

## In The Malaita Local Court

*Civil Jurisdiction*

### Civil Customary Land Case No. 16 Of 2013

|                         |   |                  |
|-------------------------|---|------------------|
| <b>Between:</b>         | <b>Abraham Pita</b><br><i>(representing Matakwafita tribe of Ndai Island)</i> | <i>Plaintiff</i> |
| <b>And:</b>             | <b>John Alick Dadalo</b><br><i>(representing Talifu tribe of Ndai Island)</i> | <i>Defendant</i> |
| <b>Land In Dispute:</b> | <b>Matakwafita Customary Land &amp; Radahafila Lake</b>                       |                  |
| Date of Hearing:        | 2 <sup>nd</sup> July 2014   |                  |
| Date of Ruling:         | 3 <sup>rd</sup> July 2014   |                  |

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### RULING

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#### [1] Factual background to the case

This is the written ruling on the issue raised in Civil Case No. 16 of 2013 which concerns customary ownership of Matakwafita land and Radahafila lake on Ndai Island as between Mr. Abraham Pita representing *Matakwafita* tribe of Ndai Island (*plaintiff*) and Mr. John Alick Dadalo representing *Talifu* tribe of Ndai Island (*defendant*) and delivered orally in court on 3<sup>rd</sup> July, 2014.

The case was filed with the Local Court by the plaintiff having been aggrieved by a third party (acting upon authority of the *defendant*) constructing a permanent building within the vicinity of the land in dispute and encroaching into the boundary of that land without the consent of the *plaintiff*.

The matter was sought through the Olemaoma House of Chiefs (*chiefs*) at Ndai Island, North Malaita on 28<sup>th</sup> November, 2012 for settlement in custom and the *chiefs* recorded their findings/decision in the prescribed Accepted Settlement form.

On 11<sup>th</sup> July 2013 the *plaintiff* filed the Accepted Settlement with the Malaita Local Court. Accordingly, by a letter dated 18/7/2013 and another letter dated 30/10/13 both parties were informed by the Local Court Clerk of the case that has been filed, and together with the prospect of the Local Court calling both parties to attend court at a later date to affirm the Accepted Settlement.

By a letter/notice dated 6<sup>th</sup> May, 2014 and a by summon set for 2<sup>nd</sup> June, 2014 both parties were called to attend court on that date. That sitting was postponed from June 2<sup>nd</sup>, 2014 for the reason that the President (and clerk) of the Local Court were to attend a workshop organized by the Truth and Reconciliation office (Auki).

By a summon dated for 2<sup>nd</sup> July 2014 both parties were again called to attend court to affirm the settlement. On the fixed date the *plaintiff* attended but the *defendant* failed to attend.

**[2] Issue before the court**

The issue before this court is whether or not that this court has the power to amend the decision as given by the Olemaoma House of Chiefs to accord with the custom of Ndai Island before recording it as that of the Local Court in accordance with the statutory requirements of Section 14 of the Local Court Act [Cap 19].

**[3] Customary law**

In accordance with the custom practice of Lau and Baelelea including Ndai Island of North Malaita an individual, line or clan/tribe can be given a portion of land or a fishing ground as a reward for some exceptional deed or responsibility done to another person or tribe such as:

1. Great assistance towards custom feasts,
2. Avenging killing of another tribesman, woman or child,
3. Burial of a custom priest or some important tribesmen, and
4. Defending or protecting a tribesman or a tribe from another tribe or other killing forces,

Other custom practices that must eventuate to broadcast/publicize the custom gift includes:

1. Custom feasting organized by the tribe giving the custom gift,
2. Custom declaration done publicly by the custom priest of the custom gift informing every tribesmen and neighboring tribes of the gift,
3. Custom agreement/understanding done between the custom priest (on behalf of his ancestral spirits and tribesmen) and the recipient sealing the exchange in custom, and
4. Custom sacrifice/offering or ritual performed by the custom priest informing their ancestral spirits of the custom gift.

and the custom exchange is binding on the tribe by custom forever meaning that the tribe shall not take back the gift from the recipient or co-own the gift with the recipient.

**[4]. Findings of the court**

- (1) This court confirms all the facts as described in the factual background to this case in section 2 above.
- (2) This court confirms that from 28<sup>th</sup> November, 2012 (date when the settlement was made) to 11<sup>th</sup> July, 2013 (date when the case was filed with Local Court) to 30/10/2013 (90 days after the Accepted Settlement form was filed with the Local Court given the parties had been informed of that by the two letters described above) and even to 2/6/2014 or 2/7/14 (the dates when the parties were called to attend court), neither of the parties ever lodged any complaints against the decision as given by the *chiefs*.

- (3) This court also confirms that the Accepted Settlement made at Ndai Island on 8<sup>th</sup> November, 2012 by the Olemaoma House of Chiefs has been done correctly in accordance with the statutory requirements of the 1985 Amendment Act (Section 14, Local Court Act [Cap 19]).
- (4) This court further confirms that the incident of the Talifu line at Ndai Island being threatened to extinction by the “Gwaikui devil” and the “defense and protection” of the Talifu line by Boruilofea of Aibulu House/Matakwafita tribe to the people of Ndai Island is common knowledge among the tribes at Ndai Island and the surrounding tribes at Manaoba Island and even Suava Bay and the Lau lagoon at the Malaita mainland.
- (5) This court also confirms that the giving of Matakwafita land and Lake Radahafila to the Matakwafita tribe by the Talifu tribe in times immemorial is true in accordance with the custom of Malaita (customary law applicable in the northern parts of Malaita)
- (6) This court also finds that the *plaintiff's* tribe or line was a principle witness to the *defendant's* tribe in a previous case on ownership of the Ndai greater Island asserting that the *defendant's* tribe is the owner of the island and had given the land in dispute to the *plaintiff's* line in times immemorial (refer: Malaita Local Court Land Case No. 6 of 1994, proceedings pg 104)
- (7) This court further confirms that the decision as recorded by the *chiefs* in the Accepted Settlement form is erroneous in customary law to the extent that the *chiefs'* decision to include the *defendant* as a co-owner of the Matakwafita land and Lake Radahafila with the *plaintiff* is wrong under the custom of North Malaita

## [5] Summary

Notwithstanding any previous or subsequent cases on the land and lake in dispute, this court is satisfied with the evidence before it and rules as follows:

## **RULING**

1. The Form II “Accepted Settlement” form and decision given by the Olemaoma House of Chiefs at Ndai Island on 28<sup>th</sup> November, 2012 are set aside
2. Abraham Pita and his line owns Matakwafita customary land and Lake Radahafila
3. The plaintiff's map is accepted
4. Any future development affecting the land and the lake must be consented to by the owner

## **The Court**