

IN THE HIGH COURT )  
OF SOLOMON ISLANDS) Customary Land Appeal Case No. 28 of 1981

BETWEEN:

JACK LUSA

Appellant

AND:

HENRY RAIGELA

Respondent

JUDGMENT

CORAM: The Honourable Mr Justice, F.L. Daly CHIEF JUSTICE

## JUDGMENT

This is an appeal against the decision of the Guadalcanal Customary Land Appeal Court ('the CLAC').

On 23rd October 1980 the TASIMBOKO Local Court heard a case between Jack GUSA and RAIGELA (the present Respondent) about TIVIALE land. Mr GUSA was represented by the present Appellant Mr. LANETELIA. In fact as Mr LANETALIA acts as representative for Mr GUSA, I shall order that the title of the appeal be changed to GUSA v. RAIGELA.

The case concerned what was said to be a wrongful sale by POE to the Respondent of TIVIALE land.

The Local Court found insufficient evidence in relation to that sale and its legality in custom and decided, quite rightly, merely to repeat a decision which the same Local Court had made on 20th June 1968 (Case No. 20/68) that is that GUSA was the landowner and that PUTI (who is the same line as the Respondent RAIGELA) had a right to part of the land which had been given to him in return for a beating drum.

The CLAC refused to hear the case itself and decided that, indeed, the Local Court decision should be declared null and void as the case had already been decided in 1968 by a court of competent jurisdiction. The issues, said the CLAC, between the parties were res judicata.

It seems to me, with respect, that perhaps the CLAC were using rather stronger terms than were necessary. The Local Court did have a new issue to decide, that is, was the sale by POE of any effect? They decided it was not and held themselves bound by the earlier decision. They were quite right to do so and rather than say that that decision was null and void, it would have been sufficient if the CLAC had dismissed the appeal and permitted the decision to stand. But the final effect of the two orders is the same.

However there is one matter which remains outstanding. Both the Local Court in 1968 and the Local Court in 1980 decided that GUSA's line gave a piece of land to PUTI's family and therefore PUTI's family (of which RAIGELA is a part) has a right to settle in that piece of land. But no court has decided what are the spearlines of that land and this is causing trouble.

Therefore I shall remit this case to the TASIMBOKO Local Court with a direction for them to hear evidence from both parties on the spearlines of the piece of land with GUSA's line gave to the PUTI's line and after appropriate survey of the land to make a decision as to those spearlines.

Both parties are limited to giving evidence on this point in the Local Court. If a party does not appear to give evidence then the court may go ahead in his absence if the party has received reasonable notice of the hearing.

In the circumstances I shall make no order as to costs.

Deposit to be returned to Appellant.

9th February 1982

(F. L. Daly)  
CHIEF JUSTICE