ALAMOA MIMIDI -v- GABRIEL RAMO

High Court of Solomon Islands
(Muria, CJ.)
Land Appeal Case No. 2 of 1995
Hearing: 12 October 1995
Judgment: 16 November 1995

T. Kama for the Appellant
A. Radclyffe for the Respondent

MURIA CJ: The appellant came to this Court seeking to overturn the decision of the Malaita Customary Land Appeal Court. Three grounds of appeal have been relied upon.

These are:

1. The Malaita Customary Land Appeal Court had erred in accepting new and additional evidence in the hearing of the appeal when it accepted a map tendered by the Respondent supporting his claim of new land areas inside the land area in dispute and the court had wrongly relied on this evidence in its decision.

2. The Malaita Customary Land Appeal Court had failed to properly consider the evidence on the location of the paddocks which were indispute before the Local Court on 10th March, 1970 in its making its decision and the decision is against the weight of the evidence.

3. The Malaita Customary Land Appeal Court had failed to decide on the boundaries of BUIRAKWAENA CUSTOMARY LAND in the entire proceedings but instead decided on the size of BUIRAKWAENA TAMBU SITE and GWANONIMAOMA gardening land and therefore the decision is grossly inappropriate as it failed to decide the issue between the parties that is the true boundaries of BUIRAKWAENA LAND on facts and circumstances set out in ground 1 of the appellant's notice of appeal before the said CLAC.

I feel it is necessary to see what the circumstances are leading to the CLAC's decision against which this appeal has been brought. Also since the CLAC hearing was a consequence of the direction from this Court, it is also important to see what the issues were before the CLAC for its consideration.

Briefly, the case over Buirakwaena Land first came before the Court on 10/3/70. That was a case between *Mimidi -v- Lamani.* Although the case was over Buirakwaena, the Local Court's decision was expressd in the following terms:

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

Then on 1st April 1993 the Local Court heard the matter of Buirakwaena Land following a reference by the High Court back to the Local Court on a number of questions which were;

(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?

Following that reference, the Local Court found on 2 April 1993 that "Buirakwaena is a small portion within Lolo. Lolo is a bigger customary and area." This supports the respondent's contention all along that Buirakwaena is separate land from that of Lolo land.

It will be noted that no appeal had been lodged against the Local Court's decision of 2 April 1993 within the required three months period. The CLAC hearing in November 1994 was following leave of the High Court.

When the High Court considered the Originating Summon in CC311/92 on 2 March 1994 it then made an order granting leave to the plaintiff, now the appellant, to appeal to the Malaita Customary Land Appeal Court against the decisioin of the Malaita Local Court of 2 April 1993. It must be noted that leave granted by the High Court was in respect of the specific question as to the boundary and/or the land area of Buirakwaena Land. Consequently the appellant now bring this appeal. Having considered the matter before him, His Lordship, Palmer J, clearly had the 1993 Local Court decision in mind and restricted the question to be dealt with by the CLAC. That question is the one which I have just referred to. His Lordship's direction is in the following terms:

> *"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 Plaintiffs to appeal to the Malaita Customary Land Appeal Court inrespect 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, failing 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"*

Mr. Kama, for the appeallant, urged the Court to find that the reception by the CLAC of the respondent's maps was wrong. Counsel submitted that the production of the maps by the respondents was really intended to mislead the CLAC.

I have great difficulty in accepting the argument put by Mr. Kama regarding the production of the map by the responent. The direction which His Lordship Mr. justice Palmer gave when leave was granted for the plaintiff (now appellant) to appeal to the CLAC was "in respect of the specific question as to the boundary/or the land area of Buirakwaena Land."

By that direction the CLAC had clearly been given the specific task of determining the boundary and/or the land area of Buirakwaena Land. In order to do that the CLAC must receive evidence from the parties. There is power in the CLAC to allow new evidence to be called at the the hearing of an appeal to it after good reason has been shown as to why it was not called in the Local Court. In this case the Local Court had dealt with the boundary of Buirakwaena Land. On direction from the High Court the CLAC was only to deal with the specific question of the boundary of that land again. I do not see any error on the part of the CLAC under those circumstances when it allowed the respondent to produce the maps here complained of. The appellant also had that opportunity but did not submit any maps to the CLAC. The appellant's side relied on the maps which they produced in the Local Court. It is also to be noted that they did not object in the CLAC to the respondent producing his maps. I do not see why they should now complain against the CLAC's acceptance of the respondent's maps.

There is no merit in ground (1) one and it is dismissed.

Ground 2 complains that the CLAC decision is against the weight of the evidence. The appeallant suggested that the CLAC failed to properly consider the evidence as to the locations of the paddocks hwich were in dispute in 1970 in the Local Court. The record clearly does not support the appellant's contention. The CLAC had dealt with the evidence on the locations of the paddocks. That is a question of facts and the best people to deal with those facts and the weight to be given to them are those in the Local Court and CLAC. This Court can only interfere if it is shown that no reasonable tribunal could reach the decision which the CLAC had eached on the evidence before it. It has not been shown so in this case and this Court sees no reason to interfere in those circumstances. Ground 2 is also dismissed.

Ground 3 can be disposed of very briefly. In this ground the appellant argued that the CLAC failed to decide on the issue of boundaries of Buirakwaena Land. This ground cannot be sustained. The record clearly shows that the CLAC considered the question of the boundaries of Buirakwaena Land. The CLAC had considered the evidence and carried out a survey of the Land before determing that the land area of Buirakwaena Land is approximately two (2) acres. Again this is a matter for the CLAC to decide on and it did so. I do not see any error at all on the part of the CLAC and so ground 3 is also dismissed.

Appeal is dismissed with costs.

(Sir John Muria)
CHIEF JUSTICE