

**IN THE WESTERN CUSTOMARY]
LAND APPEAL COURT]**

WCLAC No, 3 and 29 of 2013.

IN THE MAATER OF: AN APPEAL AGAINST GHORENA LOCAL COURT DECISION

AND:

IN THE MATTER OF: CHIEF OF RERESARE TRIBE.

BETWEEN: Jonathan Dive - 1st Appellant
AND: Jack Lagobe - 2nd Appellants
Mrs Dalcie Tozaka
Mr. Milner Tozaka



Judgment

This is an appeal against the decision of Ghorena Local Court on the issue of Chieftaincy over Reresare Tribe.

Background of the case:

The second Appellants Mr. Jack Lagobe, Mrs. Dalcie Tozaka and Mr. Milner Tozaka filed their claim to the High Court to challenge the validity of the first appellant as the true chief of Reresare tribe.

The High Court heard the application, made an order for the Ghorena Local Court to hear and determine the validity issues in accordance with Vella la vella custom by answering the following question;

- *Was Jack Lagobe validly enthroned as chief of Reresare Tribe?*
- *Was the enthronement ceremony of Jonathan Dive on the 27th May 2009 in accordance with Vella custom and did it make him chief of Reresare Tribe?*
- *Did the ceremony terminate the Chieftaincy of Jack Lagobe?*
- *Who is the true chief of Reresare Tribe at this time 22 November 2011?*

The Ghorena Local Court based on the order of the High Court convened and hears this case. Their answer to the above question is as stated below and we quote;

-“The finding of the court to answer question one (1) Is Jack Lagobe was validly appointed by the members of the Reresare Tribe, while in the absence of Jonathan Dive

The custom practice done to enthrone Chief Jack Lagobe was according with Vella la vella custom and culture. The crowning ceremony of Jack Lagobe’s chieftaincy, original tribes from Vella lavella were present to witness his crowning, thus confirms that Jack Lagobe was validly appointed”

-“The finding of the court on question two (2) is that, the enthronement ceremony of Jonathan Dive on 27th of May 2009 was not purported. It was done in accordance with the Vella lavella custom principles, in terms of the evidence of transferring custom money which empowers the office of former chief, the late Chief Silas Lezutuni. The custom money in Vella language named as Patapata was from late Chief Silas Lezutuni.

Jonathan Dive is the authentic and legitimate successor of late Chief Silas Lezutuni of Reresare Tribe, as the custom proof beyond reasonable doubts known as Patapata which the seat of the chief, “Lekasa” ko papupapu was shown in front of court.

This traditional customary right of Chief Jonathan Dive was given to him at the time of the crowning ceremony. Therefore, was not purported.”

-“The courts finding on question (3) is – the ceremony of Jonathan Dive on 27th May 2009 did not terminate the chieftaincy of Jack Lagobe, because Jack Lagobe’s enthronement has gone through the poess in custom and culture practices in Vella lavella. Jack Lagobe was the chief of Reresare Tribe for more than 10years. In assurance to his brother Jack Lagone, Jonathan Dive wrote a letter to him to look after the people of Reresare tribe, resolving problems that might arise amongst the people of Reresare Tribe.

Jack Lagobe was enthroned by nine (9) original tribes from Vella lavella with (9) custom money called “Sota” as a witness of the authenticity and legitimate of his enthronement crowning. Therefore it did not terminate the chieftaincy of Jack Lagobe.”

-“In answering question (4) the court find that according to the custom and culture of Vella lavella in appointing a chief, Late Silas Lezutuni had already appoint and announced his customary WILL to whom to be his successor when Jonathan Dive was not yet born. Late Chief Silas Lezutuni announced that his successor will be his sister, Naomi Sisiagoro’s first born son. This aspect of custom and culture was accepted in custom and was consistent in Vella lavella customary laws and culture. Jonathan Dive’s enthronement on 27th May 2009 was valid according to Vella lavella custom. Therefore

the court finds that Jonathan Dive was the true Chief of Reresare Tribe and will reign until his next successor will be made known. “

The Ghorena Local Court after answering the four questions ordered by the High Court, Made the following Orders;

1. That chief Jonathan Dive must recognized Chief Jack Lagobe as he is still alive and together to maintain relationship until Jack Lagobe is unable to perform the duties.
2. That Jonathan Dive to bring the Reresare Tribal members together as one under one common chief as decreed by Late Sila Lezutuni.
3. That chief Jonathan Dive and chief Jack Lagobe to work hand in hand in development and using the resource within the Reresare Tribal land.
4. Both parties to settle the matter in custom and to make peace and live in harmony with each other within the Reresare Trib.
5. Peace and unity among the people of Reresare Tribe must prevail and reflect the oneness as brothers and sisters and to recognize each other as one people, one family and one tribe starting from to date.

Being aggrieved from that finding and decision, both parties filed a cross appeal to the Western Customary Land Appeal Court.

The First Appellants Appeal:

The First Appellant filed four grounds of appeal and seeks the following relief;

1. An order setting aside the Determination by the Ghorena Local Court (GLC) in part.
2. Consequent upon order 1 hereof, that the following orders be made:-
 - [a] that Jack Lagobe was not validly appointed and enthroned as chief of the Reresare tribe;
 - [b] that the enthronement ceremony of Jonathan Dive on 27 may 2009 was done in accordance with Vella la vella custom and did make him the chief of Reresare Tribe.
 - [c] Consequent upon 2 [a] & [b] hereof, Jonathan Dive I and was the true chief of Reresare Tribe as at 22 November 2011.
 - [d] Consequent upo 2 [b] & [c] hereof, the enthronement ceremony that took place on 27 May 2009 terminated the chieftaincy of Jack Lagobe.
3. An order that the Respondents to pay the costs of and incidental to this appeal.
4. Any other or further orders the court seems fit to make in the circumstances.

The grounds on which the Appellants rely and upon which the Determination of the GLC should be quashed and set aside are;

1. The GLC misguidedly acted in custom when it held that Jack Lagobe was validly appointed by members of the Reresare Tribe in the face of its finding that Mr. Jack Lagobe's appointment was conducted and endorsed by the nine (9) original tribes from Vella la vella and not by the members of the Reresare Tribe;
2. The GLC's finding that Jack Lagobe was validly appointed by members of the Reresare Tribe as a matter of custom was contrary to and erroneous in terms of the finding that Mr. Jonathan Dive's enthronement on 27 May 2009 was valid according to Vella la vella custom and that Mr. Dive was the true chief of Reresare Tribe;
3. The GLC's finding that Mr. Jonathan Dive's enthronement as the true chief of Reresare Tribe and the rightful successor of Late chief Silas Lezutuni did not terminate the chieftaincy of Mr. Jack Lagobe was erroneous and contradicting in custom;
4. The GLC failed to expressly provide an answer to the question "who was the true chief of Reresare Tribe at the time, 22 November 2011" as required by the directions order of the Court of Appeal and High Court of Solomon Islands; and
5. The GLC acted beyond its mandate and jurisdiction when it went further and made orders as appeared in its ruling dated 12 April 2013.

The Second Appellant's Appeal:

The Second Appellants filed six grounds of appeal and sought the following orders:-

1. The appeal be allowed.
2. The answers to Question 2 and 4 be set aside.
3. It be declared that Chief Jack Lagobe is the true chief of the Reresare Tribe and that the purported enthronement of the First Appellant as chief of Reresare tribe is null and void and of no force or effect.
4. That the Second Appellant's costs of the appeal and costs below be paid by the First Appellant.

The Second Appellants rely upon their six grounds of appeal and submit that;

1. The GLC erred in current customary usage, tradition and culture of Vella la vella in holding that the enthronement of Jonathan Dive on 27 May, 2009 was in accordance with custom principles on the following:-
 - (a) The purported transfer of custom money, the Patapata, from a former chief Silas Lezutuni, who had died before the alleged ceremony is wrong in customary usages of Vella la vella and also factually wrong in that the Patapata was at all material time

and still is deemed to be in the custody and possession of the chief of Reresare tribe, chief Jack Lagobe, who succeeded the late chief Silas Lezutuni;

- (b) The real successor of chief Silas Lezutni is Chief Jack Lagobe as confirmed in the judgment of Vella la vella Local Court on 1st July 1994 and the Judgment of the Western Customary Land Appeal Court in Land appeal case No. 2 of 1994 delivered on 2nd June 1996 and confirmed in numerous subsequent cases including in the High Court and the Court of Appeal.
- (c) The seat of the chief of Reresare tribe, the “Lekasa” ko papupapu, vested with chief Jack Lagobe at all material time and continues to date.
- (d) The alleged “Will” by the late chief Silas Lezutuni was determined upon the enthronement of chief Jack Lagobe as his successor and it ceased to have effect in customary usages of Vella la vella;
- (e) The alleged “Will” was a bare promise by a deceased person which cannot be verified and enforced or administered under customary usages of Vella la vella and especially where chief Jack Lagobe had been enthroned as chief of Reresare tribe and served the members of the tribe and continue to do so to date;
- (f) That Naomi Sisagoro was not the sister of late Chief Silas Lezutuni in accordance with the true genealogy of the Reresare Tribe;
- (g) That the alleged announcement by the late chief Silas Lezutuni that Naomi Sisiagoro’s first born son would succeed him as chief of Reresare was foregone when chief Jack Lagobe was enthroned according to Vella la vella current customary usages as chief of Reresare tribe and therefore ceased to have any effect according to the customary usages of Vella la vella, and
- (h) Any successor named by Silas Lezutuni was in any event limited to succession in respect of his family or In and not in respect of chieftaincy of the Reresare tribe, as confirmed by LAC No. 2 of 1994 and numerous other cases;
- (i) The courts finding that Jonathan Dive was a true chief of Reresare tribe in contrary to current usages and principles and also against the weight of the evidence.

2. That in affirming the validity of chief Jack Lagobe's enthronement as chief of Reresare tribe (Question by order of the High Court made on 23 August 2012) and that his chieftaincy was not determined by the enthronement of Jonathan Dive (Question 2) but still held that the ceremony on the enthronement of Jonathan Dive on 27 May 2009 as valid (Question 3) and Jonathan Dive was the true chief of Reresare tribe (Question 4) is clearly wrong under the customary usages as it:-
 - (a) Has inconsistent findings (the answers to questions 2 and 4 being wholly inconsistent with the answers to question 1 and 3);
 - (b) Contradicts the intention of the referral questions in holding that there are two chiefs of the Reresare tribe;
 - (c) Contravenes current customary usages and tradition of Vella la vella that a tribe has only one chief who has custody over land and resources of the tribe, and
 - (d) That the said findings of the Court in respect of Question 2 and 4 are grossly inconsistent and unsafe to rely on and should be set aside.
3. Further, that the Court's finding in referral Question 2 is wrong under current customary usages and tradition of Vella la vella due to the following:-
 - (a) That the Reresare tribe has its own practice of appointing its chiefs which require the acceptance of the chief of the tribe, Council of elders and members of the tribe;
 - (b) That the appointment of Jonathan Dive and subsequent enthronement as chief of Reresare tribe was not accepted by the chief of Reresare tribe, chief Jack Lagobe, Council of elders and members of the tribe;
 - (c) It is a prima facie evidence that the chief of Reresare tribe, Chief Jack Lagobe, Council of elders and members of the Reresare tribe did not attend the purported enthronement ceremony of Jonathan Dive on 27 May, 2009 which signified their non-acceptance of the enthronement of Jonathan Dive;
 - (d) The only members of the tribe who attended the ceremony were descendants of the late Frank Lezutuni who were bound by and privy to the judgments of the Vella la vella Local Court of 1st July 1994 and the Western Customary Land Appeal Court of 2nd June 1996 and therefore they have no authority to represent the tribe;

- (e) Jonathan Dive's enthronement was initiated by Chiefs of different tribes of Vella la vella, and
 - (f) Therefore, the enthronement of Jonathan Dive as chief of Reresare tribe was not in accordance with the current customary usages and tradition of both the Reresare tribe and Vella la vella and it is null and void.
4. The Court failed to take into consideration the admission of Jonathan Dive by letter dated 6th January 1994 to chief Jack Lagobe that chief Jack Lagobe is chief of Reresare tribe and he submitted to the authority of chief Jack Lagobe and in the material time chief Jack Lagobe has not consent or approval that Jonathan Dive be enthroned as chief of Reresare tribe.
 5. Further the question of the chieftaincy of Reresare tribe has been finally determined as between chief Jack Lagobe and the descendant of Silas Lezutuni in LAC No. 2 of 1994 as confirmed by the High Court in Civil C No. 142 of 2006 (judgment delivered on 24th October 2008) and the Court of Appeal in Civil Appeal Case No. 30 of 2008 (judgment delivered on 26th March 2009). This issue is res judicata and the customary courts are bound by the decisions, as is Jonathan Dive.
 6. That the finding of the Court in its determination of Referral Questions 2 and 4 are against the weight of evidence and should be set aside.

The Court:

In determining this appeal, we examined and consider both parties appeal submissions, the 1994 Vella la Vella Local Court case, the Ghorena Local Court record of proceedings, Minutes of South Vella la vella house of chief's public hearing produced before Ghorena Local Court and the High Court Order.

Upon considering all evidences before us we find that:-

1. Chief making appointment or "WILL" for his successor is according to custom. Tribe can only make appointment if their chief doesn't appoint anyone before he dies. Therefore the WILL or appointment of Jonathan Dive by Late Chief Silas Lezutuni of Reresare tribe is in accordance with Vella la Vella custom. The evidence recorded by Ghorena Local Court revealed that Mr. Jack Lagobe is a caretaker chief, awaiting Mr. Jonathan Dive to be enthroned.

2. We believe that each tribe has their own custom money, Patapata and Jiku that is used for the enthronement of their chief. This custom money, Patapata and Jiku is passed down by the chief to his successor. According to Vella La Vella custom, Patapata is the seat or throne of a legitimate reigning chief and JIKU is the seal authenticating legitimacy, authority, inheritance and rights thereto. According to the evidence it is that the Reresare tribes Patapata and Jiku in the custody of Late chief Silas Lezutuni of Reresare tribe was passed down to Jonathan Dive.

MUI is tribal custom money that was buried in the land. Only the chief and one person selected by the chief to know where that Mui was hidden. According to evidence before Vella la vella Local court in 1994, the Ghorena Local court and the Western Customary Land Appeal Court, is that Mr. Jack Lagobe does not know the exact place where the Mui was hidden. Evidence revealed that Jonathan Dive and his cousin brother Mr. John Mekeroni knew where the Mui was.

The Second appellant's witness Mr. Casper Dorao in his evidence before GLC revealed that the custom money used to enthrone Mr. Jack Lagobe was given by chiefs who attended the ceremony and not Reresare tribes Patapata and Jiku. The Ghorena Local Court was erred when it held that Mr. Jack Lagobe's enthronement was in accordance with Vella La Vella custom.

3. The 1994 Vella La Vella Local Court case is between Mr. Frank Lezutuni –v- Mr. Jack Lagobe & Others and the main issue is Kilebebala Plantation. Mr. Jonathan Dive is not a party to that case.
The issue of res judicata does not apply in this case.
4. It is not disputed that Mr. Jonathan Dive came from a matrilineal descendant in Reresare tribe.
5. The Ghorena Local court erred when it went further and made orders as appeared in its judgment dated 12 April, 2013.
6. In light of we have discussed earlier in this judgment we conclude that the Second appellants (Mr. Jack Lagobe & others) appeal has no weight therefore must be dismissed. The First Appellants (Mr. Jonathan Dive) appeal is allowed.

DECISION

1. The decision of Ghorena Local court dated 12th April 2013 is set aside.
2. Mr. Jack Lagobes appointment and enthronement as chief of Reresare tribe was not valid in accordance with Vella lavella custom, culture and practices.
3. The purported enthronement ceremony of Mr. Jonathan Dive on the 27th May 2009 was in accordance with Vella custom and makes him chief of Reresare tribe.
4. The ceremony terminates the chieftaincy of Mr. Jack Lagobe.
5. Mr. Jonathan Dive is the true chief of Reresare tribe, commencing 22nd November 2011.
6. Parties to meet their own cost.

Dated this 24th day of October 2016.

Signed by: Allan Hall President
Eric K Ghemu Member
Silverio Maike Member
Willington Lioso Member
Tane Ta'ake Member
Davis D. Vurusu Secretary/Member



Right of Appeal Explained.