IN THE VELLA LA VELLA
GHORENA LOCAL COURT

Land Case No: 01 of 2001

Civil Jurisdiction

IN THE MATTER OF: Ownership of Sabere/Vuvure & Momoe/Valagatha Customary Land.

BETWEEN:	Belo Mulesae	1st Plaintiff
	Willie Lianga	2nd Plaintiff
AND:	Asery Tamana	Defendant

RULING

An application to eliminate this case and the proceeding, because it did not go in line with the Local Courts Act, was raised by the defendant for a strike-out Order. In another view, this court has no jurisdiction to hear this case.

The 1st & 2nd Plaintiff insisted that this court has the jurisdiction to proceed on, to hear issues of customary ownership of the land, but has no jurisdiction to hear legal issues of this case.

Background History.

The case was originally referred to the Local Court on 30th August 2006, by the defendant, Asery Tamana, through the Roviana/Rendova Chief decision of 14th May 2001. It was supposed to be between 2nd plaintiff and the defendant. The fact that the 2nd ~~defendant~~ plaintiff did not attend, the decision was awarded to the defendant.

Sometimes in September 2006, 2nd plaintiff Willie Lianga lodged the Unaccepted Settlement – Form 1 with the court fee of $50 to the Local Court without the submission of his reason to the referral. A letter of acknowledgement, dated 15th September 2006, was sent to the 2nd plaintiff requesting his Written Statement which will invoke the jurisdiction of the Local Court to hear the case, was not been replied. Another letter of 27th February 2007 addressed to Hokari Navo and copied to the 2nd plaintiff, reminding him of the requirement, was not successful.

It was on 25th July 2006 when the Unaccepted Settlement - Form 1, as a referral, was received from the 1st plaintiff but through the Rendova Chiefs decision which was in his favour.

In his letter of 23rd November 2007, para. 2, the Local Court Office in Gizo, confirmed to 1st plaintiff that 2nd plaintiff "no longer has the standing in this case," because he did not satisfy the requirement of the Local Courts Act, S12 (3). 1st plaintiff, thence, was allowed a party in this case.

The first time this case listed for court proceeding, was on 17th December 2007. The party of the defendant did not attend, but party of the 1st plaintiff was in the proceeding. The in attendance of the defendant's party was the reason for the Local Court to adjourn the matter.

However, 2nd plaintiff, Willie Lianga, then lodged his written statement dated 12th December 2008, after taking him more than a year to decide, in disputing the 14th May 2001 decision of the Roviana/Rendova Council of Chiefs. He was accepted into the issue as 2nd plaintiff, purposely, for the court itself to determine.

Legal views of Disputing Parties

2nd plaintiff raised that the issue for this court to hear is as what they have been summoned to; and that is to hear their appeal against the Roviana/Rendova Chief decision of 14th May 2001. Both cases, the Sabere/Vuvure and Momoe/Valagatha are Unaccepted Settlement which they expect this court to hear. He has no legal views to rise, but requested this court to proceed, based on that, legal issues are [redacted] for the High Court to determine. All that they want is to dispose of these cases, once and for all.

1st plaintiff confirms to have no views in law, but to proceed on with the hearing.

Defendant submitted before this court a written application or objection requesting this court to dismiss plaintiffs appeal against Determination of Ownership over Sabere, Vuvure and Bokere Customary Land. He further seeks the following determination from this court to declare "null and void";

1) that the 1st and 2nd plaintiff has no standing in this action;
2) that the 1st and 2nd plaintiff's claim and action be dismissed;
3) that the 1st and 2nd plaintiffs to meet costs in the proceeding.

Issue in Law

1) **1st and 2nd Plaintiff has no standing**

1st Plaintiff Belo Mulesae

S12 (1) of the Local Courts Act says; that 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.

It is clear that subs.(1)(c) is a follow up from subs.(1)(a). Should a party aggrieved or dissatisfies with the chiefs decision he should refer the case to an appropriate Local Court after complying with the requirement of S12(2), that is the unaccepted settlement – Form 1 certificate; and S12(3), to submit the written statement setting out the chiefs decision was not acceptable; and the reason for not accepting it.

It was from that view, 1st plaintiff took another course by lodging his referral, not in accordance with the above provision, but from the Rendova Chiefs decision of 24th May 2006, which as far as the above law is concern, it was wrong.

1st plaintiff should have filed his case through S12 and S13 of the Local Courts Act, rather, then taking another Chief Hearing as an appeal.

2nd Plaintiff Willie Lianga

In Veno v Jino, Court of Appeal, CA 02 of 2004, (page 9, para. 17): says that;

> *"The second schedule to the Local Courts (Forms) Rules prescribes a summons to be used for the commencement of proceedings and makes specific reference to S8(1) as the provision to which the form relates. The prescribed form identifies the parties as (plaintiff and defendant) and requires the details of the matter in dispute to be identified. The Form of the summons, is to be signed by the court clerk and specify the date and place of hearing. It seems clear that the summons is obtained at the instance of the plaintiff for the purpose of invoking the court's jurisdiction."*

It is obvious then, that the commencement of court proceeding is when summon is issued. The submission of Form 1, the written statement or the court fee to the Local Court should not establish the commencement as yet. A proceeding should commence, as soon as summon is issued by the plaintiff through the court.

2nd plaintiff came in as party on 12th December 2008 when this case has already commenced proceeding on 17th December 2007. The plaintiff who commences the proceeding at that time was the 1st plaintiff Belo Mulesae.

In this instance, therefore, 2nd plaintiff has no standing in this case to be a party, because he came in when the case was already commence proceeding.

Hence, this determination should be allowed and should dismissed appeals of 1st and 2nd plaintiffs.

2) **1st and 2nd Plaintiff's claim and action**

Since determination 1 is allowed and dismissed, this determination is then allowed.

3) **1st and 2nd Plaintiffs to meet costs in the proceeding.**

This court should reserve its right to impose such enormous costs as stipulated under S8 of the Local Courts Act. Therefore, determination is set aside.

In all, we see the determinations sought are allowed and dismissed.

Defendant

However, it would be fair for the parties and the court to visit the referral of the defendant to the Local Court.

The referral was made through the decision of Roviana/Rendova Chief Committee dated 14th May 2001. It was in his favour and filed on 12th June 2001 under RNo: 806191, by Asery Harry. It was an exparte decision because 2nd plaintiff did not attend.

There was no appeal until 30th August 2006 when 2nd plaintiff Willie Lianga lodged his referral under RNo: 1057262 without the written statement.

The above provision clearly mentioned that the proper person to refer the dispute to the Local Court, suppose to be the aggrieved party and not to whom the decision was in his favour. However, the fact that the other party did not attend the hearing, should not establish a dispute as yet.

In High Court CC No: 255/05; (pg 9, para. 42); it says that;

"If in the circumstances where one party does not appear and only one does, can the chief apply traditional means or ways to resolve land dispute by both parties. If only one party attends, then there is no issue before the chiefs and no claims over customary land presented to the chiefs to resolve. Resolution in a traditional manner is well recognized and appreciated when two litigating parties attend and present their claims to the chiefs to resolve. Any decision reach must be found on traditional means and done amicably to promote peace and harmony."

Abid; para. 43 further reiterated that, in such;

"Situation where notices are sent to both parties and on several occasions the same party failed to attend;"..... "the chief should regard it as exhausting all traditional means of solving the dispute and the chiefs' council should therefore refer the matter to the Local Court with reasons for their referral."

And that was what the defendant in this case has done. The continuous in attendance of 2nd plaintiff in the chief hearing seized him to refer the dispute to the Local Court as an exhausted mean.

The next question is the independence of the Roviana/Rendova Council of Chiefs. The inclusion of Roviana Chiefs with Rendova Chiefs has confused **S11 of the Local Courts Act**, that;

> *"Chiefs" means chiefs or traditional leaders residing within the locality of the land in dispute and who are recognized as such by both parties to the dispute."*

If, (HC CC No: 148/06);

> *"that issue was not for Munda Chiefs to decide, so their purported finding on land ownership has no effect on the standing or otherwise, of Asery Harry's right to contract as a landowner representative in 1988."*

The purported finding of Munda Chiefs on land ownership was not allowed, then Roviana Chiefs here, should not be allowed.

But the language in HC CC No: 64 of 1993, (para. 3, 4, & 5) says;

> *"The Plaintiff and the second and third Defendants shall in good faith endeavor to, within 14 days of the date of this Order, agree a panel of Rendova and/or Roviana Chiefs or traditional leaders (sufficient to constitute a quorum for the purposes of hearing a customary land dispute under section 12 of the Local Courts Act (Cap. 19)).*
>
> *Within 30 days after agreement as to membership of the said panel, the plaintiff shall take all necessary and adequate steps to institute a customary land dispute on the ownership of Sabere, Vuvure customary land in Rendova by making a reference under section 12 of the Local Court Act (Cap. 19)) to the said panel of Rendova and/or Roviana Chiefs or traditional leaders and shall report the decision of the said panel to the High Court within 30 days from the date of such decision.*
>
> *"In the event that the parties are unable to reach agreement as required under paragraph 4 of this Order there shall be deemed to be an Unaccepted Settlement and the Plaintiff shall;*
>
> *a) forthwith cause two of the chiefs or traditional leaders, who had been nominated by the parties for the purposes of paragraph 4 of this Order, to sign a certificate in Form 1 pursuant to section 12(2) of the Local Courts Act (Cap. 19) and shall lodge the same with the appropriate Local Court;*
>
> *b) within 30 days from the date of the certificate, commence proceedings in the said Local Court and thereafter prosecute those proceedings with reasonable diligence".*

The above precedent is clear which this court has no jurisdiction to vary but to reserve its jurisdiction base on the perception of whether the order is applicable, purposely, to the Consent Order or is a precedent that would affect all future land disputes.

This court has no further jurisdiction to proceed with this case but to rule out case is dismissed and remit back to a proper Rendova Chief Committee.

It is therefore ordered that;

1. Case Dismissed accordingly
2. Remit back to a proper Rendova Council of Chiefs.

Dated this 13th day of August 2009

Signed:

Seth Luaboe
(President)

Walter Semepitu
(Vice President)

Edmund Ale
(J/Member)

Francis M Molia
(Court Clerk)

Appeal against this ruling within 3 months from its date to the Clerk Western Customary Land Appeal Court, Gizo, or seek further ruling from the High Court.