

JUDGMENT

This is an appeal against the decision of Aola Local Court in Civil Case No. 33/81.

At the outset, the Customary Land Appeal Court must mentioned that the written record of the Court below is far from satisfactory. It is rather difficult to follow and it is felt that where a Local Court think best that its record would mean sense if it is kept in pigin English, it must be encouraged to do so. The Court records are public records and it is important that it is maintained in a language that can be read and understood.

Because of the state of the language of the court below, the Guadalcanal Customary Land Appeal Court (the CLAC) feels that it is necessary to adopt the powers vested in the Local Courts and exercise those powers in this case, and so it does. However this decision does not make the record of the court below of nullity but rather regard that record as forming part of the record of CLAC, subject to the rules of Law, so that the CLAC could have a wider scope in considering the matter before it.

The appellant lodged eleven grounds of appeal. However, in view of the course we have decided to take, the CLAC considers that taking points by points is not necessary, but as there is a point of Law involve in groud 6. the CLAC will first deal with this.

In brief, the contention is in 1975, he, the present appellant went to court with one Marcus Manetha over the question of ownership of Kokosa I. One of the justices who sat and heard that dispute is Samson Deona who then was a member of the Local Court. However in October 1981, Samson Deona challenged the judgment winner over the question of ownership of Kokosa I and Kokosa III. (The same Kokosa I which was in dispute in 1975). He contends Samson cannot dispute the ownership of the same Land with him again since he, in 1975, in his capacity as a Local justice decided in favour of the present appellant.

On this point, respondent states, he did not step down because that was his duty - ie to administer justice, though he at that time thought that, he might have some right over the Land, a right which is subject to Michael's right.

If Respondent then, in his capacity as Local Court justice together with other justices, convened lawfully in deciding the same matter and had unanimously decided in favour of Michael Leua then anyone of those justice, by so doing is estopped from challenging Michael Leua at any date after they have so decided. It is a rule of Law that a party is precluded from denying the existence of some state of facts which he has formely asserted, whether by words or conduct. On this matter Samson Deona has asserted by conduct when he as a member of Local court unanimously decided with other members that ownership of Kokosa I in 1975 case is Michael Leua. He cannot again at a later date decide he is the owner of Kokosa I. On this basis the CLAC decides that Samson Deona is estopped by his own conduct from challenging the question of ownership of Kokosa I and accordingly rule that that Kokosa I is owned by the appellant, Michael Leua.

We are now left with Kokosa III which is specified in the sketch submitted by the respondent. Before, we turn to it, the CLAC feels that it is worth mentioning that it would appear that the disputes came about because of the timber operation carried out by a Foreign Company in that vicinity. This is important, as it is the disagreements over the royalties paid to the alleged land owners that stimulates the disputes.

Now we turn to the case on Kokosa III. Firstly we must ask ourselves. Does the, estopped as a result of the proceeding in 1975 from which we decided that Mr Samson Deona cannot bring any action against Mr Michael Leua also deem to include any action by him on any land adjacent to or forming part of that land which was not a subject before the court in 1975? We can only say yes definitely if the subject matter before the 1975 proceeding was the whole of Kokosa land as specified by Mr Deonas's sketch. However in considering this case, the CLAC decide to say no in order to allow it to consider the customary evidences.

The real point of issue appears to be the devils, worshipped, that is Samoa and Sipolo and it is this issue which we consider if sorted out would lead to clear up certain issues related to the main issue. We find that there are tambu places belonging to the appellant and others belonging to respondent. This indicates that each of the parties does have some rights in the land but the degree of right has yet to be established. The appellant claimed himself as a sipolo worshipper and the respondent both samoa and sipolo worshipper. These claims of presence of sipolo and samoa worshippers are confirmed by the evidence of tambu sites and other direct evidence on the stones used for the sipolo and the samoa. There still remains the question unanswered, who has more right than who? If we decide on the sipolo worshippers then, we can be justified because it is agreed upon by both parties sipolo lived there before samoa. If we decide on samoa worshippers, knowing that samoa arrived in the land only when sipolo returned from the dance in Gella, then we must account, as to why we so decide. We, feel that Michael Leua and members of his family tree has more right than Samsons as regards to Kokosa III. It is quite true that Samson has tambu places in the land, however the tambu places were only made when the samoa was brought from Ngella. These are inferior to the sipolo tambu places but are there by custom so that no-one can disregard their value to the group of people who owns them. These samoa tambu places are 'peo' and because of their location in the land, does not qualify their owners the right to own the whole land. The owners may own the forests surrounding the sites but cannot unless specifically provided for, own the land on which they are situated. Only over the forests, surrounding the respective sites does the samoa tambu site owners have the right so, say sell the forest if they so decide. But this court cannot establish the forest how far their right does extend using each site as a centre point, as that is the matter for the parties to decide according to custom. That is a recognised respect and must be applied amidst the present changes.

On the evidence itself, Mr Leua has called witnesses to confirm that permission to use the land and buy a piece of land within this land was sought from those of his family tree. On the evidence called by respondent there is so much of inconsistency so as to render it unsafe to rely on. For instance, respondent states sipolo was human when he went to Ngella and his witness state he was already spirit, and respondent states on their return, they followed the Kokosa stream, however, his witness states they followed Bokomkimbo stream.

The burial sites were challenged by the respondent as appellant would appear to have not known his sites. Respondent argued that because of lack of that knowledge, appellant is clearly a man from another place who reside in Belagha under the care of Bently. This may to a certain extent is true however the right of ownership of land is inherited right and in this case, a right in a matrilineal society. Such right is a right through blood, and being absence from the property to which a man has right over and resulting in lack of knowing his burial sites would not in our view extinguish that right. That right as we say is an inherited right and can only be extinguish on transfer of that same right by a customarily recognised act.

We therefore make the following decree

DECREE

- (I) That the decision of Aola Local Court in Civil Case No. 33/81 is held null and void, and that the appeal is allowed.
- (II) That Michael Leua and members of his family tree owns the Lands in Kokosa I & III.
- (III) That Samson Deona owns the samoa tambu sites in Kokosa III.
- (IV) That Michael's right of ownership in (II) hereof is subject to customary recognition of values of samoa tambu sites and their surrounding forests.
- (V) That Samson Deona do recover to Michael Leua the sum of \$50 within 30 days.

Date: 4.8.82

Javan Babaua President
D. Alebua
S. Laugania
S. Sagoregana
J W Sanga