

**IN THE MALAITA CUSTOMARY]
LAND APPEAL COURT]**

MCLAC NO: 2 of 2006

Sitting at Auki on 17th/10/11.

Before: Joseph Sihiu - President
Stanley Toata - Member
Philip Otoahu - "
Smith Ragi - "
Jacob Rahe - "
Davis D. Vurusu - Secretary/member

BETWEEN: Ellison Lulu - Appellant
Elisha Ramotaifau
John Liu (John Liu Spokes person)

AND: Nathaniel Kona - Respondent
Malcom Maefilia

IN THE MATTER OF: Babanga & Naki Ferafila Land boundary

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JUDGMENT
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This is an appeal against the decision of Malaita Local Court on Babanga & Naki Ferafila Land boundary filed by Ellison Lulu , Elisha Ramotaifau herein after called the Appellants.

The Malaita Local Court decision was dated 31/5/06 and we quote;

“Upon hearing the plaintiffs and the defendants sides of arguments and after having gone through the disputed boundaries in survey the court delivers its judgment.

This court cannot change any decision of the higher courts and therefore, it up holds the determinations of the case No. 10 of Aimela Native court and case No. 8 of the High Court of Western Pacific in 1968”.
End of quote;

Being an aggrieved party to that decision the Appellant filed six grounds of appeal before the Malaita Customary Land Appeal Court having jurisdiction to the land in question. Their grounds of appeal are as follows:-

Grounds 1. The Malaita Local court after its survey prior to its decision as per case no. 24/97 has erroneously isolated its findings – re: para 7(3) and I quote: "The tabu site of Babanga is confirmed by the court. Skulls of the plaintiffs ancestors and fires are confirmed" end of quote (which Lulu proved to court).

- 2. Court decisions of 6/68 and the case between Gwaite'e and Luluanamae of Naki/Ferafila in question does not in any way binding to the purpose of landownership of Babanga customary land. With this respect the issue of Res judicata is irrelevant.*
- 3. The Malaita Local Court, after its findings of the truths of the Babanga sacrificial sites, Ngali nuts and their ownership, has erroneously given a bias decision contrary to its finding.*
- 4. The fact that Maefilia owns nothing in Babanga customary land reflects the truth of saying it in court: "seeing to prove through the panels' survey'.*
- 5. The threat by Maefilia against the chief's determination was a real injustice and intimidation to our court jurisdiction to the proceedings (see; statutory declaration of A.Kaki and F.Hagi on 25th November 1997 – under a special interest).*
- 6. Maefelia's intervention by involving a private lawyer Mr. Ishmael Kako is questionable because of his personal interest. Ishmael Kako is an immediate uncle of Mr. Maefilia (rongwaisasina in Kwara'ae). His interpretation of the law then is bias and not independent.*

We will now turn to consider grounds of appeal. To consider these grounds of appeal, we will consider both parties' submissions before this court, and examine the Malaita local court record of proceedings. We will deal with the grounds of appeal one at the time.

Appeal ground No: 1, 3 and 4;

Appeal grounds No: 1, 3 and 4 raises same issue in relation to the Malaita local courts findings, we will therefore deal with them together.

The Appellant in these grounds submits that the Local Court after confirming having seen the appellants Principal tambu sites, fires sites and his ancestors skull within the boundary claimed by appellant to be Babanga customary land contradicts and denied its own finding when making its decision. Refer page 3 of local courts decision.

The respondent has no visible customary evidence within the boundary he claimed. No Principle tambu sites etc... Respondent submit that he has garden sites, and other properties within the boundary he claimed. Respondent did not deny the fact that they saw born remains belonging to the Appellants party within the disputed boundary.

The Court:

We consider both parties evidence and examined the local court record of proceedings plus the survey reports we find that indeed the Local Court contradicts and denied its finding when giving its decision. It is according to custom that Principle tambu sites and other tabu sites can prove ownership of land. In this case the local court has confirmed it in their facts findings.

Appeal grounds 1, 3, & 4 upheld

Appeal ground No. 2, 5, and 6

These grounds of appeal raise issues related to point of law in which this court lacks jurisdiction to entertain.

Appeal grounds No. 2, 5, and 6 is dismissed

Court Finding:

The Law governing Customary is our Custom, therefore person claiming ownership of any customary land must prove his claim based on custom in that particular Area. Person claiming ownership of customary land must be able to know the land he claimed, his genealogy and the custom applied.

In this case, the court having considered customary evidences before us and upon examining the local courts record of proceedings found that the Appellant has proven his claim of boundary on Babanga Customary Land on the balance of probabilities.

The Malaita Local Court decision dated 31st/5/06 is hereby set aside. The MCLAC make its decision as stated below;

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DECISION
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1. Babanga customary land belongs to the Appellant and his tribe.
2. The True Boundary of Babanga and Naki Ferabila customary land is as stated in the Appellants Sketch map.
3. No order for cost.

Dated this 18th day of October 2011.

Signed:	Mr. Adam Kwaeria	-	President
	Mr. Stanley Toata	-	Member
	Mr. Philip Otoahu	-	“
	Mr. Joseph Sihiu	-	“
	Mr. Smith Ragi	-	“
	Mr. Jacob Rahe	-	“
	Mr. Davis D. Vurusu	-	Secretary

Note: Right of Appeal explained to both parties.