

In the Western Customary Land Appeal Court

Land Appellant Jurisdiction

CLAC no: 22 & 23 of 2003

In the Matter of: **Tasolomo Land Timber Right Appeal**

Between: **Ezra Poloso** ) 1<sup>st</sup> Appellant  
Chris Takolo ) 2<sup>nd</sup> Appellant

And: Jack Kisini & others ) Respondents



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## JUDGMENT

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This is a timber right appeal on Tasolomo land which was heard and determined by the Choisuel Provincial Executive on the 13<sup>th</sup> – 15<sup>th</sup> May 2003. There are two appeals which relates to each other and the court will deal with them together.

The applicant for the determination of timber right (Form I) is Omex Ltd.

### **First Appellant Grounds**

The First Appellant appeal points relate to each other and are summarize as follows:

1. There was no proper consultation with on matters relating to the application with the members of Tasolomo tribe.
2. A portion of land called Sirosakapa within Tasolomo land is own by them through Lua Bani.
3. Provincial Executive erred in its decision that matters raised by them is internal tribal issues and be dealt with on tribe level,

The appellant claimed that the issues raised are serious customary issues be properly dealt at the house of chiefs and ask this court to remit or refer to the chiefs.

### **Second Appellant Grounds**

And the Second Appellant's points of appeal also relate to each other and are summarize as follows:

1. Appellant is the chief of Tasolomo tribe and did not give consent to Omex Ltd to apply for timber right,
2. The Provincial Executive erred to grant timber right to on Tasolomo Land when there are serious customary issues raised by his clan at the hearing.

The appellant ask this court to remit or refer to the matter to the chiefs.

### **The Court**

Before the court deals with grounds of appeal it is important to clarify some preliminary matters relate to the hearing of this matter and in particular proceeding with the case without appearance or representation of the First and Second Appellants to the court.

A notice of the hearing of this case with others was made by way of service message over the SIBC weeks before the hearing and that case will be heard by Western Customary Land Appeal Court at Gizo commencing on 3<sup>rd</sup> October 2005 at 9 O'clock in the morning. And Parties must attend without fail.

The message further stated that failure to attend the court on the dates stated herein in person may result in a Judgment or Order made in your absences.

On the 3<sup>rd</sup> October 2005, a call over on all the cases to be heard by the court at this sitting was made. For this case Respondent parties appeared but the two Appellants did not appear at the court. There was no reason given before the court for none appearance. The court proceeded and lists the case next day being the 4<sup>th</sup> October 2005 at 8.30 am.

After the call over, a faxed letter from Second Appellant and dated 3<sup>rd</sup> October 2005 was handed to the court office which requested the court delay the matter as the were leaving Taro to Gizo to attend the hearing that day.

When the court resumes at 8.30 on 4<sup>th</sup> October 2005 to commence the hearing of this matter, they decided to adjourn it until 1.30 pm in order to allow some more time to the Appellant parties to appear in the court.

At 1.30 pm the court resumed but still the Appellant parties did not appear. There were no further reason before the court for the non appearance and so the court decided to proceed and hear the case.

The appellants did not attend but the court decided to hear the cases and invited the Respondents to make reply or submission on the matters raised in the grounds of the appeals.

Respondent party then proceeded to present its reply to the appeal points of the two cases.

## **The Law**

Section 8 (3) (b) (c) of Forest Timber Resources and Utilization Act (FTRU) provides:

*"8 (3) At the time and place referred to in subsection (1), the Provincial Executive Committee shall in consultation with the appropriate Government discuss and determine with the customary landowners and the applicant matters relating to—*

*(a).....*

*(b) whether the persons proposing to grant the timber rights in question are the persons, and represent all the persons, lawfully entitled to grant such rights, and if not who such persons are;*

*(c) the nature and extent of the timber rights, if any, to be granted to the applicant;*

*....."*

*10.—(1) Any person who is aggrieved by the determination of the Provincial Executive Committee 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.*

Section 8 (3) (b) (c) of FTRU therefore requires the Provincial Executive to determine the following matters:

The persons proposing to grant the timber rights on Tasolomo Land,

1. And if they represent all the persons lawfully entitled to grant such rights,
2. And if not who such persons are?
3. The nature and extent of the timber rights, if any, to be granted to the applicant;

## **Merit of Ground of Appeals**

For this case the court may have to look at the submission of the respondent and examine the minutes or record of the proceeding and determination of the Provincial Executive Committee. But before doing so, it must satisfy that the

appellants have cases or the issues raised in the ground of appeal may be entertained by court in the process of appeal on the matters under the FTRU Act.

For the First Appellant's ground of appeal on no proper consultation with on matters relating to the application and members of Tasolomo tribe, it is not proper to bring this ground to this court. The concern was the subject of the timber right hearing. It is not an issue for appeal.

On the ground of appeal of the portion of land called Sirosakapa within Tasolomo land is own by them through Lua Bani, it is a customary issue which cannot be dealt with under the process of appeal under the FTRU Act. The proper place for such is the chiefs and local court.

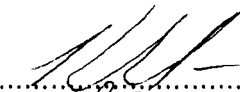
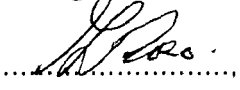
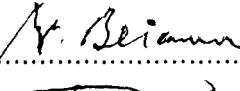
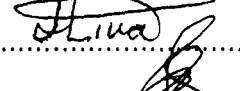
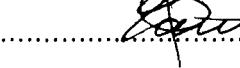
For the Second Appellant the ground of appeals bears no issues or matter for this court to entertain.

Upon considering the ground of appeals with the requirement of Section 8 (3) (b) (c) of Forest Timber Resources and Utilization Act (FTRU) (quoted above) and the reply of the respondent, the court is satisfy that the appellants has no case to bring before this court, and the matters raised in the appeals are for chiefs and local court.

**Order**

1. All appeals struck out
2. No cost awarded

Dated this 10<sup>th</sup> day of October 2005

Signed: Wilson Katovai	Ag/President	
Willington Lioso	Member	
N. Balaruru	"	
Joseph Liva	"	
Maina LR	Clerk/Member	

ROAE

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