In the Central Islands Customary Land Appeal Court

Land Appellate Jurisdiction CLAC no: 03 of 2007

In the Matter of: Teutui, Tetaugangoto, Tanahu Tehatutagagi and Magibae Land

Between: Ashley Tesua) Appellant

And: Cassidy Sanguika) Respondent

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JUDGMENT

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The Appellant Ashley Tesua (Deceased) now represented by George Taupongi appealed the decision of the West Rennell Local Court of 26th November 2006.

There are 6 grounds in this appeal and among them in ground 2 ii an issue relates relates to point of law. The court decided to firstly deal or hears this appeal ground 2 because any decision on this appeal point would determine the hearing of the other appeal points. In other words if this appeal point is upheld that may end the further proceeding of the case before this court.

Briefly the appellant in Ground 2 alleges that the court erred in law as it did not have in its possession any record to show that chiefs adjudicated on the dispute as required by Local Court Act. Appellant said it is a mandatory requirement which must be complied with or before the local court will have jurisdiction to hear the case.

He said the traditional means of solving the dispute has not been exhausted and therefore the West Rennell Local Court has no jurisdiction to determine the dispute.

Appellant spokesman in his evidence said that there was no attempt and any hearing by the chiefs of the dispute. And as such, the West Rennell Local Court has no power to hear the case of the lands concerned.

The Respondent spokesman in his submission said it was true that the chiefs had not heard or dealt with the dispute. But this was so because the chief was not functioning. Sometime the people have to wait for about 5 years and now some of them had died. It was of this reason that they brought the case to Local Court.

The issue here is whether there was any referral of the dispute to the chiefs and that all the traditional means of solving the dispute have been exhausted before the referral to the West Rennell Local Court.

The law which gives power and regulate the chief hearing of dispute and referral to the Local Court is the Local court Act and section 12 of the Act provides:

> *"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".*

The jurisdictional facts that must be established before the local court can hear and determine any customary land dispute are the matters specified in paras 12(1)(a), (b) and (c). If this requirement is not met then you cannot invoke the jurisdiction of the local court or the local court cannot hear the case.

From the local court case no. 1 of 1992 file the referral was with Uncceptance Settlement Form 1 but clause 5 does not contain the required information of the complainant and defendant summary of their evidence. The Form 1 was also not signed or bears any signature of the chiefs.

For a person to produce a filled up "Form 1" or certificate cannot alone or does not commence the proceedings at the local court. The mere lodgmentor presence of a Form 1 does not refer any dispute to the local court, either in form or in substance.

Respondent admitted that there was no hearing of the dispute by the chiefs. The evidence that the chief was unable to hear cases for years cannot constitute the requirement that tradition means has exhausted as there was no evidence show any attempt for the chiefs to hear the dispute in this case.

We are satisfied that this dispute was not hearing or referred by the chiefs and no fact to show that the traditional means has exhausted and therefore upheld the appeal on ground no. 1.

ORDER

1. The decision of the West Rennell Local Court of 26th November 2006 is quash.
2. No further hearing of the other appeal grounds
3. The dispute is referred to the chiefs.
4. No order of cost

Dated this 6th day of April 2013

Signed Ag President Moses Puloka .....

Member Mark Go'odu .....

" John Louna .....

" Anthony Pisupisu .....

Member/Clerk Leonard R. Maina .....

Right of Appeal Explained

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