

IN THE GUADALCANAL CUSTOMARY )  
LAND APPEAL COURT )

CLAC case number: 3 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: **HARILAKE/SALAOODO/CHOKA CUSTOMARY LAND APPEAL**

BETWEEN: **JARVIN VIRAVIRA** *Appellant*

AND  
**JERRY TANDA** *Respondent*

### JUDGMENT

1. This is an appeal filed against the decision of the Guadalcanal Local Court over the Harilake/Salaodo/Choka customary land hearing held on 12<sup>th</sup> of May 1998.
2. The original Appellant in this case is Mr. Jarvin VIRAVIRA who is now deceased. Mr. Ashley ASEDI stands as the spokes person on behalf of the Appellant who is his uncle.

#### *Brief background of the case*

3. Both the Appellant and the Respondent had disputed over Harilake/Choka & Salaodo customary land.

4. In July 1998, the Malango House of Chiefs determined over the land disputes and award in favour of Jarvin VIRAVIRA as the true ownership of Harilake land.
5. That determination was not agreed by Jerry TANDA, appeal to the Guadalcanal Local Court (GLC), in which the GLC reversed the Malango House of Chiefs determination and award the ownership of Harilake land to Mr. Jerry TANDA.
6. Based on that decision, Jarvin VIRAVIRA was aggrieved and appeal to the Guadalcanal Customary Land Appeal Court (GCLAC) on the following grounds of appeal.
7. Although the appeal grounds were not written in a right form of appeal, this court has accept appeal grounds submitted by the spoke person for the Appellant Mr. Ashley ASEDI when he verbally present it before the CLAC panellist.

*Ground 1*

- *The Guadalcanal Local Court is erred to consider and accept history of a man from Kakabona who has no link and blood relation to the Sarahi tribe of Malango. 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 is erred to reject the Malango House of Chiefs finding on the issue of boundaries.*

*Ground 3*

- *The GCL is wrong in law to determined and considered ownership of Harilake without any undertaking to visit the tambu site and boundaries.*

8. In relation to appeal ground one, the Appellant contended that the Guadalcanal Local Court is wrong according to the Guadalcanal custom to accept a person from different tribe in other part of Guadalcanal to own land on different tribal land. Mr Asedi for the appellant submitted that the Respondent Jerry Tada is from Kakabona village, East of Honiara. The land in question (Salado and Harilake land) were situated in the central Guadalcanal. Their traditional history over the Harilake land is based on the history of the Malango land tenure. It is unfounded in the Guadalcanal custom that a person from Tandai tribal group used their tribal land tenure to own land in the Malango tribal land.
9. Mr Asedi further submitted that from that understanding, Jerry Tada's evidence is based more on untraditional history from his witnesses.
10. On the other side, Mr Tada conceded that he is originated from the Tandai tribal land group, however, he has customary obligation and customary ownership on the land transferred to his mother by Dick Elijah from Malango, when he produced customary shell money to prove that his mother owns Salaodo land.
11. The CLAC panellist had cross examined the evidence of both the Appellant and the Respondent. They have come to conclusion that the Respondent is originated from Kakabona village. The respondent was relying on customary evidence from people of Malango like Nelson Ra' a, Usi Wesly, Paul Pagua, David Manechonia, Albino Dumusi, Gabriel Uni and Selvario Elijah. These witnesses did not support the claimed ownership of Salado/Harilake. According to the decision of the GLC held on the 12<sup>th</sup> of November 1998, most of these witnesses did not establish any original evidence or historical evidence of ownership of Salado and Harilake, however, taken into account and determined in favour of the Respondent. This court has unanimously agreed that the GLC is wrong in custom to consider the evidences that has no

link to the original ownership of Salado and Harilake tenure. This ground of appeal is accepted.

#### Ground of Appeal 2

12. Mr. Ashley ASEDI submits that there was an overwhelmed customary findings from the Malango house of Chiefs regarding the boundaries and Tabu sites submitted by Jarvin VIRAVIRA (deceased). Mr VIRAVIRA is originally claimed that Harilake portion of land is part of the land he owns. The boundaries claimed during the Chiefs hearing started from Jarikage on the south and go to the west of Taveko stream or Nugu from Taveko stream to Aroaro and slightly turn to entrance of Umea stream and to Laukutu and go south along the Betisasaga stream follows to connect the Betikama stream to Parikede.
13. In the Chiefs hearing, a slight amended boundaries was set out to commence from Nuhu on the southern part of Laukutu creek and goes eastward on a straight direction to valekaruba and then to Vugunangali by the Tangareso river. It turns north following on the same river until it reach the entrance of Jarimera stream. It continues from Jarimera to the north where the Ngalikorikasike and meets with the Jarimera strea. The boundary continue to the west following the Ngalikorikasike stream to Choka rifge on the north of Laukutu creek and slightly turns south to where it commence.
14. The respondent on the other hand submits that the reason as why the GLC did not considered the boundaries submitted by the Malango House of Chiefs is based on the contradiction knowledge of the appellant on those boundaries. He further contested that the appellant seems to lack knowledge of his original boundaries.
15. Having considered both submissions and the evidence gathered during the cross examination of both parties, the court is satisfied that there was some

contradictory between the original boundaries submitted by the appellant to the one given by the GLC. This appeal ground is dismissed.

Ground of appeal 3

16. The spokes person for the Appellant submitted that the GLC is wrong in law to determine the ownership of Salaodo and Harilake customary land without undertaking any site visit. Mr ASEDI further contended that during the Local Court hearing, both parties had submitted their tabu sites and boundaries which need to verify by the presiding Local Court panellists. In such instances, it is not safe to determine over the ownership of this land without proving the truth of these sites and boundaries. Again, Mr Asedi reiterated that the appellant's party had pleaded to the presiding Local Court members to undertake site visit but was not considered, yet they proceed to make ruling without any sites evidence.
17. In respond to this appeal ground, the respondent submitted and makes references to the site survey made by the Malango House of Chief on the land in question. He further submits that there where land survey or site visit attempted by the presiding Local Court members, however, it was not sure.
18. After considering all submissions make availed to the court by the Appellant and the respondent, there was no record in from the Local Court decision to indicate an undertaking of a site visit on the land in question. This court is so concerned about the importance of assessing the customary evidence to determine the land ownership. In such case, site visit or site survey by the presiding local court members is vital in all circumstances when comes to assessing the right ownership of a disputed land.
19. Since there was no record to indicate that a site visit or site survey was conducted, this court held that the Guadalcanal Local Court is erred in law and custom to determined and granting ownership of Salaodo and Harilake

customary land to the Respondent when there was no evidence of site survey after it was requested. This appeal ground is granted.

20. Based on the above finding, this court is unanimously agreed that the appeal is granted and make the following orders.

Order

- Appeal allowed
- The ruling or decision of the Guadalcanal Local Court (GLA) held on 12<sup>th</sup> of November 1998 is set aside;
- The matter is remitted back to the same local court (GLC) to preside over by new local court members.
- Each party to bear their cost.

Decision was verbally announced on ..... and written judgment delivered on dated this..... 22<sup>nd</sup> 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.....

