

In the Western Customary Land Appeal Court

Land Appellant Jurisdiction

CLAC no: 9 of 2001

In the Matter of: Zabana Land

Between: Chief Monty Jale) Appellant

And John Tiketike) Defendant



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JUDGMENT
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This is an appeal against the decision of the Vella Lavella Local Court on ^{Zabana} Sauro Land. The decision was delivered on 4th July 2001.

The Grounds of Appeal read as follows:

1. The proceedings of the Vella Lavella Local court was held contrary to the rules of natural justice in that the President did not preclude himself from sitting as a Justice of the Court and that the site visit which was incomplete,
2. The court erred in law in it's determination by giving undue weight to the evidence of the Plaintiff party and omitting to give due consideration to the evidence of the Defendant party,
3. The Court erred in law and in custom in deciding that the land boundary given by Pezoporo tribe to Zabana tribe commences from Modi Modi River up to Vaevoe and do own to Sisirokana River,
4. The Court erred in deciding that the Zabana tribe has the right to use and occupy the land area referred in paragraph 3 herein,
5. The Court erred in deciding that the customary compensation payment made by chief of Pezoporo tribe amount to purchase of the customary land boundary referred to in paragraph 3 herein by the Zabana tribe,

6. The court erred in its finding that in accordance with Vella Lavella Custom 2 juku namely Boresisa and Boukokapikapisia are customary payment of land made by the Pezoporo tribe to the Zabana tribe,
7. The court erred in its decision that 5 custom money was paid in respect of adultery committed by some Matupezoporo people with their tribe,
8. The court was wrong in its finding that the defendant did not dispute the fact that chief Teka settled Matupezoporo problem,
9. The court erred in custom and law in finding that Tedasi mangrove point was not fitting to be given to Zabana tribe in payment of for settling the Matupezoporo problem,
10. The court erred in considering the plaintiffs evidence in respect of Modi Modi registered land and also erred in finding that the defendant party agreed with the story that members of the Pezoporo tribe said nothing at the time the land was sold'
11. The court erred in law in having regard to Winston Vouku's vision of evidence under paragraph 9 of the judgment after having ruled on vouku's evidence out of topic,
12. The court erred in its belief that juku is part of Vella Lavella customary money for the purchased of land,
13. The court erred in law in omitting to record and refer to evidence adduced from its land site in arriving at its decision.

The appeal grounds are numerous but seem to raise the same issue on dissatisfaction to the decision of the local court.

Ground 1

This ground raise two matters which the appellant claimed to breach of natural justice of fair hearing.

On the matter relates to the President of Vella Lavella Local Court presided in CLAC/W in 1985 over a timber right case on the same land. The local court record shows that when this matter was heard on 19th June 2001 there was no objection to the members.

From the appellant submission it is clear that it was a timber right matter which the President sat in the CLAC. Appellant did not produce any evidence to support

this appeal ground except to say that a bystander observing the hearing would say that the President is not impartial.

It is also important to note that with such appeal under the timber right the CLAC lack jurisdiction to determine issues on landownership.

On the matter of absence of a member to visit the land site the submission did not state if a member of the local court who presided at the hearing did not attend the site visit, except a general statement of what the Appellant think if a member is absent.

Such site visit is not always required but depends on the court or just to see whatever is not clear to the court. But if a member was not present, a quorum of two was present.

This issue also relates to law which this court lacks the jurisdiction.

This ground lack merit and is dismissed.

Grounds 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13

What the appellant seek from this court seems to be suggested in Appeal ground 2.

The issues which the Appellant seeks to raise in respect to appeal grounds 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 appears to be that the Local court had committed an errors in accepting the Respondent or evidential matters as complained and set out in the concern appeal grounds.

In other word the appeal seeks to suggest as it seems that local court had committed errors of law when it did not accept the evidence of Appellant.

With respect however, the error if any, was not one of law, but one on customary evidence considered by the local court. And the question is whether the local court erred in accepting and the Respondents' evidence and omitting or disregards the Appellant evidence?

In Ground 2, first, the court has to examine the record of the court and in the judgment of the local court page 1 para. 2 and 3 states:

"Both parties have given evidences in court regarding the ownership of the said land.

The Vella Lavella Local Court after hearing both parties evidences in court and on the site visits makes the following:"

It continues with listing of the findings or custom facts considered by the court.

And again at page 2 states:

"Having considered the above reasons we conclude and make our decision as stated below"

The wording in the record shows that the local court had considered all the evidence before it. It is after the consideration as stated in the judgment that it made its decision.

This ground of appeal is dismissed.

In ground 3, the appellant submission did not make reference to boundary as stated in the appeal ground; all what is mentioned are matters which seem to relate to ownership.

This ground of appeal is dismissed.

In ground 4 and 5, the appellant did not make any submission on this issue. What appears against them is the submission for Ground 9.

This ground accordingly is dismissed.

In ground 6 and 7, the Appellant questioned the basis of the local courts decision for the 2 jiku namely Boresisa and Boukokapikapisia were customary payment of land and 5 custom money was paid in respect of adultery committed by some Matupezoporo people.

From the record, the local court did not ruled as suggested by the Appellant in his grounds of appeal. However it only expressed views and at its numbered paragraph 10 and 11 state that it believed that 2 jiku, 5 custom money 1 pig is not equivalent to a block of land claimed by the Respondent, even Kulu and adultery.

What is clear in the evidence and not rebutted by Appellant in his submissions in the local court and even in this appeal before us, is that the 2 jiku namely Boresisa and Boukokapikapisia, 5 custom money, 1 pig and feast was paid for reconciliation in respect of adultery committed by some Matupezoporo people with their own tribe.

And the land in question was in returned for the good deed their chief named Teka in the settling of adultery committed by some Matupezoporo people.

There is no evidence to show that 2 jiku was for the purchase of the land. This land in issue was given to Zabana tribe by way of good deed as stated above.

This ground of appeal is dismissed.

In ground 8, the issue is that the defendant did not dispute the fact that chief Teka settled Matupezoporo problem.

Appellant on this issue submitted that he had disputed this by way of question to the Respondent at the local court. There may be questioned raised by him on the reign of chief Teka, but the question did not challenged settlement of Matupezoporo problem.

Interestingly, the local court record does indicate that such question made by the Appellant in his submission was put to the Respondent at the local court. Worse so the record shows that at the end of the Respondent's submission at the local court, Appellant did not cross-examined or questioned him.

This ground is dismissed.

In ground 9, there is no dispute on the Tedasi Mangrove point as confirmed by appellant in his submission.

This ground of appeal is dismissed.

This ground 10 refers to Modi Modi registered land and the finding that the defendant party agreed with the story that members of the Pezoporo tribe said nothing at the time the land was sold.

There is a controversy in the appellant submission to this ground. This is exactly the same submission made by the Appellant in his case against John Sina in CLAC no. 10/2001. It does not address the issue raised in this appeal ground.

However, the local court is required at all means to consider any evidence that come before it.

This ground of is dismissed.

For this ground 11, what appeared in the judgment is from the evidence adduced to court. Again the local court required at all means to consider any evidence that come before it.

This ground is dismissed.

In ground 12, it questioned the belief of local court that jiku is part of Vella Lavella customary money for the purchased of land.

For this issue, the local court was commenting on the equivalency of 2 jiku, 5 custom money, 1 pig as claimed by the Respondent. It did not ruled or determined that jiku is part of Vella Lavella custom money for the purchased of land.

After all the court was also aware that 2 jiku namely Boresisa and Boukokapikapisia, 5 custom money, 1 pig and feast was paid for reconciliation in respect of adultery committed by some Matupezoporo people with the own tribe.

This ground of Appeal is dismissed.

And in ground 13, the Appellant concerns on the omitting in the record of evidence at the site visit. The appellant in his submission raises general comment on the importance of such record. But he fail submit to the court on what actual evidence or fact that was omitted.

The court record in fact has some note relating to the site visit. Such by itself is a record.

This ground of Appeal is dismissed.

ORDER

1. All grounds of appeal is dismissed
2. The decision of the Local court is upheld
3. No order of cost

Dated this.....*16th*..... Day of *January*.....2006

Signed:	Wilson Katovai	-	Acting President	<i>[Signature]</i>
	Willington Lioso	-	Member	<i>[Signature]</i>
	Joseph Liva	-	"	<i>[Signature]</i>
	Naingimea Beiaruru	-	"	<i>[Signature]</i>
	Maina LR	-	Clerk/Member	<i>[Signature]</i>

Right of Appeal Explained

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