

IN THE MALAITA LOCAL COURT

Civil Jurisdiction

CIVIL CASE NO: 1 OF 2010

GTR NO: B1339439

BETWEEN: AUGIRIA TRIBE

PLAINTIFFS

- (1) Tony Uania (m) (female line)
- (2) Billy Suafu (m) (female line)
- (3) John Selu(m)
- (4) Francis Lasika (m) (female line)

AND: AUSI TRIBE

1ST DEFENDANT

- (1) Dick Laefilamo (m) (female line)
- (2) Henry Subae (m)

AND: DARIALA'ALA TRIBE

2ND DEFENDANT

- (1) Jack Gulauma (m) (female line)
- (2) Evan Futanaone (f)
- (3) Augustine Funasia (m) (female line)
- (4) Simon Efomarui (m) (female line)
- (5) Daniel Fidalou (m) (female)

not present
(present)

LAND IN DISPUTE: FULO LOG POND AREA

COURT VENUE: AUKI COURT ROOM

DATE OF HEARING: 5TH AUGUST 2013

JUDGEMENT DATE: 4TH SEPTEMBER 2013.

JUDGEMENT

1.0 CASE BEFORE COURT

This is a CLAIM between Tony Uania, Billy Suafu, John Selu and Francis Lasika as the *plaintiffs* representing Augiria (Augilia) tribe –vs- Dick Laefilamo and Henry Subae as the *first defendants* representing Ausi tribe and Jack Gulauma, Evan Futanaone, Augustine Funasia, D. Fidalou and Simon Efomaui as the *second defendants* representing Dariala'ala tribe over *FULO LOG POND AREA* in West Koio/Dorio district.

2.0 JURISDICTION OF THIS COURT TO HEAR THE CASE

The jurisdiction of this court to hear the case is provided by an order of the High Court and by section 12 of the Local Court, Act Cap. 19

2.1 A High Court consent order in Civil Case No. HCSI-CC 444 of 2007 has remitted the dispute to the chiefs, Local Court, Customary Land Appeal Court (CLAC) or if necessary on appeal to the high Court for procedural determination. In that order, the High Court states as follows:

1. *Subject to Order 2 below, that the whole of the current proceedings in this matter before the High Court be stayed pending a final determination of the ownership dispute of all the land/s the subject of this action by the relevant land Courts starting from the chiefs Court, the Local Court the customary land Appeal Court and if required on appeal to the High Court*
2. *The injunctive orders perfected by Mr. Justice Cameron on 6th December 2007 and to remain in force until a final determination or ownership of the land/s as per order 1 above or further orders.*

Thus, by that order the High Court has referred the referral dispute for fresh hearing.

2.2 A settlement by the Loulana chiefs is made on 11th December 2009 in favor of Ausi tribe and Dariala'ala tribe. Augiria tribe being represented by Tony Uania, Billy Suafu, John Selu and Francis Lasika are not satisfied so they referred the dispute to the Local Court for hearing in Civil Case No. 1 of 2010. This is the case now currently before this Court for hearing.

2.3 The Court therefore, as a neutral body takes on board this case because it has already been referred to the Loulana chiefs and because of that, this court is satisfied that it has the power to continue on to solve the dispute amongst the Augiria, Ausi and Dariala'ala tribes.

3.0 STANDARD OF PROOF

The standard of proof in this case – Civil Case No.1 of 2010 is proof on the balance of probabilities. This means that the tribe whose majority of evidences are worthy of belief as to the truth of the facts in custom should have a high chance of winning the case.

4.0 ISSUES BEFORE COURT

The issue before this Court is to determine the customary (or ownership and usage) rights and interests to the FULO LOG POND between the Augiria tribe being represented by the *plaintiffs* and Ausi tribe being represented by the *1st defendants* and Dariala'alsa tribe being represented by the *2nd defendants* in this action.

5.0 CUSTOMARY LAW

In accordance with Malaita custom, particularly of Koio, to have ownership or usage rights and interests in custom over any customary land, the plaintiffs or the defendants must prove these on the balance of probabilities through their common ancestry, historical migrations, discoveries, genealogies, principle fire sites or worship shrines, settlements or occupation, given lands, boundary/marks and properties in the land in dispute.

6.0 PLAINTIFFS CLAIMS

6.1 The plaintiffs namely, Tony Uania, John Selu and Francis Lasika claim that the FULO LOG POND AREA is within the boundaries of Augiria (Augilia) customary land.

6.2 To support their claim, they submitted the following customary facts and evidences:

- (1) Augiria traditional history.
- (2) Genealogy
- (3) Priesthood and tabu sites
- (4) Land boundaries (map).

6.3 The disputed area is marked yellow on the Augiria (Augilia) boundary map.

6.4 Categorically, based on their submitted customary facts and evidences, they insist that the disputed area marked yellow (FULO LOG POND AREA) should be retained by Augilia as a mother land with its tribal people. (Refer to plaintiff's submission: pages 1 – 7).

7.0 1ST DEFENDANTS CLAIMS.

7.1 The 1st defendants claim that their tribe Ausi has discovered the Ausi customary which also comprises of the FULO LOG POND AREA.

7.2 In support of their claim, they also submit their customary facts and evidences on:

- 1) Ausi's history and migrations.
- 2) Genealogy
- 3) Priesthood & tabu sites
- 4) Land boundaries (map) (Refer to 1st defendants submissions 1 & 2 (pages 1 – 4) and (pages 1 – 7)

7.3 In their map, they call the area in dispute marked with strokes in a box "KWAIAFETAFALOG POND".

8.0 2ND DEFENDANTS CLAIMS.

The second defendants claim that the area in dispute is part of the area under their title of "Native Reserve Area and L.R. No. 44 within their customary land Daria'ala.

8.1 To support their claim, they submitted the following documents:

- (1) 2nd defendant exhibit No. 1 land sales
- (2) " " " No. 2 sketch map.
- (3) " " " No. 3 tabu sites and settlements
- (4) " " " No. 4 Survey Reports
- (5) " " " No. 5 Convenience & plan.
- (6) " " " No. 6 Genealogy.

8.2 The Dalia'ala tribe conclusively insists that because of their submission and exhibit 1 – 6, the tribe believes that the Native Reserve Area and part of L.R No. 44 (marked disputed area in their map) are also part of the area in the dispute.

9.0 ORIGINAL ANCESTORS & MIGRATIONS.

9.1 The Court finds that Augiria (Augilia), Ausi and Dalia'ala (Daria'ala) tribal migrations have different places of origins with different discoverers.

9.2 Augiria or Augilia tribes' discoverer by the name of Manuale (m) comes from the land of OFI in the East Koio High Lands, goes and first settles at Tofutoli in the West Koio. His second son by the name Aimela leaves Tofutoli and goes south and said to have discovered Augiria or Augilia customary land. (Refer to plaintiffs' map in their Submission). It is believed that from Aimela (discoverer) to Tony Uania (present in court) the Augilia tribe has lived in the land for ten (10) generations.

9.3 Ausi tribe believes that their first ancestor Aolamo (m) goes from Ausi or Wadokwai in the bush accompanied by the ancestor of Ngarikoka line (line from Augiria) and both of them began a journey to the sea coast and finally Aolamo's journey ends at Kokomuabu at the sea coast. (Refer to the 1st defendant's map). The tribe claims to have lived in the land from their first discoverer (Aolamo) down to Henry Subae for seven (7) generations.

9.4 The Daliala'ala tribe believes that their tribesman by the name of Fa'aolia comes from Fosulanifelo, discovers and establishes Daliala'ala (Dariala'ala) customary land (refer to 2nd defendants' map). Daliala'ala tribe believes they have lived in the land for twenty three generations since their ancestor discoverer Faolia of Fosuanifelo.

10.0 BOUNDARY MAPS

10.1 While the Court finds that the various customary land boundary maps of Augilia, Ausi and Daliala'ala tribes are not similar, they have one common area of interest. The Augiria or Augilia refers to this area as "FULO LOG POND" (see area marked yellow in the plaintiffs map). The Ausi tribe calls it "KWAIAFETAFI LOG POND" (refer area marked with strokes in a box in the 1st defendants' map). The Dariala'ala or Daliala'ala tribe refers to it as FULO Native Reserve Area and Part of L.R No. 44" (see area marked as "disputed area" in the 2nd defendants map)

10.2 The Daliala'ala's map shows that the 2,500 acres of Hulo land was sold to the Malayta Company on 29th October 1908 for £80.00 and three and thirty lbs cases of tobacco. This is registered at Tulagi on the 14th day of January 1909. (Refer to the 2nd defendant's Exhibit Nos. 1, 2, & 5).

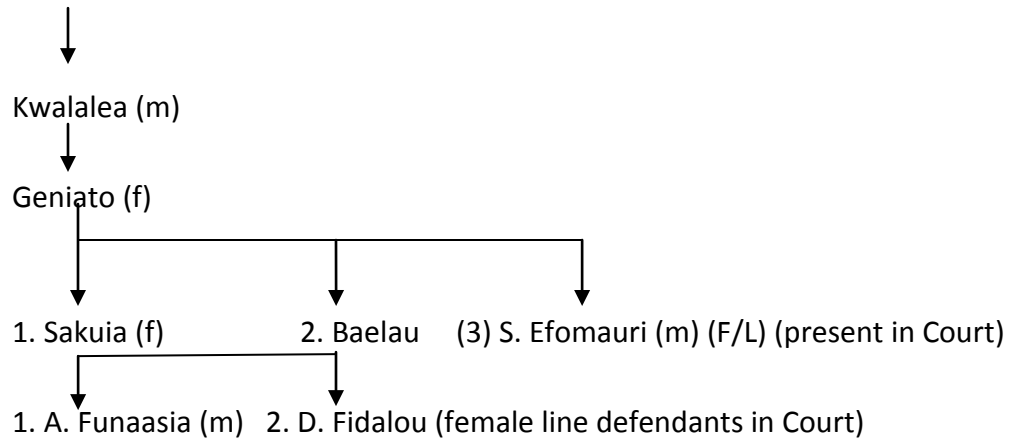
10.3 This sale is said to have been done by Daliala'ala claimed tribesmen by the names:

	<u>Daliala'ala tribe</u>	<u>HULO Registered Land</u>
(a)	(1) Talaibo (m) is claimed to be Talepo (m)	Vendors 1
	(2) Fa'alamo (m)	

- (3) Mamusimae (f)
- (4) Evan Futanaone (f)

(b) Fougwari (m) is claimed to be Fouquaine (m) Vendor 2

(c) Faimai (m) is claimed to be Fuimae Vendor 3



(d) Utamaeana (m) or is claimed to be Utamiamia (m) or (Utamaeana) (Abusula’ana) has no children

Note: In the Loulana chief’s settlement dated 4th August 2009, the chiefs find that:

- (1) Talaibo’s line ends at Evan Futanaone
- (2) Fougwari was barren.
- (3) Utamaeana is a bachelor.
- (4) Faimae’s line ends with Daniel Fidalou and Simon Efo mauri.

That referred settlement is brought forward and signed as an unaccepted settlement on 11th December 2009.

10.4 The Court further finds that one’s claimed to have registered the HULO land are born of females of the Dariala’ala line. That is, the venders are of the female line.

11.0 TABU SITES

11.1 Augilia Tabu Sites

- (a) Ngalifaoma _ Bae Nioifanua
- (b) Wanegeetolo – Tau Bae

- (c) Lelebala – Binubinu Bae.

11.2 Ausi Tabu Sites

- (a) Kokomuabu
- (b) Nafona’ala – sea cave.

11.3 Dariala’ala Tabu Sites

- (a) Takwaileo
- (b) Faulaluageni
- (c) Baeania
- (d) Busu
- (e) Namolasia
- (f) Namokekelo
- (g) Nafoniala

12.0 PREVIOUS COURT RECORDS

The old Local Court archive records show that there is a civil case no. 17 of 2007 being done about the same area in dispute.

13.0 AREA IN DISPUTE

It is clear from the evidence before this court that the tribes namely, Augilia, Ausi and Dariala’ala are in fact disputing the “FULO LOG POND AREA.”

14.0 COURT CONFIRMATIONS.

14.1. The Court finds from the Loulana Councils of Chief’s settlement made on 4th August 2009 and that the original four vendors who had sold the Hulo land to the Malayta Co. are related to Dariala’ala tribe.

14.2 The four Vendors namely:

1. Talaibo’s (m) descends to Evan Futanaone.
2. Fougwari (m) was barren and had no children.
3. Utamaeana(m) was bachelor with no children.

4. Faimae (m) descends to Daniel Fidalou and Simon Efomauri.

14.3 Although the Dariala'ala genealogy link confirms the four vendors, it is still questionable as to how or why Talaibo's name at the first place is written in error as Talepo, Fougwari's name is written in error as Fouquaine and Faimae is written in error as Fuimai and Utameana is written in error as Utamiamia in the Hulo Registered land list.

14.4 Whereas there may be doubts in the minds of the Plaintiffs and 1st Defendants on Dariala'ala genealogical links to the documented vendors, the issue is yet not beneficial to any parties at the moment. Such outright sales of land are usually quite hard to regain from the responsible authorities. The power is within the hands of Commissioner of Lands.

14.5 The court finds on the evidence before it that the parties in dispute including the four vendors of Hulo land are all female related to the land.

14.6 The Court also finds that none of the parties had successfully challenged the other parties' facts and evidences so as to weaken their claim. Furthermore, none of the parties has been found to present a good enough case to convince this court for private (or exclusive) ownership of the area by one party alone.

15.0 FULO LOG POND BOUNDARY SURVEY.

15.1 The area surveyed is shaded orange in the accepted map. Beginning at Namokekelo (seaside) the area runs eastward (inland) to the main road to a coconut marked X. Then it follows the road northwards until it reaches the LITO stream where it follows the LITO stream down to the seaside (west). From thence it follows the sea coast south ward until it reaches Namokekelo again. The parties all agreed that this is specifically the area in dispute.

15.2 Through the survey, the Court finds that Augilia and Ausi tribes have a common binubinu (sea cave) for worshipping sharks. The Augilia calls it Lelebala and Ausi calls it Nafonaala. Tony Uania for Augiria says that this is where their priest, Gaiafu (2) used to feed their sharks. Henry Subae of Ausi claims that their priest, Billy Gaiafu also fed their sharks at the same site. Both parties also agree on the same mode of prayers and feeding rituals even though they are of different tribes or clans. This is possible in custom where one of the tribes or clan as in this case Ausi being woman related to Augilia. In fact the finding of this court was previously confirmed by the findings in Civil Case No.17 of 2007.

- 15.3** Dariala'ala representatives on the other hand, do not argue the issue at this point. So the court concludes that the place for feeding sharks at Nafonaala or Lelebala binubinu (sea cave) is a common area for both tribes to feed the sharks. Augilia shark worship is transferred to B. Gaiafu of Ausi.
- 15.4** At another site, Simon Efo Mauri of Dariala'ala claims it is Namokekelo where their last priest Tetemae used to feed their sharks. This claim is categorically denied by the plaintiff and 1st defendant who claim it is their first time to hear of a shark feeding site called Namokekelo in the area. The Court however accepted the site as another site for feeding shark as it is a binubinu (sea cave) similar to the Nafona'ala or Lelebala binubinu.
- 15.5** At Kokomuabu, Henry Subae and Dick Laefilamo of Ausi and Toni Uania of Augiria confirm it as Billy Giafu's (Ausi's last priest) last settlement area. Two sango plants shown as custom signs of Billy Gaiafu's last living area are confirmed. The Court views the red sango plant as a bibia or a plant for security protection while the green sango plant is planted purposely for "NOFA" use. Dick Laefilamo explains that there used to be a sacrificial place there but cyclone Namo has washed away the site.

16.0 COURT OVERVIEW (SUMMARY)

The Court is of the view that the area in dispute or FULO LOG POND is an area of Common Access for tribesmen of Augilia, Ausi and Dariala'ala since times immemorial. Your tribes have been using the area since your tribal discoveries. It is an area where people from the highlands and coastal people come together for exchange of goods, shell collecting, meeting friends and new people and for the trade of children.

It is this co-operative and harmonious co-existence by your great grand fathers that enables you the Augilia, Ausi and Dariala'ala tribes to be able to show to this Court the MEMORIAL TAUS in and around with all your respected and respective sea caves.

Having considered the parties' submission evidences in court and the parties' customary facts and evidences seen on survey in the area in dispute, the Court is satisfied on the weight of evidence before it to give its decision.

DECISION

1. Augilia, Ausi and Dariala,ala tribes are the custodians of the Fulo Log Pond area.
2. The map with the area shaded in orange is accepted.
3. Property owners are to own and freely use their properties in the area.
4. Parties are to reconcile.
5. No order of cost.

RIGHT OF APPEAL EXPLAINED

Any party not satisfied can appeal within ninety (90) days with effect from 4th September to 2nd December 2013.

COURT OFFICIALS

1. Ilimanu Ilita Vice President _____
2. Alphones Wale C/Member _____
3. Rinaldo Talo C/Member _____
4. Ellen Konare Court Clerk _____