

IN THE CENTRAL ISLANDS CUSTOMARY LAND APPEAL COURT.

In the matter of ALE LAND Appeal Case No. 2/89.

BETWEEN: Jason Kikolo APPELLANT
AND: B. Manedika RESPONDENT

JUDGMENT

This is an appeal against the decision of the Russell Local Court, delivered on the 27th October 1988. Having lost the case in the lower court the appellant Jason Kikolo now exercises his right under the Lands & Title Act and appeal against the decision of the Local Court. There are 9 grounds altogether as per the record of the points of appeal.

This court having heard the appellant and the respondent and having considered the point of appeal makes its decisions as follows:-

1. The court has found and is satisfied that appeal point No. 1 refers to the chiefs hearing refused this points on that ground in that this court is only concern with points of appeal from the local court and not from the chiefs hearing. Appeal point number 1 is dismissed on this ground.

As to appeal point number 2 the court has found the local court has not full ascertain the histories of the parties before making their decision. It was obvious that in the Local Court both the appellant and respondent has set out their family tree but we consider that histories is something more than a family tree, it may include other things such as butial places, sacrificial places, places of worship and type of tarbu place therefore point 2 of the appeal points is allowed. However as to point 3 court also found it refers to the chiefs hearing and dismissee point three.

As to regard to point number 4 the court found that it was true that local court has not gone out to see the spearline, however the courts felt that this not really important as it was revealed during the survey carried out by this court that there is none as the dispute is over the whole land; Ale Land.

Point 5 is misconceived, the appellant was not able to produce any evidence to substantiate his claim and the point 5 is also dismissed.

Appeal Point No. 6 is of some importance. The court is satisfied that the local court has not gone out to survey the land to see tambu places and other historical factors on the land indispute. This court feels that in land disputes it is always best that the local court should carry out a survey if it is requested by any of the parties. In this case the local court has fail to do this. This court however, has had the privilege of making the survey and found that it was very helpful in deciding this case. The court founds that by not going out to survey the land the local court's decision is against the weight of the evidence. Point 6 is allowed.

Group 7 is also dismissed, both parties have had the chance of questioning each other in the local court but decided not to do so. This is their right and this court cannot interfere with it if they decided not to ask questions.

As regard to point 8 of the appeal points, the appellant was not able to prove, there are different groups in the Keruval Tribe. It is for him to prove this to the required standard. The court is afraid, this has not done and Point 8 is dismissed. We now turn to point 9, the last point of appeal. This point is not clear as the appellant has not prove whether the respondent grandmother has any effect on his claim to land, point 9 is also dismissed.

Having allowed appeal points 2, 4 and 6 this court now proceed to consider the decision of the local court. An appellant court can only interfere with a decision of the court below if it is wrong in principle or is against the weight of evidence and this court reminds itself of these facts. As we had said earlier this court has had the privilege of making the survey of the land in dispute with both parties. During the survey the appellant was able to show the court 14 historical sites which includes, sacrifice places of chief Bakou spying area for enemies, housing sites execution place, crocodile pool, its feeding place and one grave. The respondent on the other land was not able to show anything to the court. He only bluntly denied appellants ownership of the historical sites the appellant has shown to the court and said they belong to his tribe Keruval, without any explanation. The appellant told the court that the historical sites shown belong to his tribe, the sevob. He even

some of the area shown and that he said was chief Bakou. This therefore confirmed his oral evidence in the court below. The court is suprised that while the respondent is also claiming the land he was not able to show anything to this court during the survey that the respondent B. Mandika does not seem to know anything on the land or if he had ever being to the places surveyed before or know about them.

The court therefore found that, had the local court made the survey, this would greatly affect their decision. Having reached that, this court therefore reversed the local court decision and awarded the ownership of Ale Land to Jason Kikolo and his Seveb Tribe.

However having consider the relationship of the parties and the length of time, the respondent has live on the land the court also orders that appellant allow respondent to remain where he is with all his properties but if he wish to undertake any new development then he should seek the approval of the appellant.

Security for cost to be refunded to appellant.

T.R.A.

Acting President: Moses Puloka

Justice : Christian Sale

" : Henry Kabai

" : Jason Sanga

" : Eni Taki

Clerk : G. Kouhota

