

In the Western Customary Land Appeal Court

Land Appellant Jurisdiction

CLAC no: 1 &4 of 1995

In the Matter of: **Hisiai Land**

Between: **Joseph Gorae**) First Appellant

And: **William Lovinao**)
Chris Otuana) Second Appellants

And: **Sir George Lepping**)
Kevin Misi) Defendants



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JUDGMENT
.....

This is an appeal against the decision of the Shortlands Local Court on Hisiai Land. The decision was made on 26th February 1995.

There are two appellant groups representing separate landholding interests ie: Joseph Gorae & others and William Lovinao and Chris Otuana & others and one Defendant group i.e. Dionesio Tanutanu (Deceased) (the case now taken over by his son) Sir George Lepping and Kevin Misi.

The appeal grounds of the appellants are summarized as follows:

Appeal Grounds

Joseph Gorae – First Appellant

1. The Shortland Local Court erred to say that the court Justices have seen the large stone near the bank of Maleusai river during the survey. The Defendant plaintiff 1 failed to show to the court material evidence as stated. The court is biased to record false documentary of the land survey proceedings.
2. The Shortland Local Court also erred to record the statement in the decision judgment. I quote "Bulesi is very close relative of Chiefs". If he has been chiefly member by what status and he would not be acting as a servant from the word "LUA" originated from.

3. LUA is not a land transfer act in Shortlands Custom as stated in the decision judgment. How does John Maemae of Kiribati and Alban Taro of Makira Province can verify the true meaning of the word wrongly stated? The court had been erring to adapt and consider such false presentation. The word "LUA" is correct when it refer to someone (Bulesi) giving food to the Chiefs which in return he need protection, especially by the Chiefs.
4. The court failed to identify the domestic medicinal ginger used by the people of Shortlands, and the wild ginger seen in the forest vegetation during the land survey as shown by Dionesio Tanutanu.
5. During the course of this court hearings, till this year, there were many inter relationship of both the seating justices and the Dionesio Tanutanu's party in form of aiding, buying high price valued goods and sponsoring them:
 - (a) In October 1994 Kevin Misi bought pig from the Judge Taylor Davala for (\$400.00) four hundred dollars,
 - (b) On the 10th October 1994 Defendant's brother (Sylverio Maike) aided president of the shortland local court, the seating member of the court, from Komaleai to Korovou,
 - © Kevin Misi bought and outboard motor (15 Horse Power Yamaha) for his witness Sylverio Hatoto and aided his trip to and from Honiara.

Appeal Grounds

William Lovinau and Chris Otuana – Second Appellant

1. The Lord Court failed to consider or give adequate consideration to the decision of the Shortland Chiefs made at Korovou Hall on or about the 21st February 1987.
2. The Local Court was wrong and incompetent in its determination and conduct of the case in that:
 - a) the court was comprised of persons who did not have in-depth knowledge of the customs and land tenure of Shortlands, and

- b) From time to time throughout the hearing the Court permitted its Clerk to dictate the procedure by which evidence was rendered admissible for or relevant to its determination, and
 - c) The Clerk to court failed to record a substantial amount of relevant evidence and submissions advanced on behalf of the Appellant, and
 - d) The Local Court wrongfully refused to admit material evidence concerning clan of ownership of land by Alikox
 - e) The Local Court failed to consider or give adequate consideration to the statement publicly made by Chief Baure and Chief John Gorae in 1918 that the claim by the descendants of Bulesi over the land in question was not true, and
 - f) The Local Court wrongfully decided that land ownership can be transferred by the custom called 'LUA', and the local Court wrongfully assumed the existence of a large stone in the Maleusai River when it was impossible, during its visual inspection, to locate such a stone due to the muddy waters.
3. The Local Court refused to hear the evidence of Everisto Kopana for the Appellant because of an objection improperly made by DIONESIO TANUTANU AND KEVIN MISI and their privies.
 4. The Local Court unduly placed considerable reliance on the evidence of MR.SILVERIO HATOTO who:
 - a) was financially supported by MR. KEVIN MISI;
 - b) had a vested interest in the outcome of the proceedings; and
 - c) had contradicted his previous statements made during the Adjudication hearing concerning the same land.
 5. The President of the Shortland Local Court was biased and favoured the group represented by DIONESIO TANUTANU AND KEVIN MISI because;
 - a) On the 10th October 1994 the President was transported from Kamaleai village to Korovou Court House by MR SILVERIO MAEKE who had a vested interest in the outcome of the case, and

- b) During the period of the Court hearing the President from time to time paid regular visits to MR KEVIN MISI at his office at Komi Fera Building, Point Cruz Honiara.

6. The Local Court was biased and made its determination against the rule of natural justice in that;

- (a) Local Court member MR. ALBAN TARO was transported from Gizo to Ballalae for the court hearing at the expense of DIONESIO TANUTANU or his privies.
- (b) MR.KEVIN MISI gained favours from Local Court member MR.DAVALA TAYLOR when he purchased the Court Justice's pig for an excessive price of \$400.00.

Brief Summary of Shortlands Local Court - Judgment is outline as follows:

DIONESIO TANUTANU AND KEVEN MISI claimed the ownership of the Hisiai land through Bulesi. The land was given to Bulesi by old Qorae, John Qorae and Hotomo for been their guardian. Bulesi was a very close relative of the chiefs and during his lifetime he served them well by providing advice, food and other things. It is this service that HISIAI LAND was given to him. This type of transfer of land ownership is known in Shortlands language as "LUA".

To support their claim DIONESIO TANUTANU AND KEVEN MISI produced material evidence. During the survey they showed to the court a large stone near the bank at Maleusai River where Bulesi used to feed and offer customary sacrifice to MAGUILI (FISH WITH BIG MOUTH).

They also showed to court the sand beach at the bay between Maleuna point and Leaoa point where Bulesi used to call the two sharks, named RISORO AND AUOKI which he fed and offered customary sacrifices. They also showed to the court the ginger which was used by Bulesi and his people for custom medicine and bamboos. They are still growing at the site.

JOSEPH QORAE claimed the land through chief Ferguson Kelesi, Kipau and Kisu. The land was given by the three chief to them because the chiefs went and hide there when German destroyed their village at Sanae Island. It was given to Ferguson Kelosi, Kisu and Kipau by John Qorae and Buare as the memory of their hiding in the area.

There is no term to describe this type of transfer of ownership of land in the Shortlands language. JOSEPH QORAE said it is not usual way of transferring ownership of land and as far as he knows. That was the only time it had

happened. He also produces both oral and documentary evidences to support his claim. However much of these oral evidences were not convincing and contradict with his witness's evidence. The witness did not even know the area of land in dispute.

WILLIAM LOVINAU and CHRIS OTUANA claims the ownership of land in question through Buare. They said that Hisai Land was originally owned by Kelosi who was Buare's grandmother was owned by them prior to the invasion of Shortlands by Chief Porese of Mono.

WILLIAM LOVINAU and CHRIS OTUANA produced both oral and documentary evidences to support their claim but did not have any witness to support their claim.

Decision

With or among the evidences before the Shortlands Local Court it made a decision in the favour to DIONESIO TANUTANU and group.

The court

For the two appeals lodged to the Clerk of CLAC/W they raise identical issues and the court will deal with those issues together from the appeals from First and Second Appellants. It is also important to note that there are grounds which are interrelated and involve the issues of custom and Law/procedures.

First Appellant - Grounds 1 and 4 & Second Appellant – Ground 2 (g)

These grounds relates to the land survey on the site as follows:

That Local Court erred to say that the court Justices has seen the large stone near the bank of Maleusai river and failed to identify the domestic medicinal ginger used by the people of Shortlands, and the wild ginger seen in the forest vegetation during the survey.

To support his argument First Appellants submits that during the survey the local court did not see the large stone belonging to respondent's party at Maleusai River.

They only saw small stones commonly used for oven. At that time there was a heavy rain and the river was flooding which made them unable to see any large stones at all.

The Ginger Plant shown by respondent's party during survey to the court was not domestic medical ginger but a wild ginger. If it was a Custom or medical ginger then it must be looked after by someone. Only wild ginger can survive without anybody looking after it. It is unbelievable for a custom ginger planted 300 years ago without being looked after can survive till today.

In its Judgment the Court said that during the survey they saw a large stone near the bank at Maleusai River where Bulesi used to feed and offer customary sacrifice to MAGUILI (FISH WITH BIG MOUTH).

Respondent also showed to court the sand beach at the bay between Maleuna point and Leaoa point where Bulesi used to call the two sharks, named RISORO AND AUOKI which he fed and offered custom sacrifices. They also showed to the court the ginger which was used by Bulesi and his people for custom medicine and bamboos. They are still growing at the site.

It raise doubt on part of the First Appellant when he said that there was a heavy rain and the river was flooding which made them unable to see any large stones at all. Yet he said they only saw small stones commonly used for oven. The question is, if you can't see a large stone how you can see a small stone?.

Members of the local court confirmed seeing the said ginger in the bush during survey.

Grounds 1 and 4 have no merit, fail and dismiss.

First Appellant - Grounds 2 and 3
&
Second Appellants – Ground 2 (a)(f)

These appeal Grounds relates to the claim of "LUA" as a custom or method for acquiring or transfer of ownership of Hisiai Land to the Respondents.

The issue is therefore is whether "LUA" is a method of acquiring land ownership in Shortlands?

First appellant argued that "LUA" in custom is when someone continuously gives food or first harvest of crops to chief or landowner for using the chief/land owner's land. LUA is just like land rental of land and only servants can acquire land through LUA transaction but not the relatives.

LUA is not a process of land transfer. It can only be used by servants who need protection from the chief.

He said Land given under LUA transaction can be taken back by chiefs. He claimed to have seen in his area for his mother's side. This is done because his uncle did not give Hatapasusu payment for the land.

The court justices John Maemae of Kiribati, Alban Taro of Makira are not from Shortland and so they did not understand what "LUA" is in our custom.

In reply the Respondent said that "LUA" is a method or kind of the land transaction according to shortland custom practices. If any person continuously feeds the chiefs/land owner, they can transfer that land to him/her. Court members don't have to know every thing in custom. It is our parties to tell them what our custom is.

It is important to note the following statement by the First Appellant in his submission and quote,

*"LUA is just like land rental of land and only servants can acquire or take land through LUA transaction but not the relatives.
LUA is not a process of land transfer. It can only be used by servants who need protection from the chief.
Land given under LUA transaction can be taken back by chiefs. He claimed to have seen in his area for his mother's side. This is done because his uncle did not give Hatapasusu payment for the land".*

The first sentence of the statement indicates that LUA is a way or method for which land can transfer to a servant or a person who provides service to the chief/landowner. Although he denied again that such as a process of land transfer, he acknowledged that can be used by servant who needs protection from the chief.

Interestingly, he confirmed again that "*Land given under LUA transaction can be taken back by chiefs*". As he had seen from the situation of his mother's side, because his uncle did not give hatapasusu payment, thus indicates that LUA is a method of transferring ownership or rights and also such can be done among relatives.

First Appellant has made contradicting evidence to the court as stated above.

The Shortlands Local Court in holding "LUA" as the method of transfer of Hisiai Land to the Respondent said that Bulesi was a very close relative of the chiefs and during his lifetime he served them well by providing advice, food and other things. It is this service that HISIAI LAND was given to him. This type of transfer of land ownership is known in Shortlands language as "LUA".

We are satisfy that LUA is a method of acquiring or transfer of ownership of Land interest therefore would not interfere with Shortlands Court decision on this issue.

On the related on issue that justices John Maemae of Kiribati, Alban Taro of Makira are not from Shortland and so they did not understand what "LUA" is in our custom, the record of proceeding showed no objection to the members was made at the commencement of the case at Korovou. Shortland Local Court is a court of law, they hear evidence and burden is upon the parties to prove their case to the court.

Ground 2 and 3 is accordingly dismissed.

First Appellant - Grounds 5 (a)
&
Second Appellants – Ground 6 (b)

Appellant submit that Kevin Misi bought a pig from ~~on of~~ the court justice Mr. Taylor Davala. Such appears suspicious. They alleged that the pig was bought for \$400.00.

The question here is whether buying a pig from that court justice affects the decision of the case?

Appellants had not produced any evidence to support the allegation.

But on rely on this issue Kevin Misi told the court it was true that he bought a pig from Mono. It did not happen in secret. Misi asked if any pig was on sale at Mono. He did not particularly asked Davala. At that time Davala had pig for sale.

It is of our view that this did not affect the decision of shortlands local court.

This appeal ground is not proved therefore dismissed.

First Appellant - Grounds 5 (b)
&
Second Appellants – Ground 5 (a)

Appellants alleged on the 10th October 1994 the President was transported from Kamaleai village to Korovou Court House by MR SILVERIO MAEKE who had a vested interest in the outcome of the case

The issue here is whether the transporting of President of the Shortland Local Court from Kamaleai village to Korovou Court House by MR SILVERIO MAEKE would have some effect to the outcome of the case?

For this issue the evidence by Second Appellant is that he was at Korovou at that time when MR SILVERIO MAEKE and the President arrived at Korovou.

MR SILVERIO MAEKE in his evidence told the court that he is a member of Shortland Local Court.

Earlier at Gizo Magistrate Rex Foukona advised him that he was to preside with other members in criminal cases at Korovou. He directed him to pick up the clerk at Balalae and members to Korovou for the sitting. He said that he had picked up the president and brought him to Korovou.

The Hisiai land case record revealed that the hearing by the Shortland Local Court of this case commenced on 16/8/1990 and after adjournment with various trails the decision was delivered on 26th February 1995.

Mr. Maike is a member of Shortlands local court and directed by the Magistrate in Gizo to pick the court justice for criminal cases.

Appellant's fail to produced evidence such may likely to affect the decision of this case, nor to suggest that Hisiai Land case at that time.

This Ground is dismissed.

First Appellant - Grounds 5 (c)

First Appellant alleges that Kevin Misi bought and outboard motor (15 Horse Power Yamaha) for his witness Sylverio Hatoto and aided his trip to and from Honiara.

In reply Kevin Misi told the court that Sylverio Hatoto is his cousin brother and he relied on him for help or assistance.

This ground also fails and dismissed.

Second Appellant - Grounds 1

This Appellant alleges the Local Court failed to consider or give adequate consideration to the decision of the Shortland Chiefs made at Korovou Hall on or about the 21st February 1987.

In reply Respondent said the chief's decision was not made according to the Custom or practice of Shortlands. The way they conduct the hearing was not acceptable to their party. They even did not want to hear witnesses.

The chief's decision was that the two appellant's parties and Respondent together own Hisiai Land.

It is normal and according to the law that if any party does not agree with the chief's decision, such party may commence a case in the local Court. The Appellant party even did not bring up the ~~6~~ bases of the chief's decision to the Local Court even now to this court.

This ground has no merit, fail and also dismissed.

Second Appellant - Grounds 2 (b) (c) (d) (e)

This Appellant alleges that the Court permitted its Clerk to dictate the procedure, failed to record a substantial amount of relevant evidence and submissions, wrongfully refused to admit material evidence concerning clan of ownership of land by Alkosi and failed to consider or give adequate consideration to the statement publicly made by Chief Baure and Chief John Gorae in 1918.

On the issues the Appellant just talk or read out the contents of his appeal grounds. He has not made out any evidence to prove the allegation.

This ground has no merit fail and also dismissed.

Second Appellant - Grounds 3

This Appellant alleges that the Court refused to hear the evidence of Everisto Kopana, because of an objection made to court by Respondents.

Appellant has not produced any basis to support the allegation.

In reply the Respondent said that they objected to the witness because the Appellant did not disclose name of this witness at the commencement of the case when asked by court. This witness was in court for these two days. The court accepted our objection.

This ground also fails and dismissed.

Second Appellant - Grounds 4

As with our response in First Appellant - Grounds 5 (c)

This ground also fails and dismissed.

Second Appellant - Ground 5 (b)

This Appellant alleges that during the period of the Court hearing the President from time to time paid regular visits to MR KEVIN MISI at his office at Komi Fera Building, Point Cruz Honiara.

The appellant produced no evidence to support this allegation.

In reply to this issue Kevin Misi denies seeing John Memea in his office as alleged by the appellant.

This ground is baseless, fail and also dismissed.

Second Appellant – Ground 6 (a)

This Appellant alleges that Local Court member MR. ALBAN TARO was transported from Gizo to Ballalae for the court hearing at the expense of DIONESIO TANUTANU or his privies.

The Appellant told the court the incident happened in 1994 during the recommencement of hearing of the Hisiai Land case. Mr. John Gorae paid the airfare Gizo/Balalae for Local Court member MR. ALBAN TARO.

In reply John Gorae for the Respondent told the court at that time he was a Sub-Treasurer/Gizo. As Sub-Treasurer, his responsibility was to pay out money to government officers on tours.

He recalls that Clerk Caroline from the Magistrate Court raised a payment to meet Alban Taro's fare to attend court at Korovou. The money was paid out to Caroline of the court and she paid the ticket. He has no personal contact with Mr. Taro.

As Sub-Treasurer, he only acted on the PV raised by Magistrate office.

This ground is not made out, therefore fail and dismissed.

ALLEGATION AGAINST THE COURT

Lastly, it is important to comment or clarify an allegation relates to the credibility and impartiality of this court. This allegation is made by Appellants William Lovinau and Chris Otuana in their final written submission on the Appeal.

Appellants William Lovinau and Chris Otuana by their final submission allege that the recent Land Court Workshop conducted by Western Magistrate Court for the members of the CLAC/W and Local Courts in Western and Choisuel Provinces was conducted to prepare a paper to assist the Respondent in this case. The paper is entitled "**THE LAND TENURE INTEREST OF LINE AND LAND GROUP**" prepared by Principal Magistrate (Western).

This paper among others on customary land matters made reference to custom methods of acquiring customary land interest in Shortlands and Luru island, Choiseul Province.

In this allegation, there are two issues which the needs to be clarified:

1. Whether the Land Court Workshop held for two days prior or before the sitting session of CLAC/W was to prepare the court member for this Hisiai Land Appeal case?, and
2. Whether the paper entitled "**THE LAND TENURE INTEREST OF LINE AND LAND GROUP**" prepared by Principal Magistrate (Western) was intended to assist the Respondent in this case?

First, it must be made clear that among the participants of the workshop were, one of the Appellant in this case, Chief Chris Otuana, on his capacity as president of Shortland Local Court and Silverio Maike (Respondent's witness), on his capacity as member of CLAC/W.

After the workshop, Principal Magistrate/Western had directed that Silverio Maike will not sit in any case at this sitting session of CLAC/W. He was also advised to move out from the members of the court. Principal Magistrate also asked one the Appellant Chris Otuana who was participant of workshop to also move out from the members.

1. This Land Courts workshop is part of National Continuing Judicial Education Programme under the auspices of Pacific Judicial Education Programme. It was conducted by Judicial Officers Educators Mr. Nelson Laurere (Registrar of High Court and Leonard R. Maina (Principal Magistrate). The two officers are Judicial Trainers and currently undertaking a Programme with the Pacific Judicial Education Programme, Australian Training Authority and coordinated by a former Samoan Judge Mr. Enoka Puni based in New Zealand. Among the requirement to be undertaken by Mr. Nelson Laurere and Leonard R. Maina is to conduct a two days workshop by August 2005.

The choice of conducting a Land Court Workshop is base on two considerations:

- (i) The Land Court members and Clerk to Local Courts have not received any training on matters relates to court but only acquired or learned the require knowledge and skills on the job or while performing duties. A need for training therefore exists to properly equip members of the land Court with the knowledge and skills to enable them to competently and efficiently perform their duties in the court.

- (ii) Funding for the required workshop cannot be obtained from the normal Government funds. And so the gathering of the members of CLAC/W and Local Courts for normal Land Court sitting was the opportunity for the two Judicial Officers Educators to conduct the workshop.

2. The paper entitled "**THE LAND TENURE INTEREST OF LINE And LAND GROUP**" was prepared by Principal Magistrate/Western in year 2002 for the similar workshop.

That workshop was sponsored by UN Human Right Group and was conducted from 17th – 21st June 2002 at Paradise Lodge, Gizo Western Province. Among the participants were Appellant Chris Otuana and Respondent witness Silverio Maike.

The paper was also presented at 2002 workshop and during the group discussion session on the methods of acquiring customary land, Appellant Mr. Chris Otuana, representing his group from Shortland and Choisuel discussed all the methods in the paper.

The Clerk and three members now sitting in this case were also participants at that workshop.

At the recent workshop, this paper was also handed to the participants with additions of methods of acquiring customary land interest on Lauru Island. Again appellant Mr. Chris Otuana made an explanation and comment on "Tueri" method on the paper.

3. Listing of cases by the court for this session of CLAC/W was made some months ago and public notice with SIBC message was made at least a month before the sitting session.

With the above comment, there is no motive and timing of the workshop, sitting of CLAC and any workshop documents to be presented to the court. The court is fully aware of its role to be independent and impartial at all time.


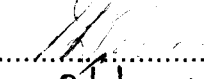
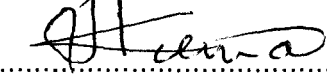
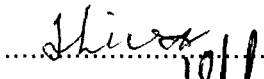

All the workshop briefs and documents are available at the Western Magistrate Court office for inspection.

ORDER

- 1. All the Appeal Grounds of First Appellant Joseph Gorae and Second Appellants William Lovinau & Chris Otuana dismissed,**
- 2. Decision of Shortlands Local Court is upheld, and**

3. No order for cost.

Dated this 8th day of July 2005

Signed: Allan Hall	Ag/President	
Willington Lioso	Member	
Jeremiah Kema	"	
Joseph Liva	"	
Davis D Vurusu	Clerk/Member	

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