

Landowners' Advocacy and Legal Support Unit

Public Solicitor's Office

PRESENTER'S NOTES: COURT PROCESS FOR LAND DISPUTES

CHIEFS' HEARING

- Every local community should have a Chiefs Committee or Chiefs Council.
- **Applications:** Claims of ownership are to be made to the secretary of the Chiefs Committee / Council.
- **Service of Notice to other party:** The Secretary will inform the Chiefs of the application and inform the other party about the dispute and ask the other party to confirm whether or not they will defend the claim.
- **Appointment of Chiefs:** If the other party wishes to defend the claim the Secretary must consider the appropriate chiefs to hear the case. The Chiefs must have a good understanding of the land in dispute and must not be related to any of the parties. This can become very difficult in some cases because in most communities people are related to each other one way or the other (same tribe or clan). In some communities, the Chiefs appointed to sit in the Chiefs Council are the only persons allowed to hear disputes. Any Chief who has a conflict can be disqualified from hearing the matter.
- **Setting the Date:** Once the Chiefs are appointed, the Secretary must set a date for hearing convenient to the Chiefs and both the parties.
- **Survey of land in dispute:** Before the hearing each party are to make a survey of the land in dispute and for purposes of clarifying land marks such as taboo sites, boundaries, etc. Sometimes this is done after the commencement of the hearing depending on the case.
- **Hearing:** Each party must call witnesses to give evidence to support their case. Evidence include, genealogy, current possession and use of land (plantation, garden, housing), burial sites of elders or ancestors, taboo sites etc
- **Decision:** Decisions are to be provided in writing to the parties and served to the parties. A copy of the decision must be forward to the Local Court office to keep as Court Record.
- **Appeal:** Any party aggrieved by the decision must apply to the Local Court within 3 months from the date of the decision. The party who wishes to appeal must sign a form called "Unaccepted Settlement" Form and signed by 2 or more of the Chiefs who decided the matter.

LOCAL COURTS

- Will not hear any case that has not been heard before the Chiefs.
- Will consider the Chiefs decision.
- **Evidence:** Hears evidence from both parties. Hear evidence from any or all of the Chiefs who decided the case.
- **Decision:** Provide a written decision to both parties. Decision must be treated as final.
- Has power to quash, substitute decision made by chiefs.

- **Appeal on point of custom:** Any person aggrieved by the decision may appeal to the Customary Lands Appeal Court on issues concerning custom only.
- **Appeal on point of law:** Any appeal on point of Law must be submitted to the High Court e.g on failure of court to accept evidence or give sufficient weight given to evidence, likelihood of biasness, failure of court to comply with court procedures such as providing sufficient notice to parties etc.
- **Appeal period.** Appeal period is 3 months from the date of the decision.

CUSTOMARY LAND APPEAL COURT

- **Parties:** Will hear submissions only from both parties to the Local Court proceedings.
- **Witnesses:** No witness can be called unless the court considers it necessary to call any witness.
- **Evidence:** Submissions must be based on customary issues only – eg. No proper consideration given to weight of evidence
- **Decision:** Written decision of the case will be provided to both parties. Decision to be treated as final.
- Has power to quash, substitute decision of Local Court
- Has the power to remit the matter back to the Local Court for re-hearing where necessary.
- **Appeal:** Any party not satisfied with the decision can appeal to the High Court within 3 months from date of decision
- Appeal must be based on error of law or failure to comply with procedural requirements of any written law. Judicial Review is a common ground for appeals to the High Court.

HIGH COURT

- Hear the grounds of appeal based on matters of law only.
- Make a decision on the grounds of the appeal.
- Has power to quash, substitute decision made by CLAC.
- If High Court finds that an error of law or error in the court process, the Court can remit the matter back to the Subordinate courts where the error was made and to hear the matter again.

COURT OF APPEAL

- To hear and determine the matter and may refer the matter back to the High Court where it sees necessary.

PRINCIPLE OF “RES JUDICATA”

If A and B dispute a piece of land B has won the ownership before the Chiefs, Local Court, CLAC or High Court, this decision shall be treated as final. But C who has not been a party and has no blood ties with A can challenge the ownership of the land against B and the matter will be treated as a brand new case. If C however has in some way participated in support of A before the final decision was made, C cannot challenge B's ownership because he/she will be stopped from commencing the case. The principle of Res Judicata will apply meaning the matter has been determined.