolo and Su'uwalu Customary Land are separate blocks of land to Buirakwaena land. That question in my view can best wait until it has been finally determined in custom where the boundary of Buirakwaena land lies. If the final verdict should be that it stretches from Lofotamasi to Darikokola

then that would seem to settle the question of Lolo land. If the final verdict should be as determined by the Malaita Local Court on the 2nd of April 1993, then the question of Lolo and Su'uwalo customary land as between the same parties in this case would still be open for litigation under the Local Court Amendment Act of 1985 as to the question of ownership in custom.

The findings of the Malaita Local Court of the 2nd April 1993 should not be confused with any purported findings as to Lolo land. Those findings are to be restricted only to the question of identifying and establishing the land boundaries of Buirakwaena land. That local court has done that and since as I have indicated it was the first time that the boundaries have been delineated, it would only be proper to allow that specific question to be taken through the relevant courts which have the specific authority to hear and determine matters pertaining to custom.

I am aware that some submissions too have been raised in respect of the question of what paddocks were the cause of the dispute in the 1970 case. I think those are matters that can properly be raised before the Customary Land Appeal Court to assist that court as to making a final determination on the question of the boundary, if and should an appeal be lodged.

The proper order for this Court to make in respect of the summons filed on the 21st of July 1993 is to give leave to the Plaintiff's to appeal to the Malaita Customary Land Appeal Court in respect of the specific question as to the boundary and/or the land area of Buirakwaena land. That leave to appeal however must be exercised within one month from today, falling which the finding of the Local Court on the 2nd of April 1993 shall automatically be uplifted into this court, and become an order of this court and therefore binding.

Any rights of appeal from the Malaita Customary Land Appeal Court can be exercised in the normal way and as provided for in the Land and Titles Act.

I am of the view that no further proceedings need to be taken in respect of the Originating Summons filed on the 13th of October 1992. That summons therefore should be adjourned sine die, but with liberty to restore on 7 days notice to either party.

The costs in this case in my view ought to be borne by the parties themselves.

(A.R. Palmer)
JUDGE