

IN THE HIGH COURT OF SOLOMON ISLANDS

CIVIL JURISDICTION

Civil Case Number 502 of 2018

BETWEEN: CHIEF BILLY PAPAQUI DOKAMA - Appellant/Applicant
(Representing the Qoza Tribe)

AND: CHOISEUL/ WESTERN CUSTOMARY LAND
APPEAL COURT - 1st Respondent

AND: EZRA KUKUTI AND OTHERS
(Representing Kalesuka Tribe) - 2nd Respondent

Date of Hearing: 16th August 2022 (Written Submission).

Date of Ruling: 30th September 2022.

Counsel; Mr. Abe for the Appellant/Applicant.

Counsel; Mr. Ale and Mr. Rano for the 2nd Respondent.



No Appearance for the 1st Respondent.

KENIAPISIA; PJ:

RULING ON WHETHER OR NOT TO ADMIT NEW EVIDENCE

1. This appeal relates to a customary land dispute originating from **Batava Council of Chiefs, Choiseul Local Court and Western Choiseul Customary Land Appeal Court**. The relevant evidences from the said lower Courts/Tribunals are already included in the appeal book, compiled by the Registrar on **21/4/2022**. Matter is now ready for trial. However, on **29/07/2022**, Appellants applied to admit new evidence.
2. New evidence Appellants seek to adduce are 2 determinations (decisions) of the Choiseul Provincial Executive on 2 timber rights hearing made on **12/06/2013** and **12/01/2017**. Appellants say that the said 2 timber rights hearing determinations involved the parties and issues in this proceeding. And ought to be included in the appeal book, for use as evidence, in the interest of justice.
3. The issue is "Whether Court should grant leave to include the determinations of Choiseul Provincial Executive on 2 timber rights hearing dated **12/06/2013** and **12/01/2017**, as new evidence in this appeal?" Appellant cannot admit/adduce new evidence, without leave of the Court (Rule 16.58).

4. The pertinent question is “Whether the new evidence is necessary or relevant to use as evidence in this appeal – Section 20 of the Evidence Act 2009 (No 11 of 2009)?” Second Respondent in opposing the application says, the evidence is irrelevant and should not be admitted, because the 2 timber rights determinations are related to 2 separate lands and tribes which are unrelated to the 2 lands and tribes in this proceeding. Even if the 2 timber rights determinations, are related to the parties and issues in this proceeding, Court will still not admit the 2 determinations as evidences. The 2 determinations do not have any legal effect as binding decisions on customary land ownership. Timber rights determinations by the Provincial Executive is not a conclusive proof of evidence of ownership of customary land(s) between parties concerned (Simbe –v- East Choiseul Area Council (1999), SBSA9, CA-CAC 8 of 1997 (9th February 1999).
5. The evidences on this appeal, which are binding on parties and which will become relevant evidences, for review by this Court, are already contained in the compiled appeal book. The relevant evidences are the materials used in the **Batava Council of Chief’s** decision, **Choiseul Local Court** decision and **Western Choiseul Customary Land Appeal Court** decision.
6. Accordingly, Court decline to grant leave to adduce new evidence on the ground of irrelevancy. Counsel should liaise with Senior Associate to list Pre-trial conference, preferably when I return from annual leave in November 2022.


THE COURT


JUSTICE JOHN A. KENAPISIA
PUISNE JUDGE