

IN THE NGELLA LOCAL COURT

ABOUT: MALEIALI WATER SOURCE CASE NO. 5/98

DATE: 6/10/99

VENUE: TULAGI POLICE STATION

- J U D G M E N T -

This matter was dealt by the chiefs in 1997 as required under section 8D(1) of the Local Court (Amendment) Act 1985.

This court after satisfied that both parties have accordingly satisfied the requirements stated or outlined in the said section (section 8D(1), Local Court (Amendment) Act 1985) consider itself to have the jurisdiction to hear and determine the matter. This court therefore has accordingly heard the matter and is now proceed with the determination. First of all this court reminds itself of the customs (customary land) of Ngella Island, especially the customary ways of owning, heritting, transferring and loosing land rights in Ngella. Further, this court reminds itself of the rule of weighing evidences on the balance of probability.

Having reminded itself of the above, this court is now bound to look at the claims and evidences produced by the parties.

The plaintiff Mr Tavasi Ishmael claims that the land in dispute is known as Maleiali and is owned by Kaukaubala sub-tribe. The plaintiff revealed to the court the History and Genealogy on how he claim to own the Maleiali land. In this respect, he stated that his sub-tribe (Kaukaubala) was the first tribe to settle on the said disputed land. Plaintiff also showed to court instruments or weapons of which he claim to use them during his tribe's journey from Valevila down to Maleiali land.

Plaintiff further claim that the Damp and the land about 5 metres surrounding the damp was compulsorily acquired in 1973 and was registered. However, he did not produced all the relevant documents as to satisfy this court beyond doubt that the said damp and the surrounding land was compulsorily acquired.

On the other hand, the plaintiff did not deny that the defendant own Valevila land but states that Valevila is somewhere about 2 to 3 kilometres away from Maleiali Water Source.

All in all this court accordingly take into account the evidences and claims produced by the plaintiff purposely to weigh them into the balance of probability with the claims and evidences that may be produced by the defendant party.

PW1 - MELKIO HOA, support the claim of the plaintiff for being the first sub-tribe to settle on the Maleiali land. Apart from the above this witness only talk about this own journey from Valevila down to Kalarekeha. He did not support other claims of the plaintiff.

This court thus accordingly take into account the evidence provided by this witness. PW2 - THOMAS NGENGEVE, only talk about his own history, his journey from Valevila to Haa, he did not mention anything might have support the claim of the plaintiff thus this court did not see any weight on his statement but accordingly take it into the account for the purpose of weighing it into the balance of probability.

PW3 - LIONALD BOGULU, who claim to be from Gaubata tribe only talk about the Kongere. This witness did not talk about the boundary or the ownership of the disputed land which is the issue in this matter. Further, at first this witness claimed that he is from Gaubata tribe and later he said that the Kongere which he is talking about belongs to his father who is from the Gaubata tribe. According to Matrimonial system which the Ngella Island practiced, this is totally wrong. Thus this court have very much doubt on whether this witness tells the truth or not.

PW4- J. SOSI of the Hogokiki tribe claim that his father who is from Gaubata tribe was the owner of the Kongere and not the plaintiff party. Kongere is now situated at Salaovo and not at Valevila.

This court accordingly take into account the evidence produced by this witness.

PW5 FRANCIS BOLE, witness for the signing of Acquisition documents or agreement by Mathew Kuri and Duddley Gorosi in 1973 with the Solomon Islands Government. PW6 - MATHEW KURI and DUDDLEY GOROSI (PW7) both declared in the statutory declaration that they signed the said documents or agreements with the Government in 1973. Despite the strong claim of Acquisition by the plaintiff and this witness of the said damp they did not produce any proper or relevant document of Acquisition as to clearly indicate that the land had been acquired compulsorily. However, this court accordingly take into account the evidence produced by these witness for the purpose of weighing them into the balance of probability.

Having looking at the evidences produced by the plaintiff this court is now bound to look at the evidences that may be produced by the defendant party.

The defendant party claim Valevila land and not Maleiali land. According to the Defendant the land in dispute is known as Valevila and not Maleiali. Maleiali is at the plain while Valevila is where the water source situated. He claim that Valevila starts from the damp and going up the mountain while Maleiali is from the dam and down the plain. Defendant did not deny that Kakau tribe own the Maleiali land which is at the plain.

The defendant reveals that all the tribes in Ngella left Valevila after they got their share or gift only Gaubata tribe stayed back at Valevila this is why he claim Valevila land.

All in all the defendant reveal a history on how he claimed the land and jpw the trobes in Ngella separated from Valevila land. This court consider the history as logic according to the custom of Ngella.

The defendant deny the Acquisition of the dam and the land surround the dam, as he is uncertain and unaware of the Acquisition.

This court accordingly take into account the evidence produced by the defendant for the purpose of weighing them into the balance of probability.

DW1 - JOHN PEGONI, confirmed the claim of the defendant to be true. His statement is consistent with the claim of the defendant DW2 -JOHN KUTA, DW3 - JOE SEKA and DW4 - PAUL GEGERE all support and confirmed the claim of the defendant as DW1- JOHN PEGONI did. The witnesses do not produce new claims and evidences apart from the defendant. All the evidences produced by all witnesses are consistent with the claim of the defendant and the evidences he produced. Thus this court take into account each of the witnesses evidences accordingly and respectively.

After looking into the claims and the provided evidences of the parties this court satisfy that the land in dispute is Valevila land and not Maleiali as claimed by the plaintiff. This court believes that Maleiali land situated below the dam (at the plain) while Valevila is where the dispute and the water source situated.

With this regard, this court satisfy as after weighing the evidences produced by the parties, that Gaubata tribe is the rightful owner of the said Valevila land also the water source that situated therein.

Due to lack of jurisdiction to deal and determine Registered or Acquired Land this court restricted itself to comment on the claimed acquired dam and the land 5 metres surrounding the dam. Thus this court thinks as appropriate to award it to the plaintiff party as it was. It is the responsibility of the defendant to disprove the claim of the plaintiff over the claimed dam and the land surrounding the dam in the higher court if so he wishes.

Finally, this court now come to its decision.

DECISION

- 1. The rightful owner of the Valevila land (to where the dispute situated) including the water source is the ~~plaintiff~~^{defendant} party of Gaubata tribe.*
- 2. The boundary of Valevila starts from about 5 metres below the dam. This means that the dam is situated inside Valevila land. However, the awarded right of defendant do not extend to the ownership of the dam and the land 5 metres surrounding the dam.*
- 3. The ownership of the dam and the land 5 metres surrounding the dam is awarded to the plaintiff as it ^{was} is. This is due to the fact that this court lack jurisdiction to determine the Registered land or compulsorily acquired land.*

Right of appeal against this decision is within 3 months from the time of receipt of this written decision.