

IN THE WESTERN CUSTOMARY LAND APPEAL COURT
SITTING IN GIZO
WESTERN PROVINCE

In the Matter of: LEPOKASI, TASOLOMO AND ZIRUNANGO-
NANGO TIMBER RIGHTS APPEALS

BETWEEN: HARRY BOE First Appellant
: ISAIAH POLOSO Second Appellant
: JACKSON POLOSO Third Appellant

AND: JAMES DIKOLO }
JOHN QAQARA } Respondents
& OTHERS }

Civil Case CLAC Nos 1, 2 & 3 of 2001

Hearings: 12-16th August, 2003

This Judgment: 19th August, 2003

This is an appeal against the determination of the Choiseul Provincial Executive in a Timber Rights hearing held at Qolevua Village, Susuka, from the 29th to the 30th of May 2001 in respect of the above three pieces of Cands, and pursuant to Section 10 (1) of the Forest Resources and Timber Utilisation Act, Chapter 40

Before the commencement of hearings, Mr. John Qaqara, Spokesman for the Respondents, strongly objected to the admission of the Appellants' ~~Amended~~ Amended

Notices of Appeals on the ground that they were filed following a lapse of 1 year and 3 months from the time allowed for appeals under Section 10(1) of the said Act, and therefore out of time.

The original appeal points, however, had already been filed ~~at~~ ^{within} time.

Following a brief hearing on the part of the Appellants, the Court retired briefly and made a ruling accepting the amended notices of appeals on the ground that they were effectively paraphrased and therefore linked to the originals which were filed within time.

Mr. Qagara revealed his intention to appeal against the ruling.

The Clerk then declared that this case could not proceed because the amended notices of appeals contained the basis of the evidence relied upon by the three Appellants, who also insisted so.

However, Mr. Qagara returned to the Justices outside of the Court room and asked to be forgiven for his decision, and to have it withdrawn upon instructions from his lawyer Mrs. Nyatali in Abriara. Was asked to reduce his ~~request~~ ^{intention} in writing.

Hearing commenced the next day, 13.08.03.

Even though the appeals were consolidated in one file against the same respondents, they were in reality three different appeals because they involved three separate, although closely bordered, pieces of customary lands. Thus, we dealt with one at a time, in the order they appear above.

1. LEPOKASI LAND

The substance of Mr. Harry Boe's appeal can be summed up as follows:

That the Choiseul Provincial Executive Committee had erred both in law and in custom in holding that Lepokasi Land is a ~~part~~ part and parcel of Reokana Land by :-

- (a) failing to hear all the relevant custom evidences which constitute the basis of his objections which include -
 - (i) his claim that ~~land~~ Lepokasi is his bani land
 - (ii) Lepokasi has separate and distinct boundaries of its own, and ~~therefore~~ separated ~~and~~ from Reokana by other portions of lands inbetween.
- (b) failing to identify the conflicting claims of ownership of the timber rights and/or the extent of each claim such as his claim over Lepokasi Land
- (c) giving too much weight than was necessary and/or taking into account irrelevant considerations in respect of the land case No. 9/71 between Stephen Zesapa Steven Zesapa and Dikolo which was not binding on his Lepokasi land.

As a result of the above errors, the Choiseul Provincial Executive Committee was not able to direct itself to the issue of whether ~~all~~ all landowners were willing to negotiate for the disposal of their timber rights in Lepokasi Land

(4)

to the Applicants, now the Respondents in this case in accordance with S.8 (3) (a), Forest Resources & Timber ~~Utilisation~~ Utilisation Act.

As a consequence of the above, the said Executive Committee had failed to reject the grant of the timber rights over Lepokasi Land to the Respondents.

The Evidence

1. Genealogy

Neither the Appellant nor the Respondent could deny the fact of custom that they both ~~originated~~ descended from one and the same ancestor BAUKANA and therefore belong to Reokana tribe.

2. Bani

The issue of ~~bari~~ Lepokasi as bani land is perhaps the most significant dispute surrounding Lepokasi land.

The Appellant claimed it was given to his great great grandmother Magatamalo by the Tasolomo tribe because her father Vanene failed to return ^{of the ten} any custom shell money (Kesa) to Reokana tribe who had paid her bride price for their tribesman Namakana (Magatamalo's husband), as was the custom in Choiseul. Appellant told this Court that the bari was confirmed ~~in two land cases~~ ~~in one~~ in 1945 and the other ~~in 1948~~ when the British Government ordered Choiseul Chiefs to identify and demarcate all native land boundaries and tribal genealogies.

(5)

A native land case in 1948 again confirmed the bari. About 1969 or 1970 a geology team was allowed to visit Lepokasi land after they approached Lepokasi people for permission, but not without first signing an agreement and opening a Trust Passbook Account (NBST) with people from Lepokasi. No Reokana persons were approached by the geologists. (Cancelled P/Book produced to Respondent and Cart - then returned).

The Respondent, however, challenged the existence of the bari as follows:

- (a) during the Executive Council's ~~de~~ hearing in 2001 the Appellant had told the hearing in answer to a question put to him by the Respondent that a tambu site (sope) was ~~located at the~~ ~~there~~ established in Lepokasi after he had got the bari. The Respondent argued that it was forbidden in Choiseul custom to give away a piece of land accommodating a sope as bari land, neither can sope be established after the land has been given as bari.
- (b) In the native land case of 1971 between Steven Zesapa (Tasolmo) and Dikolo (Reokana) won by Dikolo, both the fathers of Appellants 1 and 2 in this case witnessed for Steven, but they never made a mention of a bari on Lepokasi.
- (c) In the 1996 Timber Rights hearing at Tabarato (as extracted on pages 14 and 16~~3~~ produced to Court) the first Appellant made declarations as follows:
 - (i) that having considered the genealogies of both Reokana and Lepokasi, they

(6)

were one.

- (ii) Lepokasi land is part of Reokana land
- (iii) Withdrew his objection

(d) Appellant 1 by reason of intermarriages had been exiled (vavaraoto) to Padora and therefore had no rights in Tasolomo and Reokana.

The Appellant however denied ^{declaring} the existence of a sope on Lepokasi, saying that Ponebere was a place having customary legends where his ancestors were turned into stones for burning seaweeds wrapped in leaves, intended for their food. He reiterated that his sope is at Tasolomo.

With respect to the 1971 land case, the Appellant argued that it had nothing to do with Lepokasi land, but Chirokaboa, which was a totally different land.

Concerning the 1996 Timber Rights declarations, the Appellant denied making the declarations, saying they could have been clerical errors by the Clerk because he was speaking Babatana, and/or he may have been misinterpreted, perhaps just to discredit him. He proved this by the record on page 16 (as extracted) that he was referred to as the son of Dikolo, when his father was Tabakujuku, thus unreliable recording.

Whatever the truth may have been, new light has emerged during this Court sitting when both Tasolomo and Zirunangorango tribes corroborated the claim by the Appellant that Lepokasi was bani land. It could not have been more convincing

as it was given by Tasolomo, one of the corroborators. This in law is direct evidence and has added more weight in proving the Bari issue.

Perhaps the Executive Committee's determination could have taken a different course had Tasolomo and Zirunangonango produced this piece of evidence during the hearing.

3. Physical Features having Cultural Values

The Appellant gave evidence of the following cultural land features:

- (a) Villages on ~~the~~ Lepokasi Land
- (b) Graveyard at Taja which is at the boundary shared with Zirunangonango
- (c) Subire Village site, now deserted, Magatam village and gardening site
- (d) Ponebere - a place having legends where his ancestors were turned into stone for burning seaweeds wrapped in leaves, intended for their meal.
- (e) Kakubisi - lived ~~there in 1945, not now~~ on ~~the~~ ~~used~~ made gardens there up to 1945. Deserted now, used as hunting ground for pigs, collect nuts and materials for our houses.

No sope (tambu place) anywhere in Lepokasi.

The Respondent on the other hand did not provide the Court with any such features let alone the mineral prospecting agreement between the Solomon Islands government and Reokona tribe as represented by Chief Dikelo, which allowed

(8)

the government geologists and labourers to prospect for minerals there. There was no objection from Lepokasi tribe despite the display of a Public Notice at Susuka calling for objections daimants..

Apart from Ponebere, the Respondent did not dispute the other sites named above..

4. Boundaries

Having established the existence of bari on Lepokasi land, the boundaries of Lepokasi land as shared ~~with~~ and agreed with Tasolomo and Zirunangonango be maintained as follows:

Commences at the junction at Kugimi, upstream the Paru River, thence to Mavuvus thence to Subire Village, thence to Taja graveyard, thence to Lepokasi Village on to a shallow valley at Lepokasi, along Kugimi and back to Kugimi junction.

According to the Appellant, he said these boundaries had been agreed on and put in place since ~~years~~ ~~as~~ following and therefore the lands they contain, had been established since 1945 following the British government's directives to sort out native lands titles and their boundaries.

All three tribes maintained they only shared boundaries with each other, not ~~Lepokasi~~ ~~Reokana~~ Reokana.

2. TASOLOMO

The substance of Mr. Isaiah Paloso's appeals can be summed up in the following terms:

That the Choiseul Provincial Executive Committee had erred in law and in fact failed custom as follows-

- (a) failing to seriously consider ~~my~~ ^{his} objections in respect of the portions of Tasolomo lands claimed and awarded to the Respondents as part of Reokana land in its final determination
- (b) failing to identify and demarcate the boundaries of Tasolomo as produced by his spokesman
- (c) failing to hear and/or giving undue weight to relevant custom evidences in respect of Tasolomo land
- (d) giving undue weight to the 1971 land case (Supra) concerning Chinkaboa land which has no connection with Tasolomo Land
- (e) failing to identify the conflicting claims of ownership of the timber rights and/or their extents
- (f) As a result of and consequence of the above, the said Executive had-
 - (i) failed to identify his tribe as the persons lawfully entitled and able to grant timber rights
 - (ii) wrongly granted timber rights over Tasolomo to the Respondents ~~and~~
 - (iii) wrongly identifying Tasolomo land as part of Reokana land

- (iv) failed to direct itself to the issue of whether all the Tasolomo landowners are willing to negotiate for the disposal of their timber rights to the Respondents, under S.8(3)(a) of the said Act
- (v) failed to reject the Respondents application over Tasolomo Land.

The Evidence

1. Genealogy

The Reokana and Tasolomo tribes are two separate and distinct tribes.

2. Customary Evidence

The Appellant stated that Tasolomo has got two Sape (tambu sites), ~~at Mt. Pidini~~ one at Mt. Pidini and the other at Bisivunu.

(a) At Mt Pidini -

- dolu - a carved image of their tribal god
- buturu - a heap of stones for Parasae Brothers
- traditional villages of tribal gods
- Pipie - another place of worship
- Sabarakang - place of worship of traditional spirits called Motigana.

(b) At Bisivunu -

- Village settlement of Tasolomo people for 27 years now
- Ancestors lived there before

- Graveyards for the Tasolomo dead
- Tribal coconut plantation from the sea coast to Mamadara inland, a distance of about 3 miles.
- Mamadara - a sope where ancestral gods were worshipped
- Gardening Areas still in use

The Respondents would comment on the Respondents did not ~~dispute~~ Bisimuru for the reason that it was not included in the determination, but made strong claims on Mt Pidikin

- two tambu sites (sope), each sope has a dolu (god), a man (below) and a woman (further uphill) with holes on their heads
- several photographs of the two dolus (images) released by the National taken in 1976 during a trip to the two sope's by the Curator of the National Museum Mrs. Scriven ~~were shown~~ officially authorised by the Museum were produced to the Court and the Appellants.

The Respondent Spokesman further stated that if the sope's and therefore the dolus belong to another tribe, they could not have gone near them without something terrible happening to them ~~as~~ to show the dolu's anger.

He said nobody from Lepokasi Tasolomo objected to the trip even though they were present and knew very well what was happening.

However, the Appellants claimed they never knew about the trip until sometime later, and

are now claiming compensation of \$6,000-00 from the Respondents for trespass. Further, the Respondents ^{did not take the photos of heaps of stones for Paravae brother because they did not know where they were} ~~did not take the photos of heaps of stones for Paravae brother because they did not know where they were~~ This ~~was~~ matter remains unresolved as yet.

3. Boundary Overlap

The Appellant stated that the boundaries of Tasolomo land as set in 1945, and confirmed in 1948 in the Pitisopa - Nadovana case, won by Pitisopa (Tasolomo) is as follows:

From Dorokolo, down Pidini Mountain, thence to Qegelese Stream, thence to Paru River, thence further down Paru River, up along Kilakita Stream, thence to Lumlum, thence to Mamadara thence to Bisivunu Stream, all the way downstream to the sea.

In 1946, Tasolomo granted Timber rights to Eagon Resources Company to log within the above boundaries. Reokana never objected.

However, Tasolomo's concern in the Choiseul Provincial Executive Committee's ~~decision~~ award of boundaries was that it had encroached into Tasolomo land by a great margin in two areas as follows:

- (i) Bisivunu Stream, along the beach to Udadae thence to Paru River mouth, upstream to Kilakita and Mamadara, down the coast to Bisivunu again.
- (ii) Mt Pidini and its surroundings were included even though there was no detailed evidence on it from the Respondents.

The Respondent, however, argued that his boundary, as contained in the said Executive's Determination was confirmed by Leadly Borelaku's father Marokaha in 1989 when he was Convener of the Rio Area Committee for Lauru Lands Conference for Tribal Communities (LLCTC). He referred to the map in Annex A contained in the bundles of Court documents.

The Respondents had not ^{and} disputed the Appellants' evidence of the 1945/1948 ~~and 1976~~ demarcation.

The Respondents' boundary claim is fairly recent compared to the Appellants.

Obviously something had gone wrong, over the years since 1945 and 1948.

4. Boundaries Crossing Rivers

The Respondent raised this point as a matter of custom in Cheiseul, saying that tribal lands cannot cross big rivers such as Faru unless for some in custom.

When asked the reason for Tasolomo's boundary crossing the Faru River, the Appellants said there was no reason, and argued that it was ~~always the case~~ not a prohibition in Cheiseul custom.

He said there was nothing customary about it. There are ~~pieces of~~ ~~lands~~ rivers running through a piece of land.

3. ZIRUNANGONANGO

The essence of the Appellants' appeals were exactly the same as those of the first two Appellants, needless to repeat.

It is only proper to mention at this stage that the case for Zirunangonango need no further consideration now that the existence of bar has been accepted by this Court on Lepokasi land.

It follows therefore that the boundaries which have been ~~set~~ agreed upon and set by W. Tasolomo and Lepokasi be maintained as follows:

From the junction at Lepokasi, thence to Taja, thence to Subire, thence to Manuvuou, thence to Varavanga Varale, reaches Roe Stream, down to the Lepokasi junction again.

COURT FINDINGS

Having considered the evidence of all three Appellants and the Respondents, the Court found as follows:



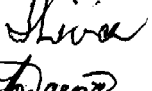
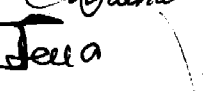
1. That the Choiseul Provincial Executive Committee could have done better in its determination had it allowed more time for the Appellants to present and exhaust all their relevant custom evidences
2. Arriving at a decision with very little evidence it ~~was~~ allowed and had from all three Appellants, thus an unfair hearing and therefore unsafe decision.
3. As a result of the above errors, the said Executive had - of Reokana
 - (a) wrongly demarcated the boundary land to include portions of Tasolomo, the whole of Lepokasi and portions of Zirunangorango lands belonging to the Appellants.
 - (b) wrongly granted timber rights to the Respondents on portions of lands and boundaries which formed the basis of the Appellants' appeals in this case.
 - (c) failed to identify the Appellants as persons lawfully entitled and able to grant timber rights within the bounds of the lands ~~they~~ the subjects of their appeals

D E T E R M I N A T I O N

Having arrived at the above findings, the Western Customary Lands Appeal Court rule as follows:

1. The determination of the Choiseul Provincial Executive Committee ~~be~~ ~~quashed~~ dated the 30th day of May 2001 be quashed
2. Lepokasi land is bari land and therefore separate and distinct from Reokana land.
3. The boundaries of Lepokasi, Tasolomo and Zirunangenango ^{as concerning each other} be maintained as established since 1945
4. The boundaries of Tasolomo as shared with Reokana be that as produced by Tasolomo in this hearing
5. Appellant tribes are the ones lawfully entitled and able to grant timber rights within the bounds of their respective lands under 3.8(3) of the Forest Resources and Timber Utilisation Act.

Dated the 19th day of August 19th 2003

Justices:	Tan Maelagi	Vice President	
	Allen Hall	Member	
	Joseph Liva	Member	
Clerk:	David Laena	Member	
Clerk:	Jefferson Lera		