

JUDGMENT

This is an appeal against the decision of West Ysabel Local Court in Civil Case No. 7 of 1980. In that proceeding the Lower Court decided that "Mostyn Peni must work and live in the place where he is working."

On the outset, as the case in the Lower Court is seriously in conflict with the decision which the West Ysabel Local Court made on Liheshite it has become necessary that the judgment and decision of the Lower court be read in the light of the evidences adduced in that court. We must first turn to the L.C. record.

The plaintiff in the Lower court, that is Peni, stated that the land is not his land, but the land belong to Posomogo clan into which he married. This land, he said, passed down from generation to generation. In July (1978) he developed and occupied the land. (He states in this court, that he did so on the authority of Timothy Uza) He said he has not heard of the customary purchase of the land allege by Robinson Tao, in the court below.

Robinson adduced substantive evidences on the transaction that took place. He stated from whom the land was bought, the price of the land and the boundary and from which clan he belong that bought the land. (See p1 West Ysabel L.C. Civil Case 7/80)

Neither of the parties called any witnesses, most importantly Timothy Uza on whom the present Respondent relied in the court below.

Despite the weight of the evidence adduced by Robinson Tao in the Local Court, the court however made the following judgment and decision:-

"Robinson Tao have not enough evidence that he is the rightful owner of the land. He hasn't anything planted on the land and Mostyn Peni haven't heard of the customary registration made long ago.

Mostyn Peni must work and live in the place where he is working".

On studying the Local Court record the only evidences that the Local relied upon and made their award were

- a) the evidence of development of the land by Mostyn and no development by Robinson Tao.
- b) the authority he obtained from Uza; and
- c) the customary purchase of the land by Robinson's clan.

The CLAC feels that these are not strong evidences to rely on as weighed against the clear and substantive evidence of Robinson Tao. If Mostyn developed the land before Robinson and although Robinson had no development on the land over which he has the right to the title, it does not extinguish that right over the title.

If Mostyn relied on Uza's authority then he must bring Uza in the lower court to establish why he had authorize him. Although he did not do it yet the Local Court relied on that as a strong evidence.

If Mostyn did not hear of the customary purchase that still do not qualify him to own or use the land without enquiry as to who might have some interest in the land.

The CLAC has carefully considered the evidences and findings and decision made in the court below and feel that the Local Court is seriously in error by deciding against the weight of the evidence. The judgement and the decision lacks justification and therefore it is necessary to have them reversed and is so reversed by the CLAC accordingly.

Having reached that conclusion it is not needful to consider the grounds of appeal by Robinson Tao.

Furthermore the CLAC would add that parties to the suit should have been Tao and Timothy Uza - and not Peni. Peni as he admitted in the Local Court is not the landowner, but only occupied and used the land on the authority of Timothy Uza. As Uza has not been called to give evidence in both this court and the court below if he so wishes he may challenge Robinson Tao on the question of ownership of Liheshite.

The CLAC therefore decree as follows.

DECREE

1. That West Ysabel Local Court decision in Civil Case No. 7/80 is held null and void.
2. That Robinson and members of his clan are owners of Leheshite according to custom.
3. That no further development be carried out by Mostyn Peni unless Robinson Tao consents thereto.
4. That Mostyn Peni do refund Robinson Tao the court fee of \$50 within one month.

Announced at Buala on 30.6.82.

S Holara	President
P Kezo	Member
E Huinodi	"
Martin Solodi	"
Joses W Sanga	Sec/Magistrate