

LIFOE LAND DISPUTE

JUDGMENT

This is an appeal from a decision of Malaita local court. The court sat at Gwaunatolo and the proceedings lasted four days. The court gave its decision on the 21st October 1983.

After hearing the evidence and making a survey of the disputed area the local court decided that the Respondent was the owner of Lifoie Land but there were crops and plants growing in the land which belonged to the Appellant and members of his line. The Appellant and his line should continue to enjoy the fruits of those crops and plants but would have to obtain the Respondent's permission for any new projects.

The Appellant, who was the plaintiff in the proceedings in the local court, has appealed against that decision. His notice of appeal contains twelve grounds of appeal in which he sets out in some considerable detail the reasons why he claims the decision in the local court was wrong. We do not propose to repeat the grounds in this judgment because they are set out in full and attached to the record of the local court proceedings.

At the outset remind ourselves that the rules of custom, like the rules of law requires a person who makes a claim to prove it. In legal phraseology. "He who avers must prove," and this is a requirement of custom also.

We have paid careful attention to the submissions of the parties and closely studied the local court record and survey report. At the request of the Appellant two of our members carried out a further survey of the disputed area. At this stage we think it right to say that having made a survey for ourselves, this court is satisfied that the survey carried out by the members of the local court was undertaken conscientiously and the report is reliable and accurate except in one very material respect. We have studied the plans submitted by both parties in the local court and it is clear that Lifoie Land does not extend to the sea coast as the local court held. We ourselves are unable to define precisely the boundaries of the disputed area but it is clear that it lies between Manuau land and Abeaitelekuna Land. If a dispute does arise as to the precise boundaries of the land the parties will have to take further proceedings in the local court to settle the matter.

Turning however to this present dispute it is clear from the plans submitted by the parties that as we have said Lifoie Land does not extend to the sea coast and this is significant because during the survey by the members of this court, the survey party were shown some ngali nut trees and the tambu place known as Loau. On survey it was agreed by both parties that some of the ngali nut trees belonged to the Appellant, some to the Respondent and some to other people not parties to this dispute. Similarly this court is satisfied that the tambu place known as Loau belongs to a man called Kakalu'ae but the Appellant has the right to worship there. Also there was a burial site for both Kakalu'ae's line and the Appellant's line in vicinity of this tambu place. However the really significant factor that this court's survey revealed is that neither the ngali nut trees nor tambu place are on the area in dispute, namely Lifoie Land. We would point out that this finding

is confirmed by the map prepared by Justus Belo and produced by the Appellant in the local court. That plan clearly marks the ngali nut trees and the tambu place as being outside the disputed area.

Turning now to the evidence in this case, this court is satisfied that both the Appellant and Kakaluāe are related and in custom are regarded as brothers although their actual blood relationship is more remote. Each is descended from the woman known as Abu. Equally it is clear that Abu was formerly a member of the Manuau tribe and on her marriage outside her tribe she was given a piece of land known as Abeaitelekuna land as a marriage portion. The Appellant by reason of his descent from Abu has a sustainable claim to Abeaitelekuna Land but he does not base his claim to Lifoe Land through Abu.

He claims that his ancestor Alafeilau was given Lifoe Land as a reward. The Appellant says that I'uu a man of Manuau, was murdered. His body was recovered and given a decent burial by the Appellant's ancestor Alafeilau and for this service Hailifu, I'uu's sister, gave Alafeilau Lifoe Land as a reward.

In effect the Appellant is saying that his line acquired Abeaitelekuna Land as a marriage portion and Lifoe Land as a reward and clearly it follows from that the two lands are separate. However although in custom a gift of land on marriage is understood and accepted before the gift of land as a reward can be effective, it must be marked by a public gathering and feast to give all the people notice of the gift and in this case there is no evidence to show that any such public acknowledgement of the alleged gift ever took place. In custom a transfer of land from one line to another is a very important step affecting as it does the rights of whole group of people so custom requires such a momentous act to be done and acknowledged in the presence of all concerned so that everyone shall know about it. In this case the only evidence to support the Appellant's claim that his line was given Lifoe Land as a reward for the recovery and decent burial of I'uu's body is the Appellant's own say so not supported by any other evidence and in custom that is not sufficient to prove that the land was given to his ancestor Alafeilau as he claims.

Having given this case our full consideration we are satisfied that the local court came to the right conclusion. We are satisfied that the Appellant does not own Lifoe Land and this appeal is dismissed. We confirm that the Appellant shall continue to enjoy the fruits of the crops belonging to him growing on Lifoe Land but if any dispute arises between the parties as to the precise boundaries of the land, such dispute shall be referred to the Local Court to be determined.

Dated this 20th day of November 1984.

Vice President: Enoch Fisu

Member: Shemuel Walanihou

-do- Daniel Baetalua

-do- Joseph Kaia

Magistrate: J.A. Bowran.

Ruling

We allowed the Appellant his travelling expenses of the last hearing in October. He submitted a claim for \$318 but that included claims for food and court fees which he was not awarded. He also claims \$60 for hiring a truck. This is not reasonable. We will not allow either party to recover the cost of hiring a truck. We allow the Appellant \$54 for his travelling expenses. That is to be paid by the Respondent.

The Respondent has also claimed for food and truck hire, items which we will not accept. The Respondents claim amounts to \$260 which we have reduced to \$132.50 on the principles set out above. That means there is a nett balance of \$78.50 due from the Appellant to the Respondent. The Appellant has deposited \$50 in court as security for costs. This must be paid out to the Respondent forthwith and the balance of \$28.50 must be deposited in court by the Appellant within twenty eight days.

J.A. Bowran
CHIEF MAGISTRATE, (MALAITA).

Right of appeal explained.

J.A. Bowran
CHIEF MAGISTRATE, (MALAITA).

20th November 1984.

