

at Malekula, 29th April 1986

IN THE MATTER OF: GIDEON
PAUL - APPELLANTS ✓
WILLIE TUN

AND

IN THE MATTER OF: PETER DAN - RESPONDENT

CORAM : Mr Justice F.G. ~~COOKE~~, CHIEF JUSTICE

CUSTOM ADVISERS: PETER ANDRE
WILLIE BOE

INTERPRETER: CHRISTINA NARUN

JUDGMENT

This is a dispute to land at Botolwof set out on the surveyors plan. It is the only land this judgment deals with.

This case was first tried in the village court when the land was divided between the parties. Attempt were made to have the customary ownership of the land decided by the area council of chiefs but the parties would not agree to some.

The dispute was then brought to the Island Court who gave judgment in favour of ~~Peter Dan~~ the Respondent in this appeal. The judgment of the Island Court was not acceptable to the parties and the appellants Gideon, Paul and Willie Tun appealed to this court against the decision of the Island Court.

I had on this appeal two custom advisers Peter André and William Boe.

I considered all the evidence given by the parties before the Island Court, heard the three appellants and the Respondent and visited the area.

The first Appellant was Gideon who stated that everyone in the area knows he is from the disputed area. He states the disputed area is an independent station as its language and dialect is different from that spoken in other areas. He states that Botolwof the disputed area and Danmiel the next area are two different places having distinct Nasaras, Chiefs and Boundaries. The land of Botolwof goes down to the sea at Espigle Bay and not through Danmiel. He said he claims the land accordingly to custom as his father and grandfather has been on the land for many many years. He stated the Village Court was right when it gave them all rights. He further stated that his father sowed coconuts trees near the sea in 1938 when they moved to that area because of the fight with the bush people in the North. The other parties do not contest his rights to seven hectares of land under coconut trees which it is alleged his father purchased. ~~I hold that Gideon is~~ customary owner of the seven hectares purchased and to the land in dispute area near Orone as set out on the survey plan.

Secondly Willie Tun, the Appellant states that he lives at Matavat No 2 with his parents and grandparent since 1901. His case is that the land was given to him by his grandfather, Chief Daniel, his uncle Chief Ham and Chief Malachi his grandfather's brother. He agrees that the land follows the male line and that the last person to give him that land was Chief Malachi who married a woman from Tanmial but there was no children of that marriage. His grandmother was a daughter of Chief Daniel who was a brother of Chief Malachi, so he has inheritance by direct relationship with the three chiefs. I am advised by my custom advisers that the land follows the male line and further that as there was no children of Chief Malachi and his wife, only certain rights follows Chief Malachi and wife who is still living with the Respondents father at Tanmial. I met the man who is over one hundred years of age and blind and who was not able to help me with this case. I consider Willie Tun has a good claim under custom to some of the land in Botolwof and allow his appeal. I consider him to be entitled one third owner of the land in the disputed area and to be entitled to one third of the coconut trees in the disputed area.

Thirdly the third Appellant, Paul. He has stated that he is entitled to part of the disputed area by virtue of a custom of two persons coming from fruit trees. The other appellants state they are unaware of such a custom but one of my custom advisers inform me that such a custom does exist. He said the Village Court gave judgment in his favour provided he divided the land with two other appellants.

Having considered his case I am of the opinion that he is also entitled to one third of the disputed area together with one third of the number of coconut trees in the disputed area. I therefore allow his appeal and award him ownership of one third of the property in the disputed area together with one third of the total number of coconut trees in the disputed area.

Fourthly the Respondent, Peter Dan. It is accepted that he had gardens in the disputed land for some years. He stated his parents own a parcel of land at Tanmial up to the border with Botolwof the disputed area. It is further stated by him that his ancestors worked the disputed land for many years because he contends that Botolwof and Danmiel are one people. The appellants do not agree to this contention, infact Gideon says that they are quite distinct areas with Nasaras, Chiefs and Boundaries. Peter Dan contends that the dispute only arose when the people were chased out of their land in the North by the bush people and came down to the sea front. He also stated that Chief Malachi's wife is still alive and living with his father at Tanmiel. He claims that Malachi's wife is his grandmother. Not a direct grandmother but because of close relationship with the family he and his family called Malachi, grandfather. I consider all the family of Malachi and friends who lived so close together that a family relationship did develop and the old people were treated as grandparents of the younger generation as though there was a blood relationship. In my opinion Peter Dan has a claim in custom because of such relationship and accordingly award him one third of the property and one third of the coconut trees on the disputed land as set out on the survey plan.

One third of the area nearer Navtar on survey plan goes to Peter Dan. The middle one third goes to Paul and the one third nearer to Oroni on survey plan goes to Willie Tun. It may happen that one third of the coconut trees awarded may lie within the awarded area of Peter Dan, Paul or Willie Tun. If so, then only the fruits of coconut trees are awarded and not the land on which they stand.

Gideon is only awarded that area in the disputed land which is fenced off and shown on the survey plan.

Each party to this appeal will pay to the court the sum seven thousand three hundred and thirty five vatu each for the survey plan to date. A further sum may have to be paid for the surveyor to mark out the division of the land and the area of each party's coconut trees.

Frederick G. Cooke

FREDERICK G. COOKE

1987/5/86

Custom Adviser :-

Peter André

William Boe

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