

the years 1992 to 1994. Also, as a member of the Lupa Tribe, he says he is entitled to be paid his share in the distribution of those money.

The Plaintiff's claim originates from statute law; the North New Georgia Timber Corporation Act. In the First Schedule to the Act, it described the New Georgia Lands as consisting of five customary land areas, including Lupa Land; which land is the subject of this application. The First Schedule also makes clear the boundaries of those customary land areas as more fully delineated on a plan deposited at the office of the Commissioner of Lands with a specific number. Lupa Land is numbered **Lot 4 of LR 731**.

The Plaintiff relies on paragraphs 1(1) and 3 of the Third Schedule for his claim of entitlement to the share in the money in Lupa Land. Those two paragraphs read: "1.(1).

1. (1) Each tribe whose customary land is within the area of the New Georgia lands shall inform the Board of Directors of the names of the leaders of that tribe who have been authorised to receive that tribe's share of the net profits of the Corporation for distribution amongst those members of that tribe having the right to live in the area in accordance with custom.

3. The revenue available for distribution shall be distributed to the Tribal Leaders on behalf of the members of each tribe on whose land work is currently in progress under the terms of a felling licence granted by the Corporation and where more than one area is being worked pro rata to the value of timber logged in the areas affected by the felling licence.

The Defendant's Case.

The Defendants say that the Plaintiff is not a tribal leader of Lupa Land and that he is not entitled to live in accordance with custom in land areas lying between the Mase to Hepa Rivers. These issues however relate to customary matters and accordingly they have filed this summons to have those matters referred to the Local Court; which Court has the jurisdiction to deal with issues in custom.

The Plaintiff's Case.

The Plaintiff opposes the application arguing that the Plaintiff's rights to a share in the distribution of the net profits stem from his rights in custom over the said land (Lupa), which had been established once and for all by the Philips Commission's Report in 1925 and recognised by the High Court of Western Pacific in Native Land Appeal Case No. 14 of 1973 ("*the 1973 Case*"). He says therefore that it is not necessary for this Court to accede to the request of the Defendants, and asks this Court to rule that the Defendants basically do not have a defence.

Lupa Land?

The Philips Commission's Report of 1925 refers to an area of land from MASI to MEZO which was said to be "looked after" or "controlled" by MATENGUA (or PANDA), EVEVELU, and KAVE.

The 1973 case however appears to identify two distinct land areas within that area from Masi to Mezo. One area is identified as **Lot 5 of LR.731 known as Logina Land**, whilst the other is **Lot 4 of LR.731**. In that case, Bodilly C.J. found that Evevelu had land rights in Lot 5 of LR.731. In Lot 4 of LR.731 however, he found that Kave was the chief of that land. It is interesting to note that that land was identified as Lupa Land.

The Affidavit Evidence.

In the evidence of Luxton Jovere filed on 30 September, 1994 at paragraph 1(b) he states:

"From Mase to Mezo is exactly as confirmed under Section 2, First Schedule of the North New Georgia Timber Corporation Act 1979."

In other words, he is asserting that the area from Mase to Mezo is the same as the area identified on plan no. Lot 4 of LR 731.

In contrast, the affidavit of Nira Viga filed on 28 November, 1994, states at paragraph 3 as follows:

"From Mase to Mezo is not exactly the Lupa Land as confirmed under Section 2, First Schedule of the NNGTC Act of 1979. I declare that the true Lupa Land is only the piece of land lying between Mase River to Hepa River. Mase to Mezo Land has been further sub-divided into two separate land areas as per NNGTC Amendment Act of 1984 described as:

- (1) Mase to Hepo (sic) in Lupa, and
 - (2) Hepa to Barora in Lupa.
4. The Land from Hepa River to Barora is truly Logina Land (*Lot 5 of LR 731*) as confirmed per Native Land Appeal Case No. 14 of 1973. This is the area of land where the Plaintiff has right and interest by law and custom."

The above affidavit evidence of Nira Viga is strongly disputed by the Plaintiff in the affidavit of Luxton Jovere filed in reply, on the 30th of January 1995.

The Philips Commission's Report of 1925.

The Philip's Commission Report of 1925 does refer to three persons who "*looked after*" or controlled the area of land from Masi to Mezo, namely, Matengua, (*Panda*), Evevelu and Kave.

The Native Land Appeal Case No. 14 of 1973.

This Land Appeal case dealt with the acquisition of an area of land identified as Lot 5 of LR.731, and locally known as Logina Land. In its determination, the Court found that Evevelu had interests in the said land and that therefore his descendants had a right to be represented in the said land. The Court however also made reference to an adjoining land, called Lupa, identified as Lot 4 of LR.731. The Court pointed out that the Chief of that neighbouring land was Kave.

The Issues.

The Plaintiff submits that the Philips Commission's Report of 1925 established once and for all that the persons who had control over the land from Masi to Mezo was the three persons named in that Report. This however, has been strongly disputed by the Defendants as has been seen in the affidavit of Nira Viga filed on 28 November, 1994.

At this stage, it is not clear if the land area from Masi to Mezo is the same area of land as delineated in plan no. Lot 4 of LR.731, identified as Lupa Land in the First Schedule to the North New Georgia Timber Corporation Act, 1979. If it is, then the Plaintiff's submission would appear to be correct.

However, the position is not clear. The Native Land Appeal Case No. 14 of 1973 made reference to two distinct land areas; namely, Lot 5 of LR. 731 and Lot 4 of LR.731. The defendants say that that case supports their position that there are actually two distinct land areas in the Mase to Mezo land area and that the area of land which the Plaintiff had rights over was in Logina Land, Lot 5 of LR.731, or the area from Hepa to Barora; but not from Mase to Hepa River.

The defendant's position or claim as I understand it to be is that Lot 4 of LR.731 is the area from Mase to Hepa. This is also the area called Lupa Land. They say that the Plaintiff has no interest or rights in custom over this land area.

CONCLUSION.

Further evidence is required in the absence of agreement, as to the respective land areas from Mase to Mezo, and whether that area is the same area as Lot 4 of LR.731. The area of Lot 5 of LR. 731 should also be identified, together with the land areas from Mase to Hepa and from Hepa to Barora.

If the area from Mase to Mezo is the same area as Lot 4 of LR.731, then the Plaintiff's submission that the Philips Commission's Report of 1925 had settled once and for all the question of "control" over that land area, correct. However, if the area from Mase to Mezo is comprised of Lots 4 and 5 of LR.731, then the questions of custom raised by the Defendants in their summons are relevant and should be referred to the Local Court.

ORDERS OF THE COURT

1. In the absence of agreement, DIRECT that further evidence be adduced to determine the following:
 - (i) the land areas from Mase to Mezo;
 - (ii) the land areas from Mase to Hepa, and from Hepa to Barora;
 - (iii) plan of Lot 4 of LR.731 to be produced;
 - (iv) plan of Lot 5 of LR.731 to be produced;
 - (v) all the above land areas to be marked clearly on a plan or map where possible; in particular to show clearly whether the area from Mase to Mezo is the same as Lot 4 of LR.731.

2. In the event that the land area from Mase to Mezo is not the same as Lot 4 of LR.731, then, the following questions in custom be referred to the Local Court for determination:
 - (i) Is the Plaintiff "tribal chief" in the area of land from Mase to Hepa?
 - (ii) Is the Plaintiff a member of the landholding tribe(s) in the area from Mase to Hepa? If so, does he have the right to live in that area in accordance with custom?

3. The findings of the Local Court are to be forwarded to this Court for its final consideration.

ALBERT R. PALMER

A. R. PALMER
JUDGE