IN THE HIGH COURT )
OF SOLOMON ISLANDS )

Land Appeal Case No. 19 of 1984

BAKWA'ABU LAND

FRED KONA — Appellant

v.

JEZIEL IDU — Respondent

JUDGMENT

BEFORE: John Freeman, Commissioner of the High Court.

Kenneth BROWN, Public Solicitor, for the appellant
The respondent in person.

Argument heard 5 & 6 November
Judgment delivered 6 November 1984.

JUDGMENT

On 2 December 1983 the Malaita Local Court ("the LC") awarded various lands, together known as BAKWA'ABU Land ("the land") to KONA's line. On 28 June 1984 the Customary Land Appeal Court for Malaita, legal member Roger COVENTRY Esq., ("the CLAC") allowed an appeal by IDU's line, and awarded the land to them. They held that they were bound to do so by a Local Court decision of 1960, later upheld on appeal to the District Officer, sitting with assessors. (1962)

The notice and additional notice of appeal against the decision of the CLAC raise four grounds. Both notices were filed before a typed copy of the record became available. Grounds 1 and 2, (alleging the CLAC failed to hear KONA and so broke the rules of natural justice) have not been proceeded with before me. Nor could they have been, once the record was seen; it showed that the CLAC had heard KONA at some length. The additional ground was also abandoned when it was confirmed that the legal member of the CLAC had been validly appointed a magistrate by the Judicial and Legal Service Commission on 28 March 1984. (So he was entitled to sit under the terms of the CLAC's warrant, which like all others, includes as members "the District Magistrate or in the alternative any other magistrate").

The only remaining ground is ground 3 "The Appellant appeals against the whole of the said decision". It should be made quite clear that vague or general grounds (including "such other grounds as may become apparent after sight of the record" or the like) are liable to be struck out by the Registrar under H.C.R. O.60A r.2(2). This was not done here, as at that stage reasonable (if eventually unsustainable) grounds of law remained on the notice. After seeing the typed record, counsel for KONA was able to word his remaining complaints in such a way as to reduce ground 3 to one of law or procedure. So I allowed him to continue on that basis; however, I was only prepared to do this in view of the unavoidable delay in preparation of the record in this particular case. In future, it must be clearly understood that it is the duty of appellants to arm their legal advisers with enough information to enable them to raise any reasonable grounds of law or procedure in their notice of appeal when it first reaches the Registrar. There are obvious difficulties in their way, since legal representation is not allowed in Customary Land Appeal Courts, but I am sure their ingenuity and determination will be equal to it. One obvious course is for the appellant to pay for typing of the record well inside the three months' appeal period. Though in this case (by no-one's fault) it did not, it will normally mean that his legal advisers can file notice of appeal after seeing the record. (The judgment will of course always have been sent to the parties in typed form very soon after it is given).

The complaint now raised on behalf of KONA is that there was no proper evidence before the CLAC on which they could decide that KONA was of the same line as RAMODUA (who had lost in 1960) and so was estopped from asserting any right to the land. No objection is made to the general procedure used in dealing with this as a preliminary point (which must be right) or in the rule of law stated by the CLAC.

The CLAC declined to consider whether a judgment in a land case was in ren or in personam. I should hold that it is in personam, but that the persons involved are the whole lines of the parties before the court, meaning anyone who claims through the same ancestors as them. This represents a very well-known principle in customary land litigation here, which was correctly followed by the CLAC. They were even more than fair to KONA in suggesting they would have been prepared to go behind the previous decision if "there had been fraud, some material evidence had been omitted or something of that nature". I should discourage courts hearing land cases from considering any attack on a decision which had become final, unless there had been a criminal conviction of a crucial witness for perjury or of a court member for corruption. However I have not the least wish to foment hopeless prosecutions; any such complaints will no doubt be referred to the Director of Public Prosecutions before investigation begins. The almost invariable rule must be that once a land case decision is final (that is, once the last appeal has been dismissed, or time for it has run out) then it remains final for ever between the lines involved. If a court suspects someone is trying to reopen a case which his line has lost, it may, indeed should take the lead in investigating whether his claim is barred.

The specific complaints in this case are as follows :

a) KONA never told the CLAC he was of the same line as RAMODUA;

b) if he did, then he only meant the female line, (which is irrelevant in Malaita, where succession is patrilineal);

c) even if KONA's statement could reasonably be taken by the CLAC as meaning he was related to RAMODUA in the male line, they should still have mounted a more careful and comprehensive investigation to see whether his claim is barred.

a) I reject; the record is quite clear on this point, and in the absence of any possible mishearing, must normally be taken as conclusive.

b) I reject also; KONA is an experienced Malaita land litigant; the terms "male line" and "female line" and the importance of the distinction between them would have been as well known to him as to the customary members of the CLAC. It is clear from what KONA said ("I am related to P. Ramodua, we are not of same father and same mother. We are of same line") that the CLAC took pains to establish what he meant. It is also plain from the letter written to this court by the legal member that the customary members had very clearly in mind the crucial question of whether KONA's descent estopped him from asserting his claim. They are all experienced in court procedure as well as learned in customary law. I find it impossible to believe that they would have unanimously agreed to bar KONA from claiming the land merely because he was related to RAMODUA in the female line. I need not therefore consider the documents mentioned in the CLAC's judgment (they are not exhibited to the record).

c) I likewise reject. It is certainly both desirable and much easier for Customary Land Appeal Courts to require both parties to draw up written pedigrees for themselves (and in a case of this kind, the other side too). It is also of the very greatest help to future courts. However, I do not think that failure to do this (or to take any of the courses suggested by counsel for KONA) can amount to an error of procedure with which I can interfere. Of course the CLAC might well have gone more closely into questions of descent of KONA had he not himself admitted that he was of the same line as RAMODUA.

So the appeal is dismissed, and the land belongs to IDU's line. Through the fault first of some neighbouring owners, and then of KONA, the LC never surveyed it. So if IDU wants the boundaries with his neighbours defined, then he will have to take a case in the LC against them. None of KONA's line will be allowed to argue in any such case that any land under the names of RONGOA-KOA or BAKWA'ABU belongs to them, since those are the names of the lands KONA has claimed and lost in these proceedings.

Sel + 152 Penal. Code

(John Freeman)
Commissioner of the High Court

6 November 1984