

In the Western Customary Land
Appeal Court

CLAC no. 7 of 2003

In the Matter of: Timber rights Appeal on Zodi Land

Between: Jeremiah Pitasopa (Appellant)

And Anthony Pitamama & Others (Respondents)

JUDGMENT

The Appellant appealed against the Choisuel Provincial Executive Committee determination of the timber right on Zodi Land.

Grounds of Appeal

Appellant Jeremiah Pitasopa submitted four points of appeal to the court. At the hearing he withdrew two grounds. The remaining grounds are summarized as follows:

1. All the maps tender before and after the hearing by applicant of timber right covers large portion of Paleka's tribal land, and
2. Paleka tribe acknowledges that Subi Clan of Batongo tribe is the rightful caretaker of Zodi and Paleka land and Chief Joseph Gamata Kere is a person who knows the boundary.

Appellant's Case

Appellant Jeremiah Pitasopa in his submission told the court he has no objection to Zodi tribe to pursue their interest to log Zodi customary land. The concern is that the map in Form II also covers the whole of his Paleka tribal land. He indicated to the court the overlap of the boundary to his Paleka tribal land in the map. This issue can be sorted amicably with the Respondent.

The Form II map of Zodi land which the Provincial Executive used to determined the persons to grant timber right covered portion of Paleka land. Lambete stream at the southern part of Zodi is the common boundary between Zoko land and Paleka land not Zodi and Paleka land as plotted on the detailed map tendered to the court by the respondent's party.

Respondent's Reply

Respondent's spokesman in his submission submitted that Paleka land boundary with Zodi land at Lambete stream and going eastward.

Paleka tribe's acknowledgement that Subi clan of Batongo tribe is the rightful caretaker of Zodi land and fourth Appellant Joseph kere knows the boundary is not true. Zodi tribe did not know nor did they know that Subi clan is caretaker of Zodi land. Zodi tribe and Subi clan of Batongo are two different tribes.

Lauru custom does not allow other tribe to look after another tribe's land.

They did not know that Chief Joseph Kere looks after Zodi land and that he has full knowledge of our tribal land boundary.

Zodi land shared common boundary with Paleka land at Lambete stream and the source is from Mount Kumbokua.

The Court

It is important to point out the matters relate or claims of ownership of land.

This court with appeals under the FRTU Act has no powers to determine such issues. However any evidence relates to ownership of land and other related issues will assist the court to determine, whether the Provincial Executive Committee has properly identified persons to grant timber right on the Land concerned.

First, it is clear from the appeal grounds that the issue is the common boundary between Zodi land and Paleka land.

The court also noted that both parties are confused with the boundary of their land because it is situated in the middle of the Lauru Island and they rarely reach or visit Zodi and Paleka lands. Appellant Pitasopa said that he visited Paleka land and Lambete stream in 2002. And the Respondent claimed that his group reached Zodi land in 1991.

Having pursued the record or minute of the Executive Committee the court noted the issue of ownership and boundary of Zodi land and Paleka land was raised at the hearing. It was raised by Stainer Pitadunga and the Appellant through questions to the Respondent's party. It is also noted the map used at the hearing was merely drawn on a paper and described the Zodi land the surrounding lands or adjoin to it.

The issue relates to common boundary that separates them. For this court to determine the boundary between Zodi land and Paleka land will result or amount to the determination of ownership of land. The legal position in regard to customary land matters are as follows:

1. A determination by the Provincial Executive as to who are the rightful persons to grant timber rights in the land which is the subject of a hearing is not a decision of ownership of the land. If a decision of ownership of the land is required, the matter has to be brought before a proper forum that is chiefs or Local court (*Gandly Simbe –v- East Choisuel Area Council & Others, Civil Appeal no.8 of 1997 and other later High Court cases*), and
2. This court has no power to decide land ownership issues where appeal has been filed against the Provincial Executive determination under the FRTU Act (*Lupa Development Ltd –v- Kongunaloso & Others CC no. 110 of 2001, Ruling of 04/07/01*).

This legal position is base on the artificial distinction of ownership of customary land and timber right created by legislation as opposed to custom as the one who owns the land owns the trees on the land unless the trees planted by someone else or other person's land.

In this matter, it is quite clear Zodi land is owns by Respondent and Paleka by Appellant's party and former is identified by Provincial Executive to grant timber right on Zodi Land. The problem or issue here relates to the exact location of the boundary or they are not certain of their common boundary and as result this appeal comes to the court.

In other word the only dispute is overlap of boundary. This appellant claim Paleka land that common boundary with Zodi land at Lambete stream and sourced from Mount Rana. While Respondent claim that the boundary is Lambete stream and Zodi land shared common boundary with Paleka land at Lambete stream and sourced from Mount Kumbokua.

When asked by the court to indicate from the map used at the hearing the location of Mount Zodi, Mount Yogolo and Mount Rana and Lambete stream Appellant Pitasopa plotted them in the map with the Lambete stream sourced from Mount Rana.

As noted earlier for this court to determine the boundary between Zodi land and Paleka land will result or amount to the determination of ownership of land.

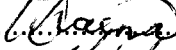
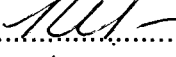
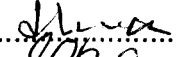
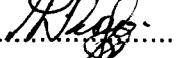

It is our view that Provincial Executive was correct to determine or identify the persons to grant timber right on Zodi land.

However, because of the uncertainty of their common boundary, the Provincial Executive should demarcate out the dispute area or portion of land until the boundary is sorted through the proper forum, the chiefs or Local court.

And accordingly the court makes as follows:

Orders

1. Appeal Ground 1, upheld
 - (a) The area that runs from Zodi hill to Sukipozo be excluded from logging activities, until the boundary is sorted out through the proper forum, the chiefs or Local court,
 - (b) Other areas within Zodi land is not affected by (a),
2. Appeal Ground 2, dismissed,
3. No order for cost.

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

Dated: 18th May 2005

*Right of Appeal to the High Court is explained

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