

IN THE LOCAL LAND COURT)
HELD AT MALALAUVA)

LLC NO:- 01, 2011

BETWEEN:

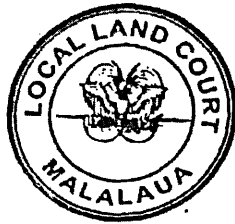
THADDEUS EHAVA SEOKA for and on
Behalf of the 12 Clans of Mailovera
-Complainant-

AND:

JOSEPH MANGABI for and on behalf of the
Kovio (Inafanga Tati Mekeo) Tribe
-1st Defendant-

AND:

ANDREW NIAITORO for and on behalf of the
Kamea Tribe
-2nd Defendant-



Coram: OAKAIVA OIVEKA, Magistrate
Mediators: CHARLES KIVIA and DESMOND MOKA

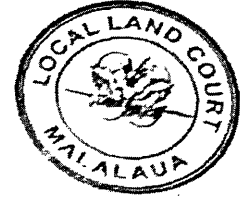
Dates: 20/5/18, 28/5/18, 15/6/18, 16/7/18, 26/7/18, 13-15/8/18, 6/9/18, 12-16/11/18, & 02/07/2020

DECISION OF TAURE/LAKEKAMU RIVER BASIN LAND DISPUTE

1. This particular land dispute case commenced in 1987 by the same parties and in 1991 the land was awarded to the Moveave people by His Worship Miai Larelake. Consequently the Defendants appealed to the Provincial Land Court to review the decision. Hence the appeal was presided over and heard by His Worship Francis Tenge and he quashed the decision of the Local Land Court on the 21/11/1991 and remitted the case back to the Local Land Court for rehearing.
2. Whilst this case was pending, the first Defendant obtained injunctive orders from the National Court which was discharged in 2000. Thus the case was left pending rehearing in the Local Land Court. In the years 2014 and 2015 several motions were moved before His Worship Sinclair Gora as he was then, and specific orders were issued to stop developments on the disputed area pending the hearing of the dispute.
3. Finally the case resumed on the 20/5/18 and it commenced by way of Affidavits and boundary inspections were completed on the 16/11/18 by motorized patrol upstream along the two rivers. It was a vast area to cover so the hearing took more than the time and days expected to determine the case. In addition, the parties except for the Moveave people, lived upstream of the Taure and Lakekamu rivers and transportation was difficult as well as costs were high for ordinary village people.
4. Anyhow, the hearing commenced whereby the Court informed and directed all parties to tender Maps, Charts and Genealogy Charts and Affidavits to expedite the hearing as soon as practicable.

We will now present the evidence of all parties when and how it unfolded before the Court in the form of Affidavits and Oral evidence by witnesses for each party.

COMPLAINANT'S EVIDENCE



5. The Complainant's evidence consisted of the Affidavits of the following persons:

- (a) Thaddeus Ehava
- (b) Jonn Tevere
- (c) Max Oro Severe
- (d) Steven Mehere plus
- (e) Rueben Patal.

Documentary evidence consisted of; (1) A map of Australian Colonial Administration, (2) Archeological evidence, (3) Report of James Chalmers – London Missionary Society Missionary (hereinafter referred to as LMS) and a Notice of Motion seeking restraining orders.

6. As for the First Defendant, its evidence was filed through Affidavits and these were:-

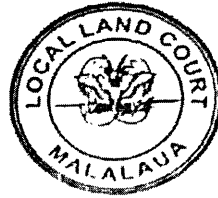
- (a) Paul Apio's Affidavit of 16/07/2018
- (b) Simon Peter's Affidavit of 16/7/2018
- (c) Kore Iore's Affidavit of 27/7/2018.

The Second Defendant Andrew Naitoro filed three Affidavits and each of the deponents also gave oral testimony. These were; (1) Andrew Naitoro, (2) Gilbert Oiyoko and (3) John Wendendo.

7. All the witnesses were sworn in and their Affidavits were tendered and accepted by the Court as evidence. That is for the all the parties in this land dispute case. The reason being that the area is so vast that in order to cover the whole area selected witnesses who had knowledge of the area would provide evidence and the parties were also directed verbally to bring evidence of their genealogies and charts or maps indicating the respective lands and boundaries of the land owned or used by the parties. Unfortunately, none of the parties in this case complied with this direction except that they filed Affidavits and tendered documents as annexures like pre independence reports to substantiate their claims. These materials were accepted as they were presented on face value regarding ownership and right to usage of the land in dispute but not as conclusive evidence to hold as a matter of course. The materials as mentioned plus the Affidavits of the parties will be considered as a whole in the determination of ownership of this vast land mass.

8. At the close of the evidence by all parties, written submissions were filed in Court to decide the ownership of the land mass. The Complainant party traced the history of how this dispute started and ended up this stage. In that initially, the land mass was granted to the Moveave people and the Defendants appealed the decision to the Provincial Land Court. Following which an application was also filed in the National Court by the first Defendant and an injunction was obtained but this was eventually discharged by the National Court in 2000.

Their evidence is that the Moveave people own much of the land in the Taure /Lakekamu river Basin as supported by the various reports by Patrol Officers, Archeological reports, LMS Reports and Reports from Governor William McGregor. These reports only mention the Moveave people by name and not the other two ethnic groups. That is the Kovie and Kamea people.



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9. They submit that the Kivio and Kamea people however are mentioned by name in the report by Reverend Herbert Brown on his missionary trips to the hinterlands of Taure and Lakekamu river basin. The question is why weren't these two ethnic groups discovered and mentioned in the previous reports? Were they settlers in this area? What the Complainant is actually intimating is that because they were never discovered and were not physically living there in the first place; then they don't own the land. These issues will be further elaborated once the Defendants evidence and submissions are canvassed in this case.

10. The Defendants in their submissions raise the issue of occupation of the Taure/ Lakekamu Basin rivers and tributaries during the pre-colonial period until independence. They maintain that their ancestors lived there before the white men and Moveave people set foot on their land. Even the missionary trips by Dr. Herbert Brown of London Missionary Society found them in occupation of the land and brought evangelism and mission services to them. That the Moveave people came as lay pastors and settled on the land for missionary purposes only. They had no right to settle on the land nor did they own portions of land there in the disputed area. Interestingly the Patrol Reports only mention the Kivio and Kamea people by names as people found to be living within the disputed area. These reports were about the disputed land where the Colonial administration had influence over and not about land ownership. The various reports filed by the parties attest to that fact.

11. On cross- examination of the witnesses for both the Complainant and the Defendants it became apparent or clear that the issue was about ownership of the Taure/Lakekamu river basin. That is whether the land belonged to the Moveave people or the Kivio and Kamea people respectively? In order to understand and assess this issue of ownership by the parties ; a boundary survey was conducted by motorized dinghies up the Taure and Lakekamu rivers as it was and is impossible to survey the whole or entire land mass by foot. It was noted that there were settlements of Moveave people living upstream from both rivers to a certain point and after that only the Kivio and Kamea people had settlements in existence.

12. From our observation, the Kameas had settlements after the land called Apuapu along the Taure River and both the Moveave and Kamea people agreed on that fact alone. However, there were Moveave people still living further upstream from Apuapu to Putei. The witness John Wendendo in his story to the Court stated that he was invited to settle along the Taure River by Andrew Naitoro. He was from Kotidanga and was not a landowner. On the contrary, Rueben Patai attested that he grew up in Putei when his father was a catechist with the Roman Catholic Church and that his father gave a portion of his land to the Church at Putei for that purpose. After serving the church he and his family moved down to Apuapu and this was their land. But soon after they moved away they didn't maintain any interest in the land or dispute anyone who settled there until to this present time. But there were signs of past gardening activities and secondary growth showing human occupation along this river. That is past Apuapu land along Taure River.

13. Thus why were the Moveave people allowed to settle on this land in the past if they were not land owners? This shows that certain people of Moveave origin do own land along this river as well. Then there is the legal implication as per section 67 of the Land Dispute Settlements Act as regards maintenance of interest on the land for the past twelve years in which this claim of ownership may fail or rather needs another investigation to ascertain true ownership. Hence these people are not present in Court to lay their claims for assessment by the Court.



14. In regard to the boundary survey upstream and along the Lakekamu river, it was noted that at Ekeri a settlement of the Moveave people was seen and when the Kovio representatives Andrew Evore and Kore lore were asked about this settlement; they testified that these were illegal settlers. Then across from Urulau village which is occupied by people of Kovio tribe, there is a settlement of Moveave people. A distance of about 400 meters is land occupied by Meve Aravape of Moveave. The witness Meve Aravape was for the Complainant and he and his family have been living together with the Kovio people for many years. The witnesses for Kovio people said that this was illegal settlers and then why was this allowed to happen if these people were illegal settlers? Why wasn't he evicted if he did not own the land? And why was the settlement at Ekeri allowed to exist as well? As previously mentioned the real occupiers have not come to Court except for Meve Aravape who is a witness but he is just a witness and not a Complainant which can only mean that he is a witness for the Complainant and does not have a dispute with the Kovio people and vice versa.

15. Having perused the submissions by all the parties to this dispute, I am of the view that and rightly pointed by all parties that land is owned by Clans and not by the tribe. So each family within the Clan who own land has the customary and legal right to challenge any trespassers for encroaching on their property. They have a right to settle on the land and cultivate and develop it as they wish. And it seems or rather appears that certain families within the Moveave community own land upstream from both the Taure and Lakekamu rivers and not the whole of the twelve (12) Clans of Moveave. Thus it can be seen that they are allowed to co-exist with the Kovio and Kamea people. There is evidence of their settlements along these two (2) rivers. This means that people have not been truthful in revealing this information to the Court or that they do not know how this status quo has been maintained until to date. In that one can infer from the evidence of settlements which were allowed to exist until up to the present time. The true land owners from Moveave have not come to Court to stake their claims to the portions of land that they own in this disputed area.

16. In addition, there are issues of maintaining possession and controlling interests on the land in the last 12 years pursuant to Section 67 of the Land Dispute Settlements Act. These issues will be best adjudicated if individual claims by settlers along the two rivers are done properly in Court as they have a right to be heard. That is to clearly identify the areas of dispute instead of a whole tract of land which is disputed without clarity as in this case. Now what about the evidence of the Kovio and Kamea people? Suffice it is say that they have settled further up river along the banks of the Taure and Lakekamu rivers. They stated that in their evidence to the Court that they lived there before independence and do not dispute the fact that lay pastors and missionaries of the LMS came to evangelize their areas and lived among them. They claim that the land in dispute belong to them and that is to say that the eastern bank of the Lakekamu river belong to the Kovio people and the western bank belong to the Kamea people including the upper Taure river to Putei. This is based on an understanding between the two tribes.

17. They do not depose as to how they obtained the land but have lived there before the missionaries arrived and this includes the version of evidence by the Moveave people. However, the Moveave people state that the defendants were nomads and could not settle in the area permanently and own the land. They were settled on the land by the Moveave people and could not have been the land owners. With that contention, the complainant tendered Reports from the colonial administration regarding patrols within this area at the relevant time. The Reports were tendered and accepted as evidence to show the status of the land and the influence of the administration and not as proof of ownership.

And so the issue that begs attention is; how did the three (3) contesting parties acquire the land within the Taure and Lakekamu Basin? The case of WENA KAIGO –v- SIWI KURONDO & OTHERS In re BANGAGL, KAMBU (2), KAMBU(1), SIRUE, BINGAGL EXTENDED, KAMBU BELOW, KAMBU ONTOP AN OKA LAND [1976] PNGLR, 34. Highlights a principle that can be of some assistance to this Court and I quote..” Conquest and effective occupation is not repugnant to the general principles of humanity. It is the only practical and sensible base upon which ownership of the land can be recognized. Otherwise a tribunal would be faced with the impossible task of going back to the mists of time in order to ascertain who are the rightful owners of the land.” The test to be applied is that laid down in the Privy Council case of TWIMHENE ADJEIBI KOJO II-v OPANIN KWADWO, BONISIE & ANOTHER [1957] 1 WLR 1223.” Where there is conflict of traditional history; one side or the other must be mistaken, but both may be honest in their belief. In such a case demeanor is of little guide to the truth, the best way is to test the traditional history by reference to the facts in recent year as established by evidence and by seeing which of the two competing histories is the more probable”



APPLICATION OF THE LAW

Section 67 of the Land Dispute Settlements Act, provides that anyone exercising control over land without the approval or consent of any other party sets up a presumption that the interest in the land is vested in him.

But this presumption maybe rebutted by clear evidence that; that interest is vested in some other party or person. This proviso is supported by the case of WENA KAIGO –V- SIWI KURONDO alluded to above and also the principles enunciated in the RE HIDES GAS PROJECT LAND case.

To understand more on this issue one has to consider and refer to the case of: - RE HIDES GAS PROJECT LAND [1993] PNGLR 309, His Honour Justice Amet (as he was then) relevantly stated the principles of ownership in customary land ownership; I hereby quote and paraphrase the relevant principles. These are; **(a) Adverse possession** – A group that resides upon the land and improves the use of the land for sufficient period of time without the permission or active opposition from other persons who own it and a group who use the land for a sufficient long period without residing on it and without permission acquires user right to it. **(b) Marks of ownership** – A group own the land and if other people acknowledge their claim by not challenging it or opposing them; and by their ability occupy and use the land. **(c) First is last/Last is first** – The group with the least interest in occupying the land for successive generations become diminished. **(d) Maintenance of interest** – Maintaining interest in the land by settling on the land or improving it and using it forbidding others to occupy and use it. **(e) No unqualified right of return**- No group that has abandoned their ancestral land by cutting off all ties with it cannot return and claim the consent of present occupiers. **(f) Ownership presupposes control** – This involves the use of power by the use of land and prevents others from the use of it. **(g) Preponderance of evidence** – The party whose case is supported by the preponderance of evidence. And **(h) Right to resist attempt to return** – The right to resist attempt to return to the land is largely dependent on those occupying it and the extent to which they have been able to forge a friendly relationship with the former owners.

In so far as the evidence of all parties including colonial reports, missionary reports and archeology reports; in this case and notwithstanding the lack of Maps, Charts and Genealogy information that were presented in the Court; this Court is of the view that;

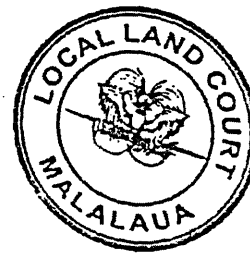
(1). The preponderance of evidence, (2) maintenance of interest, (3) resistance to trespassers and (4) marks of ownership indicates to this Court that certain Moveave families and clans of Moveave plus the Kamea and Kovio people own the land beyond the mentioned areas along both the Taure and Lakekamu Rivers. Therefore the genuine disputants of Moveave have not come to the Court to oppose the claims by the Kamea and Kovio people. There is no evidence by them except Meve Aravape and Rueben Patai whom this Court had the opportunity to hear. But they were witnesses and not the complainants. They have their own specific areas which they attested to in Court.

CONCLUSION

The claims by the 12 Clans of Moveave is hereby declared to be null and void as land is owned by Clans and families and there were no clear indication of boundaries during the boundary survey upstream along the two rivers. . The same can be said of the other two parties but then they have controlling interests along the two Rivers together with certain families and clans of Moveave. That is to say that during the land boundary survey adjacent to the Taure River at Apuapu and at Urulau and Ekeri along the Lakekamu River there were evidence of Moveave people and people from the Defendants' Tribes living alongside each other. Hence the dispute should have being properly filed by these people instead of the Tribes as is evident in this case.

It is therefore declared that the land within the Taure/Lakekamu River basin is owned by individual clans and families of Moveave, Kovio and Kamea people and not the tribes. The claim is henceforth dismissed and each party bear their own costs.

Dated the 02nd of July, 2020.




Mr. OAKAIVA OIVEKA
Local Land Court Magistrate


Mr. CHARLES KIVIA
Land Mediator


Mr. DESMOND MOKA
Land Mediator