IN THE HIGH COURT OF SOLOMON ISLANDS
(Chetwynd J)

Land Appeal Case No. 8 of 1994

BETWEEN

STANLEY SUIANOA **Appellant**

And

MAHLON DOFAI and
JAMES DELEMANI **Respondents**

Mr Marahare for Appellant
No appearance for Respondents

Date of Hearing: 18th February 2011

Date of Judgment: 15th March 2011

Ruling

1. This appeal was listed for hearing on 18th February 2011. When the case was called on Mr Marahare was present for the Appellant but no one appeared on behalf of the Respondents. As this is a case which has been dragging on for far too long I said I would be prepared to deal with the appeal on the basis of the appeal book and submissions filed by the Appellant's former legal representative, Mr Tegavota, on 15th May 2009 and the submissions filed on behalf of the Respondents on 8th July 2009. I subsequently asked the Registrar High Court to write to Bridge Lawyers informing them of that. I found out later on Mr Nori had been involved in a criminal trial and so his absence was understandable.

2. At the hearing I did mention to Mr Marahare that there was a bundle of documents on the file. All the documents seemed to relate to a letter written by Mrs Kate Kaura as Secretary for the Chairman of the Te'ekwali Land & Resources Trust Board (Inc) on 19th March 2009. Following a cursory glimpse at the papers it seemed to me the bundle contained documents I should not look at. I did not therefore read any of the papers, or indeed the letter they were attached to. Neither the letter nor the "attachments" were referred to in the submissions relied on.

3. This appeal is from a decision of the Malaita Customary Land Appeal Court ("MCLAC"). They sat on 21st March 1994 in Auki. The court carried out a survey on 23rd March 1994 and the decision was handed down on 25th March 1994. The notice of

appeal was filed on 24th June 1994. The appeal the MCLAC was hearing was from the Malaita Local Court and it was handed down on 18th July 1991. I mention these facts just to emphasise the age of this case and the need for a decision to be made. 20 years to resolve a dispute is far too long. I understand the factors which have contributed to the delay and although I am bound to say the parties did not make too much effort themselves to expedite the appeal, it also seems to me that they have been let down by "the system".

4. The case involves land in north Malaita. It is land between the Manakwai River to the east and the No'o River to the west. From the record the Appellants claim in the Local Court was about, "...my land Te'ekwali land left over" from previous disputes. The findings of the Local Court were lengthy and detailed. The Local Court basically decided this was a claim relating to the boundary or spearline between two areas, Abuilalamua (sometimes called Abuilalamoa) and Te'ekwali. The Local Court pointed out a number of previous court decisions had dealt with the boundary. They dismissed the claim. The Appellant appealed to the MCLAC. His notice of appeal is found starting at page 19 of the record. The MCLAC dismissed the appeal and their judgment is found starting at page 5 of the record.

5. He now appeals to the High Court and the grounds are set out in the notice to be found on page 4.

6. There is no error of law to be found in the decision of the MCLAC when they agreed with the Local Court that genealogies were not needed in boundary cases. In the second paragraph (page 5 of the record) the MCLAC did say the Local Court was not wrong in ruling that genealogies cannot be produced in boundary cases. The MCLAC also went on to say, "We find that in boundary cases genealogies should be produced where there is a dispute involving ownership of customary land." The MCLAC were differentiating between a straight forward boundary dispute and one involving a boundary dispute and other issues of customary land ownership. In simple terms, they were dealing with the evidential requirements that could arise in such cases. It also follows there is no merit in the second ground of appeal either.

7. In this case there has never been a dispute about ownership of Te'ekwali and Abuilalomoa lands. The Respondents say they own Abuilalomoa land and they agree the Appellant owns Te'ekwali land. The Appellant similarly accepts he does not dispute the Respondents ownership of Abuilalomoa land. In an answer to the Respondent in the Local Court the Appellant says, "I don't dispute Abuilalamua but Te'ekwali". That can only mean he is saying Te'ekwali land extends to the west of the Manakwai River. His problem is that there have been cases which not only decided who owns the two lands but also where the boundary between the two was.

8. What the Appellant was clearly asking both courts below to do was to re-define the boundary between the Te'ekwali and Abuilalamoa. That means, in practical terms, he is disputing ownership of part of Abuilalamoa land but of course he has accepted the Respondents own Abuilalamoa land. If the court changes the boundary then they change the ownership of the land that was outside the "original" boundary but which is now inside it. The court decision would not affect the ownership of the rest of the land.

9. The MCLAC did appreciate the distinction and it can be seen from the record they allowed the Appellant to give evidence about his genealogy insofar as it affected his claim concerning the boundary. He was given adequate opportunity to explain to both the Local Court and the MCLAC how his genealogy affected the boundary. Whilst he may not have presented a detailed written genealogy, he was allowed to explain at length the basis of his claim based on his genealogy. I would also point out that the MCLAC carried out its own survey. A detailed record of that survey is in the record. The Appellant had a spokesman who represented him (William Iro) and he was given ample opportunity to point out tambu sites and other important areas which would support evidence given in the hearing about his genealogy.

10. It is said in submissions on behalf of the Appellant, the claim (in the Local Court and by appeal in the MCLAC) was him representing the female line of Te'ekwali. It is submitted on behalf of the Appellant, both the Local Court and the MCLAC "misunderstood this" and that is why they treated the case as a boundary dispute and why they wrongly raised decisions in previous cases. That, on reading the decisions of both courts, was clearly not the case. They understood exactly what the Appellant was arguing before them, they simply did not accept it. For these reasons, and as I have already indicated, there is no merit in the first two grounds of appeal.

11. Ground 3 of the appeal relates to res judicata. The Appellant does ***not*** say the ownership and boundaries of Te'ekwali land and Abuilalomoa land had not been settled in previous cases. He says the MCLAC was wrong to take those earlier cases into account. It has long been settled in this jurisdiction, the concept of res judicata does not strictly apply to cases involving disputes about customary land. It can and does apply in certain situations.

> *In the Solomon Islands context it can arise where the same members of a tribe seek to bring successive claims over the same piece of land and against the same persons. Where a member of a tribe suing in his capacity as a representative or on behalf of his tribe loses the case then other members of his same tribe cannot bring another land case against the same persons on behalf of his tribe. The issues raised on his/her tribe have already been determined by a court of law and the defence of res judicata prevents that other member of the same tribe from opening a fresh case on the same issues.*[1]

In the later case of Kofana v Aute'e [2] His Lordship said:-

> *The doctrine of res judicata had been amply discussed by this Court in numerous cases already. In Talasasa v. Paia and Another (1980/1981) SILR 93 at page 100-104, his Lordship Daly CJ. discussed in detail the application of that doctrine to decisions involving customary land disputes. His Lordship states:*

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[1] Palmer J Tisa v. Farobo Civil case 254 of 1991
[2] Kafona & Ors v Aute'e & Ors High Court Land Appeal case 1 of 1998

"In Solomon Islands customary land cases usually involve the interests of a line in a particular piece of land as opposed to the interests of another line. There is very often no determination of who falls within the line and a degree of vagueness about the extent of the land under discussion. For my part, I would be most reluctant to hold that a judgment in a customary land case is a "judgment in rem" and binding on the world at large. After consideration of the authorities, I am happy to conclude that they do not in any way require me to do so.

These judgments are then, in my view, judgements inter parties"

His Lordship then went on to identify the three essential ingredients in which the doctrine of res judicata would apply in "judgments inter partes":

(i) an earlier case in which the cause of action or point in dispute was really the same;

(ii) a final determination by a court of that cause of action or point on its merits;

(iii) the raising of the same cause of action, or the same point which has been distinctly put in issue, by a party who has had the action or point solemnly and with certainty decided against him."

In the Court of Appeal this has been expressed in the following words:-

To make out estoppel per rem judicatam or cause of action estoppel", it is necessary to show that the earlier judgment relied on was a final judgment, and that between the former and the present litigation there is identity of parties and of subject matter or "cause of action" [3]

12. In his appeal to the MCLAC the Appellant [4] says this:-

"The said Local Court had gone wrong in upholding that the previous land cases are binding on me or my claim of ownership over the land in question as I am not a party to those previous cases ***except the High Court case between Alaikona*** *but that case covers land from Manakwai River to Kukuru stream."*

The MCLAC dealt with that appeal point in the following words:-

"On the second ground of appeal we have been referred to a number of decisions involving Te'ekwali land on the east and Abuilalamoa land on the west.... Then in the case between James Alaikona and Stanley Suianoa

[3] Majoria v Jino Court of Appeal Civil case 36 of 2006
[4] See page 19 of the record at appeal point number 2

(Appellant). It was decided that Suianoa is the owner of Te'ekwali land. The spearline of Te'ekwali land was described thus:

"Kukuru river on one side, Manakwai river the other side on top of the spearline is Faudiko to Luamandanau coming through Malamoni. On the bottom is salt water."
This previous decision clearly shows that the spearline of Te'ekwali land is Manakwai River. We find that the Appellant is or was a party to the previous land cases".

13. They reached the correct conclusion on the question of previous cases. There was no error of law on their part. The Appellant was conscious of the effect of the previous cases. In order to avoid the obvious conclusion, in law, the MCLAC would have to reach the Appellant submits the previous case involved him representing his father's side whilst the present case involved him representing the female side. This argument was rejected by both the Local Court (points 2 and 3 on page 46 of the record) and the MCLAC (paragraph 3 on page 6 of the record). There is absolutely no merit in the third ground of appeal.

14. As for ground four, this is almost a repeat of grounds one and two. In any event the MCLAC dealt with this aspect by correctly finding this was not a dispute as to ownership because that had been dealt with in previous cases, it was a dispute as to where the boundary between Te'ekwali and Abuilalamoa was. They reached that conclusion even though they were aware of the previous cases and only after they considered evidence from the Appellant about his genealogy and conducted a careful and thorough survey. The MCLAC dealt with the case on that basis. It cannot be said the Appellant was not given a fair hearing.

15. The entire appeal is without merit and is dismissed in its entirety. Whilst I accept the appeal was lodged before some of the cases referred to in this decision were heard and before the judgments in those cases were handed down, it should have been clear to Counsel some time ago this appeal had no prospect of succeeding. There is no reason at all why I should not order costs against the Appellant.

Order:

1. The appeal is dismissed.
2. The decision of the Malaita Customary Land Appeal Court is upheld.
3. The Appellant shall pay the costs of the Respondent in this Court and in the Court below, such costs to be taxed on a standard basis if not agreed.

Cherwyn J