

CUSTOMARY LAND APPEAL COURT  
(MALAITA)  
AUKI  
23 - 8 - 96

CLAC NO. 15/95

BETWEEN:    LEMUEL LIOFANUA                         -                         Appellant

AND:        HENDRY TAENAO                                 -                         Cross - Appellant

RE: LIMA'ABU LAND

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J U D G M E N T

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In this appeal there was an oversight as to how the appeal documents were filed and compiled. Both parties appealed, however the appeal documents did not indicate which party was the cross appellant. For convenience, since Lemuel Liofanua presented his appeal to this court first, we have made him the Appellant and Hendry Taenao the cross - Appellant. Both parties have argued their appeals fully and diligently and we are satisfied that this minor oversight will not create a miscarriage of justice. We now deal with the appeal substantive of Lemuel Liofanua. His first point of appeal deals with the chiefs settlement which was an unaccepted settlement (LC form 3). An unaccepted settlement does not have to be signed by the parties to the dispute. The requirement is that an unaccepted settlement must be certified by the chiefs and then filed with the Local Court and there-after the Local Court can exercise its power to hear the land dispute. It is indeed, a judicial discretion for Local Court to exercise, whether to accept the chiefs decision or not. We find no errors made by the Local Court and therefore we dismiss appeal point one.

As to appeal point two, we note Local Court finding No. 2 at page 37 of the record in respect of previous land cases. We had time to check these cases and we find that these cases did not deal with Dadakubale land, but dealt with Lima'abu II land. We also find that the Appellant's father Samuel Siuniele was a party to these cases which he no doubt won. The cross Appellant's father R. Obiau was not a party to these cases for the reason that these cases did not dispute Dadakubale land.

We further note that in High Court CC 31/82 R. Obiau lost to Maenunu. In that case part of Dadakubule as it appears on the map produced was awarded to Afoa

This court is satisfied that the Local Court did not consider the previous cases properly and as a result, it misdirected itself as to the right of ownership to Lima'abu II and Dadakubale lands. We allow appeal point two. Appeal points three and four raised similar issues and those points can be determined together. On the evidence before the Local Court, it is clear that the Lima'abu land has three portions. They are, (1) Lima'abu Kulue (2) Lima'abu Dadakubale and Lima'abu Loketa. This divisions were created many generations ago by the discoverer of the Lima'abu land, Ifuaki. The Appellant and the Cross-Appellant are in one way or another descended from the children of Ifuaki, however since they were given specific portions their ownership is restricted to those portions. The Appellant is restricted to Lima'abu II which is Loketa II. In previous court cases the Appellant's father Siuniele had won Lima'abu II land and therefore he is entitled to that portion.

Whereas, there is no dispute that the Cross-Appellant is entitled to own Lima'abu Dadakubale. It is therefore apparent that the Local Court was wrong, when it granted equal rights to the parties.

The portions Lima'abu II or Loketa and Dadakubale share a common boundary on the western side which had been previously decided by the courts. The boundary that was decided by the CLAC in 1983 commences from the Matakwalao bridge up Bia river thence Lonana river inland. This common boundary divides Lima'abu II and Dadakubale. The Cross-Appellant does not agree with this boundary. He contended that the boundary of Dadakubale commence at Gwa'ako bridge follow up Tafurade stream to Kuradi stream then cuts across to Lelegana stream which borders Afoa land then cut in and join Bia stream follow down to Matakwalao bridge. This boundary would clearly erase Lima'abu II or Loketa land from the map. This boundary is therefore obviously wrong. We can see the reason for extending the boundary of Dadakubale land, and the obvious reason is that almost three quarter of Dadakubale land had been awarded as Afoa land. We reject the boundary of the Cross-Appellant and accept the Appellant's boundary. The common boundary of Lima'abu II or Loketa and Dadakubale is at Bia river thence up Lonana stream inland.

We allow appeal points three and four.

As to appeal point five we note that Roy Konarii gave evidence as P15. In his evidence he wrongly stated the geneologies of the Appellant and the Cross-Appellant. This was clear inconsistency and therefore the Local Court should have rejected his evidence. The Appellant contended that Roy Konarii was related to persons who lost previous cases against his father Siuniele. This would be sufficient motive for Roy Konarii to tell lies in court.

Therefore Roy Konarii's evidence is rejected as not being credible. Appeal point five is allowed.

Appeal point six deal with principal tabu sites of Dadakubale. From the sketch maps it is clear that tabu sites of Dadakubale were awarded to Afoa land by the courts. The Cross-Appellant's father Robinson Obiau lost part of Dadakubale land to Afoa people. We allow point six of the appeal.

Appeal point 7, we find that Alick's wife is the daughter of the Appellant father's sister. And it is quite obvious for her to own properties on Lima'abu II land which is owned by the Appellant. Apart from her properties, the Cross-Appellant has no properties at all on Lima'abu II land. We allow ground seven of the appeal.

Appeal point eight deals with the name Loketa. In previous CLAC Case reference MD/CLAC/83/N13 the Appellant's land was referred to as Lima'abu II. He now contends that the custom name for that portion of land is called Loketa. We accept his contention because it would be confusing to called the land Lima'abu II as there had been a division. We therefore approved the name Loketa. It is not necessary to call Loketa in stages. Appeal point eight is therefore allowed.

We now deal with the appeal of the Cross-Appellant. From the out set the main issue the Cross-Appellant argues is the right of equal ownership. This court has earlier discussed this point in appeal points three and four of the Appellant's appeal.

As to cross appeal point one we have earlier mentioned that the Cross-Appellant should own Dadakubale. There should not be any equal rights to that land because the Appellant own Loketa. The only issue is as to the common boundary of both portions of land which we have also earlier identified. Appeal point one is dismissed.

The point raised in ground two of the cross appeal has been dealt with in appeal point eight. It is not necessary to repeat what we have stated earlier. Point two is dismissed.

Cross appeal ground three should be decided on the same reasons we have given in appeal points three and four. That point is disallowed.

As to cross appeal point four there is no dispute as to tabu sites. There are tabu sites in Loketa and Dadakubale portions of lands. This court cannot give tabu sites that are included in Afoa land. We dismiss point four.

Inrespect of Roy Konarii's evidence, we have found that it was not credible, therefore appeal point five is not allowed.

Cross appeal point six has not been accepted by the Local Court in its findings. The story that the Appellant's devil killed Wa'aia the Cross-Appellant's devil and recently there was a reconciliation by prayers has not been accepted by the Appellant.

We dismiss point 6 of the cross appeal.


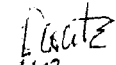

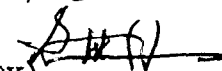
Cross appeal point seven has not been proved before the Local Court. The Appellant denied selling any portion of Dadakubale land. There is no evidence from those who bought lands that indeed it was the Appellant or his father who sold part of Dadakubale land. We reject cross appeal point seven.

Cross appeal point eight raise a serious issue of bribery, however it has not been proved to the satisfaction of this court that there was indeed bribery of the members of Local Court. The Appellant and the Cross-Appellant told the court that they did not see or hear about the bribery. This is a mere speculation and cannot be proved by evidence. We reject point eight of the cross appeal.

DECREE:

1. The Appeal of the Appellant Lemuel Liofanua is allowed and the cross appeal of the Cross-Appellant Hendry Taenao is dismissed in its entirety.
2. The Local Court decision in land case no. 3/95 given on the 14th of September, 1995 is set aside.
3. The Appellant Lemuel Liofanua shall own Loketa and the Cross-Appellant Hendry Taenao shall own Dadakubale.
4. The common boundary of Loketa and Dadakubale is at Bia river thence follow up the Lonana stream inland.

Dated at Auki the 23rd day of August 1996

JOSEPH KAIA	(P)	
ADAM KMAERIA	(VP)	
GEORGE WATE	(M)	
MATHIAS SANAU	(M)	
SHEMUEL WALANIHOU	(M)	
RODDY KOARU	(CLERK)	