

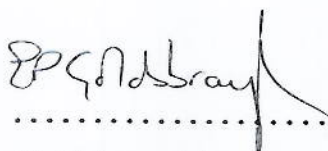
IN THE SOLOMON ISLANDS COURT OF APPEAL

<b>NATURE OF JURISDICTION:</b>	Appeal from Judgment of the High Court of Solomon Islands (Faukona J.)	
<b>COURT FILE NUMBER:</b>	Civil Appeal Case No. 34 of 2011 (On Appeal from High Court Civil Case No. 297 of 2008)	
<b>DATE OF HEARING:</b>	MONDAY 20 APRIL 2015	
<b>DATE OF JUDGMENT:</b>	FRIDAY 24 APRIL 2015	
<b>THE COURT:</b>	GOLDSBROUGH P, WARD JA, WILSON JA	
<b>PARTIES:</b>	Nason Beikera and Others	Appellant
	-V-	
	Alpheaus Zobule, Pelpi Tada & Others	Respondent
<b>Advocates:</b>		
<b>Appellants:</b>	Mr. Tegavota- PT	Appellant
<b>Respondent:</b>	In-person	Respondent
<b>Key words</b>	ASSESSMENT OF DAMAGES BALANCE OF PROBABILITIES	
<b>EX TEMPORE/RESERVED:</b>	RESERVED	
<b>ALLOWED/DISSMISSD</b>	DISMISSED	
<b>PAGES</b>	1-3	

## JUDGMENT OF THE COURT

1. In this appeal the Appellants are represented by counsel and the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are represented by their spokesperson who is the 1<sup>st</sup> Respondent. Although some of the remaining Respondents were present for the hearing they agreed that Mr Zobule (the 1<sup>st</sup> Respondent) speak on their behalf.
2. The appeal is against the assessment of damages. That assessment took place after default judgment had been entered on 8 April 2011. It followed a hearing on 22 July 2011 with the decision being delivered on 30 September 2011
3. The decision on land ownership can be found at page 148 of the Appeal Book. It is correct to say that within that decision of the Chiefs there is no boundary to the west of the land known as Vitu Tribal Land set out in any narrative way. Yet it is just as incorrect to say that the same Chiefs did not define all of the boundaries of Vitu Tribal Land. It is apparent from the face of the document that the Chiefs had the benefit of a map produced by a witness, Derick Alekera. Given that they chose not to attend the hearing, none of the Appellants will have seen that map at that hearing. The Chiefs in their decision accepted the claim made before them and, taken together with the map produced to them, made a determination based on the material before them, which material included the map of the area claimed. Therefore, whilst it is possible to assert that there is no narrative description within the decision setting out the boundary lines, the decision is not lacking when taken as a whole.
4. With the material before him the learned judge at first instance was not able to make a positive finding of where each tree felled had grown. He was required, and made clear in his judgment, that he made an assessment based on the material before him. It is wrong to say that he was obliged to make that assessment solely because he was not privy to a narrative description of the western boundary. He would have been obliged to make such an assessment even had he had the benefit of such a narrative given that there was little or no evidence of tree locations put before him by either party to the hearing other than the general location that logging took place.

5. The assessment made by the learned judge was, as he said more than once in his reasons, the best assessment available on the balance of probabilities. He could do no more than that and, in our view, performed that task without fault.
6. The real issue within this appeal is that the 1<sup>st</sup> Appellant still does not accept the finding made by the Chiefs that part of what he considers his land has been lost to him by the effect of that Chiefs' decision. He took that decision on to court by way of Judicial Review, even though he chose not to participate in the original hearing before the Chiefs, and lost. He chose not to take the decision of the Chiefs to the Local Court.
7. More recently he has exhibited in these proceedings a drawing showing Vitu Tribal land to be a small circular area which area bears no relation to even the points identified by the Chiefs on the coast demarcating the northern and southern boundaries of Vitu Tribal land. Regrettably there comes a time when he must accept the determination. As the Respondent so eloquently asked in the course of this hearing, at what point will the Appellants approach a court and show how their ownership of any land (and its boundaries) be established, as opposed to attacking the claims of others? It is worthy of note that when the Appellants did take the question of ownership to court, they lost.
8. All of the grounds of appeal raise the same issue, that given the lack of a precise boundary demarcation in narrative form no assessment could take place. There is little point in repeating the reasons set out above.
9. In the event the appeal is dismissed with costs of the appeal to be paid by the Appellants to the Respondents, such costs to be assessed on the standard basis and taxed by the Registrar of the Court of Appeal if not agreed.



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**Goldsbrough P**

**President of the Court of Appeal**



*Ward*

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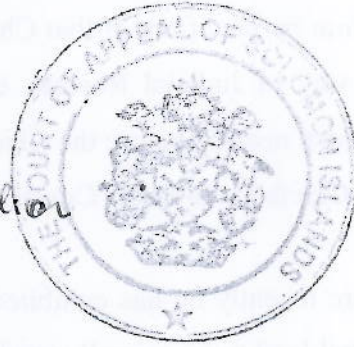
**Ward JA**  
**Member of the Court of Appeal**



*Margaret Wilson*

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**Wilson JA**  
**Member of the Court of Appeal**



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.....  
Member of the Court of Appeal