IN THE CUSTOMARY LAND APPEAL COURT FOR THE GUADALCANAL } Civil Cases No. 10/83 & 16/83

ON APPEAL FROM TASIMBOKO LOCAL COURT ABOUT SOLE LAND
RUBO LAND

BETWEEN:	JOHN NANAU	Appellant
AND:	SARAU	First Respondent
AND:	JOEL SIKUA	Second Respondent
AND BETWEEN:	JOEL SIKUA	Appellant
AND:	JOHN NANAU	Respondent

JUDGMENT

NANAU claims a large area called ITHUITHU land. SARAU claims a part of it, known as SOLE land, and SIKUA another part, known as RUBO land. The boundaries of SOLE and RUBO lands are shown on the plans produced by SARAU and SIKUA and agreed by NANAU. In addition, there are parts of ITHUITHU land not in dispute between these people, so we make no decision about them.

Both NANAU and SIKUA make complaints against the Local Court in their notices of appeal, as well as raising the merits of their cases. In points 6 and 7, NANAU complains about the Local Court survey. In point 6, he says that they should have looked at his sacrifice places; if they did not, this was certainly unfair; but he has told us that his sacrifice places were outside the part of the land in dispute, so they are not of direct importance. In point 7 he complains that only two Local Court members took part in the survey; there is nothing wrong with this, though we think it would be a bad thing if only one member went. In point 8, NANAU makes the not unusual complaint that one of the justices revealed the result before it was officially announced. He should not have done this of course, but NANAU told us nothing to make us think this showed that the justice was biassed against him. In point 9, NANAU complains that the president only concern was to make peace between the parties: he told us that the president had told him this himself. Even if this were true, we do not think we have the right in a matter of this kind to rely on what NANAU says the president said. In any case NANAU did not claim that the president said anything about the decision being wrong in itself. All courts like to make peace, but everyone knows that justice must be done first. So we reject all NANAU's complaints.

SIKUA complains in point I that the decision of the Local Court was prepared and signed by the Clerk without being approved by the President or members. This point was clearly based on the typescript, which left out the President's signature which, as we have seen and SIKUA accepts, is there out the original handwritten record. In point 2 he says the Local Court Clerk was related to NANAU by marriage: he told us he objected to him at the hearing, but not other clerk was available. We are prepared to accepts that he made this objection, without which we should have refused to consider this point. But NANAU very frankly told us that the clerk GELADIKA had married his brother's daughter. In the custom of Guadalcanal, this does not make for a very close relationship between them: it might have been undersirable if GELADIKA had been a court member, but we do not think any sensible Local man would have thought it mattered for a clerk.

Points 3 and 4 really go together, and suggest that the written decision of the Local Court was not the same as the spoken one. In effect we are asked to find that the spoken decision was the real one. The usual rule, of course, is that where a court has put its decision into writing in a proper way, other courts will only pay attention to the written decision. Otherwise there is no point having it written down. It is of court best for the decision to be written down first, and then given out to the people, in which case there is less room for mistakes. If something seems to have gone really wrong, there is an exception to this rule, and an appeal court may rely on any strictly accurate record of the spoken decision when considering whether the one that was written down was the real decision of the court.

In this case the only complaint of any difference was that the spoken decision had made SIKUA the first owner of RUBO land, whereas the written decision only gave him secondary rights. The written decision (see p. 24 of the Local Court Record) was quite clear and comprehensive about this, and we do not there can have been any mistake when the President signed it. A member of the family referred to (not acting in his official capacity) held a meeting with the Local Court President and others to discuss the alleged discrepancy. (We were asked to look at the record of this meeting, and the two magisterial members did so in order to decide whether it should be placed before the court as a whole. We took the view that this would not be helpful as although the meeting was scrupulously recorded by a skilled secretary, there was no such record of the Local Court's spoken decision, nor any record at all shown to us.

It is perfectly fair for a family or local meeting to be held to discuss problems of this kind, and there could be no possible criticism of what was done at this one. But although judges of the higher courts have sometimes been called to give evidence about decisions in cases they have heard, this is never done with furymen, once they have given their verdict.

We think that members of the Local Court should be in the same position: their written decision should be treated as final, unless there is an accurate record of their spoken decision which casts serious doubt on it. To make sure that this ruling is accepted by the parties, we hope that at least in land cases, all members of the court and not just the president will read over the written decision (or have it translated to them) and sign it. So we reject SIKUA's complaints against the Local Court and turn to the merits of the case, which can be dealt with much more shortly.

NANAU says he first settled ITHUITHU land. SARAU agrees with that, but says the area NANAU settled did not include SOLE Land, which his own ancestors discovered. SIKUA says his ancestress BOROVI was given RUBO land as a dowry by the then owners.

We were impressed by the details of ancestors and cutomary properties NANAU was able to give us, and accept so far as it is relevant his claim to ITHUITHU land. But it is also perfectly clear that SARAU and SIKUA's lines have been long settled on their parts of it with consent of NANAU's line. So they can keep any houses or gardens there, but must not start any new developments without leave of NANAU.

D E C R E E

NANAU is the first owner of SOLE land and RUBO land; SARAU has second rights over SOLE land, and SIKUA has second rights over RUBO land.

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S. SAGOREGANA (V/PRESIDENT)

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S. LAUGANA (MEMBER)

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U. BORUBORU (MEMBER)

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T. OLI (MEMBER)

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J.G. FREEMAN (MAGISTRATE)

.....
JKR STANFORD-SMITH (MAGISTRATE)

Dated this 20th day of March 1984.