

IN THE WESTERN CUSTOMARY)
LAND APPEAL COURT)

CLAC No: 4 of 1997

Timber Right Appellant Jurisdiction

IN THE MATTER OF: Kokoburi Land – Timber Right Appeal.

BETWEEN: Job Lato)
Nerio Kuchibatu) Appellants

AND: Chief Silverio Kubebatu)
Chief Gabriel Podosovaka) Respondents
& Others)



JUDGMENT

This is an appeal against the determination of the North West Choiseul Area Council of the timber right on Kokoburi land, Choiseul, Province. The determination on timber right decision was made and form II was dated 10th January 1997.

The Brief Background

The North West Choiseul Area Council convened a timber right hearing on 9/1/97 on Kokoburi land.

The applicant according to Form 1 is Eagon Resources Development Company (SI) Ltd. The North West Choiseul Area Council made a determination in favour of the Respondents as persons entitled to grant timber right on Kokoburi land.

The appellant party did not attend that timber right hearing. Having aggrieved by that determination, they appealed against that said determination to the Western Customary Land Appeal Court having jurisdiction on the area in question.

Grounds of Appeal

There are four grounds of appeal filed by the appellant.

1. In accordance to the Local court decision of 26th August 1960 which photocopies of the evidence document are herewith attached, I am the

true Chief and landowner of the said land. Kokoburi. Since that Local Court decision, no appeal has been made to prove that Mr. S. Kubebatu, the claimed chief who applied with Eagon was made. Instead, Mr. S. Kubebatu was one of my key witnesses at the court hearing of Totorematekana on 26/8/60 at Mamarana.

2. Standing on Local Court evidences that I am the chief, Eagon Company has failed to comply with section 6 of form I of the Forestry Act. Because no preliminary negotiation was made with me to obtain my permission for the company to apply for timber right for Kokoburi land, as required under form I (s6).
3. I raised objections to the application prior to any hearing before Christmas 1996, with Mr. S. Kubebatu and his trustees and verbally notified Eagon Company. A special tribal meeting was requested by the Company and Kubebatu so that the claim of ownership by Mr. S. Kubebatu could be sorted out. This meeting was postponed to after New Year, at a date to be set.
4. On the 9/1/97 Mr. S. Kubebatu and Eagon Company (forwarded Kokoburi Land) to Area Council's timber hearing and timber right was granted even in the following situation:
 - (a) The tribal meeting I was waiting for was never held. Nor being informed of any changes about the tribal meeting.
 - (b) Myself and those other clan leaders we own the land did not know that Kokoburi land was heard by the Area Council on 9/1/97. On 11/1/97 I heard about Kokoburi land timber right being granted to Eagon. I was shocked and felt being robbed of my land right.
 - (c) Those who supported Mr. S. Kubebatu were the loser in the Court hearing of civil case 7/60 of 26/8/60. Therefore, the same group used this timber rights issue to put claim to the same land. This is a breach of Local Court Decision of Civil case 7/60 and the applicants are trespassing onto Kokoburi land.

All these grounds of appeal relates to ownership and Chieftainship over Kokoburi land.

Finding of Court

The power of this Court in this appeal is to hear and determined issue on Timber Rights only, this court lacks jurisdiction to determine issued related to ownership or who owns the land.

The issue of ownership of customary land is a matter to be referred to the right tribunal, that is began 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. The issue has been conclusively determined in High Court of Solomon Islands. [See Ezekiel –v- Seri Hite, Civil Appeal No. 155 of 2003].

LOCAS STANDI

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

Appellant argued that they were not aware of the hearing date although notice was put up at there village.

Respondent argument that, appellants were aware of the hearing date, Notice was put up in their village. The Respondent and Appellant were living almost in the same village.

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

The CLAC is an appellant court and whoever is aggrieved by the determination of the Area Council Committee 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 the Area Council for consideration at the time of the Timber Right hearing. It is as result of that representation that such was not considered or decision not in your favour you would then appeal to this court. If you aren't then you can not appeal to this court. You have no case to bring before this court.

For the appellant to have standing they must have attempted interest or must have direct affected by the determination. In this case there is no evidence to show any attempt to attend the hearing. Thus therefore revealed that, the appellant have no standing in the appeal court. Even of appellant have

standing in before this court their grounds of appeal 1 – 4 a, b, c all relates to ownership and chieftainship, in which this court lacks jurisdiction to determine under FTRU Act. All the grounds of Appeal therefore dismissed.

Upon considering all the evidence before this court we made the following Orders:

- Order:
1. Appellants has no locas standi;
 2. The appeals have no grounds.
 3. All grounds of Appeals dismissed
 4. No order for cost.

Dated this 17th October 2005

Signed: Wilson Katovai (P)
 Wellington Lioso (M)
 Joseph Liva (m)
 N. Beiaruru (m)
 Davis D Vurusu (Clerk)

ROAE
