

IN THE WEST RENNELL LOCAL COURT
OF SOLOMON ISLANDS

BETWEEN: CASSIDY SANGUIKA Plaintiff
AND: ASHLEY TESUA Defendant

IN THE MATTER: TEUTUA, TEHATUTAGI, TETAUNGAGOTO, TANAHU and
MUGIBAE LANDS

JUDGMENT

The case in dispute is between Cassidy Sanguika, Plaintiff and Ashley Tesua, Defendant. The matter in dispute is about the following lands, Teutua, Tehatutagi, Tetaungagoto, Tanahu and Mugibae lands.

The local court Amendment Act, cap 19, stipulates "*no Local Court shall have jurisdiction to hear and determine any customary land dispute unless it is satisfied that all traditional means of solving the dispute have been exhausted*"

The court had found out that this case had been referred to the chiefs' council but never eventuated. The court considered that the chiefs' settlement had been exhausted and it's only appropriate that the local court dealt with the matter now.

Before the court considers all the evidences from both sides, it must remind itself that all the evidences are weighed on the balance of probability. The court must take into account of the land tenure system practiced on Rennell. It must make sure to abide by sect.16 of the Act which states that "*a local court shall administer the law and custom of islanders prevailing in the area of jurisdiction*". In that, the court must consider that the ownership of land or lands practiced on the island is traced through the line of a man. The court therefore must narrow its scope and focus on the lands in dispute.

The plaintiff, Mr. Sanguika gave evidences under oath and said that his genealogy was traced back to Temoa. He told the court that one of the five sons of Temoa by the name Tapaipolo was the first person to first discovered and settled on

Tetaungagoto district. The plaintiff outlined his genealogy beginning with Tapaipolo and ends it up with his late father, himself and his son Tuhenua. He stated that he himself is the eighth generation.

The plaintiff also mentioned that one of his ancestors by the name Hua'itenga used the lands in dispute and even defended the said lands from invading tribes. He told the court that after Huaitenga's death, Noah took over position as head. The plaintiff told the court that his grand father Noah had used Teutua as a garden area. He also outlined the uses of Tehatutagi, Tanahu and Mugibae lands both in his statements and during cross-examination.

The plaintiff told the court that the defendant party had just came to Tetaugangoto from Magalea district around 1942 and 1945. He further told the court that his late father Malachi Tepai took over power and authority as head after Noah's death in 1949. The plaintiff also produced to court a sketch map showing the lands which they owned. The sketch map was marked as **EXHIBIT CS1**.

He further told the court that late Malachi Tepai and Solomon Temega gave some piece of lands to the defendants group but were later reclaimed back from them. The reason is because the defendant's party mistreated the plaintiff's late father very badly. That was the root cause of the dispute.

Also, the plaintiff witness or **PW1**, Dick Taumata testified under oath that when the plaintiff's ancestor by the name Noah controlled the district of Tetaugangoto, he did not allow any person to do any activities on the lands in question without his permission. **PW1** further told the court that the very reason for the giving of the lands to the defendants by the plaintiff's father was because late Malachi Tepai married to late Jason's sister. **PW1** further testified that the lands which were once given away were reclaimed by the plaintiff's father as a result of a continuing conflict between the plaintiff's and the defendant's late fathers. **PW1** also told the court that Chilion who was born to Gamukoba, the sister of Noah had no father. He further stated that Chilion was a bastard and supposed not to make any decision or control over the lands owned by the plaintiff's late father.

We now turn to the defendant's case.

The defendant gave evidences under oath and said that his geneology begun with a person called Baimango. He told the court that Temoa who was the ninth generation from Baimango sent out his six sons to many different areas. He further stated that Tamua went and lives at Magalea and Tapaibolo went and live at Tetaugangoto.

The defendant further told the court that Tamua later came from Magalea and met with his brothers Saghei and Tapaipolo and they divided the area at Tetaugangnoto. He stated that after the division of the whole area of land, Tamua took control of the southern district, which was the area of dispute.

The defendant further told the court that Tamua lived at Ahenoa and the succeeding generations that follow also live there until the time of Sau'uhi, another of the defendant's ancestors. The defendant stated that Noah who is the plaintiff's late grandfather came to the settle at Ahenoa during that period of time.

He further told the court that Noah lived at Ahenoa for the sake of his grandfathers and uncles who had been using the said area of land. He told the court that Noah was just looking after the lands which belonged to the Magalea tribe and therefore it does not mean that he owned them.

The defendant claimed that Noah returned all the lands to some members of his tribe. He further told the court that Teutua was given to Chilion by Noah and that not any piece of land was given back to the Patonu tribe.

The defendant claimed that his late father allowed the plaintiff's father to live with them in the same area of land. He further stated that the dispute arose because his late father prevented or stopped Malachi Tepai from building another house in the same area.

The defendant claimed that Teutua land was given to his younger brother, Sibolo whom his parents gave to Chilion to adopt as his son.

The court also considers the statements made by the defendant regarding the places or lands which the plaintiff claimed as his landmarks.

The defendant denied the plaintiff party to have owned the Tepolotugnu which is a body of water in Ahenoa. He further stated that Tehatutagi, Mugibae, Tanahu and Tetaugangoto are located or situated in one area and does not belong to the Patonu tribe.

Defendant witness or DW1, Gwen Kotoika testified under oath with the assistance of an Interpreter said that Teutua land was given by Noah to Chilion. DW1 further stated that she and her husband live with Chilion on the said land. She did mention that Chilion even gave them a piece of land beside the area they lived. She further told the court that they came to occupy the said area of land by 1960.

DW1 also told the court that the problem between the plaintiff and defendant remain until the birth of their seventh child who was adopted by Chilion. She mentioned that it was from this adoption that Malachi's family was not in good terms with Chilion. DW1 also touched on Tanahu. She stated that they build houses and plant coconuts on the land. She further said that they farmed the land, operate businesses on Tanahu. She told the court that such activities were not disputed by the plaintiff party.

By studying all the evidences before the court; the court must take into account of all the evidences from both parties and weigh them on the balance of probability.

The issue before the court now is that, who should be the rightful owner of the lands in question since both parties claimed that they both originated from Temoa. The court takes into account of the first occupancy of the areas of dispute. The court accepted the plaintiff's evidence as worth believing. This is because Tapaipoio was the first person to settle and discovered the district known as Tetaugangoto which is a part and parcel of the lands in dispute. It was from Tapaipoio that the plaintiff had descended. The plaintiff Cassidy Sanguika is the eighth generation from Tapaipoio.

The court also considered that both parties did utilise the lands in dispute for gardening and other activities. It found that the giving of the lands such as Teutua to the defendants by the plaintiff's party occurred due to intermarriage between Malachi and Jason's sister. The court pointed out that the good relationship was the very base that make or allow for the lands to be given to the defendant's party.

However, it was evident from the stories of both parties that the good relationship that once exist between the plaintiff's father and the defendant's broke up when the parties were not in good terms with each other. The court found out that this was the very point or ground that made the plaintiff's father to reclaim his lands back from the defendants.

The court considered the evidence from the plaintiff that his late father was mistreated very badly by the defendant's late father. Therefore the court accepted that it was normal for one to get angry when mistreated and react in some way. In this situation the plaintiff's father reclaimed his lands.

The court also considered that the defendant's evidence is not worth believing because Tamua had already been assigned to settle on a different area or district; yet he came to Tetaugangoto. The claim by the defendant that Tamua came to Tetaugangoto without having utilised Magalea district draws the court to conclude that the defendant's evidence is untrue. The court view that Magalea is an area of land untouched or not disputed in this case.

The court after having made comparisons of all the evidences from both parties and their witnesses comes to believe that the plaintiff is a direct descendant of Tapaipolo. It disbelieved the defendant's claim that the lands were given them by Noah and Chilion. Had it been right for Chilion to give away any tribal land to an adopted son it would not be inline with the tradition and land tenure system practiced on Rennell.

The court concludes that the core of the dispute may have arisen when Chilion failed to uphold the tradition and land tenure system of the Rennell people.

**After having considered all the evidences on the balance of probability.
The court finally makes the following orders:-**

COURT ORDERS

- 1) The court is in favour of the plaintiff as the true original land owner of Teutua, Tetaugangoto, Tanahu, Tehatutagi and Mugibae lands.
- 2) The plaintiff has the sole authority to exercise his right in the area of ownership. That is any development or activities done by the plaintiff on the lands must not be disturbed by the defendant and his party.
- 3) Any further expansion of commercial development, businesses or any activities relating to land use by the defendant is restricted when this order is in force or effective.
- 4) Any activity which relate to the ownership of land that may amount to a criminal offence is prohibited.

Any party which is aggrieved with this decision must lodge an Appeal to C.L.A.C office in Honiara within 3 months from today's date.

Dated this 28th day of November 2006

Before:	Matthias Tapolo	Signed	President
	Moses Tepai	Signed	Member
	Raymond Sau	Signed	Member
	Paul Ngaingeri	Signed	Secretary/LC officer



The original written Judgment was signed by all the Court Justices