

**IN THE WESTERN CUSTOMARY LAND)
8/08
APPEAL COURT)**

WCLAC NO: 3, 4, 5, 6, 7 &

Timber Right Appeal jurisdiction.

IN TH MATER OF: West Parara and Nusa Hilele Island Timber Right Appeal.

Between: Warren Paia - 1st Appellant
Stanley Pae - 2nd Appellant
Heddison Nivah - 3rd Appellant
Steward Evo - 4th Appellant
Douglas Hivah Bapu - 5th Appellant
Norman Hickie - 6th Appellant

AND: Sunil Dhari & 17 others - Respondents

AND: Shakespear Zamakara & 2 others - Respondents

JUDGMENT

This is a timber right appeal against the determination of the Western Provincial Executive Committee on West Parara and Nusa Hilele Island. The timber right hearing was held on 18th October 2008 and Notice of determination was published on the 15th October 2008.

There are six separate appeals but at the hearing before Western Customary Land Appeal Court, the First and Second Appellants joint up and made one submission.

The Appellants grounds of appeal are summarized as follows:

First and Second Appellants grounds of appeal.

Ground 1 & 2 & 5(b) (c). Persons named in Form 1 application did not represent the majority member of the Ago/Simaema tribe.

- 3 - Western Provincial Executive failed to consider evidence that Zokolo land LR 1043 has been the subject of a separate High Court action in Civil Case No: 251 of 2008.
- 4 - The WPE erred in its determination when it failed or ignored to consider the thrust of Roviana custom that a single chief could not unilaterally give away tribal land without the concurrence of the tribal elders and senior members of the tribe.
5. (a) The WPE predetermined that only those persons listed as having the authority to grant timber right over West Parara tribal land.
 - (d) The WPE purportedly made a single determination based on two separate Form 1 applications contrary to the provisions and spirit of Cap 40 as amended;
 - (e) The circumstances leading up to the production of the second form 1 applications purportedly covering Nusa Hilele Island issue under the public notice dated 13th July 2008 revealed clearly that the said notice was never been issued to the public including the majority of the land owning members of the West Parara land, as well as the true landowners of the Nusa Hilele Island.

Third Appellants grounds of appeal.

Grounds 1. The customary lands from Miho Merika to Pine Commonly known as Pitikole are under the MOMOU concession covered by licence No: 1053 issued to NIDECO by the Commissioner of Forest in 2005 and is still

valid. There is no objection to these land areas. NIDECO is still using the land.,

2. The customary land from Miho Merika to Ovipevu commonly known as Kauru Gema belongs to Duke People. The land owner submitted their withdrawal of these lands in the hearing; however, the WPE determination did not exclude these areas from the application map.
3. The customary land blocks of Pinokoimo, Top Sevolo and Kaboroga Naevuki with others were declared to have withdrawn their consent from the application and yet the determination still covers and includes their lands.
4. The Island of Nusa Hilele was strongly objected and should not form part of the determination.

Fourth Appellants grounds of appeal.

Ground 1. The determination of the Western Provincial Executive in awarding timber right to the persons named in said determination was wrong because none of these persons are genealogical members of Kivara tribe which is the rightful customary owner of Kauruqema land block which was included as part of the timber right concession area without the consent of said landowning Kivara tribe.

2. By virtue of its customary ownership of Kauruqema land block the Kivara tribe was exclusive right to appoint its own trustees to be timber right grantors if said tribe desires to do so. In making the determination it did Western Provincial Executive was wrong when it breached the authority of the landowning tribe over the control use and disposal of the resources in its land.
3. Western Provincial Executive did not seriously consider our objection to exclude

Kauruqema land block from the timber right concession area although we presented sufficient evidence during the hearing proving our right to be consulted in respect of preliminary discussions and negotiation before including Kauruqema land block as part of the concession area.

Fifth Appellants grounds of appeal.

- Grounds 1. There was not a single Island in Vonavona Lagoon and is called Nusa Hilele. The only Island widely known by all Kindu descendants living in Kohiqo, Parara as well as Kindu descendants living in Munda is Kovua Lavata while Kovua Hite own by Belo the brother of Vaikera in Buni village was in front of Kovua Lavata on the mouth of Kovua channel.
2. Kovua Lavata has been sub-divided into 4 blocks from time immemorial and later reaffirmed in 1977 when people realized that trees can be turned into cash. This was realized when Levers Pacific timber in Ringi Cove, Kolombangara Island in Western Province started to buy logs from merchantable species or selected species of trees that are tradable.
3. The block owners of Kovua Lavata is as follows:
- (a) Beta land block was owned by Emu Luli and was entrusted to his sons, Selwyn Sunga (SIBC) Gizo and Sgt. Neki Nero, Noro Town.
 - (b) Eghoro land blocks also in Kovua Lavata was owned by Mary Kuzu and was entrusted to her adopted daughter Mrs. Miriam Risi Pratt, whosen appointed spokes person is Douglas Hivah the writer of this appeal and objection application.
 - (c) While Tevi land block also in Kovua Lavata was jointly owned by both Ms. Eve and Ms. Posa Alenge the

daughters of the late deceased Chief of Kindu tribe. The same land block was later entrusted to the 4 sons of Ms. Eve and Ms. Posa Alenge and they are Francis Kennedy, Clement Sasapio with Job Alenge and....

(d) Whereas Hilele land block on the tip portion of Nusa Kovua Lavata was owned by Zamakera and was later entrusted to his son Shakespear Bela Zamakera.

4. The 4 blocks in Nusa Kovua Lavata and Kovua Hite was given to the Chiefly clans of Kindu tribes living in and around Parara, Kohiqo and Kindu main land.
5. The approval and granting of timber right is not relevant in that it does not represent the other (3) three remaining blocks of Tevi, Beta and Eghoro land blocks.

Sixth Appellants grounds of appeal.

This appellant did not attend this hearing. No reason given to the court for his party's absence in court. The court therefore struck out his appeal.

All his grounds of appeal is struck out.

The Appellants and Respondents made written and verbal submission to the court. They briefly summarize their points to the court.

The Issues.

From the appeals the issues are:

1. Whether the Provincial Executive had complied with the requirement of Section 8 of the FTRU Act.
2. And whether the Respondents are entitled to grant timber right and represent all persons entitled to grant timber right in the land concern.

The first question to be resolved by the court is whether it has jurisdiction to entertain issues raised in these appeals.

The Law.

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

“8(3) – At the time and place referred to in sub-section (1), the provincial Executive Committee shall in consultation with the appropriate Government discuss and determine with The customary land owners and the applicant matters related to:-

- (a).....
- (b) whether the persons proposed to grant timber right in question are 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 grant 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 months from the date public notice was given in the manner set out in section 9(2)(b), appeal to the Customary land appeal court court having jurisdiction for the

area in which the customary land concerned is situated and such court shall hear and determine the appeal.

The Law therefore clearly defines what to appeal against if any person is aggrieved by the determination of the Provincial Executive. The matters are whether persons proposing to grant the timber rights are lawfully and represent all the person 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 issues of the matters related to claim of ownership and related issues it cannot be dealt with by this court by way of appeal under FRTU Act.

Any issue relating to ownership of land is to be determined under the Lands and Titles Act and Local Courts Act, while the Acquisition of persons to grant timber rights to be determined under the FRTU Act. However, persons identified to own the land may only assist the Provincial Executive Committee to identify the proper persons to grant timber right on the land concerned.

The Court.

We will now consider both parties submissions on the grounds of appeal filed by the Appellants.

First and Second Appellants ground of appeal.

Ground 1. This ground raises issues on timber right. Appellant submit that the respondents whose names appeared in WPE determination did not represent the majority members of Aqo/Simaema tribe and that they were not mandated by the tribe to represent them in this application.

The Respondents submit that Chief Aurther Paia is the current chief of Aqo/Simaema tribe. The Appellants and

the Respondents were all from Aqo/Simaema tribe. They represent the Aqo/Simaema tribe in this timber right application. The fact that both parties all came from one tribe is not a disputed factor.

The Appellant did not dispute the fact that Chief Aurther Paia is their current chief. Our humble view is those the WPE determined as grantor represent all persons lawfully entitled to grant timber right on the land concerned. It is impossible for everyone in the tribe to be identified although they all have right to grant timber right in their customary land. This ground has no merit therefore must be dismissed.

Ground 1 is dismissed.

Ground 2. This ground also raise the same issue as of ground number one above therefore must also be dismissed.

Ground 2 is dismissed.

Ground 3. This ground relates to claim of ownership. This court lacks the jurisdiction to entertain them.

Ground 3 is dismissed.

Ground 4. In this ground, appellant submit that according to their Roviana custom, Chief Aurther Paia have no power to make decision of his own on matters relating to tribal land.

The Respondents submit that Chief have power to make decision of his own. Chief is a custodian of custom and land for the tribe. Respondent further submit that previous chief of Aqo/Simaema tribe did sold the tribal land without consulting the tribe, this clearly confirm that chief have power to make decision for his own. The court believes that custom is similar to all islands in the Western

and Choiseul. This ground has no merit therefore must be dismissed.

Ground 4 is dismissed.

Ground 5. (a)(b) – This raise the same issue as one above.

(c)(d)(e) – These grounds relates to point of Law. This court lacks the jurisdiction to entertain them.

Ground 5 (a) (b) (c) (d) (e) is dismissed.

Third Appellants grounds.

Ground 1. This ground relates to point of law. This court lacks the jurisdiction to entertain them.

Ground 1 is dismissed.

Ground 2, 3, and 4 relates to claim of ownership. This court through this process under timber right acquisition lacks jurisdiction.

Grounds 2, 3, and 4 are dismissed.

Fourth Appellants grounds.

All grounds relate to claim of ownership. This court lacks jurisdiction to entertain them by way of appeal under FRTU Act.

All grounds of appeal dismissed.

Fifth Appellants grounds.

Locus Standi/Standing.

Before the court consider the appellants grounds of appeal, it is important to determine the issue of standing. This is so because if the Appellant lack the standing, then this court has no case to entertain or no issue to determine from the fifth appellant.

The CLAC is an appellate court and whoever is aggrieved by the determination of the Provincial Executive 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 Provincial Executive for consideration at the time of hearing of Timber rights. It is as a result of that representation that such was not considered or decision not in his favour thus you would then appeal to this court.

For this preliminary issue, a minute of the Western Provincial Executive of the hearing should have the record of representation or submission to them on the land concern. We have examined the minute and determination of the Western Provincial Executive, but the record does not disclose sixth appellant's representation or appearance at the hearing nor being identified as among the persons lawfully entitled to grant timber right on Nusa Hilele at the hearing. Appellant have no Locus Standi/Standing.

All grounds of Fifth Appellants appeal are dismissed.



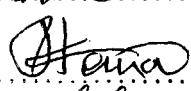

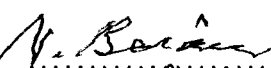
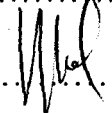
The court is satisfied that most of the Appellants grounds of appeal are not for this court to deal by process under the FRTU Act.

The Court after hearing all parties' submissions and upon reading the minute or record of the proceeding of the Western Provincial Executive found that there is nothing wrong in the determination to warrant this Court to intervene.

ORDER

1. Allgrounds of appeal of 1st, 2nd, 3rd, 4th, and 5th is dismissed.
2. Appellant 6th appeal is struck out
3. No cost awarded.
4. No further orders.

Dated this 27th day of July 2009.

Signed: **David Laena**  Ag/President
Silverio Maike  Member
Jeremiah Kema  "
Wilmington Lioso  "
Naranea Beiaruru  "
V. DD  Clerk/Member

ROAE.....