

IN THE WESTERN CUSTOMARY )  
LAND APPEAL COURT )

CLAC No: 12 of 2005

Timber Right Appellant Jurisdiction

IN THE MATTER OF: Poi-ikusu Land  
Timber Right Appeal



Mockson Aaron & Others Appellant

Ricknick Aquillah & Others Respondents

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**JUDGMENT**  
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The appellant appealed against the determination of Western Provincial Executive committee on the timber right on Poi-ikusu Land.

**THE BRIEF BACKGROUND:**

The Western Provincial Executive Committee convened timber right hearing on 19<sup>th</sup> January 2005 at Seghe substation Marovo Western Province for Poi-ikusu Land.

The applicant according to Form 1 was V.G Timbers Enterprises. The Western Provincial Executive committee made a determination that the applicants are identified as true representative of Poi-ikusu Land and lawfully entitle to grant timber right on the said land. The public notice of the determination was published on 19<sup>th</sup> September 2005.

The appellants have appeal against the determination and seek an order of this court to quash the determination of Western Provincial Executive Committee and or Appellants being the representatives of the descendants of Jeka, Namusu, Ghuati and Silala be declared the rightful person to grant timber rights on Poi-Ikusu customary land.

## **GROUND OF APPEAL**

1. That the Western Provincial Executive erred in law in proceeding to hear the Respondents Form 1 application's negotiate timber rights when there was overwhelming disagreements and disputes presented in the timber rights hearing verbally and in writing against granting of timber rights to the Respondents;
2. That the Western Provincial Executive erred in custom in accepting the name Poi-Ikusu in the Respondent's application as a customary land when in fact the land in being subject to timber rights hearing was in custom known as Bituru customary land which is owned by the Appellants;
3. That the Western Provincial Executive erred in custom in determining the Respondents as persons lawfully entitled to grant timber right when the said Respondents are not rightful customary owners of Poi Ikusu;
4. That the Western Provincial Executive erred in custom by including the boundaries of lands and islands outside of Poi-Ikusu land in the timber rights determination made in favour of the Respondents; and
5. That the Western Provincial Executive erred in law by failing to deliver its timber rights determination in public and in the presence of the parties having interest in this matter.

## **THE LAW:**

Sections 8 (3) (b) (c) and 10 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.*

Section 8 (3) (b) (c) of FTRU requires the Provincial Executive to determine or identify with the customary landowners and the applicant the persons lawfully entitled to grant such timber rights.

It is important to note that the persons and/or land owning groups named in Form 1 (in particular item 6) with whom preliminary discussions have been made regarding land ownership, timber rights and development proposals was with the persons purport to be the owners or land owning groups.

It was at hearing that the Provincial Executive Committee heard claims or objection of the persons who claimed to be lawfully entitled to grant such timber rights on the land.

The evidence and submissions should essentially related directly to the question of timber right interest of that customary land, thus may enable the Provincial Executive Committee to determine whether the persons proposing to grant the timber rights are not the persons lawfully entitled to grant such rights and identify who the persons to grant timber right are. Those the Provincial Executive identified as true persons lawfully entitled to grant such rights would eventually have the right to grant timber rights of the land.

### **Grounds 1, 2 and 4**

Grounds 1, 2 and 4 raises issues relates to the ownership of land subject to the application of V.G Enterprises at the determination persons to lawfully entitle to grant timber on the concern customary land. They are interrelated or raise the similar issues of ownership of land and so we will deal with them together.

Section 10 of the FRTU Act clearly defines what to be appealed against if any person is aggrieved by the decision of the Provincial Executive Committee. The matters are whether persons proposing to grant the timber rights are and if they represent all the persons lawfully entitled to grant such rights, and if not who such persons are. And the nature and extent of the timber rights, if any, to be granted to the applicant;

On the disputes or claim of ownership of Poi-ikusu as do clearly reflected on the submissions of the appellant and respondent as well as the minute of the Provincial Executive Committee of 19<sup>th</sup> January 2005 cannot be dealt with by this court in this process or by way of appeal under FRTU Act.

The legal position in regard to customary land and timber right matters is settled. A determination by the Provincial Executive as to who are the rightful persons to grant timber rights in the land which is the subject of a hearing is not

a decision of ownership of the land. If a decision of ownership of the land is required, the matter has to be brought before a proper forum that is chiefs or Local court (*Gandly Simbe –v- East Choisuel Area Council & Others, Civil Appeal no.8 of 1997 and other later High Court cases*).

And this court has no power to decide land ownership issues or method of acquisition where appeal has been filed against the Provincial Executive determination under the FRTU Act (*Lupa Development Ltd –v- Kongunaloso & Others CC no. 110 of 2001, Ruling of 04/07/01*).

Appellant cannot use this court now on the issue of ownership of customary land on appeal under FRTU Act. The court can only look into dispute or error on the identification of all the persons identify to grant timber rights.

It is clear the issue of Grounds 1, 2 and 4 is the claims of ownership on land. This court with appeals under the FRTU Act has no powers to determine such issues. However, any evidence relates to ownership of land and other related issues will assist the court to determine, whether the Provincial Executive Committee has properly identified persons to grant timber right on the Land concerned.

The matters raised in these grounds of appeal relate to custom and this court lack the jurisdiction.

Grounds 1, 2 and 4 are dismissed.

### **Ground 3**

This ground concerns or relates to the determination that the Respondents are persons lawfully entitled to grant timber rights by the Western Provincial Executive when the said Respondents are not rightful customary owners of Poi Ikusu.

## **ISSUE**

Whether Provincial Executive Committee had determined that the Respondent or identify the persons to grant timber right on Poi-ikusu Land.

To determine the issue, we have to examine the relevant documents for the purpose so desired. They are submissions from the Appellant and Respondents, the minutes or record of proceeding of 19<sup>th</sup> January 2005 and determination of the Western Provincial Executive committee.

First the Form 1 states that the Applicant is VG Enterprises (and by the certificate produced at the court, VG Enterprises is a business name). Raynick Pulesea Aquilah, Seth Piruku Qoqoro and Nathaniel Kua is named in Form 1 (in particular item 6) as with whom preliminary discussions have been made regarding land ownership, timber rights and development proposals was with the persons purport to be the owners or land owning groups.

From the minute, Raynick Pulesea Aquilah for the applicant submitted to the Provincial Executive Committee at Seghe hearing the description of the location, area he claims as Poi-ikusu land, intended development for the area, reference to dispute on that land since 1962 and the previous occupation by Keto and Namusu tribes.

The minute also shows that one of the appellant Riki Namusu made representation at the hearing on his claim of the land subject to this appeal. His representation was on his claim that the concern land is Gevala land and his genealogy. He requested deferment of the hearing for 14 days in order to sort matters related the land concerned.

The determination of the Provincial Executive Committee is in the following terms and quote:

*"2. With the above points, the Executive resolved to:*

- A. *AGREE that the applicants are identified as the true representative of Poi-ikusu customary land and therefore lawfully entitled to grant timber rights of the said land*
- B. *Agreed unanimously to recommend to the Commissioner of Forest that Poi-ikusu land Form 1 application to proceed on to Form II notice with relevant formalities”.*

The minute of the determination as quoted above does not disclose any evidence or information to identify the respondent as the proper persons entitled to grant timber on the land subject to this appeal. It only identifies the applicant being VG Enterprise (business name) to represent of Poi-ikusu customary and lawfully entitled to grant timber right.

Even the Respondent's submissions to the Provincial Executive Committee at the hearing in Seghe fail to disclose neither claim of right to grant timber right nor claim of ownership.

Section 8 (3) (b) of FTRU requires the Provincial Executive to determine or identify the persons lawfully entitled to grant such timber rights. The person in the text of customary land matters is a human being. It must not be an artificial person or business name. To that effect the Provincial Executive has fail to identify proper persons to lawfully entitle to timber right on the Poi ikusu land.

Ground 3 is upheld.

**Ground <sup>3</sup>A 5**

The issue relates to delivering of determination in public and in the presence of the parties having interest in this matter is point of law and this court lack the jurisdiction


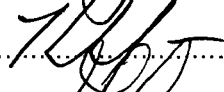

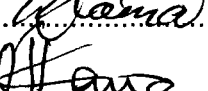

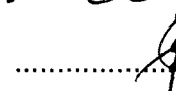

Ground 4 is also dismissed.

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**ORDER**  
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1. Quash the determination of the Western Provincial Executive Committee on Pio-ikusu land timber right
2. No order for costs.

Dated this 10<sup>th</sup> day of November 2006

Signed:

Ian Maelagi	Ag President	..... 
Wilson Katovai	Member	..... 
Wellington Lioso	"	..... 
David Laena	"	..... 
Jeremiah Kema	"	..... 
Allan Hall	"	..... 
Maina LR	Clerk/Member	..... 

ROAE

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