

IN THE MALAITA LOCAL COURT.

Civil Jurisdiction

Receipt No. B 1428685

CIVIL- CUSTOMARY LAND – CASE NO. 6 of 2012

BETWEEN: (1) SAMO MASIABU - plaintiffs
(representing AIBOU land)

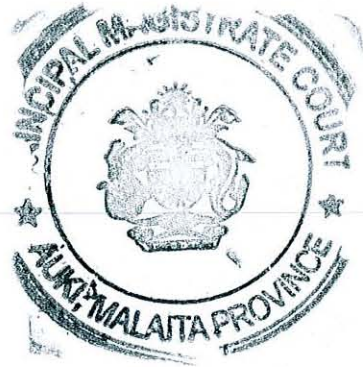
(2) JIMSON SIOFA
(representing NAONI/FELEKE tribe)

AND: (1) CHRIS MONA & (2) DICK SUIBOO - defendants
(representing FUNILOFO & FELENI tribe)

LAND IN DISPUTE: AIBOU PARCEL OF LAND

Date of Hearing : 29-30 July, 2014

Date of Ruling: 1ST August, 2014.



RULLING

[1.0] Introduction.

This is the ruling to the preliminary enquiry into the unaccepted settlement made on the 18/7/2011 at Bethany village by the Tatalenasina House of Chiefs of East Kwaio. The Aibou parcel of land settlement is forwarded for the local Court for registration on 24/5/12 and is known as civil case no . 6 of 2012.

[2.0] Basis For Inquiry (the Issue before court).

The very issue before the court is to determine whether the Aibou parcel of land "UNACCEPTED SETTLEMENT" of 18th July, 2011 be upheld by the local court or be remitted to the chiefs for rehearing.

[3.0] Party Claims

(3.1) Plaintiffs Claim

The plaintiffs claim that the Unaccepted Settlement made on 18th July 2011 on Aibou Parcel of Land is properly done by the Tataelanasina House of Chiefs and the Local Court should uphold it as legal basis for the Local Court to proceed on with the hearing.

They further claim that the defendants failed to attend the chief's hearing on 16th May, 2011 and again on 4th July, 2011. Then on 6th July, 2011 the defendants did attend but they failed to give their statement of claim before the chiefs.

In support of their claim, the plaintiffs submitted previous native court records and letters annexed as Refs 1 to 11 (attached to their submission – Plaintiffs Submission Exhibit 1)

They argued that the defendants failed to follow the proper channels for resolving the dispute under law and instead resort to other custom means to block the progress of the case which results in the President of the Tataelanasina House of Chiefs fleeing to West Kwaio leaving his home and family. On another incident, they claim their community school has closed down due to demands from the defendants .

(3.2) The defense

The defendants, on the other hand, assert that on 6th July, 2011 their party (Funilofo group) did not attend the chiefs hearing for the reason that they have to attend a custom cleansing ritual that has to be performed by their Custom Priest. They further assert that their reason for not attending the scheduled hearing is accepted by the President of the Tataelanasina House of Chiefs.

The defendant further claims that on 7th July, 2011 the President of the chiefs deferred the hearing of the case to a later date.

In defense of the claims by the plaintiffs, the defendants argue that previous Native Court cases submitted by the plaintiffs' as Ref 1-3 are not related to the current issue over Aibou Portion of Land. Furthermore, they argue that the plaintiff's Refs 4 -11 lacks substantial evidence relevant to the current issue (the Unaccepted Settlement of 18th July, 2011).

They further argue that the Unaccepted Settlement form is not signed by the Tataelanasina House of Chiefs.

On the basis of their arguments the defendants maintain that the case be referred to the chiefs for proper settlement in custom.



[4.0] Findings of Court

1. This court finds that both parties argue on the chief's hearing of 6th July 2011 and on the Form I (LC Civil 3) "Unaccepted Settlement" form of 18th July, 2011
2. This court further finds that despite arrangements made by the Tataelanasina chiefs for settlement of the dispute, no chiefs settlement actually eventuated on 6th July, 2011 and on 18th July, 2011.
3. The "Unaccepted Settlement" form of 18th July, 2011 is not authorized by the chiefs
4. There is no record from the chiefs to confirm that their power or means of settling the dispute has been exhausted and to defer the case to the court.
5. The Aibou parcel of land settlement issue has gone beyond proper channels to an extent that it affected the Tataelanasina House of Chiefs and its President, the school and the community at large.

[5.0] Confirmation

The court confirms that the Aibou customary land dispute settlement is not done properly in accordance with the statutory requirements of Sections 12(1)(a)(b) and (c) of the Local Court Act, Cap [19].

This court, therefore cannot continue further with its proceedings but rules as follows:

RULING

1. The Tataelanasina Chiefs "Unaccepted Settlement" (Form LC Civil 3) of 18th July, 2011 is set aside
2. A new panel of chiefs from the area of dispute to be agreed upon by both parties to hear the dispute
3. Both parties to cooperate with the chiefs in performing their duty as mandated by the Constitution and Local Court Act
4. Both parties must respect the rule of law and strive to maintain peace and order to facilitate for true justice to prevail

Further orders by court:

- I. Public facilities such as schools, clinic or water supplies including telecommunication facilities in the area be freed from the dispute
- II. The President Geraldo Aloafea be freed from the custom curse



III. Parties be restrained from using custom practices against the chiefs or other party members that should affect the progress of the settlement.

THE COURT

1. Rinaldo Talo *Raly* President

2. Eddie Wasi *Eddie* Court Justice

3. Alphose Wale *Alphose* Court Justice

4. Hillary Fioru *Hillary* LC Clerk

Dated this 1st day of August, 2014

