IN THE HIGH COURT OF SOLOMON ISLANDS
Civil Jurisdiction

Civil Case No. 182 of 2022

BETWEEN: CHIEF JOHN FRANCIS TANIVEKE, FRED VATABASU, SMITH KAPAKESA, SOLOMON TABAKUJUKU AND JAMES RONNIE KABOKE
(Representing themselves and members of their Tiokana tribe) - Claimants

AND: GRACE LOGGING LIMITED - 1st Defendant

AND: LEADLEY MAVOKANA AND BILLY SIRIKAU - 2nd Defendants

Date of Hearing: 2 October 2024
Date of Ruling: 9 October 2024

Mr. J. R. Kaboke for the Claimants
Mr. P. Teddy for the First and Second Defendants

RULING ON PRELIMINARY QUESTION OF LAW

AULANGA PJ

1. This is an application by the Claimants made pursuant to Rule 12.11 of the *Solomon Islands Courts (Civil Procedure) Rules 2007* for the Court to determine a preliminary question of law that could resolve this proceeding without trial. The issue raised in the application is one of res judicata. That is, the Claimants say the boundary between Tiokana and Ririsoka customary land in East Choiseul has been conclusively determined by the Western Customary Land Appeal Court in Timber Right Appeal No. 4 of 2019 and therefore, is res judicata.

2. The Claimants are the landowners of Tiokana customary land in East Choiseul. Their Tiokana land shares a common boundary with Ririosoka customary land, owned by the Second Defendants. The precise location of the boundary is still in dispute. The Claimants assert that the common boundary between them is at Taroó stream to Varu stream to Pazakurapu to Ququlu stream and then to Koleja stream.

3. The First Defendant is a licensee while the Second Defendants are the landowners of the Ririosoka customary land.

4. Sometimes in 2018 or 2019, the First Defendant applied for timber rights for logging operations inside the Ririosoka customary land. The area designated as concession area for the logging was somehow extended to Buru River, which was beyond the common boundary. The Claimants say this encroached into their land called Sobesobe.

5. The Claimants objected to this overlap of area during the timber rights public hearing. The Choiseul Provincial Executive (CPE) determined the application for the grant of the timber rights and made a determination by excluding this overlapped area from the concession area. The CPE however failed to amend the map to reflect its determination.

6. The Claimants appealed the failure of the CPE to make the required amendment in the map to the Western Customary Land Appeal Court (WCLAC).

7. The WCLAC in its decision on 4th October 2019 held that the portion of land boundary commencing from Taroó stream up to Kolopele stream to Varu stream to Pazakurapu and to Ququlu stream, to be excluded accordingly from the concession map. This excluded portion of land was the disputed area. The WCLAC further held that the exclusion was necessary because the ownership of the disputed land was yet to be decided by the chiefs or the Local Court. The WCLAC did not decide the ownership of the disputed area and implicitly decided to delegate this task to the chiefs under the *Local Court Act.*

8. It is on the basis of the WCLAC decision to exclude the disputed area from the concession map that the Claimants perceived that a valid decision on boundary between the Tiokana and Ririsoka customary was conclusively made and therefore, the ownership of the disputed area was res judicata.

9. This application can be easily disposed of. In my view, the answer to this application centres on the proper understanding of the decision of the WCLAC.

10. Relevantly, paragraph 25 of the WCLAC decision states:

> *"For what we have discussed above, we agree that the CPE has erred in recommending a grant of timber rights over the portion of land boundary commencing from Taro'o stream up to Kolopele stream to Varu stream to Pazakurapu to Ququlu stream <u>when the issue of land ownership and boundary has yet to be properly settled before the Chiefs and Local Court</u>,*

thereby, failed to consider the Appellant's submission at the timber rights hearing." (underlined mine).

11. Order 1, 2 and 3 of the WCLAC continue to state:

> *"1. Appeal is allowed.*
> *2. Henceforth, vary or refresh the Choiseul Provincial Executive decision dated 1st of April 2019 to exclude the concession map and physical area the portion of land boundary commencing from Taro'o stream up to Kolopele stream to Varu stream to Pazakurapu to Ququlu stream.*
> *3. Parties at liberty to refer the matter to rightful avenue to settle issue of landownership and boundary."*

12. The Claimants' contention that the WCLAC has conclusively decided the boundary between the Tiokana and Ririsoka customary land is unfortunately flawed and erroneous. The overlapped area referred to in paragraph 25 of the WCLAC is the disputed area. It is clear that the WCLAC did not decide on the common boundary of the disputed area but decided to have it excluded from the concession map because the resource owners did not agree to grant their timber rights over the disputed area. It would be a breach of section 9 (1) of the *Forest Resources and Timber Utilisation Act* for the WCLAC to uphold the CPE determination by failing to amend the concession map to exclude the disputed area when the resources owners are not willing to negotiate for the disposal of their timber rights. For these reasons, the WCLAC did not reduce or vary the common boundary as submitted by the Claimants' counsel, but have it omitted from the concession area, which is different from a decision confirming a common boundary between the Tiokana and Ririsoka customary land.

13. Further, it is also clear from the WCLAC's decision that it has declined to decide on common boundary of the disputed area but delegated this task to the chiefs. This means, the ownership of the disputed area is still unresolved and a live issue to be decided by the customary courts established under the *Local Court Act*. As such, I do not think there was a final determination made by the WCLAC regarding the common boundary between the Tiokana and Ririsoka customary land. This will be decided by the appropriate customary courts as mentioned at paragraph 25 and Order 3 of the WCLAC decision.

14. The principle of res judicata as explained in *Talasasa v Paia* [1980] SBHC 2 and subsequently applied in *Majora v Jino* [2007] SBCA 20 and *Misiava v Tukinava* [2020] SBHC 92 requires that the dispute must involve: (i) the same parties, (ii) same issues in the previous proceeding and (iii) same cause of action that has been conclusively determined in a previous case. In the current proceeding, the common boundary and

the ownership of the disputed area between the Claimants and the Second Defendants is yet to be conclusively or finally decided. As explained, the location of the common boundary to separate the Tiokana and Ririsoka customary land is still unresolved, and for this reason, the law on res judicata does not apply to this proceeding.

15. The question raised in the application is answered in a negative. This application is bereft of merit and must be dismissed with cost to be paid to the First and Second Defendants on standard basis.

Orders of the Court

1. **The Claimants' application on a preliminary question of law on the issue that the boundary between the Tiokana and Ririsoka customary land has been conclusively determined by the Western Customary Land Appeal Court in Timber Rights Appeal Case No. 4 of 2019 is answered in the negative.**

2. **Consequently, the application is dismissed with cost to be paid by the Claimants to the First and Second Defendants on a standard basis.**

THE COURT

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Augustine Solver Aulanga

PUISNE JUDGE