

IN THE CUSTOMARY LAND APPEAL
COURT
MALAITA SITTING ON 13/8/96

BETWEEN	-	KESTY TA'AFIA	-	Appellant
	AND	JOHN LERO	-	1st Respondent
		PETER DAUM	-	2nd Respondent
		CELESTINO LANETELIA	-	Spokesman

DATE OF JUDGEMENT 16th AUGUST 1996

J U D G E M E N T

This is an appeal against the Malaita Local Court decision date 11-7-95 regarding Foai/Su'ubira Land.

Altogether 6 grounds of appeal were submitted by the appellant Mr. Kesty Ta'afia who in this judgment shall be referred to as the appellant. All the appeal points are some what inter-related.

In court the appellant dealt with appeal points in reverse and therefore start with appeal point number 6.

Appeal point no. 6;

That "the Local Court erred in law in allowing the respondents to claim extension of boundary of Foai Land into another Foai Land. Indirectly the respondents are still claiming, ownership of Foai Land by such claim and therefore gives rise to the principle of "res-judicata" in that ownership of Foai Land has been awarded to the appellant in Local Court Case No. 12/83 and CLAC No. 10/84. The respondents father was the losing party in these cases" (Sic).

The appeal point is an important one because if it applies, then that is the end of the matter as the respondent would have been bound by the decision of Local Court Case No. 12/83 and CLAC Case No. 10/84.

The doctrine of res-judicata is a doctrine in law, therefore the crucial matter which this court must consider is whether in the earlier cases referred to above the cause of action or point in dispute was the same. In other words, whether the land in dispute which in this case Foai/Su'ubira Land, had already been adjudicated upon and a final determination entered. Secondly, whether the parties in this case are the same parties in the earlier cases.

On the evidence before this court it is apparant that in the previous cases the parties were the fathers of the present appellant and the respondents. We are therefore satisfied that the parties are the same.

The only remaining question is, whether the land now in dispute is the same as that was disputed by the present parties fathers in the Local Court Case No. 12/83 and CLAC Case No. 10/84.

The appellants strongly submits that it was the same land, called Foai Land. The name Foai/Su'ubira he submits is not a name of any land. In the previous cases he submits that the name Foai/Su'ubira was used because the dispute concerns the boundary of Foai and Su'ubira. He conceded that Su'ubira Land belong to the respondents and submits that the Foai Land belongs to him.

To ascertain whether the land now in dispute was the same land dispute in the Local Court Case No. 12/83 and CLAC Case No. 10/84 one only have to look at the decisions of those courts.

The decision of the Local Court Case No. 12/83 is " Jared Tafia is the owner of Foai Land see map. He has 160 people for this land (underlining ours). The Local Court decisions was upheld by the CLAC in CLAC Case No. 10/84. The Local Court in Case No. 12/83 did not mention in their decision mention the boundary of Foai Land. What they say in their decision is see map. The phrase see map refers to the map of the land in dispute in 1983.

This court had inspected the original map. The area of land dispute in the 1983 case was the shade area which runs along Bila river and ends in land at holy sacrifice place marked (1). On the original map there was no name given to that holy sacrifice places. On the photocopies tendered to this court the sacrifice place mark (1) is near Kwainaura stream. It is clear therefore, that was the only land area which went before the Local Court in 1983 and the CLAC in 1984. The areas from the holy sacrifice place No. 1 near Kwainaura stream and up inland were therefore had never by adjudicated upon.

The principal of Res-Judicata therefore does not applied to the issue dealt with by the Malaita Local Court Case No. 13/95 from this appeal lies.

This court does not see any error in the Local Court decision and so appeal point No. 6 must be dismissed. Our finding as such makes it unnecessary to consider the rest of the grounds of appeal.

This court also found that the Local Court in Case No. 13/95 does not proceed to consider the ownership of the lands outside those covered by the

The ownership of those land remains open to parties to pursue under the Provision of the Local Court amendment Act 1985.

The Appeal is dismissed.

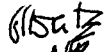
Right of appeal explained.

Signed: President - Joseph Kaia



Member - Adan Kwaeria

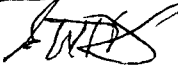
" - George Wate



" - Mathias Sanau



" - Shemuel Walanihou



" - Michael Daka

Clerk - E. Kouhota