

IN THE GUADALCANAL CUSTOMARY LAND APPEAL COURT

Held at Honiara on 26th July 1982

Before:	Javen Babaua	President
	Stanly Sagoreghana	Member
	Dominic Alebua	"
	Savino Laugana	"
	Joses W Sauga	"

Between: Shadrach Kalapalua (Appellant)

And: Tome Vagidia (Respondent)

IN THE MATTER OF: Taivu Land Dispute

CT: The purpose of this case is to decide whether the matter be remitted for retrial or the CLAC should proceed to rehear the case, for want of Local Court Record.

Shadrach Kalapalua (SOB) in English

This dispute came up in 1970 recorded as case No. 29/70. This was about properties. In 1975 Tome and I went to court about the land. The decision was given on the 6th June 1975. The president of the court was Samuel Saki, and the justices were Martin Tagha and Robert Rava. I am not to definite about Robert Rava or Sohota. The clerk at that time was Joseph Rukale. I am sure the clerk maintained a record. At that time Ghaham Walker was responsible for Local Court Affairs. At that time when Local Court finishes with a Land Case it would be kept in the Magistrates Office. On the 30th June 1975 I came up to the Magistrates Office to check for the record but there was no record. I gave notice of intention of appeal on 4th July 1975. Graham Walker since then did not find the Local Court Record. I tender a copy of a letter from Graham Walker to Registrar of High Court advising him that I intend to appeal. 'A' I then lodged my appeal straight after I gave notice. The draft marked 'B' is the appeal I lodged.

At the time the customary appeal court was established and I was advised that my case was to be transferred to that court instead of the High Court. I kept checking but I could not find the Local Court record. It was recorded in a whole book. Mr Smiley wrote in 1980 to the Clerk of Tasimboko Local Court to look for the court record on Taivu Land but we could not find the book.

XXX by Tome

Q: Do you agree that the case be retried by Local Court?

A: I do not want the case to be retried by Local Court, but by CLAC. The court empowered by the then Governor, Mr Luddington dated 10th April 1975 empowering their West Tasimboko Local Court to hear this case was not properly carried out.

Appellants Sio on the issue close

Respondent's side

Tome Vogidia, (SOB) in English

I went to court in 1970 with Shadrach Kalapalua. We went to court to decide not the question of ownership of Taivu Land, but the ownership of properties damaged by Kalapalua. I took Kalapalua to court. I did not go back to court again in 1975. I did not go to court against Kalapalua in 1975. I did not go to court twice, sorry. I now recall I went to court with Kalapalua in July 1975. I did not see Local Court record since then. One week after the decision as made I have been notified by the president, Samuel Saki and the vice president Mr Rodi that Shadrach intended to appeal but I have waited until now and no appeal was heard.

Samuel Saki was the president but when the decision was announced only Rodi, vice president, and Martin Tagha and Sota were justice who finished off the case and announced the decision the following day. Joseph Rukale was the Court Clerk.

XXX by Appellant

Q: Are you sure Rodi was the vice president?

A: Yes, He announced the decision

Q: The Gazette then said Martin Tagha was vice president. Did that justice has the right to give decision of the court?

A: Martin did not say anything, but because Rodi announced the decision I assumed he was the vice president.

Q: Why did the president not give the decision?

A: I do not know why Saki did not come to decide the case. I also question that.

XXX by Court

Nil

Resp. I agree that this case be remitted for retrial.

No witnesses to call

Court adjourned to search the West Tasimboko Local Court record that is available in Magistrates Court.

Ruling

This is an appeal against a decision of West Tasimboko Local Case between Shadrach Kalapalua and Tome Vogidia. The appeal is made by shadrach and was lodged in about June/July 1975 notice of which appeal was filed on 30th June 1975.

As was explained at the start of this proceeding, the purpose of this proceeding is to ascertain if the Local Court record could be produced so as to allow this court to proceed with the appeal.

Both parties admit not having seen any record in this matter. The appellant although checked several times with the then Magistrate, could not able to locate any such records on the matter. Checks have been made with the clerks and further check was made by this court among the books that are available in the Magistrates court records, but was still unsuccessful.

As record cannot be found it has become necessary for an order for retrial to be made. Accordingly the customary Land Appeal Court (Guad.) orders that the case be retried by another Local Court other than Tasimboko Local Court.

Order

Matter remitted for retrial by Local Court other than Tasimboko Local Court.

Dated 26.7.82