

IN THE WESTERN CUSTOMARY)
LAND APPEAL COURT)

CLAC No: 3 of 2006

Appellant Jurisdiction

IN THE MATTER OF: Pusingau Customary Land Appeal.

BETWEEN: Nuatali Veni Appellant

AND: Wendy Pana Respondent



JUDGMENT

This is an appeal against the decision of the Gizo/Kolombangara Local Court over Pusingau Customary Land situated on Gizo Island, Western Province. The decision of the Gizo/Kolombangara Local Court was dated 11th November 2005.

THE BRIEF BACKGROUND

The Pusingau Land dispute was first referred to Sageragi and Pailoqe Council of Chiefs by Wendy Pana. The Sageragi and Pailoqe Council of Chiefs heard the dispute on 5th of September, 2003 and awarded ownership of Pusingau Customary Land to Wendy Pana. Both parties in this appeal were party to the chiefs hearing in 2003.

Chiefs Decision

"It was therefore declared that the land where Nuatali is residing in and also presently cutting timbers in, belongs to Peter Pana family."

The Appellant in this appeal case after receiving a copy of the chief's committee's decision went to the Public Solicitor's office in Gizo and seek advice so that the matter is referred back to the chiefs for a fresh hearing. The advice she got was that the matter can not be reversed at this stage. Should she not satisfy with the chiefs decision then she should proceed to the local court. The appellant after receiving that piece of advice did not bother to refer the case to the local court.

In the year 2004, Wendy Pana again referred the dispute to Gizo/Kolombangara Local Court. The Gizo/Kolombangara Local Court on 9th November 2005, Convened the hearing of Pusingau land dispute and on their decision dated 11th November 2005, they awarded the ownership of Pusingau land to Wendy Pana.

GROUND OF APPEAL

With the determination Mrs. Nuatali Veni then filed an appeal to this Court. Her grounds of appeal summarized as follows:

1. The Gizo/Kolombangara Local Court breached the rule of natural Justice in not allowing the appellant to be heard in the determination of the ownership of Pusingau customary land on 9th November, 2005.
2. The Local Court failed to inform the Appellant in a way other than a service message thus preventing the appellant to attend the hearing. Appellant has no radio.
3. That the Declaration of landownership on 5th September, 2003 by representatives of Sageragi/Pailoqe Chiefs Council was null & void because it was (i) not made in accordance with the customary ownership of land (ii) neither made in accordance with the proper process of Chiefs hearing in that the chiefs cannot be judges and witnesses at the same time and, (iii) in breach of rules of natural Justice because the appellant was not informed about the hearing and therefore, for the appeal points given under (i) to (iii) herein, the Local Court wrongly relied on the chiefs Declaration.
4. The Appellant deny that the land belongs to Peter Pana, now inherited by Wendy Pana, the defendant.
5. The Appellant claims that the portion of land at Pusingau claimed by the Defendant in fact belongs to her, being inherited from her mother late Mita Lume.
6. The appellant claims ownership of Pusingua through Mita Lume, from late Kere (her father), the main claimant in Judge Philips Commission of enquiry in 1923 in claim 55. This allocation was confirmed to late Mita Lume by her brother the late Milton Talasasa, in late 1949.
7. The Appellant claims that the late Mita lume lived and worked in the disputed land for more than 20 years prior to her death in 1999 and that neither the Defendant nor her father, Peter Pana raised any claims.

8. The Appellant claims descent from Kere, the owner of Pusingau land, whilst the Defendant claims descent from Panasikae, who does not own Pusingau land.

ISSUES

Before this court consider the Appellants grounds of appeal it is important to first consider the requirement of Section 12 of the local court Act.

Section 12 (1) (a) (b) (c) and subsection (2) and (3) of the Local Court Act provides;

"12 (1) – Notwithstanding anything in this Act or in any other law, no local court shall have jurisdiction to hear and determine any customary land dispute unless it is satisfied that-

(a) the parties to the dispute had referred the dispute to the chiefs;

(b) all traditional means of solving the dispute have been exhausted; and

(c) no decision wholly acceptable to both parties has been made by the chiefs in connection with the dispute".

(2) It shall be sufficient evidence that the requirements of paragraphs (a) and (c) of subsection (1) have been fulfilled if the party referring the dispute to the local court produces to the local court a certificate, as prescribed in Form 1 of the Schedule, containing the required particulars and signed by two or more of the chiefs to whom the dispute had been referred.

(3) In addition to producing a certificate pursuant to subsection (2), the party referring the dispute to the local court shall lodge with the local court a written statement setting out –

(a) the extent to which the decision made by the chiefs is not acceptable; and

(b) the reasons for not accepting the decision.

Section 12 (3) (a) and (b) of Local Court Act requires the aggrieved party to refer the dispute to the local court thus setting out why the chiefs decision is not acceptable; and reasons for not accepting the decision.

This section therefore does not qualify the winning party to refer the dispute to the local court. It is the aggrieved party to refer the dispute to the local court. In this case the Appellant is the aggrieved party, not the respondent.

The Court

It is clear from the evidence before this court that the Appellant having aggrieved by the chiefs decision failed to refer the dispute to the local court. To fulfil the requirement of section 12 (3) of the Local Court Act, it will be proper for the Appellant in this case to refer the dispute to the local court and not the Respondent as it was. Unless the dispute is referred to the local court, the chiefs decision still stand. This issue is made clear by the recent Court of Appeal, in the case of Havea Majoria + others –v- Oliver Bikomoro Jino + others Appeal case no. 36 of 2006 at paragraph 43 & 44

In this case the dispute was referred to the local court, however, this referral was not in accordance with section 12 (3) of the local court Act, therefore the local court was erred in accepting and hearing the matter referred to them by the Respondent.

It may be that the Appellant can refer the matter to the local court if she maintains that the decision is unacceptable. Until the matter is properly filed and determined by the local court, however, the decision of the chiefs must stand. The appellant therefore has no case to argue in this court.

The Western Customary Land Appeal Court upon hearing evidences before it and make its determination

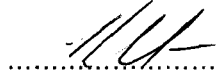


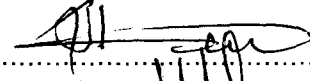

DECISION

1. The Decision of Gizo/Kolombangara local court dated 11th November 2005 is accordingly set aside.
2. The decision of the Sageragi/Pailoqe council of chiefs stands.

3. The Appellant has no standing in this appeal.
4. Parties meet their own cost.

Dated this 18th day of December 2007.

Signed:

Wilson Katovai	Ag President	
David Laena	Member	
Wellington Lioso	"	
Jeremaiah Kema	"	
Davis D. Vurusu	Clerk/Member	

R.O.A.E.

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