

In the Western Customary Land
Appeal Court

CLAC no's 29 and 30 of 2003

In the Matter of: Timber rights Appeal on Lukuloboro Land

Between: Rence Pirukana (First Appellant)

And: Garry Burukere (Second Appellant)

Chief Philemon Pitapoqa & others (Respondents)



JUDGMENT

This is an appeal against the Choisuel Provincial Executive Committee determination on timber rights on Lukuloboro Land of the heard on 8th August 2003.

Ground of Appeals

First Appellant Rence Pirukana has raised four grounds of appeal, but all relates to each other and summarized as follows:

1. *Sisiru land is a portion within Lukuloboro Land and the ownership was determined or subject to a Local Court Decision in LC no. 2 of 1977. Respondent Chief Philemon Pitapoqa in that case confirmed the existence of Sisiru land.*
2. *Members of Lukuloboro tribe and Lauru Conference acknowledged the existence of Sisiru land.*
3. *The chiefs on 28th May 1983 acknowledged the existence of Sisiru land.*

On that basis the appellant seeks an order of the court to quash the determination of the Choisuel Provincial Executive Committee.

The Second Appellant Garry Burukere raised 5 grounds of appeal which also relates to each and summarized as follows:

1. *The rightful chief of Lukuloboro Land was late Jekelekolo and chieftaincy was passed to his daughter Sarumona and eventually to appellant's uncle Tumuri and himself,*
2. *Chief Philemon Pitapoqa cannot be chief of Lukuloboro as his grandfather Tapata was married to Pazeleke from Tiokana and was "varaoto". All other trustees are descended of Tapata;*
3. *And they do not own Lukuloboro Land.*

The second appellant claimed that Chief Philemon Pitapoqa and his trustees are not proper persons, but he is a rightfully person to grant timber rights on of Lukuloboro Land.

Appellant also seeks an order of the court to quash the determination of the Choisuel Provincial Executive Committee.

First Appellant's cases

Appellant Rence Pirukana told the court that Sisiru Clan is a clan from Lukuloboro tribe. Sisiru land is a portion within Lukuloboro Land and ownership was determined or subject to a Local Court Decision in LC no. 2 of 1977. It was determined when a dispute arose among the members of Sisiru clan over a portion of land called "Tumi Land" within Sisiru Land and members of Lukuloboro tribe were their witnesses. Among them was the Respondent Chief Philemon Pitapoqa. The ownership was for his Sisiru clan.

A copy of the LC no. 2/77 was tendered in court.

Appellant also told the court the members of Lukuloboro tribe and Lauru Conference in 1983 acknowledged the existence of Sisiru land and tendered a copy of the minute.

Appellant Rence Pirukana claimed that it is on this basis that his Sisiru Clan members should be identified or the proper persons to grant timber rights on the portion of land called Sisiru land within Lukuloboro Land.

Respondent's case to First Appellant

In reply to the grounds of appeal, the Respondent's spokesman Mr. Nicholas Biliki for Lukuloboro tribe said that the dispute was among the Sisiru clan members and his tribe was not a party to the dispute.

The Local Court Decision in LC no. 2 of 1977 dispute was on Tumi Land and not Sisiru Land. There is also no description of Sisiru land described in the court decision.

Sisiru came to existence when Padavai committed Taravalu (Sorcerer) within Lukuloboro. He was chased out and told to stay at the place called Sisiru. The place was given the name because there was this Sisiru, which was a claiming plant that climbed on ngali nut tree. That place is situated between Rorenge and Koloko streams.

With regard to the Lauru Land Conference in 1983, it is acknowledged but was a reconciliation between the Sisiru clan members.

Ownership of land and chieftaincy issues

At this stage, it is proper to point out that all the grounds of appeal raised by the two appellants relates to ownership of land and claims of chieftaincy. This court with appeals under the FRTU Act has no powers to determine such issues. However any evidence relates to ownership of land and chieftaincy will assist the court to determine, whether the Provincial Executive Committee has properly identified persons to grant timber right on the Land concerned.

Analysis of First Appellant's case

For this appeal, the starting point is Local Court Decision in LC no. 2 of 1977. This is so because, it is the best evidence put before this court about Sisiru Land and Tumi Lands. Both First Appellant and Respondent seem to confirm existence of Sisiru Land and Tumi Lands within Lukuloboro Land.

This Local Court Decision in LC no. 2 of 1977 was also presented to Choisuel Provincial Executive Committee determination on timber rights on Lukuloboro Land of the heard on 8th August 2003.

The Plaintiff and Respondent in Local Court Decision in LC no. 2 of 1977 were Cornelius Kilalua and Moses Moses Pitsopa respectively. The claim was on the ownership of Tumi Land.

Both Plaintiff and Respondent's witnesses in that case made reference in their evidence to Tumi land and Sisiru Land. There was no evidence to distinguish Tumi and Sisiru lands expect with Sisiru referred as line or lineage.

And as result the court ruled that the parties belong to the same generation or Sisiru and both Plaintiff and Respondent were the chiefs of the line and land.

From the question by the court, Appellant described the location or boundary of Tumi/Sisiru as land along Tumi stream to Kino ridge and down to vala ridge and the down to low plain to Kole River.

We have considered submissions by the parties and examined the minute of the Choisuel Provincial Executive Committee and in particular the representations by the respondent and appellant's sides at the hearing. The materials presented

before them and now copies made available to the court. We do not find major error as claimed by the First Appellant on the identification of persons who have the right to grant timber right on Lukuloboro Land except to the area described in the First Appellant Local Court Decision in LC no. 2 of 1977.

And accordingly,

Order

1. Appeals is upheld as follows:
 - (a) First Appellant to grant timber right on the land area subject to Local Court Decision in LC no. 2 of 1977;
 - (b) The area (Tumi/Sisiru land) is described or boundary as land along Tumi stream to Kino ridge and down to Vala ridge and the down to low plain to Kole River.
2. No order on cost.

Second Appellant's Case

Second Appellant Garry Burukre told the court that he attended the hearing but made no representation or objection.

Second Appellant told the court he is also from Lukuloboro tribe. Chief Jekelekolo had a daughter and the chieftaincy of Lukuloboro tribe passed to her and to his uncle Tauburi and himself.

Chief Philemon Pitapoqa cannot be chief of Lukuloboro as his grandfather Tapata was married to Pazeleke from Tiokana and was "varaoto". All other trustees are descended of Tapata;

Chief Philemon Pitapoqa and his trustees are not proper persons, but he is a rightfully person to grant timber rights on of Lukuloboro Land.


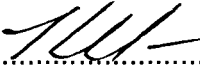



The Second Appellant has no case to bring to this court. He lack the locus standi/standing.

With respect to the appeal grounds, the issues raised by him relates to customary matters and cannot be determined by this court on appeal under the FRTU Act. And accordingly, the appeal is dismissed.

Order

1. All Appeal grounds dismissed,

2. No order to cost.

1.	David Laena	Ag President	
2.	Wilson Katovai	Member	
3.	Joseph Liva	"	
4.	Wellington Lioso	"	
5.	Maina LR	Clerk/P/Magistrate	

Dated: 3rd May 2005

*Right of Appeal to the High Court is explained

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