

JUDGMENT

10th October 1988.

The Local Courts (Amendment) Act 1985, provides that no Local Court has jurisdiction to hear and determine any customary land dispute unless the local court is satisfied that such dispute had been first referred to the chiefs.

Accordingly, this dispute had been first referred to the chiefs in which the chiefs in its judgment awarded for Morris Saueha who is the defendant in this case.

Complainant in this case Wilson Songeika was not satisfied at the chiefs ruling takes further proceeding of the dispute before this court.

The disputed lands in this case are Pouono and Maunga road.

The parties in this case are both from the Hangekumi tribe. Both agreed their tribe ceased from Muia and Teasoaika and both agreed Saueha son of Taukiu returned from Patonu and restored their tribe. His sons were Tehaibaki, Semua, Banini and Tengaukatoa or Maungu. Customary, the elder son settled and owned the tribe's HQ i.e. Hangekumi. It was Tehaibakiu at that period of time settled and owned at their HQ, Hangekumi. Semua one of the youngest brothers took over when Tehaibakiu was killed.

According to the plaintiff it was Semua who first divided the lands of their tribe in which his elder son Sangoihenua was given the following lands, Hongakaba, Tapakohe, Mataubea, Hangekumi (HQ), Tausukea, Ahea and Pouono the disputed land. To Saueha the grandfather of the defendant he was given Tamana and Teutua lands.

~~According to the defendant, it was Saueha who first divided the lands of their tribe and not Semua as claimed by the plaintiff. This was the Saueha who came from Patonu. To his elder son Tehaibakiu father of Sangoihenua the grandfather of the plaintiff, he had given him six lands namely, Hongokoba, Tapakohe, Mataubea, Hangekumi (HQ), Tausukea, Ahea and Pouono the disputed land. To Saueha the grandfather of the defendant he was given Tamana and Teutua lands.~~

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land being one of them.

These were the lands kept and succeeded by Sangoihenua, Gakei, Sauhonu and the plaintiff. He agreed his sub-group were given two but denies not Tamana and Teutua but Ubea and Pouono the land in question.

We would not consider other lands other than Pouono and then the Maunga road. First, Pouono land.

According to the plaintiff, this was where Mangienga and her sons Sauhonu his father and Paaunga PW1 lived after Gakei and Taupongi were killed. Gakei father of Sauhonu and Taupongi of PW1. It was their land from Semua. It was at Pouono his grandfather Sangoihenua gave praise over his victory when he murdered Puipuihenua of Nukuangoha. Further claimed this was where Puipuihenua before he was murdered attended and damaged the coconuts of Sangoihenua and other crops on the incident of the dove. Kaipua also unrooted a number of coconuts of Sauhonu at Pouono. Mangienga and her sons lived in their house at Pouono built by one of their relative Tepuke of Tangamata, and while at Pouono, heard the death of a Rennellese who was killed by Bellonese.

The plaintiff stressed, emphasized and asked this court to consider the fact that customary in their tribe, when their elders were killed and left their in-matured sons behind, the survivors elder cared for their lands and when attained their state of manhood, their respective lands were given back without any loss. According to the plaintiff this was not in the case of Topue father of the defendant. He has kept back some of his father's lands, and his witness PW1, and Pouono is one example, so as Tangakitai land of PW1 the defendant's father had attempted some years ago to take in which the Bellona Local Court dealt with the dispute gave its Judgment for his witness Paaunga the rightful owner of the said Tangakitai land.

In defence the defendant and his witness denied Mangienga and her sons Sauhonu and PW1 settled and owned Pouono land. Defendant and witness explained the activities referred to by the plaintiff and his witness e.g. the house built by Tepuke, the damages caused by Puipuihenua and then Kaipua, when heard about the death of a Rennellese murdered by a Bellonese etc were occurred at Tausukea land which shares its boundary to Pouono. The defendant however, denies coconuts being planted and later damaged. He explained to the effect that their tribe at that period of time referred hardly planted coconuts in their lands. Their tribe was the most hated tribe on the island and could not allow such to be on their lands.

The defendant agreed that the elder survivors from their tribe would keep the lands of those who were still on their teenages and attending their state of manhood their respective lands were given. He denies his father has kept back some of the plaintiff's father and his witness lands. The lands of these brothers kept and cared by his father and been given back. In the case of Tangakitai land, defendant agreed the land of PW1 but his father disputed it when PW1 took the land of his father namely, Kangua. Explaining when Sangoihenua grandfather of the plaintiff praised his victory when murdered Puipuihenua at Pouono, this came about when the said Puipuihenua when murdered Tengaukatoa or Maungu, instead of conducting the ceremony of victory at their Headquarter at Hangekumi the main settlement of the said Puipuihenua and group, they held it at an ordinary area beside their HQ called Gangopeau. In return when Sangoihenua murdered Puipuihenua instead of conducting his victory at their HQ, Hangekumi, he did it at their ordinary area i.e. Pouono but otherwise the land of his grandfather Saueha. It was his land from his grandfather Saueha son of Taukiu. He had made his settlement in that land. His father assisted his father that was Saueha from all his activities on the land. They had built 3 houses and in addition he had built two in which the plaintiff had assisted him.

Having considered the arguments of both parties we accept as both agreed that the lands of their tribe were divided. The question of whether Semua or Saueha did the sharing is not matter. The question to decide is, who was given Pouono land. To decide, we considered various activities claimed by the parties. We accept the activities claimed by the plaintiff and witness were at Tausukea and not at Pouono. We accept that coconuts were rared in those days especially to this tribe the most hated tribe on the island to have them planting. In this respect we do not accept the account by the plaintiff and his witness that coconuts were planted at Pouono.

On the aother hand in considering the ceremony of victory conducted by Sangoihenua grandfather of the plaintiff at Pouono. Why did Sangoihenua conduct such ceremony at Pouono if it was not his land. Why not at Tausukea. We have paused at this question and then concluded that time has changed. There is no evidence from the parties that Sangoihenua and Saueha got differences between themselves regarding their personal interests, including lands matter. Based on that, we believe that Pouono was owned and settled by Saueha at that time and it was not a concern to him but rather his pride that his brother conducted his victory over their most bitter enemy at his settlement, Pouono.

There is no evidence from the plaintiff and his witness to rebut the claim by

the defendant of the three houses built by his father and grandfather Saueha and his two houses at Pouono. Having considered all we have stated we disallowed the claim of the plaintiff in respect of Pouono land.

The second disputed land is the Maunga road. According to the plaintiff the Maunga road is ever since the road of their tribe and only the one who owned their HQ at Hangekumi is the one entitled to own it. Their tribe got access to the usage of this road. Should not regard as a tambu place. He agreed the tambu area was the cave at the seaside of the road otherwise the rest of the road was not, on the ground that their tribe got access to the drinking water, collecting fruits, digging wild yam etc. on the road, and when missionary N'uihua attended, it was at the cave on the seaside he had conducted the meeting and claimed to free the area from the devil. The occasion by the said missionary was not attended by his father. He was with his uncle Taika at west Bellona and at that time he was only a young boy. A common practice by the missionaries at that time was that when a particular tambu ground was declared free from devil, they would ask who would like to claim the ownership. At the cave at Maunga, the said missionary Niuhua asked as who to own the area. It was Mangie who replied, Sauhonu. His father cut his canoes, harvested nuts (Gemungi) at the Maunga road without obtaining permission from someone believing the land is his. His father did not farm or do gardening because he got other lands for gardening. All these occurred after the said road declared free.

His witness gave the same account regarding the road. He hesitated to accept if the road was a tambu place. His explanation is that any land or area regarded as a tambu place, no body has accessed to it and the fact that their tribe got access to the usage of the road is in his opinion is not a tambu place. It is evident from both parties that their tribe did not have access to the road in gardening, cutting canoes and harvesting nuts (Gemungi). Any other minor activities they did.

To the defendant the said road was a tambu place. He named two persons who disregarded the holiness of the tambu and got curse but not identified it to this court if they were from their tribe. Saueha his grandfather had attempted to brush an area near to the road area but got curse with a boil on his leg despite being complied with the traditional dress required in such place. He agreed their tribe did not do gardening, harvesting nuts (Gemungi) and cutting canoes at the Maunga road. Their tribe got access to the drinking water, collecting fruits, digging wild yam etc. He denied whoever settled and owned their HQ owned the said road. His witness explained only the areas

namely Goia, Natebe and Bangika'ango are under the ownership of whoever settled at their HQ. We accept this explanation.

The Maunga road remained a tambu place until missionary Niuhoa in 1938 freed it from the devil. Mangie arrived home told Topue the Maunga road has been declared free. Topue claimed to be his road. Attended later put signs and began brushing, cutting canoes etc. Since 1938 Topue farmed in that road. Permission to cut canoes, do gardening etc. were obtained from Topue.

The defendant has attended his state of manhood tookover the full responsibility from his father. He had argued with Tupeuhi of the Sa'apai tribe over their boundary in that land. There was an arguement between Joseph Taika of the Gikobaka tribe and Topue. An enquiry held and proved the Maunga road of the Hangekumi tribe which the said Topue had represented. Defendant urges this Court to consider this road not the road of their tribe in succession. It was a tambu place, his father inherited it from the devil. Further asked this Court to consider only his family do farming at the Maunga road than the plaintiff, and permission to do gardening, cutting canoes etc. obtained from him and dad.

We have considered the cases of both parties and accept that the Maunga road was a tambu place. We also accept that while it was true the said road was a tambu place, it was not a strickly forbidden tambu like the well known one at Gabenga. The fact that both parties before 1938 in which this tambu place was declared free got access to the drinking water, collecting of nuts, digging wild yam etc. within this tambu place justified that it was not a strickly forbidden tambu. Both parties agreed their tribe did not farm, harvesting nuts (Gemungi) and cutting canoes in this land. Saucha grandfather of the defendant had attempted it but did not success when he got a boil on his leg but we do not accept it was his land. The ownership was not either of the plaintiff nor of the defendant. We accept the Maunga raod was regarded before christianity arrived of the Hangekumi tribe in which both parties belonged. There is no evidence before us that other tribes on the island got access to this place except the tribe of the parties. It was attempted by Joseph Taika of the Gikobaka tribe but that was after the tambu declared free, but his claim failed when an enquiry was held between the Hangekumi and the Gikobaka tribes.

It is evident before this court that both Topue father of the defendant and Sauhonu father of the plaintiff were not attended when missionary Niuhoa freed this tambu place.

According to the plaintiff and his witness, when Niuhoa asked as whose land is this declared free land, Mangie in reply said, of Sauhonu. To the defendant and his witness, when this tambu place declared free, the same person Mangie attended Topue and told him the Maunga road had declared free and it was then Topue replied, my land. We have considered, but could not conclude who is more likely to be true. It was the same person Mangie claimed to have convey the story to both Sauhonu and Topue. In this respect, we accept that Mangie replied the missionary that the road was of Sauhonu and we also accept that it was Mangie who attended at Topue, told him the Maunga road was declared free by the missionary and Topue said, my land. We accept it was Topue who attended later the area and put signs then followed brushing and farming etc.

He claimed the ownership after Mangie told him the land had declared free. We considered on the other hand the position of Sauhonu at that time in comparison with Topue. Topue at that state of time, a matured person. He had seen and involved in tribal wars against his tribe. He knew and valued how important at that period land was, and when Mangie told him the Maunga road was declared free, he claimed the ownership and took an immediate action by attending put signs and brushed the land.

In the case of Sauhonu at that period of time, it is evident before this tribunal he was young. We accept his interest on land matters was not as of Topue. We accept that though he did not act as Topue did on the land after being declared free, he believed it was his land when Mangie told missionary Niuhoa. We accept he knew or aware of the activities done by Topue on the land but thought the land is his but kept by Topue as he did to other of his lands.

It is evident before us that since 1938, Topue the one who farmed, brushed, harvesting nuts, cutting canoes etc. in the Maunga road. Permission to cut canoes in the land obtained from him. We also accept that after 1938 at later state when Sauhonu attended his manhood he harvested nuts (Gemungi) cutting canoes at the Maunga road without asking Topue. This is disputed by the defendant but this is what we believe and accept.

Another contribution factor to this issue we accept is the respect of Sauhonu to Topue. It is evident Sauhonu was adopted by Topue when his father was killed. What has impressed us is the fact that Topue has been disputed by their tribe groups except Sauhonu. Even this case he has decided not to stand challenging the one who had at the time their tribe was in doom, cared and loved him thus when christianity brought the good news of peace, changed the

heathen hearts of the islanders he survived. We accept Sauhonu has been patiently longing that his step father i.e. Topue will one day surrender back the Maunga road to his ownership. It took him years of expectation and when his son the plaintiff in this case attended his manhood state he brings up court.

In summing up, we accept the Maunga road was a tambu place but not a strickly forbidden tambu. We accept the Maunga road before 1938 when christianity brought to the island, this tambu was known to be of the Hangekumi tribe but not owned by one particular person.

Both parties before the tambu road declared free from the devil, got access to the drinking water, collecting nuts, digging wild yams etc. at the Maunga road.

Both Sauhonu and Topue not attended when missionary Niuhoa freed the Maunga road. Mangie replied to the missionary that the Maunga road of Sauhonu. Topue claimed the ownership when Mangie attended and informed him the said road declared free. After 1938 both sides harvested nuts (gemungi) cutting canoes. Only the defendant did farming. Permission to cut canoes and farming granted from the defendant side. Plaintiff side harvested nuts (gemungi) cutting canoes without asking the defendant side.

Having considered all that we divide the ownership of this road from the parties.

#### Decision

We amended the chiefs decision as follows:

- a) Pouono land remains of Morris Saueha.
- b) Maunga road is divided in which the Plaintiff i.e. Wilson Songeika owns the western side and the defendant Morris Saueha owns the eastern side.
- c) The beginning of each respective awarded sides of the tambu begins at where the defendant has explained and specified.
- d) The main track leading down to the sea side is the boundary of each respective awarded sides.
- e) The fallow garden areas below the beginning of the tambu remain of

Morris Saueha.

Dated 10th October, 1988 at Gotohenua Village, Bellona Island, Central Province.

President (Ag)

Clerk

Ani Piloe

Eddie Muna

Judgment to be delivered on 11/10/88.

Resume 11/10/88.

Parties attend.

Decision delivered.

R/A explained.

E. Muna 11/10/88.