

JUDGMENT

This is a cross appeal against the decision of the Bellona Local Court in Civil Case No. 8/81 on POTUGEI LAND dated the 5th August 1983.

Francis Taupongi is the appellant as he first file his grounds of appeal and Saugogo Takiika becomes the respondent in this case.

The appellant F. Taupongi submitted 22 grounds of his appeal. As there are grounds alledging that the Bellona Local Court is bias in its decision, we decided to deal with these grounds first. These grounds are Nos. 1, 2, 4, 7, 8, 9, 13, 17, 18, 19 and 20.

POINT 1:

It is not disputed that the case was adjourned too long. For a case to be adjourned to long without a good given reason is not right. The proceeding in this case begins in 1981 but the decision was given not until 1983.

We support this point as it is unreasonable to adjourn and prolong the hearing of a case as it would give opportunity for people to talk about the case and get information from people outside and not from ones own knowledge. We support this point.

POINT 2:

1. It is not disputed that WILSON Tangabea a court member is the brother in law of Sau Takiika the respondent as he married Newata the Respondent's sister.
2. WILSON Tangabea felt hurt when appellant say something against his father in law in court. That may be so but it may only be the impression the appellant have.
3. The appellant divorced Wilson Tangabea's sister Florence Hoika. There is no dispute about that.
4. The brother of Wilson Tangabea lost in a case against appellant in a previous court where the appellant was sued for \$150.00 in respect of a tree cut for a canoe.

We find for this point. We believe that Wilson Tangabea should not preside over this case because of the reasons given above.

POINT 4:

The Bellona Local Court decided on information received from outside and not the evidence produced in court. There was no mention of Togokona, Sungaemae and Baiago in the Local Court record or statement alleging graves of the people covered with sand but how it appeared in the court judgement is evidence that the Bellona Local Court gave its judgement not according to the evidence before court. We also find for this point.

POINT 7:

The respondent and his 2nd witness his own brother cried in court. The respondent denied this but admitted that his brother did. What effect it has on the court is not known however it might influence the justices to sympathise with them but we cannot really believe that they did in the absence of evidence. We do not allow this point.

POINT 8:

The Local Court can be held in any place within the area of its jurisdiction. However we accept that the place must be neutral and safe for everybody. It is hard to see or believe that the applicant was afraid. We cannot allow this point.

POINT 9:

We cannot rely on hearsay evidence alleging that before the decision, it was told that the case would be won by the respondent. No one really knows where the information originated. We can't allow this point.

POINTS 17 & 19:

As we have supported point 4 we also must support this point and particularly as to why the upper and the lower part of the land in dispute was given to the Matabaingei people who were not a party to the case in the Local Court.

POINT 18:

This is an allegation against the whole of the Local Court. It is not disputed that the members including the clerk are all of the Kaitu'u clan of which the respondent is also a member. They are also of the same denomination S.D.A. This point is also not right and we also find in support of this point.

POINT 20:

It is not disputed that Temasu'u Sauhonu who gave evidence for the respondent in the Local Court is:-

1. The appellant's cousin brother
2. They were of the same clan.
3. From the same district.

However, he is not bound to give evidence to one particular party so long as he tells the truth.

Whether or not the Local Court encourages him to tell lie is not known. Not according to the evidence before us. We do not allow this point.

The customary 1 and appeal court having found for grounds 1, 2, 4, 17, 19 and 18, being points against the Bellona Local Court submitted by the appellant, we feel that there is no need to go on the other appellant's remaining points and all of the respondent's point. After all both parties dislike the lower court's decision. We allow this appeal on the above grounds and ordered as follows:-

ORDER:-

1. We rule that this case be remitted back to a differently constituted Local Court for rehearing.
2. The decision of the Bellona Local Court dated 5th August 1983 is null and void.

3. Security for cost be refunded to the respective parties who made such payment.

Right of appeal to High Court explained.

President: FR. SAMUEL BALEA

Members: GORDEN MOA

JOHN PLANT HOKA

MOSES PULOKA

Magistrate/Secretary: NELSON LAURERE

Dated 7th June 1985