JOHN QAQARA (representing the Reokana tribe) –v- HARRY BOE & ISIAH (AZEA) POLOSO (representing the Tasolomo tribe) AND JACKSON PITA (representing the Zironananomo tribe)

HIGH COURT OF SOLOMON ISLANDS
(F. O. KABUI, J.)

Civil Case No. 279 of 2001

Date of Hearing: 3rd May 2002
Date of Judgment: 8th May 2002

Mrs A.N. Tongarutu for the Applicant
Mr D. Hou for the Respondent

JUDGMENT

(Kabui, J): The Applicant by Originating Summons filed on 15th October 2001, seeks the following declarations and orders-

1. **The customary rights to ownership of Reokona and Chirokaboa lands are vested in the Reokana tribe which the Applicant represents and that the final judicial determination of ownership of the said lands was made in the Judgment of the Choiseul Local Court Civil Case No. 9/71.**

2. **The Certificate of Customary Ownership dated 8th June 2001 is the final determination on timber rights over Reokana and Lepokasi Lands.**

3. **That the letters of appeal dated 4th July 2001 by the Respondents must be dismissed in that neither the Magistrate's Court nor the Customary Land Appeal Court (Western) has jurisdiction to hear the appeal points contained therein.**

4. **That the Second Respondent's Appeal must be struck out in that the Certificate of Customary Ownership does not include Zironanonano Land.**

The Facts

The Applicant is a member of the Reokana tribe on the Island of Choiseul. The Reokana Small Business Association on 6th March 2000 commenced the procedure for the acquisition of timber rights over Reokana land. The Form 2 Certificate was signed on 8th June 2001. This Form 2 Certificate contains the list of persons whom the Choiseul Provincial Executive found to be the persons lawfully entitled to grant timber rights over Reokana land. One of these persons is the Applicant. Messrs Boe, Poloso and Pita have appealed against the determination of the Choiseul Provincial Executive by

letters all dated 4th July 2001. These letters of appeal are all the same in terms of intent. They were lodged with the Magistrate Court at Gizo pursuant to section 10 of the Forest Resources and Timber Utilization Act (Cap.40) **"the Act".** The appeal is yet to be heard by the relevant Customary Land Appeal Court.

The Applicant's Case

The Applicant's case is that the appeal lodged by the appellants is unnecessary because the ownership of Reokana land was already decided by the North Choiseul Native Court in **Civil Case No. 9 of 1971**. On that basis the appeal to the Customary Land Appeal Court should be struck out and the determination made by the Choiseul Provincial Executive be confirmed being the correct reflection of the decision reached by the North Choiseul Native Court in 1971 cited above.

The 1st and 2nd Respondents' Case

The case for the 1st and 2nd Respondents is that the true position is more than what the Applicant said. The facts in **Civil Case No. 9 of 1971** upon which the Applicant relies are different in that the land in dispute then is Chirokaboa land, the boundaries of which have never been determined in relation to neighbouring lands. Lastly, the appropriate forum to determine the appeal in this case is the Customary Land Appeal Court and not the High Court.

My decision

The starting point here is section 10 of the Act, which reads-

(1) Any person who is aggrieved by the determination of the council made under section 8(3)(b) or (c) may, within one month from the date public notice was given in the manner set out in section 9(2)(b), appeal to the customary land appeal court having jurisdiction for the area in which the customary land concerned is situated and such court shall hear and determine the appeal.

(2) Notwithstanding any provision to the contrary in any other law, the order or decision of a customary land appeal court on any appeal entertained by it under subsection (1) shall be final and conclusive and shall not be questioned in any proceedings whatsoever.

(3) It shall be the duty of the clerk to any customary land appeal court to forthwith notify the Commissioner of the lodging in his court of an appeal under this section and where such appeal is finally determined inform the Commissioner and the appropriate Government of the result of the appeal and forward to each of them a copy of the relevant judgment.

Clearly, once an appeal is lodged under section 10 above, the process of seeing the appeal to its conclusion cannot be sabotaged in any way until that

process is competed. The appeal may of course be withdrawn but that is not the case here (see Judgment of the Court of Appeal in **Aquilla Talasasa, Jacob Zingihite and Nathan Maisasa Losa v. Rex Biku, John Kevisi and Customary Land Appeal Court (Western) Civil Appeal No.2 of 1987).** I have no power to strike out the appeal lodged by the 1st and 2nd Respondents in this case under section 10 of the Act. It is not for the High Court to correct the appeal points in the appeal before the appeal is heard by the Customary Land Appeal Court. The Customary Land Appeal Court will decide the appeal points at the relevant time **(see John Sina v. John Mark Matupiko, Civil Case No. 082/2001).** The question of customary ownership of Reokana and Chirokaboa lands is a matter for the Chiefs and the Local Court to deal with at the appropriate time **(see Gandly Simbe's case often cited in this regard).** I can see that there is already a potential dispute over the ownership of Reokana land. That is not a matter for the Customary Land Appeal Court or the High Court to take up now at this point in time. I must therefore refuse this application. The application is dismissed with costs.

F. O. Kabui
Judge