

**In the Western Customary
Land Appeal Court**

CLAC no. 03/02

Between: Robert Pentani) Appellant

And: Raku Halu & Others) Respondents

JUDGMENT

This is an appeal under section 10 of the Forest Resources and Timber Utilization Act filed by the Appellant Mr. Robert Pentani

Background

The Western Provincial Executive did an 12/8/02 at Seghe substation sat and heard an application made under section 7(2) of FRTU Act on Tiroto Customary land, situated in North Vangu Island in the Western Province. The WPE Determination was said to be on 12/8/02. Their Form II was dated 18th September, 2002. The WPE determination was in favour of the applicants.

Having aggrieved by that determination, the appellant Mr. Robert Pentani on the 8th of October 2002 filed an appeal under section 10 of the FRTU Act to the Western Customary Land Appeal Court.

Grounds of Appeal:

There are four grounds of Appeal:

1. that the Notice (Form I) for the meeting to identify persons to grant Timber Rights under section 8(1) of the Forest Resources and Timber Utilization Act was not served on us the rightful persons to

grant Timber Rights on Tirotobo customary land. I in other words, such notice had not come to our attention and therefore as a result we were not able to attend the meeting arranged by the Western Provincial Executive on 18/09/02 to present our claim of interest over the land in question.

2. As a result of ground 1, the Western Provincial Executive had identified wrong persons to grant Timber Rights on the land, namely, Smith Moses, Ricky Namusu, Kokei Joseph, Derold Timothy, Ricky Hallu, Pitivi Nicely and Joshua Giri.
3. That persons identified by the Western Provincial Executive in their determination on 18/9/02 as named alive are not the persons and/or do not represent all the persons lawfully entitled to grant Timber Rights on Tirotobo Customary land.
4. That the persons lawfully entitled to grant such rights are Belapeza Pentani and myself and members of our tribe.

Request for Adjournment

Before the court look at the points of appeal it is important to rule on the letter by appellant's lawyer Maelyn Bird to clerk of Western Customary Land Appeal court of 8th August 2006, requesting the case to be adjourned to a later date.. For this matter, the appellant in this case Mr. Robert Pentani has not appeared at this hearing. The reason is that there is a matter between these same parties that is before the High Court on 18th August 2006. And this is the only reason for seeking an adjournment.

On the matter, Respondents Mr. Roku Hallu who is the plaintiff at the High Court and his party are here before this court. He said that case before the High Court is for mention or listing. They were advised by their lawyer to attend this hearing as case can proceed in their absence. Both parties' counsel will appear on their behalf.

The Respondents submitted that they see no good reason why Appellant did not come down for this case.

On part of the court we have conducted the High Court Registry and they confirm that the appellant matter is only for mention.

We respect the High Court as superior Court, but upon hearing Respondent submission on this matter and by the understanding of the court we are satisfied that the reason for requesting the adjournment is unreasonable. The court shall proceed and deal with the hearing of this case in the absence of the appellant.

Locus Standi

Respondent raised in his submission that appellant did not attend the Timber Right hearing when it was held Seghe on 12th August 2002. Before the hearing the Western Provincial Executive had put up a Notice of hearing of Tiroto Timber Right at surrounding places or locality where the Tiroto land is situated. The notices were displayed at:

1. Seghe Substation
2. Michi Village
3. Sasagana village
4. Chubikopi village
5. Varata Island
6. Rukutu Village; and

7. Batuna Station

The minute of the Provincial Executive do not disclose any appearance of the Appellant at the hearing. The Appellant in his appeal states that he did not attend the meeting.

This CLAC is an appellate court and whoever is aggrieved by the determination of the executive 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 to the Executive committee for consideration at the time of the hearing of Timber rights. It is as a result of that representation that such was not considered or decision not in his favour that you would then appeal to the court. You cannot appeal to this court if you had not made any representation thus you have no case to bring before this court.

This court is satisfied that the appellant has no locus standi in this matter now before the court.


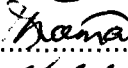




On the basis of this ruling, there is no need to determine Grounds 1, 2, 3 and 4.

All the grounds of appeal is dismissed

ORDER

1. Appellant has no locus standi
2. All grounds of appeal is dismissed
3. Parties meet own cost.

Date: 18th day of August, 2006.

Signed:	Ian Maelagi	President	
	David Laena	Member	
	Wilson Katovai	"	
	Wellington Lioso	"	
	Allan Hall	"	
	Davis D Vurusu	Clerk	

Right of Appeal Explained.

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