

CENTRAL CUSTOMARY  
LAND APPEAL COURT

Land Case No 2 of 1993

IN THE MATTER OF TAGHAIANA LAND

BETWEEN	Tesua Muakitangata	Appellant
AND	Japhlet Pongi	Respondent

JUDGMENT

This is an appeal against the decision of a specially constituted local court made up of members from East and West Rennell local courts which awarded ownership of Taghaina customary land to the Respondent.

The Appellant now comes to this court with six grounds of appeal which we will later consider in our judgment.

We are of the view that a brief look at the history of litigation in this land dispute would be worthwhile. This case was first proceeded with before the West Rennell Local Court on 8th July 1991 until 10 July 1991 when it was left part heard for the next tour. The West Rennell Local Court continued hearing this case from 11 to 18 November 1991 when the Respondent objected to its sitting members. The West Rennell Local Court accepted the Respondents objection and as the record showed, the local court made attempts for the East Rennell Local Court to continue hearing this case. This time the Appellant objected the member of East Rennell Local Court. The West Rennell Local

Court, again, accepted the Appellants objections and adjourned this land case so that advice may be sought for the Principal Magistrate (C). The position of this land dispute after the adjournment left nearly all Rennell and Bellona local court members being objected to by the parties from hearing this case.

The hearing of the land case re-commenced on 4 November 1992 before a local court constituted of member from East and West Rennell local court. From the record a rehearing of the whole land dispute appeared to have been done before this specially constituted local court (hereinafter East/West Renell Local Court) until judgement which was dated 12 November 1992. Against this judgment that the Appellant appeals to this court.

We will now turn to the grounds of appeal. As we see them, the grounds of appeal may be summarised as follows:-

- (1) Grounds of appeal numbers 1 and 2 alleged bias and prejudice from associations between Thomas Taupongi, a chief originally hearing this case and Ani Piloe, president of the East/West Renell local court. These grounds of appeal also alleged associations between Rex Saungongo, Oliver Pengupengu as interested parties to the Respondents case and Billy Kerepiniano, the court clerk.
- (2) Grounds of appeal 3 - 5 alleged prohibition of objections and unfair interruptions by the president of the East/West Rennell Local Court during its proceedings. These grounds of appeal also alleged that members of the East/West Renell Local Court paid minimal attention when the Appellants case was presented before them.
- (3) Grounds of appeal 6, in all, alleged erratic recording of the Appellants evidence before the East/West Rennell Local Court. These grounds of appeal also alleged biased perception of the Appellants evidence being reflected in the East/West Rennell Local Courts judgment.

We have heard the submissions by both parties in this appeal and make it our judgment that this appeal can only be best decided with the record the East/West Rennell Local Court. However, we have tried to do so with some difficulties as there are clear gross irregularities and omissions in the recording of evidence before the East/West Rennell Local Court.

Some examples that we will refer to are as follows:-

- (1) Whether or not the East/West Rennell Local Court invited or that the parties themselves applied for objections was not in record.
- (2) The Appellant argued that he was prevented from raising objections by the East/West Rennell Local Court. The Respondent conceded caution was given by the Local court bearing in mind earlier difficulties in proceeding before a local court wholly acceptable by both disputing parties. We accept that the East/West Rennell Local Court did say something about whether or not objections should be allowed. However this was again not in record and we have difficulty in establishing the authenticity of what actually transpired before the East/West Rennell Local Court.
- (3) The Appellant argued that the East/West Rennell Local Court recorded a distorted version of his case. In this they sought to appeal against the East/West Rennell Local Courts proceedings in its totality. We find that the Appellant has a strong grounds for such argument. In looking at the local courts record we find various deficiencies. The Local Court record omitted the Appellant's evidence but did record the Respondent evidence.

We add that we have difficulties in deciding this appeal on the merits of the parties evidence before the local court. There are gross irregularities in the recording of evidence that should allow the East/West Rennell Local Court to arrive at a decision that they are entitled to.

We also find that the East/West Rennell Local Court 'assumed' that it could refer to the record of earlier part-heard proceedings before different local courts. The East/West Rennell Local Court, as the record suggested, appeared to be concerned about saving of time. However to meet the ends of justice that approach in our view is simply wrong. The East/West and Rennell Local Court therefore decided on matters and especially the Appellants case that was not before it. All it did was allow oral evidence of custom in re-hearing the land dispute on 4 November 1992 without recording one party's case and that poses difficulties for us as an appellate court in this matter.

We conclude that there was miscarriage of justice on the part of the East/West Rennell Local Court and we will not decide on the question of ownership on Taghaiana land. That needs proper consideration of evidence of custom. That is also a matter for the local courts and not for us unless and until there are proper local court records to assist us arrive at a decision regarding customary ownership of land.

We therefore allow the appeal. The decision of the East/West Rennell Local Court dated 12 November 1992 is set aside. We further order that this matter be remitted to the local courts for a complete re-hearing. We also recommend that the local court re-hearing this dispute should be the only one granting any fresh judgment, on evidence recorded from the beginning to the end of a re-hearing.

We order that parties are to bear their own costs.

By the Court.

Moses Poloka	President
Henry Angiki	Member
Eni Taki	Member
James Kaipu	Member

Dwane Tigulu

Clerk

Dated 17 November 1995.



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