IN THE SOLOMON ISLANDS COURT OF APPEAL

NATURE OF JURISDICTION:	Appeal from Judgment of the High Court of Solomon Islands (Chetwynd J)
COURT FILE NUMBER:	Civil Appeal Case No. 6/2012
DATE OF HEARING:	23 April 2013
DATE OF JUDGMENT:	26 July 2013
THE COURT:	Justice Edwin Goldsbrough P., Sir Albert Palmer CJ, Sir Gordon Ward JA.
PARTIES:	Samlinsan(1st Appellant) And Rarahu Land Holding Group (2nd Appellants) V. Ta'amora (representing the WaiiRespondents) Tribe)(
Advocates: Appellants: Respondent:	 M. Pitakaka P. Afeau
EX TEMPORE/RESERVED:	**RESERVED**
ALLOWED/DISMISSED	~~**DISMISSED**~~ ALLOWED
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Palmer CJ. (Dissenting Judgment):

1. I have had the opportunity to read the judgment written by Sir Gordon Ward JA, Goldsbrough P., concurring, and comment as follows.

2. On or about 22 July 2009 the Po'oikera House of Chiefs delivered its decision in favour of the Respondent as to the boundary of Waii customary land, which abuts the Sui customary land claimed by the Rarahu Landholding Group. It appears there had been an earlier decision by another panel of chiefs but was not accepted and the parties agreed to go before another group of chiefs, the Po'oikera House of Chiefs. That is consistent with the tenor of the Local Courts Act that *all traditional means of resolving the dispute have been exhausted*[1].

3. As is to be expected, when the Po'oikera House of Chiefs convened, objections were raised by the representative, SilvesterAkoai ("Akoai") of the Rarahu Holding Group, to the composition of the Chief's Panel and that his witnesses were not in attendance. The Chief's Panel considered both objections, made its decision and ruledthat the proceedings were to continue.Akoai decided not to participate in the hearing and left. The Chief's hearing ruled and found in favour of the Respondent as to the boundary between the two claimants.Akoai naturally did not accept that decision and decided to refer the matter to the Local Court to hear the dispute.

4. By a letter dated 5th May 2011[2], the Local Court Clerk (Malaita) ("the Clerk") advised Mr.CyprianoTa'amora("Ta'amora") of the Respondents as follows:

   - that an LC Civil 3 "Unaccepted Settlement" Form by the Po'okera House of Chieves of West Are Are with a covering letter by one of the Chief, Tobias Maimarosia dated 19th August 2009 had been received; and

   - a letter[3] addressed to Ta'amora and copied to Akoai written by the Local Court Officer (Malaita) dated 25th August 2009 had been sent.

5. The Clerk also went on to point out that the unaccepted settlement form had not been registered for hearing by the Local Court and explained what would need to be done to satisfy the requirements of the Local Court Act. That letter was copied, inter alia to Akoai.

6. By letter dated 10th May 2011, the Clerk informed Ta'amora and copied to Akoai, that the boundary dispute between Wai and Sui (Rarahu) lands had been registered at the Local Court for hearing. A copy[4] of the GTR receipt for payment of fees was also attached.

7. The learned Judge in the Court below held that the letter of 10th May 2011 was insufficient evidence that the matter had been referred to the Local Court.

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[1] Section 12(1)(b) Local Courts Act

[2] See Document no. 149 in the Appeal Book.

[3] See Document no. 148 in the Appeal Book

[4] See Document no. 152 in the Appeal Book.

"The Defendants say they have "appealed" that decision to the Local Court. The only evidence is a letter from the Local Court Clerk in Malaita. That is insufficient evidence."

8. This is where I must differ from his Lordship's finding in the Court below and also from the majority decision in this case. It is for the Clerk to rule whether a matter has been referred to the Local Court or not. It is not for the High Court to determine that question. It was also not in issue whether the matter had been referred to the Local Court or not. Further, this is a matter which can be rectified at that level if it is held that the matter had not been properly referred as there is no bar or impediment to having the matter corrected or attended to. It could be easily rectified as an administrative or technical error and the referral validated.

9. The Clerk in his earlier letter of 5th May 2011 had already identified an unaccepted settlement form purporting to have been filed with the Local Court but not accepted as he also explained in his letter that the matters set out in the Act had not been fulfilled.

10. Section 12 of the Local Courts Act sets out the limitations on the Local Courts' jurisdiction as follows:

"12. (1) Notwithstanding anything contained 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."

11. .Subsection 12(1) sets out the three mandatory requirements which had to be fulfilled before the Local Court's jurisdiction can be invoked, 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.

12. The answer to the three questions posed above in this case in my view had to be answered in the affirmative. The dispute had been referred to the Chiefs and dealt with by them satisfying paragraph 12(1)(a) of the Local Court Act.In terms of paragraph 12(1)(b), it was also an accepted fact that all traditional means of solving the dispute had been exhausted. The next step was to go to the Local Court. And in regards to paragraph 12(1)(c), it is pertinent to note that the "unaccepted settlement form" earlier completed and lodged by the Po'oikera House of Chiefs to the Local Court, while not accepted as a referral, was consistent with and reflected the view there had been no accepted settlement. I think that was an obvious fact from the start and should have been taken cognisance of by the Court below.

13. The other matters set out in subsection 12(2) and (3) are evidentiary matters only which set out the basic information required about the dispute and the extent and reasons for not accepting the decision. I do not think it is too difficult to work out the extent on which the Chief's decision was not acceptable and the reasons for it. Akoai refused to attend the Chief's hearing when his objections were declined and so the whole extent of the Chief's decision would have been objected to by him.

14. In any event the Local Court's hearing would have included a complete re-hearing of the dispute with each party calling their witnesses and any other witnesses they may wish to add.

15. The critical piece of evidence of a referral, which the lower Court refused to accept as adequate, would in my view have come from the Clerk in the form of a letter confirming that the matter had been referred and fees for the hearing paid. This is where I differ in this case. I do not accept that the letter of referral was insufficient. It is prima facie evidence of a valid referral and the learned Judge ought to have stayed proceedings and allowed the dispute on boundary to be determined in the appropriate forum.

16. I do not think it isdenied that the dispute in custom on the boundary between the competing land owners remains a live issue at this point of time. While Ta'amora holds a decision by the Chiefs in his favour, that is not unusual for almost all chief's hearing, about 99% of disputes have ended up being re-heard by the Local Court. As well noting there is no time limit as to when a matter can be referred, it is no bar to the registration of the referral even after a delay of two years. It should also be noted that in a letter dated 25th August 2009[5], the Local Court Officer (Malaita), correctly pointed out to Ta'amora that the referral to the Local Court where there is an "unaccepted settlement", can equally be done by either party. It is an accepted fact that the decision from the outset was not going to be accepted and so Ta'amora could equally have expedited the process by filing the referral as an unaccepted settlement with the Local Court.

17. Accordingly I would have ruled that the hearing in the High Court be stayed and direct that the matter before the Local Court be expedited. The appeal therefore should be allowed and the orders of the High Court quashed.

Palmer CJ.

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[5] Document no. 148 in the Appeal Book