

ABUILALAMOA LAND

Coram:	Enoch Fisu	Vice President
	Selwyn Kwaifi'i	Member
	Jeriel Lifuasi	- do -
	Daniel Baetalua	- do -
	J.A. Bowran	Magistrate.

Appellant - James Delemani
Respondent - Nemuel Nafomea

Respondent wishes David Dauta Nafomea to act as spokesman.

Appellant and Mr Nafomea speak and understand Pidgin.

Mr Delemani has no objections to any of the members.

Mr Nafomea has no objections to any of the members.

Members confirm that they have not discussed this dispute with anyone other than their fellow members and also confirm that no-one has sought to discuss dispute with them.

Magistrate requests members to discuss dispute with no-one apart from their fellow members and to report to his any attempt by any outside party to discuss the dispute outside the Court.

The Appellant agrees that the local court's decree accurately describes the boundaries of the land in dispute.

The Respondent does not accept that the local court's description of the boundaries is correct.

Mr Delemani

I wish to submit a plan to this court. This is the document that appears on page 2 of the local court record.

Mr Nafomea

I accept that this plan was produced at the hearing in the local court.

Mr Delemani

I will merely be making submissions on the local court record. I do not seek to call further evidence.

Mr Nafomea

I will be making submissions on the appeal points and the record. I do not seek to call evidence.

Magistrate reads the above back to both parties and each agrees that it is an accurate transcription of the proceedings so far.

Appellants submissions open.

- 1) In last hearing Nafomea claimed this tabu place. He called it Kwa'antaba'a. K. is a tabu place belonging not to Abuilalamoa but to Takiniano. Talogiu is one of the three brothers of Takiniano. They are Laufooa, Konamalefo and Talogiu. They were the original men of Takiniano. Their father was Buma.
- 2) The three women were all Takiniano women and not from Abuilalamoa as indicated in my genealogy on Page 2 of the record. Orumae was Laufooa's daughter.
- 3) Nafomea claimed that Talogiu was married to Rokonari'i not to Eiuwane of Lima'abu who in fact was Talogiu's wife. I say the local court is wrong when it held that Orumae married Koniau. I say she married Taegola a man of UreUre tribe.
- 4) Nothing to add to point except that when asked to show his tabu place on survey he could not do so despite claiming that Konaniau was the father of Rokonarii.
- 5) Nothing to add to the point of appeal.
- 6) I have studied the copy of the court record. My last question was "Did you survey in 1978?" All questions after that were asked by Court. After that I tried to ask questions about tabu places but the Court refused to let me ask such questions.
- 7) I submit that Nafomea's line is a branch away from the main line and the local court erred in holding that Nafomea's line was the principal line.
- 8) Submit that Nafomea clearly descended through the female line. In our custom descent is through the male line and not the female line.

In our custom a female may not have primary rights and Nafomea claiming through Hauma, a granddaughter of Talogiu could never acquire primary rights to Abuilalamoa Land. Furthermore the tabu place, Kwanataba'a, claimed by Respondent is connected to Takiniano Land and has nothing to do with Abuilalamoa Land.

Mafuni only had a daughter so the primary right passed through her to her son Silwaibulu.

Court reads the record back to the Appellant who confirm it accurately paraphrases the reasons why he claims the local court was in error.

Appellant's case closes.

Respondents reply opens.

- 1) The Appellant claimed K. outside A. Land. Last paragraph of Page 10 of record is the relevant part. Father clearly testified K. in A. land.

At this stage Court rises to enable Respondent to discuss case with his spokesman. Court rises to 1.30 p.m.

1.30 p.m.

Court constituted as before.

Parties present as before.

Mr Nafomea

I submit that the decision of local court was right. I submit that my descent from the three women. My descent is from Fangalea. (Page 10 Line 21) next from Orumae (Page 10 line 3). Lastly from Hauma (Page 11 Line 1).

That descent gives me the right to A. land. We say K. tabu place in A. land. The present boundary was erected by Appellant.

2) I accept that the Appellant's statement that the male line takes priority in custom in this dispute is correct but I submit that the pedigree or geneology that he has given to the court relates not to A. land to T. land.

Talogiu is a man of Kwanataba'a tabu place.

3) I reject the Appellant's submissions. I say Rokonarii was the wife of Talogiu. I refer you to the last paragraph page 10. Ask you to consider reply to first question on Page 14.

4) My father who was on the survey did show the local court members the proper tabu places.

5) My father showed tabu places to the members on the survey. My father also showed some properties of his on the land to the members.

6) Respondent confirm Appellant stopped for asking one question. It was a question about old custom which the Court President hold that a young man would not know about.

7) I support the local court decision. Court hear our evidence. Court considered our pedigree.

8) T. land and A. land are two different lands. Each has its own genealogy and customs. My side made no reference to anything connected with T. land in the local court proceedings. We submit the line of descent claimed by Appellant is from T. land, not A. land.

I submit that local court decision right because the male line of T. destroyed the male line of A. This means the customs of A land were lost. One or two men escaped. One has not been traced.

Before T. line could have any legitimate claim to the A. land in custom a settlement was required. There has been no settlement so in custom the T. line is declared from having any interest in A. land.

We claimed direct descent from Talogiu from Hauma, his granddaughter who married into UreUre tribe. My father claims direct line descent from Hauma. The Appellant's own pedigree supports our claim through Hauma. My father elaborated on our geneology in the local court (Page 10 last paragraph, top of page 11).

In 1978 the local court held that the boundary between Tekwali land and A. land was Manakwai River.

The boundary goes inland along Manakwai River as far as Malamuli then through Gukwa'a, Rakwana and Oleano which is on the Gwa'ako River and then back along Gwa'ako River to the coast.

Court reads the above back to the Respondent's spokesman who confirms they are an accurate paraphrase of his submissions.

Respondent's submissions close.

Appellant's reply to Respondent's submissions.

I say my line, the T. line held a prayer which I submit is the equivalent to a settlement. Maerau made a prayer on A. land. Last person to do so.

Hauma descended from Talogiu and Edwane, not Talogiu and Rokonarii. Edwane is not of the A. line. I do not know the line from which Rokonarii came but she did not come from A. line.

The local court surveyed the land and looked at boundaries before making its decision.

Appellant's reply closes.

Court rises. Decision to be given on Friday.

J.A. Bowran
26/9/84.

28/9/84.

Court constituted as before:

Parties present as before.

At request of Vice President Magistrate delivers annexed Judgment.

Decision

Decision of local court reversed.

Appellant and his line have primary rights.

Respondent and his line have secondary rights.

The Appellant has no further application to make.

J.A. Bowran
28/9/84.

Magistrate explain rights of appeal to both parties.

Magistrate also explain effects of Sec. 231(4) of Cap. 93 and Order 60A of High Court (Civil Procedure) Rules to the parties.

Magistrate also advised both parties to seek legal advice if any appeal to High Court is contemplated.

Both parties confirm they understand the situation.

J.A. Bowran

28/9/84.

JUDGMENT

We have studied the record of the local court and considered the submissions of the parties. We are satisfied that this dispute can be settled very shortly.

Firstly we are satisfied that the local court in its judgment accurately defined the boundaries of the land in dispute.

Secondly both sides are agreed on the geneologies in this case. Each claims descent from a man called Buma who had three sons called Laufooa, Konamalefo and Talogiu. It is not disputed that the Respondent's line is descended from a woman called Hauma who was the granddaughter of Talogiu whereas the Appellant has a direct line of male descent from Buma through Buma's son Laufooa.

That in our opinion, is sufficient to decide this dispute. It is well established that in custom the male line takes precedence over the female line. It follows that the local court was wrong in this case. We are satisfied that the evidence adduced in the local court establishes beyond any doubt that the Appellant and his line have the principal or paramount rights over Abuilalamoa land and the Respondent and his line have the secondary or inferior rights.

In effect we are of the opinion that the decree of the local court must be reversed.

DECREE

Decision of local court reversed.

Appellant has primary rights.

Respondent has secondary rights.

Security for costs of \$50 to be refunded to Appellant.

Dated this 29th day of September 1984.

Enoch Fisu	Vice President
Selwyn Kwaifi'i	Member
Daniel Baetalua	- do -
Jeriel Lifuasi	- do -
J.A. Bowran	Magistrate.