

IN THE GUADALCANAL CUSTOMARY )  
LAND APPEAL COURT )

CLAC case number: 5 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: TAMUPAPE, LENIU, KIKIBA & SAULOGU CUSTOMARY LAND APPEAL

BETWEEN: SAMUEL NGAVIA *Appellant*

AND  
STEPHEN LALAEA  
*Respondent*

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JUDGMENT

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1. This is an appeal filed against the decision of the Guadalcanal Local Court over Tamupape, Leniu, Kikiba and Saulogu customary land hearing held on 25<sup>th</sup> of May 1998.
2. At the preliminary back ground of the CLAC proceeding, the Appellant is now deceased and was represented by Gabriel Leua LOVANITILA as the spokesperson on behalf of his Sipolo Tina tribe.
3. On the other party, the Respondent was represented by Richard TAKO as the spokesperson.

*Brief background of the case*

4. Both the Appellant and the Respondent had disputed over Tumupape, Leniu, kikiba and Saulogu 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 (Stephen LALAEA) appeal to the Guadalcanal Local Court (GLC). The GLC reverse the House of Chiefs finding and held that Stephen LALAEA is the primary and rightful owner of lands described as Tumupape, Leniu, Kikiba and Saulogu.

5. On that decision, the aggrieved party Samuel NGAVIA appeal to Guadalcanal Customary Land Appeal Court (GCLAC) on the following grounds of appeal.

*Ground 1*

- *The Guadalcanal Local Court is erred and misdirect itself that the Appellant failed to establish why the said lands were given to him.*

*Ground 2*

- *The GLC failed to give sufficient and due weight to relevant evidences submitted by the appellants.*

*Ground 3*

- *The GLC is erred to accept the evidence that the lands; (Leniu, Kikiba, and Sauloghu) were given to Koroko for his bravery.*

*Ground 4*

- *The GLC has erred in law to accept the Respondent is the true descendent of Koroko and therefore, the true owners on Tumupape.*

*Ground 5*

- *The GLC is wrong in law to allow the court justices on replacement, and the non-presiding Justice allowed for site visit.*

*Ground 6*

- *The GLC is wrong to refusing a request from the Appellant for a site visit or site survey.*

*Ground 7*

- *There is a real likelihood of Bias by the Guadalcanal Local Court.*

*Ground 8*

- *The GLC erred in law to refused evidences from the previous presiding customary chiefs in which depriving the Appellant to show that the Respondents evidences were inconsistent and unreliable.*

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

*Ground of appeal 1;*

7. Mr Gabriel LOVANITILA submits that the GLC failed to consider the history of the said land. He further stated that the Respondent is originated from Gela. He came in to claim those lands through marriage and not traditional inhabitant by devil or customary gods.
8. In the Local Court hearing, the Appellant produced full details of tabu sites, sacrificial site, properties, land boundaries, old settlement and other relevant information pertaining usage of the land. The local court did not consider it.
9. At the outset, the GLC decision also confirmed that even the witnesses of the Respondent did not support his customary evidence how he acquire those customary land.
10. On the other hand, spokesperson for the Respondent respond to this ground of appeal very negatively. In his respond, Mr TAKO says “ it is not my business to speak for the local court decision.” The GLC has concluded with their findings.
11. In cross examination, the Respondent has no other submission regarding the decision of the GLC, however, he quote that the GLC decision is final.

12. After considering submissions from both parties, through cross examination and summary of submission, the court unanimously agreed that the GLC is erred to accept the evidence that has no customary bearing. This ground of appeal is allowed.

*Ground of appeal 2*

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

*Ground of appeal 3*

14. The Appellant denies the evidence adduced in the local court to say that Leniu, Kikiba and Saulogu land were given to Koroko for his bravery warrior who killed Thivolia. Mr LOVANITILA contested that the true version of their history is that the warrior who avenged Vthea's killing was Voda who is a warrior of Sipolo tribe. Thivolia killed Vathea with a spear, Voda the warrior from sipolo tribe pulled the spear from Vatheas's body and promise to used the same weapon to kill the person who kills Vatheas. The Gaobata warriors raided the garden and Thivolia was caught, Voda used the same spear and killed Thivolia. Therefore, to say that Leniu, Kikiba and saulogu land was given to Koroko for his bravery is not a true story. The said plots of land were given to Liko and Sopi and their heathen gods (Livo sakai) to settle when Sipolo and Loha called them ashore.

15. In response to this argument, spokesperson for the Respondent makes the same statement that it is not his responsibility to answer to this ground of appeal.

16. Having considering this ground of appeal, the court unanimously agrees that the GLC is erred to accept that the land in question was given to the Respondent as a token of appreciation of his bravery.

17. The court accepts that the spear which was used to kill the warrior called Thivolia was tendered in court as an exhibit. This is a traditional spear kept by

the Sipolo tribe to prove their customary history of ownership on those lands. This ground of appeal is made up, therefore, allow.

*Ground of appeal 4*

18. The Appellant submits that when they gave their evidence in the local court, the Respondent failed to prove himself that he is a direct descendant of Koroko as there was no genealogy provided. Also there was no site survey to prove their tabu site, sacrificial site and their old settlement. Despite of this submission, the GLC granting ownership to the Respondent.
19. In response to this ground of appeal, spokesperson for the Respondent says that the true koroko was from Guadalcanal and not from Gela, therefore, he is the right ownership of those lands.
20. The CLAC panellists have the opportunity to cross examined the evidence submitted from both parties and concluded that the GLC is wrong in law to accept and grant the ownership of those lands in question without any backup history and customary evidence of tabu sites. The GLC decision is not specifically put in any record to substantiate their findings. Therefore, the court unanimously agrees that the GLC decision is not safe and founded, therefore, allow this ground of appeal.

*Ground of appeal 5*

21. In relation to this ground of appeal, the spokesperson for the appellant submitted and says that the GLC is wrong in law to allow a Local Court Justice who was not a presiding justice to involve on decision making. It is submitted that there is evidence to prove that Local Court Justice Joseph TABALA who was opted in to replace LC Justice Joel SIKUA who was not even presiding over the local court proceeding. He was present presiding decision making.

22. The respondent did not put any defence into this contention, however, he maintains that it was not his responsibility to answer to any allegation made against the local court decision.

23. The CLAC panellist have gone through this ground of appeal and concluded that it is regrettable if this contention is proved. Such approach is not acceptable and it is against the court procedures provided for in the Local Court Handbook. If any local court justice did not understand the court responsibility, it is the ultimate duty of the court clerk to make sure that local court justices understand their judicial code of ethics. Having considered this ground of appeal, there was no evidence to suggest that the local court decision was interfering by a third party. Therefore, this ground of appeal is dismissed.

#### Ground of Appeal 6

24. This ground of appeal is not disputed by the Respondent. In his response, Mr TAKO conceded that all parties agree not to do any ground survey because the Respondent witnesses are not available. The Appellant still contested that their party has requested for a site visit but later cancelled due to unavailability of the respondent witnesses.

25. Having considered the above findings, this court has unanimously agreed that the GLC is erred to accept and determine the ownership of the disputed land without ground survey. Local court is the only avenue that all custom evidence must reveal before determine the ownership of the land in dispute. It is the official court which have original jurisdiction to try the ownership of customary land. Therefore, whatever means of customary evidence must not ignore. The GLC is erred to determine the ownership over Tamupara, Leniu, Kikiba and Saulogu customary land without site inspection. This ground of appeal is allowed.

#### Ground of Appeal 7

26. This ground of appeal has already discussed as in appeal ground 5, where the Appellant contended that there were some likelihood of bias based on the assumption stated in their submission. Since there was no submission from the respondent in relation to that argument, the court held that there are certain potential area, conflict of interest arise. In such a situation, Local Court Justices should register their interest in relation to any land disputes. In this case, the appellant asserting their right to the disputed land but denies by the Local Court when some of the local court justices did not registered their interest, however, they were members of the presiding justices in the local court hearing on the 25 of May 1998. This ground of appeal is allowed.

#### Ground of appeal 8

27. The appellant did not pursue further on this appeal, and the court assuming that some point of argument relating this ground of appeal has been covered in the previous argument. This ground of appeal is dismissed.
28. Having considered all the material submissions presented from both parties, the court is satisfied and agreed amicably that the appeal is made out and therefore allow the appeal with the following orders.

#### **Order**

- The decision of the Guadalcanal Local Court held on 25<sup>th</sup> of May 1998 is quashed and now 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..... 22<sup>nd</sup> Day 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.....

