

DAVID LENGA -v- JOSES LOTE**High Court of Solomon Islands
(Muria, C.J.)**Civil case No. 21 of 1995
Hearing: 5 April 1995
Judgment: 18 May 1995***A. Radclyffe for the Plaintiff
T. Kama for the Defendant***

MURIA CJ: The plaintiff applies to have the Local court decision made on 21st August 1994 quashed on the ground that the Local Court was prohibited from hearing the case by virtue of *res judicata*. The area said by the plaintiff to have been covered by the Local Court is Rakata Baitfish Ground which he said had already been dealt with by the CLAC No. 4 of 1989 case.

In his affidavit filed on 27 January 1995 in support of his application the plaintiff described the Rakata Baitfish Ground area as the west side of Pazagere to Rakata water where the CLAC held that it belonged to the Mamara Clan and the Eti Eti Clan had the right to use that part of the land. The plaintiff is a member of the Eti Eti Clan. The parties to the CLAC case No. 4/89 were the plaintiff and Defendant.

The plaintiff now says that the Local Court in 1994 dealt with the same issue over the same land and between the same parties again. This was so, despite objection by the defendant who did not attend the Local Court hearings.

Mr. A. Radclyffe Counsel for the plaintiff urges this Court to quash the Local court's decision on the ground of *res judicata*. It is also argued by Counsel that the Local Court failed to consider the objection raised by the plaintiff and that had it done so, it would have agreed with the plaintiff that the matter was *res judicata*.

Mr. Kama, Counsel for the defendant submitted that the CLAC had dealt with a different issue and different land from that dealt with by the Local Court in 1994. Mr. Kama argued that the CLAC Case No. 4/89 dealt with the land on the inland area adjacent to LR 23 and which is still customary land. The registered land in LR 23 is from mouth of the Rakata River, and follows the stream up to a point on the boundary of LR 675 and then directly down to the high water mouth. So, argued Counsel, the land which CLAC gave to the Mamara Clan and where the plaintiff have right to use is inland and not extending to the sea where the baitfish ground is.

The principles governing the application of *res judicata* are discussed in *Talasila -v- Paia & Another* (1980 - 81) SILR 93. At page 100, Daly CJ had stated that judgement in customary land cases are "judgements inter parties" and then went on to say that:

"In relation to 'judgement inter parties' for the doctrine of 'res judicata' to operate there must be:

- (a) an earlier case in which the cause of action or point in dispute was really the same;*
- (b) a final determination by a court of that cause of action or point on its merit;*
- (c) the raising of the same cause of action or the same point which has been distinctly put in issue by a party who has had the action or point solemnly and with certainty decided against him."*

In this case it is clear from the CLAC Case No. 4/89 that the case was about the claim by David Lenga (plaintiff) over the right to Rakata Land which he said he had been willed the right to use the said land by the Chief of the Mamara Clan. The CLAC held that :

"(1) The Bulau boundary extends from Zuzuao to Pazagere.

(2) From the west side of Pazagere to Rakata water belongs in custom to Mamara Clan and the Eti Eti Clan have the right to use this part of the land."

I have considered the evidence contained in the affidavits of the defendant and Selwyn Dika and quite clearly the decision of the CLAC No. 4/89 giving the plaintiff the right to use the land was over Rakata Land which is shown on the maps produced by the plaintiff and defendant as LR 675. That land belongs to the Mamara Clan and the plaintiff was given the right to use part of it between Pazagere to Rakata water. The maps produced clearly show that the part of the land to which the plaintiff had been given the right use is inland. One only needs to look at the maps again to confirm that.

The part of the Rakata Land between Pazagere and Rakata Rivers and described as LR 675 is inland which was the subject of the decision in CLAC No.4/89. Again looking at the maps both submitted by the plaintiff and defendant the land between Pazagere and Rakata River described as LR 23 toward the coast is different from that in LR 675. I have grave doubt that the CLAC Case No. 4/89 was also concerned with the land in LR 23. It will be noted also that LR 23 consists of the area which I have just described and also Papatara Island and the group of islands next to it.

The Local court case No. 4/94 was about claims of the right to the baitfish ground within LR 23 in particular with the area in and around the Rakata Bay. That Local Court case also was concerned with the right to the baitfish ground to the west of the Rakata Bay and North of Rakata Bay to Ghizuriabeana Group.

In the light of the evidence and reading the decisions in the two cases (CLAC Case No. 4/89 and Local Court Case No. 4/94), I cannot help but to conclude that the land in dispute in CLAC and the land in dispute in the Local Court are different. The issues are not the same. It is therefore not surprising that the other clans have disputed the right of the Eti Eti clan to claim the right to the baitfish grounds in question

In those circumstances, applying the principles as laid down in *Talasasa -v- Paia & Another*, the claim of *res judicata* by the plaintiff here must fail.

As regard the argument that the Local Court had failed to consider the objection of *res judicata* raised by the plaintiff, I can only say that although the Local Court did not specifically address the issue of *res judicata* it nevertheless consider the letter of objection sent to it by the plaintiff (who was the defendant in the Local Court). It was read out in Court and comments were invited from the parties. After the defendant (who was the plaintiff in the Local Court) gave his response the Local Court made its ruling to proceed in the absence of David Lenga.

It must be noted that David Lenga (plaintiff) did not only object to the power of the Local Court but refused to attend despite being given notices of the hearing. In such situation I do not think he can complain of the Court proceeding in his absence and leaving him to challenge the Local Court's power to deal with the matter later on. I do not think he can find much sympathy by mere objecting to the Court's power and did not attend to substantiate his objection. Having raised his objection he should attend to substantiate it.

In any case the failure of the Local Court to specifically address the question of *res judicata* raised in the plaintiff's letter would not in any way affect the conclusion I come to in the present application.

For all those reasons, an order for certiorari is refused and in the circumstances of this case it must be so refused with costs.

(Mr. Justice GJB Muria)
CHIEF JUSTICE