

IN THE GUADALCANAL CUSTOMARY)
LAND APPEAL COURT)

CLAC case number: 6 of 1998

Customary land ownership Appellant Jurisdiction

IN THE MATTER OF: **THE LOCAL COURT ACT [CAP 144]**

AND **THE LANDS AND TITLE ACT (CAP 93)**

IN THE MATTER OF: **BOROKOKO CUSTOMARY LAND APPEAL**

BETWEEN: **HENRY KOLITOGHE** *Appellant*

AND **PHILI BUTO**
Respondent

JUDGMENT

1. This is an appeal filed against the decision of the Guadalcanal Local Court over the BOROKOKO customary land hearing held on 12th of May 1998.

Brief background of the case

2. Both the Appellant and the Respondent had disputed over Borokoko customary land. The dispute was determined through the GAOBATA House of Chief in favour of the Appellant. The aggrieved party who is the Respondent in this case appeal to the Guadalcanal Local Court (GLC). The GLC reverse the House of Chiefs finding and held that both parties have the same right or equal right of ownership on Borokoko land.

3. On that basis, the Appellant (Henry KOLITOGHE) was aggrieved and appeal the GLC decision to this court on the following appeal grounds.

Ground 1

- *The Guadalcanal Local Court is erred to consider the central issue that Managu was only adopted, hence, the Respondent should not claim ownership through her as there was no significant customary ceremony for her to own land.*

Ground 2

- *The GLC failed to considered the fact dispite our great grandfathers originated from Waisisi, we both have landed at Bo'o under different tribal heads, ie. The Respondent under the man call Atana and the Appellant under the tribe of Nekama, thus we should not have the same rights as principal owners.*

Ground 3

- *The GLC failed to consider that Managu did not born together with late Kolutoghe, as such the Respondent should not be regarded as principal owners.*

Ground 4

- *The GLC has insufficient evidence before, to conclude that the Appellant and respondent have the same rights of ownership of Korokoko land.*

4. This court will deal with those grounds of appeal in turn.

Ground 1;

5. After considering submission from both parties, through cross examination and summary of submission, the court unanimously agreed that the GLC is erred to accept that both parties came from the same ancestors. According to

evidence adduced from both parties, the Appellant and the Respondent are not from the same tribe. Thus, they were connected through customary adoption as the Appellant is the first settler at Borokoko land. This ground of appeal is allowed.

Ground 2

6. This ground of appeal has the same argument as in appeal ground 1. Dismissed.

Ground 3

7. This ground of appeal has the same argument as in ground of appeal 1. Both the Appellant and the Respondent are not of the same tribe, therefore, they should not have the equal right over Korokoko land. Allow as in ground 1. Ground of appeal 3 is made up, therefore, granted.

Ground 4

8. This ground of appeal has been deal with in ground of appeal 1.
9. It was noted from the outset that both parties were represented during the local court proceeding. They were given opportunity to make representation in relation to the issues. Both parties gave the same evidence during the Chiefs hearing, and also same history in the GLC.
10. Having considered the above findings, this court has unanimously agreed that the GLC is erred to accept that both parties have the same right of ownership without considering the overwhelm evidence that both the Appellant and the Respondent are from different tribe and Clan. Therefore, this appeal is allow.

Order

- The ruling of the Guadalcanal Local Court held on 12th of May 1998 is set aside;
- The matter is remitted back to the same local court (Guadalcanal Local Court) (GLC) to be heard by new Local Court members.
- Each party to bear their own cost.

Decision was verbally announced on and written judgment delivered on dated this..... 22nd May 2015

Signed:

1. John SEKETALA (President)

2. Fr. John GATU (Member VP).....

3. Martin TSUKI (Member)

4. Henry LUI (Member)

5. William Rex POCHO (Member)

6. Jim SEUIKA Clerk/Member.....

