

Resume 9.30 am on 17/4/89

JUDGEMENT OF MASUG LAND DISPUTE DELIVERED ON MONDAY 17TH APRIL 1989 AT NAMUGA.

JUDGEMENT:

This is a judgement on Customary land dispute known as Masugu land. The said land indisute has been dealt by the Star Harbour chiefs. The Star Harbour chiefs fail to settle the dispute. Later the Santa Ana chiefs come without the request of the Star Harbour chiefs or both parties and gave final disision on the disputed land. The Customary land indispute is generally name in custom Nafaboo land. It is a simple dispute that may have been settled by the chiefs but fail to play their part. However the plaintiff did not satisfied with the proceeding of the Star Harbour and Santa Ana chiefs on the disputed land which is now channel to court. In any law the plaintiff have the right to lodge his appeal to Local Court seeking for final decision on the land dispute. Now the Star Harbour Local Court has Jurisdiction to hear and make final decision to the disputed land.

The court now turn to evidences given in Court by the two parties. The Court may consider the evidences of both parties, and must bond by law to deal firstly with the plaintiffs evidences and second to the defendants evidences. In evidences submitted in court by the plaintiff, outline that the land indispute is generally call in custom Nafaboo land, but the plaintiff insist in court to disputed a small plot shaded on his map call Masugu land, as Nafaboo land has many small plots of land and were owned by other people. The plaintiff has given in court his genealogical table of his ancesistors, who clan own the said land indisputed. The plaintiff claim the two (2) sisters who were from generation to generation own the disputed land. The two sisters were call KAMAPIRENE and KATIKUKAWATAU. This has been outline in court their family tree. The plaintiff claims that this are the generation who own Masugu land. The plaintiff stated in Court that Masugu land was the ownship of his generation. He admitted in court that Masugu land is a small plot shaded on his map. The boundry of the disputed land begins at the mouth of Masugu passage and right up and end at Qwanapupu. The court understand that Masugu is located in the Nafaboo land. The Plaintiff claims that there is a customary boundary have been excist and bounded by custom. The court believe tha excists custom bondary always bonding by the big river and not small streams. The court depend on survey before final decision can be made.

The court then now turn to evidences submitted in court by the Pw! Sosimo Mugusi in his evidence he confirm that land indispute have been handed down by their generation and boundary of the dispute land is bounded Masugu river as customary bondary. He confirm in court that chief Qwarari own the disputed land. The plaintiff witness admitted in court that his father Murisigea advice him or give the knowledge that the land indispute belongs to the plaintiff.

The court then now turn to the Defendants evidences. Before the court may deal with the defendants evidences, it must be clear that the Defendant has five witness to give their evidences or to witness the evidences submitted in court by the Defendant. The defendant outline in court that she is disputting Naruka land and not Nafaboo land. The defendant admitted in court that the land been awarded to her was from TARAMANU to FIRU. She claim why she own the land from Taramanu to Piru was because chief clan call Pitoro care of Nagonime when the enemy kill him. Defendant claim that her chief Pitoro collect the body of Nagonime and buried. Thus this is why they handed the land from Taramanu to Piru to her generation to generation. The defendant claim three (3) chiefs clans call Puna-nga, Wamea No 1 Wamea No.2 and Katara Kajarona and Katororisi. This generation mention were Anea clan who own the land in dispute. The generation end. The defendant admitted in court that Naruka land was handed or transferred to Atawa for some reason. The defendant did not clear to court why the land was transferred to the Atawa clans.

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The defendant did not mention the husbands of Kamakini, Karaki, Karukea, Kafaru-teona, Katara, Kamasu and Katora. Thus this court may not sure why this generation exists. The defendant witness one (1) was the defendant's own brother. Therefore the court may not consider the evidences given in court by the Dw 1 on outlining his statement depend merely on properties, but not the land indispute. The court understand that what the Dw 1 given in court may similar understanding of what the defendant submitted in court as the defendant and the Dw 1 are real brother and sisters. The Dw 1 argue in court he understand well the boundary of the disputed land the start from Bware and end at Wameomeoga. This he conclude his evidences. In question submitted in court by the plaintiff to the Dw 1 said that during 19 years establish in the disputed land, where did you stay? The Dw 1 admitted in court that he know that the disputed land was his ownership but did not want to dispute. The court warn itself before making final decision. The court argue that the motor must be to prevent is better than to cure. Thus Dw 1 and the defendant should speak out to stop the plaintiff at first time when saw that the plaintiff start clearing the land. No its too late. It is the matter that the court may consider in all evidences submitted in court by the defendant, and all her witness and must convince the court to prove that the defendant own the disputed land.

The court then now turn to evidences given in court by the Dw 2 Kiroto Banato. In court proceeding the court ordered the Dw2 to shown on oath but excuse to the court bound to allow him to explant himself why he come to witness in court. He admitted in court that he come in court not to witness the defendant not to witness both parties. He claims in court that the two (2) parties dispute the land today, are same people. Later he accept to shown on oath and given his evidences. In evidences lodge in court by the Dw2 admitted that Murisigea advice him on the boundary of the disputed land.

Court understand that Murisigea was the father of the Pw 1. The Pw 1 have been admitted in court that his father also advice him on his understanding on the disputed land. In question submitted in court by the plaintiff question the Dw2 to tell the court if he know any custome, in the land indispute. The Dw2 admitted that he come not to dispute custom, but he dispute the land. The court fully understand that the land is thr root of the custom. Without the land no one man live untill today. In considering the evidence given in court by the Dw2 has given similar evidences as the Pw1's evidences. The court is satisfy on Dw2 evidences and bear in mind to move to consider the Dw2's evidences. In evidences lodge in court by the Dw3 that she was sure that the land indispute was belongs to Defendant. The Dw3 claim in court that her father also teach her on the boundary of the disputed land. She admitted in court that her father was the defendant's uncle. She claims that sometimes they made gardening in the land own by her father call Funaboa. The court then check the defendant's map but could not locate the name call Funaboa. The Dw3 also claim that the defendant owns sago palms and swarm taros in the disputed land. The court will not consider as final but to depend merely on the survey. The court also turn to consider the Dw4's evidence.

In evidence given in court by the Dw4 claim that the land in dispute belongs to Qaoqoongo and Katora. He admitted that his father also owns swarm taro in the disputed land. The plaintiff argue in court that the swarm taro claiming the Dw4 was outside the disputed land. In considering this evidences the court has set aside the evidence given in court by the Dw4, because he was talking about the out side land and not in the disputed land. All in all the court may final in considering the Dw5 evidence. The Dw5 claim that the land indispute was the ownership of the defendant. He argue in court that when he was a small boy he went to cut sago palms leafs in the disputed land. That is for sure he believe that the land belongs to the defendant. In cross examination on evidence given in court by the Dw5 court found, the Dw5 evidences is too soft to convince the court to consider.

In cross examination on the evidences produce in court by both parties, the court then found that real land in dispute is generally call Nafaboo. The court is in doubt of the defendant who claim that the land indispute was in custom call Naruka land. However Dw2,3,5, admitted that the land indispute is generally call in custom Nafaboo, but the plaintiff is only claiming a small plot namely Masugu. In making final judgement court must turn to court survey before any final decision can be made.

The court then survey the land indispute and found that the real customary boundry in the disputed land starts at mouth of Masugu river went right up to Nasaunapupu dense up to Nagiriworo. The defendant claim that her boundary lies from Wameomeoga and right up to Bware. Court proved that boundary lies from Wemeomeoga is not true boundary according to custom. The court also found sago palms, coconuts, swarm taro who own by the defendant in the disputed land. There is no doubt the both parties owns properties in the dispute land. Court proves all the properties owns by the defendant was situated just close to the main boundary. There is some argument rose during court survey by both parties, but would not take note thus this court is only interested in proving what the parties may showed to court, such as properties memory, grave yards and tambu sites. Both parties did not show the court any grave yards or tambu sites in the disputed land. However, they claims that the tambu sites and grave yards are outside the disputed land, but in side land boundary. It is for making last decision.

All in all the court is satisfy on survey and all evidences lodged in court by both parties and their witness and the disputed customary land known as Masugu land, and Masugu land is awarded to the PLAINTIFF and the DEFENDANT has no right over the land, but the properties must be shared to the parties concern.

DECISION:

All properties own by the defendant in the disputed land may own by the defendant and not the land. This includes coconuts sago palms, swarm taro, nali nuts, cut nuts, mangos and other entable trees. All properties own by the plaintiff may own by the plaintiff. The plaintiff has full right over the Masugu land.

COURT ORDER:

The Plaintiff is warn not to destroyed the defendants properties and the defendant also warn on the same condition.

RIGHT OF APPEAL EXPLAINED

MATHIAS TAROHA  
COURT PRESIDENT

ISAIAH TARO  
COURT CLERK