

Timber Right Appellant Jurisdiction

IN THE MATTER OF: Davala Land Timber Right Appeal

**BETWEEN:**

Ben Lomulo

Appellant

**AND:**

Ezekiel Mateni  
Mendana Hagere

Respondents

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**JUDGMENT**  
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This is an appeal filed before Western Customary Land Appeal Court by the appellant against the determination of Western Provincial Executive Committee of the timber right on Davala land.

**THE BRIEF BACKGROUND**

The Western Provincial Executive Committee convened timber right hearing on 3<sup>rd</sup> of April 2003 on Mukimuki Davala and Riki land. The applicant according to form 1 is Mr. Ezekiel Mateni (Mukimuki Development).

On 8<sup>th</sup> April 2003, the Western Provincial Executive Committee made a determination in favour of the respondents as persons entitled to grant timber right on Mukimuki and Davala land. The appellant has appeal against the determination. Appellant seek order of this court to quash the determination of Western Provincial Executive on the portion of land called Davala land and a fresh or identify him as persons who represent all persons to grant timber right on Davala land.

**GROUND OF APPEAL**

There are two grounds of appeal filed by the appellant.

- 1) The Western Provincial Executive was wrong as it did not convene the meeting for timber right on the fixed and appointed date 28<sup>th</sup> March 2003, but convened or held the meeting at Seghe on a date not fixed on the notice, the being 3<sup>rd</sup> day of April 2003.

- 2) Davala and Mukimuki lands are two separate land and Provincial Executive committee was wrong to identify Ezekiel Materu and Mendana Hagere as the persons to grant timber right on both lands areas. Davala land is owned by Busimati tribe whom I represent; therefore have the rights to grant timber right on Davala land.

Grounds 1 relates to point of law. The appellant has withdrawn this point in his submission and this leaves us grounds number 2 to be dealt with.

## **ISSUE**

Whether Provincial Executive had determined or identifies the person to grant timber right on Davala land.

## **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 aggrieved by the determination of the Provincial Executive Committee made under section 8 (3) (b) or (c) may, within one month from the dated 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.*

The Western Provincial Executive Committee is therefore required to determine the matter set in section 8(3) © of FTRU Act.

To consider the issue, we have to look at the submission of the Appellant, Respondents and examine the minutes or record of proceeding and determination of the Western Provincial Executive.

### **The Case**

The Appellants spokesman submit that his father Mr. Ben Lomulo has identified himself as person having right to grant Timber Right on Davala land at the Timber Right hearing at Seghe.

He (Appellant) submitted that Mr. Ezekiel Mateni and Mendana Hagere were not the right persons to grant timber right on Davla land because their names were not disclosed in their evidence or representation at the Timber Right hearing as persons to grant Timber Right on Davala land. He submits that the Western Provincial Executive Committee did not identify or determine them as persons to grant Timber Right on Davala land in their determination.

The Respondents spokesperson in reply submit that the only reason why appellant was not determine by the Western Provincial Executive Committee is that, Appellant's party have lost their case on Davala land in 1974.

For the determinations, what did the Provincial Executive committee record say?

The records of determination consist of 2 pages and at page 2, it states as follows:

*"The Western Provincial Executive therefore by majority approved Mr. Ezekiel Mateni application for Timber Rights Acquisition for Riki, Davala and Mukimuki customary land.*

*The Executive further approved that Mr. Ezekiel Mateni must unlike the provincial Executive during the negotiation for agreement so that the appropriate government will participate in the initial development program in accordance with section 5C(3)(4) of FTRU Act.*

The record of the WPEC does not disclose any evidence or information to support those who proposed to grant timber right on Davala land.

## **Afresh**

If the court decides to quash the decision, does it have the power to afresh the case? In the case of Ezekiel Mateni –v- Seri Hite H/C CC No: 155 of 2003 at page 3 the court made reference in the judgment of the court of Appeal, in the case of Aquila Talasasa , Jacob Zingihite and Nathan Maisasa Losa –v- Rex Biku, John Kevesi, and WCLAC, Civil Appeal No. of 1987.

*".....The function of the Customary land Appeal court once an appeal was instituted is, as set out in S. 5D(1), to hear and determine the appeal. In this statutory context this must mean that it is the duty of the Appellate court to examine whether the determination certified by the Area Council and determine whether it correctly identified all the persons lawfully able and entitled to grant the rights in question..... It follows that it is the function of the customary land appeal court to examine the question afresh and to make its own determine...."*

The evidence before this court is that, the WPEC does not identify or determine persons to grant timber right on Davala land on the evidence before them in the hearing. We also note that, the WPE does not identify or determine persons to grant Timber Right on Mukimuki land. However this is not the subject of this appeal therefore we will not consider it.

After concerning all the evidences before us we make the following Orders:

### **Order**

- (1) Quash the determination of the Western Provincial Executive
- (2) Afresh the matter
- (3) That Ben Lomulo is identified as a person to grant timber right on a portion of land called Davala land.
- (4) No Order for cost.

Dated: 17/10/05

Signed:	Wilson Katovai	-	Acting President
	Willington Lioso	-	Member
	Joseph Liva	-	"
	Naingimea Beiaruru	-	"
	Davis D Vurusu	-	Clerk/Member

Right of Appeal Explained