IN THE CENTRAL ISLANDS CUSTOMARY LAND APPEAL COURT

CLAC 1/89/CMC

BETWEEN:	**MORRIS SAUEHA**	Appellant
AND:	**WILSON SONGEIKA**	Respondent

JUDGMENT

This is an appeal from the decision of the West Rennell Local Court on the land known as Pouono and Maunga road delivered on 11th October, 1988.

In its decision the Local Court awarded the land known as Pouono to the Appellant (Defendant at that time) and divided the Maunga road between the Appellant and the Respondent (Plaintiff at that time).

On appeal to this Court the appellant submitted six points of which are as follows:-

1. The Maunga Road was a tambu of Sikimoemoe. Nobody ever cleared and cultivated the area. People had been cursed and died because of the sacredness of the area. When christianity in 1938 arrived home, the area was declared free from the devil by Niuhua, my father (Appellant's father) was the first man to brush the area.

2. Mangie as was emphasised by the Court that he was the person who answered to Niuhua that the road of Sauhonu, was not a member of Hagekumi tribe. He was from Tangakitoga tribe. So whatever said by Mangie is not worth considering.

3. Both parties before the tambu road declared free from the devil, got access to the drinking water, collecting nuts, digging yam etc. At the Maunga road but nobody cleared and cultivated the Maunga road because its a tambu. E.g. Gabenga and Oa Tambus. People got access to collecting nuts, digging yams etc but never cleared and cultivated.

4. The finding of the Court of Maunga road is that the road was a tambu but not strictly forbidden contradicted to the Plaintiff and PW1 knowledge and statements that the Maunga road was not a tambu place.

5. The chiefs who first heard this case awarded me (the Appellant) the road because they customarily have the knowledge that the road was a tambu.

6. There is no proof that the Maunga road is of the only one who owned their HQ Hagekumi, because from Taupongi to Wilson (Plaintiff) nobody put signs or cultivated the area, Maunga road, until my father (Respondent's father) did.

7. Temasi (PW1) my witness was with Niuhua when the Maunga road declared free. His statement should be considered more seriously rather than considering Mangie of Tangkitoga of what he said.

Firstly we must point out that this Court only invites appeals on the points of law and procedures. In any point relating to custom there must be sufficient ground that the Local Court has failed to consider such point. The rationale behind this is that this Court should not be tempted to rehear the whole case over again as the Local Court has already done so and has accordingly made its decision.

Having considered the grounds of appeal we find that most of the grounds submitted are not qualified to be entertained by this Court. They are matters in which only the Local Court is in a better position to decide upon and in this case the Local Court had already done so. For this reason the following grounds are hereby dismissed: ground no. 1, 3, 5 and 6.

We now come to ground no. 2 in which the appellant submitted tha since Mangie was not a member of Hagekumi tribe whatever said by him is not worth considering. In its submission the Respondent submitted that Mangie is their tribe in their district Kugagoto. We wish to add on that both parties have mentioned about Mangie in their statements in the Local Court hearing. In particular, the appellant stated that Mangie after the Maunga road had been declared free told Topue about it. On the other hand, the Respondent stated that Mangie had answered the missionary Niuhua saying that Maunga road belonged to Sauhonu. As such the Local Court to decide whether what Mangie had said was true or not. Accordingly we dismissed ground no. 2.

In ground no. 4 the Respondent's submission was not too clear to rebut the Appellant's submission. The Respondent, instead, insisted that the Maunga Road was not strictly tambu except the cave. It is clear from the Local Court judgement that having considered both evidence it was satisfied that the Maunga road was not strictly tambu

as both parties got access to it prior the land being declared free. Thus, it is not necessary for the Local Court to solely based on the Respondent (Plaintiff at that time) and its witness' evidence to come to that conclusion. This ground is also dismissed.

We consider point no. 7 to be the only relevant and qualified ground of appeal in this case. The appellant claimed that Temasi (DW1) was with Niuhua when the Maunga road was declared free and that his statement should be considered more seriously rather than Mangie of Tangkitoga. As we can see from the Local Court judgement there is no mention as to how Temasi's evidence was being placed. However, in the judgement there is an implication that Temasi's statement had not been accepted at all. The relevant sentence was and I quote:

> *"We have considered but could not conclude who is more likely to be true. It was the same person Mangie claimed to have conveyed the story to both Sauhonu and Topue. In this respect, we accept that Mangie replied the missionary that the road was of Sauhonu ....."*

I accept the fact that the Local Court failed to expressly state in its judgement what its view regarding Temasi's evidence. However, from what we have quoted from (as above) it is clear that Temasi's evidence was considered to be unacceptable. Again it is for the Local Court to decide whose evidence to accept and not for this Court. Accordingly we dismiss ground no. 7.

Having considered all the circumstances of this case we uphold the decision of the West Rennell Local Court delivered on 11th October, 1988.

Respondent: I've been here for about 3 months to take care of my wife in the hospital. I only claim my return fare which is $39.00 per one way. Total $78.00.

ORDER

We order that the Appellant pay $78.00 to the Respondent as costs. This has to be paid out from the $100.00 for security costs paid in Court by the Appellant.

President:	**Moses Puloka**
Member:	**Kennedy Ges**
Member:	**Christian Sale**
Member:	**James Temoa**
Clerk:	**Francis C. Luza**