

SUA LAND

JUDGMENT

This is an appeal from a decision of the Malaita local court sitting at Bitama on the 26th, 27th and 28th March 1984. The court surveyed the disputed area the next day and gave its decision on the 2nd April 1984. The court comprised Teomanu as Vice President and Messrs J. Ratai and N. Niurongoa as members.

The local court's decision was:-

"The land in question properly called LAGWAE lower lands.

- (1) Joseph Taega has the right to took or own this area from ANAKWAO goes up reached ALUDAU ST. go inland to SABITA-KWAI through DARIWEDE down north west following RUFOKI river.
- (2) Japhet Ramoi has the right over the area from Rufoki river goes inland through ANONAKI, BUBUIFAKA, KILUDOLO, OSIORUORU goes down the FUNLAMA river this is the southern area."

The Plaintiff in the proceedings in the local court and the Appellant in these proceedings has appealed against that decision. His grounds of appeal are as follows:-

- (1) All evidence that I gave in court about Sua Land the court has alter E.D Why?
- (2) On the land approval of all my tambu places and grave yards, I asked the court Judges to survey but they refuse to go follow my boundary Why?
- (3) Mr Joseph Taega hasn't shown any of his tambu places to Court, and yet the court gave him all my land. Why?
- (4) During question time in court the court rejected all my questions making fun of me saying I always want 100%? They did not respect me. Why?
- (5) Mr Joseph Taega and his witnesses claim that there are no tambu places on Sua Land. They only gave the name of land but not the names of the devil who owns the land.
- (6) Why did Joseph Taega who only has six (6) generations, but wins my land, who has 24 generations.
- (7) Why does Joseph Taega enter court room after same time Decision given? To me it is favouritism shown here. I suspect something here which is against law."

Those grounds of appeal contain allegations of serious impropriety and other irregularities which cause us considerable concern but the Appellant has not pressed them before us with any great conviction. Furthermore before us both the Respondent and the

Appellant made a concession which in our opinion narrows the issues very considerably and has made our task immeasurably easier. We wish to emphasise that the concessions were made spontaneously and voluntarily without any coercion or persuasion from members of this court or anyone else.

The opening remarks of the Respondent when he replied to the Appellant's submissions were:

"I do not agree that either of us have any right to Sua. I submit neither side has any tabu places in Sua Land."

Later the final comment of the Appellant in reply to the Respondent's submissions was:

"I am saying that Sabitakwai is part of Sua Land. If Sabitakwai is not part of Sua Land I have no claim to it."

Clearly the Respondent can make no concession for the Appellant but clearly he is saying that he and his line have no claim to Sua Land. Similarly the Appellant is saying that if Sabitakwai is not part of Sua Land then he and his line have no claim to it.

One of our members is from East Fataleka and Fataleka is his native tongue. He has no doubt that the above is an accurate transcription of the remarks made to this court on Wednesday morning.

It is apparent that those remarks have reduced the issue to a straightforward matter of fact. Is Sabitakwai a part of Sua Land or not? If it is then the concession by the Respondent that he has no right to Sua clearly establishes that he has no right to it.

Conversely if Sabitakwai is not part of Sua then the concession by the Appellant that if Sabitakwai is not part of Sua he has no claim to it clearly establishes that if Sabitakwai is outside Sua he has no right to it.

Putting it another way the Respondent has said that he has no claim to Sua Land and the Appellant has said he has no claim to anything not part of Sua Land. The issue is, where is Sabitakwai? Is it part of Sua Land or not? We have made a careful perusal of the local court record and given close attention to the submissions of the parties but have discovered nothing that enables us to say with certainty where Sabitakwai is.

In these circumstances we feel we have no option but to survey the land ourselves.

After the last appearance the court surveyed Sibitakwai on Tuesday the 16th April. All members of the Court were present.

Both parties were agreed that Sabitakwai was on a ridge of land between two streams and was about 1½ miles inland from the main road. In fact the name Sabitakwai means "between two streams". The two streams run roughly East to West and one is to the North of Sabitakwai and the other to the South. Each party agreed that the boundary or spearline between the land on which Sabitakwai is, was the northern/ of the two streams and the land on the far side

most/

of this stream is Suibongi Land. However the Appellant maintained that Sabitakwai is part of Sua Land while the Respondent maintained it is part of Lagwae Land.

The Appellant maintained Sabitakwai had been a place where people had lived whereas the Respondent said it was a tabu place.

Having seen Sabitakwai we are satisfied that it is a tabu place as the Respondent claims. Indeed in his reply to us on 20th March the Appellant conceded that there was a fafarae there.

Also the grandfather of one of our members was a High Priest or Masikiri in Fataleka and before he died he showed his grandson all the principal tabu places in Fataleka including those in Sua Land and Suibongi Land. From his own personal knowledge our member has no hesitation in saying after visiting the area that Sabitakwai is not a tabu place associated with Sua Land.

In our opinion this settles this dispute. We are satisfied Sabitakwai is not part of Sua Land. This appeal must be dismissed. The decision of the local court is affirmed.

Dated this 17th day of April 1985.

Joseph Kaia	President
Enoch Fisua	Member
Daniel Baetalua	-do-
Shemuel Walanihou	-do-
J.A. Bowran	Magistrate.