

In the Western Customary Land  
Appeal Court

CLAC no.1 of 2005

In the Matter of: Timber rights Appeal on Gasapatu & Lato Land

Between: Holmes Saeve ) Appellant  
Luxton Zovere )

And: Hedison Niva Respondent

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**JUDGMENT**  
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This is an appeal filed by the appellant Mr. Homes Saeve and Luxton Zovere, against the determination of the Western Provincial Executive made on 29<sup>th</sup> December 2004 in respect of Gasapatu and Lato Timber Right.

The appellant in this matter filed four grounds of Appeal points.

Summary of facts:

The Appellants party claimed ownership of this land in question Gasapatu & Lato therefore claim right to grant any Timber Rights.

The appellant said that, the Respondentts party settled at Gasapatu Land under the permission of Kindu Tribe, therefore Respondents have no right to grant any Timber Right.

The Appellants said this area in question Gasapatu & Lato land already been determine by the Roviana Area Council in 1984. The persons determined to grant Timber Rights were all from Kindu Tribe. It was raised that Respondents didn't object that determination.

The Appellants said that Respondent's party was regarded as beneficiary in that land.

Point 1: Appellants questioned why Western Provincial Executive have to convince another Timber Right hearing when there has been a Timber Right hearing over the same land in 1984.

The Respondents application was heard by the Western Provincial Executive in Gizo on 29/4/04. Appellants said his party didn't aware of the hearing date therefore didn't attend the hearing on 29/12/04.

The Appellants confirm that his party saw the Public Notice put up in Lambete about six days. However, they said the actual date of hearing was not known therefore they didn't attend.

Further to their evidences, the Appellants spokesperson No. 3 testify in court there was no timber right hearing over this land in question in 1984. They have been advised by the Western Provincial Government and Lands Division to go ahead carry out logging operation. This is because they have already been granted a sawmill timber license on that area of land.

#### Respondents Case:

In reply the respondents argued that the appellants were aware about the hearing held in Gizo on 29<sup>th</sup>/12/04. The Notice was displayed in Lambete. And since the Appellants party failed to turn up during the hearing, they have no standing in this appeal.

The Form III document produced by the Appellants is only a draft. There was no timber right determination for the land presented in this appeal court as to prove that there was a timber right hearing over this land in 1984.

#### Finding of Court:

The power of the court in this appeal is to hear and determine issues on Timber rights only. This court lacks jurisdiction to determine issue related to ownership or who owns the land.

The issue of ownership of customary land is a matter to be referred to the right avenue, that is begin from the chiefs. Ownership of customary land is not the same issue as ownership of Timber Rights in the harvestable trees on that same customary land.

This issue has been conclusively determined in the High Court of Solomon Islands [see Ezekiel -v- Seth Hite, Civil Appeal No. 155 of 2003]

The first question that needs to be discussion is whether the appellant have standing in this Appeal.

#### LOCAL STANDI

Appellant argued that they were not aware of the hearing date although Notice was put up at Lambete. They have sighted the Notice but did not attend.

Before the court consider the points of appeal of the appellant it is important to determine this issue of standing and whether he had made representation before the Executive Committee. This is so because if the appellant has standing or made representation which the Executive Committee did not consider or erred in deciding then the appellant has case before this court.

This CLAC is an appellant court and whoever is aggrieved by the determination of the Area Council must establish his standing or right to appeal to this court. And for the purpose of appeal to this court, such appellant must make representation or objection to Area Council for consideration at the time of the hearing of timber rights. It is as result of that representation that such was not considered or decision not in his favour thus you would then appeal to this court. If you aren't then you cannot appeal to this court. You have no case to bring before this court.

For the Appellant to have standing in the appeal, they must show that they have attempted interest or have must direct affected by the determination. Be some necessary attempt be made by them to attend the said hearing. In this case there no evidence to show any attempt made to attend the hearing. This therefore revealed that, the appellants have no standing in the appeal court.

Timber Right hearing in 1984

This issue needs also to be answer as it form part of the evidence before this court.

Appellant said that, these has been a timber right hear by Roviana Area Council in 1984 in the land in question. The Earth Movers has been carrying out logging activities in part of the land in which Gasapatu and Lato is part of Respondents argument that this part of customary Land was not been to the Roviana Area Council for determination in Timber Rights in 1984.

On the evidence of Mr. Mathias Maelagi for Appellants, he revealed in court that there is no Timber Right hearing in the customary land. He revealed that the Kindu Tribe only acquire Timber Saw milling Project License later applied for logging however, its Western Provincial Government and land Division advice them that there is no need in applying for two licenses on one land. They therefore extend the Earth Movers License to operate on Kohigho Customary land.

This clearly revealed in this fact that there is no minute of Roviana Area Council Timber Right hearing in 1984 and also no form II issued.

This court therefore satisfied that there has been no Timber Right hearing as required under the Forestry Act been carried out on Gasapatu and Lato customary land.

**DECISION**

1. Appellant has no locus standi.
2. The appeal has no ground
3. Appeal dismissed.

**Order:**

No cost award.

Dated this **02<sup>nd</sup>** Day of **May** 2005.

Signed:	David Laena	.....
	Wilson Katovai	.....
	Wellington Lioso	.....
	Joseph Liva	.....
	Davis Vurusu	.....

ROAE