

IN THE MALITA LOCAL COURT

Civil jurisdiction

CIVIL (LAND) CASE NO. 4 OF 2013

BETWEEN: REGINALD ILIWANE *Claimant*
MARTIN DICK (*representing the Claimant and the Lifue Tribe*)

AND: ROBERT RAMOSALU *1st Defendant*

AND: ISHMAEL IALIFU *2nd Defendant*

AND: SIMON SAREA *3rd Defendant*
TIMOTHY (*representing the 3rd Defendant and the Ania tribe*)

IN THE MATTER OF: *ACCEPTED SETTLEMENT BY KWAIBU COUNCIL OF CHIEFS*

IN THE MATTER OF: *SECTION 14 OF THE LOCAL COURT ACT CAP. 19*

IN THE MATTER OF: *OWNERSHIP OF ANIA & LIFUE LAND*

Hearing: *29th – 30th July 2013*

Ruling: *1st August, 2013*



RULING

1. On the 27th February 2013 Martin Dick, for the Claimant, filed an action against the Accepted Settlement by Kwaiabu Council of Chiefs dated the 26th May 1992 over Ania & Lifue lands and an order of the Local Court on 3rd December, 2012 referring the parties to the chiefs to properly fill and sign a new settlement form in the ruling in Case No. 16 of 2000.
2. Though this action is taken against one Mr. Robert Ramosalu (as the *1st Defendant*), one Mr. Ishmael Ialifu (as the *2nd Defendant*) and Simon Sarea (as *3rd Defendant*), this Court sees this action as a reinstatement of Case No. 16 of 2000 for the reasons that the present *Complainant*, Reginald Iliwane was the defendant in Case No. 16 of 2000 while Simon Sarea, the *3rd defendant* was the plaintiff, the matters in dispute are the same and that Simon Sarea has listed Ishmael Ialifu, the *2nd Defendant* as his witness whereas Robert Ramosalu, the *1st Defendant* is found to be a deceased party.
3. The particulars of the action taken by the Complainant are contained in his notice filed at the Local Court on 27th February 2013 which the Complainant also used as his Sworn

Statement or Submission in court. A copy of that notice is in the case file annexed as the Plaintiff's Submission/Sworn Statement, together with Statutory Declarations by one John Kodere, Reginald Iliwane himself and one Edward Beso, a copy of the Accepted Settlement in question, a letter of objection by the 3rd Defendant, Simon Sarea and a copy of the Local Court ruling of 3rd December, 2012.

4. In essence, there are two main issues in argument between the two parties namely; the decision given by the chiefs and the Accepted Settlement form dated 26th May, 1992.
5. The *Complainant* asserts that the true decision given by the chiefs in 1992 awards equal rights of ownership of the lands in favor of both parties. In support of his claim, he presents statutory declarations by one of the presiding chiefs, one John Kodere, a witness to the chiefs' hearing, one Edward Beso and Reginald Iliwane himself.
6. In contrast, the 3rd Defendant, Simon Sarea maintained that the chiefs had given the decision in his favor as recorded in the Accepted Settlement form of 26th May 1992. In support of his defense, he presents his submission (also sworn as his statement in court) and statutory declarations by one of the presiding chiefs, one Elson Ramo and Ishmael Ialifu, the 2nd Defendant who was the secretary to the chiefs then in 1992.
7. This Court finds it hard to prove which is the true decision for the reason that the two chiefs remaining alive out of the six (6) chiefs who had heard the dispute (and who should have assisted this Court) are also divided in their evidence, Chief John Kodere witnessing by statutory declaration in the *Complainant's* favor and Chief Elson Ramo in favor of the *Defendant*. The issue of which is the true decision of the chiefs is therefore, settled with the two living chiefs divided in their witness evidences.
8. On the Accepted Settlement form, the issues disputed can be reduced to three namely, the *Complainant*, Reginald Iliwane's signature, the fact that only one out of six chiefs signed as witness to the settlement and the period for lodging the Accepted Settlement form at the Local Court. We will deal with these issues in the subsequent paragraphs to follow in the order they are presented herein.
9. On the issue of the *Complainant*, Reginald Iliwane's signature on the Accepted Settlement form, this signature is categorically denied by the *Complainant*. It is therefore, upon Simon Sarea the *Defendant* to prove on the balance of probabilities that the signature is truly that of the *Complainant*. This Court however, considered this issue already settled by the finding of the same court in its ruling of 3rd December 2012 in Case No. 16 of 2000. Finding 2.3 of the said ruling states as follows:

"That the defendant, Reginald Iliwane denied signing any Accepted Settlement form before the chiefs and disputes his signature on the form. The Court confirms by comparing his signature on the letter dated 23rd May 2000 ...and that on a piece of paper handed to him during the inquiry with that on the form that the former two did not match with the latter."

This Court is certain that the defendant, Reginald Riliwane in that ruling of 3rd December 2012 (or in Case No. 16 of 2000) is the same person as the Reginald Iliwane now *Complainant* in this case. Furthermore, we have carefully studied those signatures ourselves and can further confirm the same finding is true. That is, that the signature on the form is not the same as the signatures on the letter of 23rd May 2000 and sheet of paper handed to Iliwane. However, since this matter is raised again before this Court, this Court looks no further than the evidence of Ishmael Ialifu.

Ishmael Ialifu was the secretary to the chiefs then in 1992. Though in this current case he witnessed on the side of Simon Sarea, the present *Defendant* by statutory declaration, he was called by the Court as a witness for the chiefs by sworn statement in court. In examining the witness, he affirmed the *Complainant*, Iliwane's signature on their (*Complainants*) submission. When shown the signature on the original Accepted Settlement form of 26th May 1992, he emphasized that that is Iliwane's true signature. However, this Court doubts his evidence on the reason that the two signatures are markedly different by close scrutiny. This settles the issue on the signature.

10. The last issue to turn to now is the period for lodgment of the Accepted Settlement form at the Local Court. The Accepted Settlement is dated 26th May, 1992. This fact is not disputed by both parties. So that settles the date the settlement occurred. In the year 2000, when the same Accepted Settlement form was lodged at the Local Court, a file was opened and given the reference Case No. 16 of 2000 (reference File MLC 7/56) The reference Case Number itself settles the issue. The settlement form was lodged at the Local Court in the year 2000.
11. There are other issues of conflict such as allegations of forgery and affiliation of certain chiefs with a particular party. It is also unfortunate that Chief Robert Ramosalu who signed the form singly and who could have provided some insights to this case has, with due respect, been deceased. Despite of above, this Court need not concern itself with them.

The Law

The relevant law that provides the procedure and jurisdiction or power for our traditional chiefs and the Local Court in resolving land related disputes is the Local Court Act Cap. 19. In this particular case, the relevant section is Section 14 paragraphs (1) and (2). Section 14 of the Act states in paragraphs 1 & 2 as follows:

1. ***"Where , in any dispute referred to the chiefs, a decision wholly acceptable to both parties has been made by the chiefs, the chiefs or any of the parties to the dispute may, within three months from the date of the decision, cause a copy of the decision to be recorded by the Local Court"***

2. ***"A copy of the decision referred to in subsection (1) shall be in such a form as prescribed in Form II of the Schedule and shall contain the particulars prescribed in that form and signed by the parties and two or more of the chiefs who took part in making the decision"***

The fact that the Accepted Settlement form was lodged at the Local Court in year 2000, seven to eight years from when the decision was made in 1992 not only is not in accordance with the provisions in Subsection 1 but the period of seven to eight years is quite excessive of the three months grace period provided by the Act. This raises a lot of doubts in the mind of the Court of the veracity or truthfulness of the contents of the Accepted Settlement form of 26th May, 1992.

The same sentiment can be said of the fact that only one chief signed as a witness to the Accepted Settlement form contrary to the statutory requirement in Subsection 2 of the Act. Regardless of whether or not all six chiefs agreed that only one chief can sign on their behalf (as is the argument advanced by the *Defendant*), the Act requires that two or more chiefs must sign to witness the settlement. This issue has also raised a lot of doubts in the minds of this court.

Before this Court can come to any conclusion on this matter, it must be said that the new Accepted Settlement that is produced in response to Order 1. in the ruling of 3rd December, 2012 (lodged at the Local Court on 24/05/2013) is still defective in that the *Complainant*, Reginald Iliwane did not sign that form in accordance with the requirement in Subsection 2 above. That form is therefore, declared invalid for the purpose of any law. Similarly, the original Accepted Settlement form lodged in 2000 is also defective and not valid for the purpose of any law. Finally, that ruling of 3rd December, 2012 is now to be superseded by this ruling.

Ruling

1. The dispute is referred to the chiefs of the area for a fresh hearing.
2. Parties are at liberty to apply to the court of relevant jurisdiction if not satisfied with this ruling. The period to apply shall be 90 days with effect from 1st August to 29th October, 2013.
3. No order for ~~costs~~ ^{costs} *H.D.F.*

THE COURT

Rinaldo Talo (President)

Rinaldo Talo

Lazarus Geniakwasia (Member)

Lazarus Geniakwasia

Alphonse Wale (Member)

Alphonse Wale

Hillary D. Fioru (Clerk)

Hillary D. Fioru

