

IN THE MALAITA LOCAL COURT

Civil jurisdiction

CIVIL (CUSTOMARY LAND) CASE NO : 17/2010

**BETWEEN : JONATHAN BUSUAKALO
JOHN ASHLEY MAEARA**

**AND: PAUL LOISIO
LEVI IDUMANU**

GTR NO 1426297

**(PLAINTIFF)
(SPOKESMAN)**

**(DEFENDANT)
(SPOKESMAN)**

LAND IN DISPUTE: LEOKWAOABU /MALANUNU LAND

DATE OF HEARING: 19th May, 2014

JUDGEMENT DATE: 2nd June, 2014

JUDGEMENT

INTRODUCTION

1. This is a claim between Jonathan Busuakalo and Paul Loisio over Leokwao-abu/ Malanunu Customary Land in the Central Kwara'ae of Malaita Province.
2. This matter was sought before the West Kwara'ae House of chiefs but failed on two (2) occasions to meet the legal requirements.

STANDARD OF PROOF

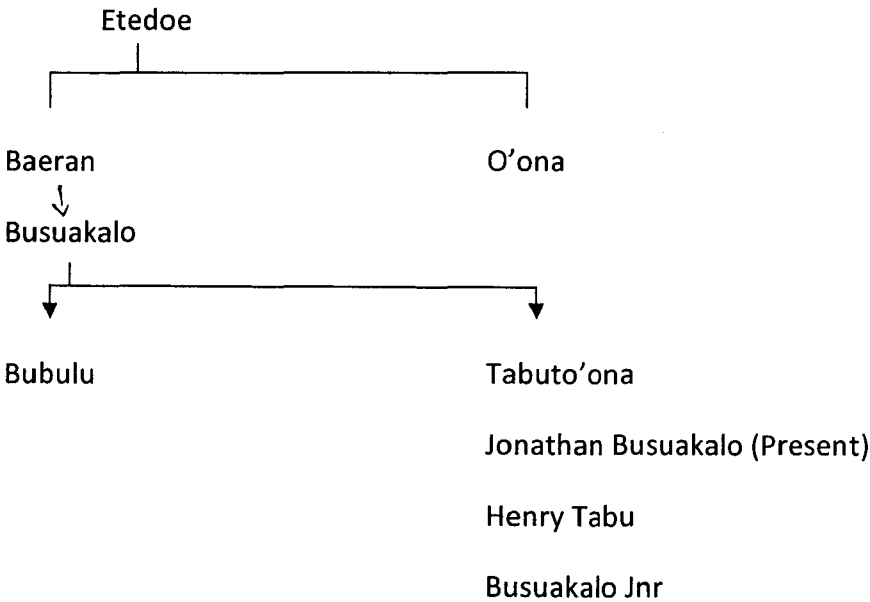
3. The standard of proof in this case No 17/2010 is proof on the balance of probabilities. This means that the party whose facts and evidences are more worthy of believe as to the truth of the facts in custom should have a higher chance of winning the case.

PLAINTIFF'S SIDE

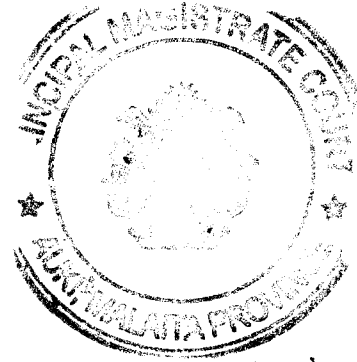
The plaintiff claims that his devil named Abarako came from Fauala'ala settled at Malanunu settlement Site and established his Principle site, LEOKWAOABU principal sacrificial site. His genealogy at Leokwaoabu land is as follows:

Plaintiffs Genealogy

- Abarako begat
- Abanite'e begat
- Kabate begat
- safidoe begat
- Felota begat
- Lusimani begat
- Oforodo begat



Fautobi — went from KWARU TO FAUALA'ALA
Gailia (GALIAU)



KWARU

LEOKWAOABU /
Fautobi, Saenica
+
Jonathan | Aliosio

NUNUARA
↓
JOHN ISEI C IRO GAULA

Plaintiff's Boundary Map:

Refer to Plaintiff Exhibit No 1 bounday map of Leokwaoabu land shaded and enclosed in orange ink/colour.

Tabu Sites

The plaintiff mentionin his submissions that he had three tambu sites namely, AFEKALI, LEOKWAO ABU PRINCIPAL SITE and LEOKWAO MOLA.

The three(3) sites were visited by the Court party during the site survey – Refer to Survey report.

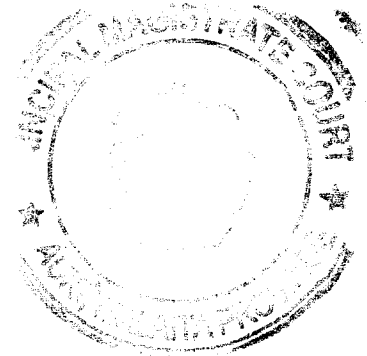
Properties

Plaintiff claims to have cocoa, coconut and tic tree plantations on the land. Refer to Survey report.

Plaintiff Witnesses.

P W No 1. Alfred Asimae

- Confirmed Abani settled at Leokwao-abu
- Denied the Def. Paul Loisio from Leokwaoabu
- Ans. to Q2 is confusing as to whether the land was a discovered or given land.



P W 2 -Alick Iamae

- Totally denied the defendant although both were close relatives .
- He was given a parcel of land by Fauala'ala tribe but not Leokwaoabu as claimed bythe plaintiff.

P W 3 – Rosina Alanimae

- Confirmed to Court that Jonathan Busuakalo (Plaintiff) was the original owner of Fouala'ala Land .(Court Question No 1)
- Confirmed Malanunu & Leokwaoabu are one.

- Had no idea of the incidents occurring on the land in the past.



DEFENDANT'S SIDE

1. Paul Loisio
11. Levi Idumanu

Claimed- Lauofa the first discoverer of Malanunu land .

- Leokwaoabu was the Principle Tambu site.
- He had 21 generations since the discoverer arrived.
- Had custom significance on the land.

D W 1 – John Liu of Irogaula Tribe

- Confirmed Lauofa was the discoverer of malanunu Land
- The conflict was only between brothers namely;

(a) Saeniu – Paul loisio

(b) Fautobi - Jonathan Busuakalo

(c) Niufara – John Liu

- Confirmed ,there wasn't any reconciliation done between Saeniu & Fautobi ; (A killing took place within these two tribes).
- Confirmed the present boundaries of the lands owned by the three brothers remain.

D W 2 – John foliga

- Confirmed the real boundaries of Malanunu land
- Supported the boundaries.

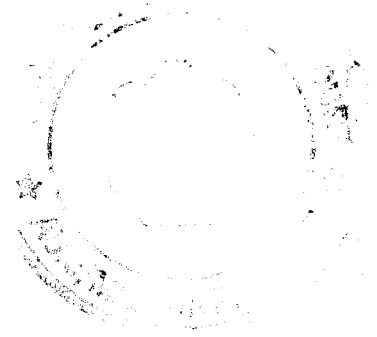
D W 3 – Albert Isu

- Confirmed the boundaries
- Permission always granted by Paul Loisio for the surrounding communities for gardening.

Properties

- Had coconut trees
- Cocoa plantations

Refer to survey report.



COURT FINDINGS

1. The Court finds the survey has proved that both plaintiff and defendant agreed on every important significances of the Malanunu /Leokwaoabu customary land. This proves that they're one at the very beginning at Kwaru.
2. According to accepted custom principle of Malaita a full land cannot bear the name of a principle tabu site, because the tabu site belongs to the forefather (devil) who is sacred or very tabu. On the other hand, it is accepted custom principal that a land can be named after a tree, bird etc. So the land can be called Malanunu and its principle site be Leokwaoabu.
3. The Court finds that according to custom, the destructions of tabu sites reveals that the party responsible for such practice may not be the true owners.
4. The Court finds that the problem regarding this Leokwaoabu land is only between brothers as confirmed by D W 1 (John Liu).
5. The Court finds that the evidences produced by P W 1, 2 and 3 do not adequately support the plaintiff's claims.
6. The Court finds that both parties have properties on the disputed land and had been using the land since arrival of their ancestors.
7. The Court finds that in the judgment in Local Court Civil Case No. 18/2007 the Plaintiff denied his present Leokwaoabu Principla Tabu site. He claims his Principle tabu site was at Fau ala ala and Leokwao abu is just a minor site.
8. The Court finds that the legal decision regarding AFEKALI land is still binding on this Court as in land case No 2/70 bound from Su'uri Stream down west to AIKWAO Stream.

Summary

From the findings of the Court to the statements in court parties and party witnesses and facts seen on the site Survey, the Court is satisfied and delivers its decision.

DECISION

1. Both Jonathan Busuakalo and Paul Loisio have EQUAL RIGHTS over LEOKWAO ABU MALANUNU Land which stretches from Su'uri Stream (w) to Kwainabibisu Stream (E) to the Bush road (S) and Kwaiafa River(N).
2. Any future development both parties must agree together.
3. Each party must respect the properties currently owned by either party.
4. Any party who is not satisfied with the decision has the right to appeal within ninety (90) days

COURT OFFICIALS

Jonathan. L. Ratai _____ V/President

Lazarus Geniakwasia _____ C/Member

Solo Nene _____ C/Member

Ellen Konare _____ C/Clerk

Dated this 2nd day of June 2014

