

**IN THE ISABEL CUSTOMARY LAND APPEAL COURT**

**LAND APPEAL CASE NO. 20 OF 2007**

**CIVIL JURISDICTION**

**BETWEEN: Nathaniel TUGUMANA (Appellant)**

**AND: Andrew GEDI (Respondent)**

---

**JUDGMENT**

---

This is an appeal against the decision of the Isabel Local Court in Land Case No. 2 of 2003 made on 28<sup>th</sup> July 2007.

The appellant's grounds of appeal are contained in the Notice of Appeal filed with the Court on 18/10/2007.

With regard to appeal ground Number One we agree with Submission by the respondent that there is nothing in the record of the Local Court to show that the appellant has asked the Local Court to call one of the chiefs who was involved in the chiefs' hearing to give evidence.

Secondly, we agree with the Submission by the respondent that the provisions of section 13 of the Local Court Act [Cap.19], regarding the powers of the Local Court when hearing a dispute are discretionary. Specific to this issue in this appeal, point, we conclude, that the Local Court in exercising its discretion not to call any of the chiefs who took part in making the decision to give evidence before it, committed no error of law. There is no evidence to support this point. We accordingly dismiss this ground of appeal.

Appeal Point No. 2:

In custom, usually natural land features such as mountains, rivers, ridges are used to identify and mark out land boundaries.

According to the survey made by the chiefs during the chiefs hearing of this dispute between the appellant and the respondent, what came out of the survey is that, according to the chiefs' survey, which was referred to in the chiefs' decision of the highlands and central house of chiefs, Hograno District, it was clear that of the two parties – the chief held that the appellant party were very familiar with tambu sites and that both parties claimed almost the same sites. The respondent party were slow in identifying their tambu sites and that they misled the chiefs during the survey.

However, in analysing the findings of the chiefs' survey, we find that the respondent party based their boundary claim on natural features, such rivers, streams and hills and ridges. And, in assessing the record of the Local Court proceedings, we find that the Local Court finding that the respondent party based its boundary on natural features and accepted it, is supported by evidence. And accordingly we dismiss appeal Ground No. 2.

With regard to appeal point Number 3, we are of the view that it is a repeat and rephrasing of appeal point No. 2. And because of our finding regarding appeal point No. 2, Appeal Point Number 3 is dismissed.

Appeal point No. 4, we find that from the record of proceedings of the Local Court, the appellant never raised the issues raised in this appeal before the Local Court. Not only in relation to appeal ground No. 4 but also in respect of all the other grounds of appeal. He has had the opportunity to raise all of this before the Local Court, but he failed to do so. And again before this Court he called no evidence to support his appeal.

We find that decision reached by the Local Court was reasonable and upon to its based on the evidence presented to that Court. This appeal is therefore without merits. The appeal is accordingly dismissed.

Dated this 6<sup>th</sup> day of April 2011-04-11

(1)	Alfred Kolighegna	(President)	(Signed)
(2)	Alex Nindi	(Member)	(Signed)
(3)	Wilson Tuhula	(Member)	(Signed)
(4)	Timothy V. Diamana	(Member)	(Signed)
(5)	Eric Ngokro	(Member)	(Signed)
(6)	Emma Garo (Ms)	(Clerk)	(Signed)