

IN THE WESTERN CUSTOMARY LAND APPEAL COURT

Sitting in Gizo  
Western Province

CLAC No. 8 of 2002

IN THE MATTER OF:       **Kona (Jarakana) Timber Right Appeal**

BETWEEN:               **Gideon Zoloveke**       )       *Appellant*

AND:                   **Carter Polosoboe**       )  
                              **& Others**               )       *Respondents*

Hearing:    19/8/02 – 20/8/03

Judgment:  26/8/02

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**JUDGMENT**  
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This is an appeal from the Choiseul Provincial Executive decision made on 2<sup>nd</sup> October 2002 and notice of the determination was published. The appeal was filed on 2<sup>nd</sup> November 2002 and additional grounds or points lodge to the court on 12<sup>th</sup> November 2002. Briefly the appeal comprises of 3 main grounds of Appeal.

The appeal was filed by Sopere tribe and grounds are:

1.    Boundaries.
  - (i)   That the boundaries the applicant made covered the boundaries of our land commences from Boe River followed the coastal and goes to Lukabakoso river, goes to Kakarake river to Suqama river and goes to Arapokutu to Kadepupuka river and then to Bobotere river and goes from Narapuqu river to Boe river.
  - (ii)  That the boundary claimed by the applicant was over lapped on to Zukupota River which is the Boundary of Jirusaboro land and is totally a different piece of land. However, the boundary was high lighted during the hearing but the Choiseul Province Executive ignored the

facts that it was different set of land and granted Timber Rights to the applicants.

## 2. LAND OWNERSHIP

- (i) That Kona Clan does not own any land close to the coast, Kona Clan is from Matakale Tribe. Its Land Kotolua situates below mountain Maetabe called Sapelua land.
- (ii) Under the Lauru Custom the land known as Veqolozuqa and Kotolua have to be situated with in the same region. In this case it is not like that.
- (iii) That Kona clan has no Tambu places and properties on Zarakana land.
- (iv) That the reason why Peter Pitamama came to Kapoka village was thjat the came and saw his aunt Rarisikapa and lived there. He has no land at Zarakana land.

## 3. OTHER POINTS:

- (i) That in any event Sopere tribe who claims ownership of the land in question was not a party to the previous court hearings.
- (ii) That apart from the sermons of the 1933 case there was not evidence of court hearing taking place nor its decision.
- (iii) That there was no document presented as evidence of 1933 court decision hearing and no document presented as evidence of the 1933 court decision at the said Timber Right hearing.
- (iv) That the 1978 local court decision between Peter Pitamama of Kona tribe and Rence Aralolu of Qilaboe tribe was in relation to their rights to use the portion of the land in question, which was assigned to Kataka tribe as consideration for custom services rendered by Mr Kataka which form the basis of the Kataka tribe, and not a determination of tribal ownership of the land in question;
- (v) That there were objections raised on the composition of the sitting Choiseul Executive Committee members in the said Timber Right hearing that there would be likelihood of bias in the determination of Timber Rights of the land in question.

- (vi) That the determination of the Choiseul Executive Committee to be made in public at the place of hearing.

#### The land

The land subject to this timber hearing appeal is on the land referred to or called by the Respondent as Kona (Jarakana) land. For the appellant it is referred to as Sopere Land and is situated in East Choiseul.

#### Method of Submission

The appellant made verbal submission on all the grounds of the appeal. He was assisted by Voyce Pitakaka and others. For the Respondent his spokesman Nicholas Biliki prepared written submission and copies tendered to the court and another provided to the Appellant. He also made a verb submission direct on the points on the written submission.

Briefly, the legal obligation is that this court is required to take into account of all the oral submissions on that were adduced before it and likewise the record of the Choiseul Provincial Executive committee and documents tendered before it. Witnesses may not be mandatory required to be called, but a party may do so on application to the court.

#### Ground 1- Boundary

On this ground, the Appellant described the boundary which he claims to be owned by his Sopere tribe. The boundaries of his land commences from Boe River runs along the coastal to Lukabakoso River, Kakarake River to Suqama River and goes to Arapokutu to Kadepupuka River and then to Bobotere River and goes from Narapuqu river and to Boe River.

This land which the Respondent called Kona land is owned by his Sopere tribe. Respondent has called it as Kona land because of Timber Right. For Appellant, they do not know any land as Kona.

In reply to this ground, Respondent submitted that the Appellant submission has nothing to do with boundary but ownership. Appellant submission was only reference to the description of this land which in this situation falls within Jarakana land. Kona tribe knew nothing of Sopere tribe within Kona/Zarakana land, nor its clans.

On this issue, the Respondent further submitted that from Boe River they share boundary with:

- (i) Boe to Bobotere - confirmed by Chief Israel of Kalesuka tribe.
- (ii) Taroreve to Vongu – confirmed by Pita Patakaka
- (iii) Pat Uvate to Siqisake – confirmed by D. Dalisaru of Ngauru tribe.
- (iv) Saqaseke to Vujolo – confirmed by Israel of Kalesuka tribe.
- (v) Sugama/Kakarake/Papakutu/Lukabokaso – confirmed by Kilivini of Sikaroto tribe.

The Respondents made reference to Choiseul Provincial Executive minute/Record of proceeding i.e.: pages 8, 10 and 12 to support his submission on the issue of boundary.

On the claim of overlapped of boundary onto Zukupoto River, appellant is true to confirms boundary at Zukupoto and not Narapuqu. Kona shares boundary with Kalesuka and not Sopere.

On this issue the court view that the Appellant's submission is just only on the description the area land which he claims to own nor an overlap of boundary. This ground is not substantiated, therefore fail and dismissed.

#### Ground 2 - Land Ownership

Appellant submitted that the land concerned belongs to Kataha tribe and it is called Kataha land and not Kona land. It was formerly Sopere land and was acquired by them through a custom called Ju. It belongs to Kataha tribe and they should grant timber rights.

Appellant claim that there is no Kona land as the Respondent claim is just from Siwi. They came and live with this man Siwi but their land is at Sapelu below mount Maetabe.

On the issue of ownership, the Respondent made references to all the disputes over Kona/Zarakea land and they had successfully defended in court and particularly the North Choiseul Local Court Case No. 1/78 and CLAC No. 1/79. Respondent also made reference to civil case of 1933 to have been referred to North Choiseul Local Court Case No. 1/78.

He also made reference to the Kona tambu site and villages of Kona tribe on the land.

In order to be entitled to grant Timber, there must be some evidences to show to this court the ownership or control over the land concerned in custom.

Appellant himself has confirmed in his submission to this court that this land is subject to Ju and belongs to Kataha tribe and they be the tribe to grant timber on the land in issue.

Appellant has not established his claim and this ground also fail and dismissed.

### Ground 3 - Other Points

On this ground, the points (i), (ii) and (iii) relates to Ground 2 above and has been dealt with. For the purposes of clarity we will response to them as follows:

- (a) With regard to (i), Respondent said that Sopere was not a party to the cases as the parties to LC 1/78 and CLAC No. 1/79 was fighting over leadership and rights.

This court examined the record of the proceeding of the two cases and noted that the Parties concerned were disputing about ownership of the land. For not being a party to those cases can not be an issue in the process of this timber right hearing appeal. Hemay pursue it under the Local Court Act.

This ground or point is rejected and dismissed.

- (b) On points (ii) and (iii), the appellant claimed that the document presented by the respondent was just summon and not a decision. There was no decision of 1933 presented at the timber Right hearing.

Respondent submitted that although there was no decision made available, the Appellant acknowledged or mentioned by at the timber Right hearing. Appellant also confirmed when asked at the Timber hearing that the case took place. It was also mentioned in LC NO. 1/78 hearing as appeared in the record. At the timber right hearing the Appellant also referred to it as shown on the minute/record.

This document of 1933 and is on issue by its appearance is a notice of hearing. The LC No. 1/78 and CLAC No. 1/79 made reference to it. Also the Appellant made reference to the 1933 case.

This ground or points (ii) and (iii) is also dismissed.

- © On point (iv), it is clear from the record of proceeding and judgment that the North Choiseul Local court cases LC No. 1/78 and CLAC No. 1/79 were on the issue of ownership and not the use rights.

This appeal point is also dismissed.

The appeal point (v) relates to the rule of natural justice and in particular on the issue of bias. This issue cannot be entertained by this court as it lacks the jurisdiction. This is clearly stated in the High Court case John Sina –v- John Mark Matupiko, CLAC No. 82 of 2001. In that case Kabui J stated on Page 5 para 2, quote

“In my view this appeal is misconceived. It is misconceived in that it presumes that the Western CLAC did have jurisdiction to hear an appeal on a point of law arising from the decision of the Vella la vella local court made on 31<sup>st</sup> July, 1996. A customary Land Appeal Court is a court established to hear appeals from the decision of any local court on the question of ownership of customary land. Its membership consists of men who are knowledgeable about customary law governing the ownership of customary land. It has no power to decide legal issues such as the breach of natural justice. The correct forum that has jurisdiction to decide such issues as the breach of natural justice is the High Court under Section 84(1) of the Constitution.”

Again on page 6

“Breach of natural justice is one of the causes for judicial review. In this jurisdiction, breach of natural justice attracts a writ of certiorari under Order 61 of the High Court (Civil Procedure) Rules 1964, (the High Court rules). The notice of appeal filed by the Appellant on 28<sup>th</sup> October 1996 seeking the Western CLAC to set aside the decision of Vella la Vella Local court for breach of natural justice was wrong. The Western CLAC should have rejected that appeal on the ground that it had no jurisdiction to hear an appeal on the point of law”

As clearly stated above it is the point of law and the CLAC lack the jurisdiction to entertain or determine, therefore this ground is rejected and dismissed.

- (d) On appeal point (VI), the Appellant claimed that the decision was done at Provincial Headquarter at Taro and not at the place of hearing at Pangoe. He alleged that such amount to favoritism to the appellant.


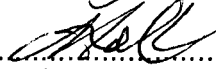
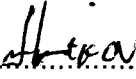

Appellant has not presented to this court any evidence to support this point of contention. Even if it did so, this court would not deal with it as also relates to point of law, which this court lacks the jurisdiction, therefore fail and dismissed.

This court finds nothing wrong with the Choisuel Provincial Executive committee process of identifying persons entitled to grant timber right on Kona/Jarakana Land and will not interfere with the said determination.

**ORDER**

- (1) Appeal is dismissed
- (2) Cost to the cause

Dated this 26<sup>th</sup> day of August 2003

- 1. Ian Maelagi V/President 
- 2. Allan Hall Member 
- 3. Joseph Liva Member 
- 4. David Laena Member 
- 5. L R Maina Clerk/Member 