

IN THE WESTERN CUSTOMARY )  
LAND APPEAL COURT )

CLAC Nos: 03, 04 & 05 of 2012



*Timber Right Appellant Jurisdiction*

IN THE MATTER OF: **THE FOREST RESOURCES AND TIMBER UTILISATION ACT [CAP 40]**

AND **THE FOREST RESOURCES AND TIMBER UTILISATION [APPEALS]  
REGULATION LN 22/1905**

IN THE MATTER OF: **SUBAVALU CUSTOMARY LAND TIMBER RIGHT APPEAL**

BETWEEN: **ALPHA KIMATA** *First Appellant*  
**JAMES ALEPIO** *Second Appellant*  
**FRANK VIVO** *Third Appellant*

AND **CHIEF EDDIE NGAJIKESA**  
**LUKE SOTOKANA**  
**ROONEY BO**  
**HON. PHILIP BAVARE & OTHERS** *Respondents*

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**JUDGMENT**

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**Introduction**

1. This is a timber right appeal filed against the decision of the Choiseul Provincial Executive (CPE) on Subavalu customary land timber rights hearing held on the 14<sup>th</sup> day of November 2011.
2. Briefly, on the 14<sup>th</sup> Day of November 2011, the Choiseul Provincial Executive determined in favour of the Respondents as the right people to grant timber

rights on Subavalu customary land. From that decision, the appellants filed an application against it.

3. The application was jointly filed by three appellants namely, Mr Frank VIVO representing Barokesa tribe, Mr James ALEPIO for Kubobagara tribe and Alpha KIMATA representing Kubolabata tribe.
4. All parties to the sitting were served by way of notice to attend the hearing at Gizo magistrates' court on the 8<sup>th</sup> day of October 2012 without failed. In responding upon the notice, the following parties appear, Frank VIVO, James ALEPIO for the appellants and Philip Bavare for the respondents. A written apology was filed on behalf of Mr Alpha KIMATA .No appearance from the second Respondent (Choiseul Provincial Executive).

#### **Brief history of this case**

5. In 1995, the Subavalu tribes obtained a timber right determination from the then Northwest Choiseul Area Council. There was no objection from either parties, the operation was carry out by the Eagon Resources Ltd.
6. The outcome of that council determination in 1995, an appeal was filed in the CLAC (Western) challenging the determination of the Northwest Area Counsel. This appeal was heard in 2008 by the CLAC (Western) in which dismissing the appeal and ordered that the matter granting determination in favour of the Respondents, dismissed ordered and afresh the determination, where Subavalu tribes are the people to grant timber rights at Subavalu customary land according to boundaries and demarcation submitted in 1995.
7. The CLAC (W) afresh and upheld determination of the Northwest Choiseul Area Council, with review of trustee over Subavalu tribes. There was no party challenging this CLAC decision and therefore, remain unchallenged and still binding on both parties.

8. In 2010, the respondents make an application to the Choiseul Provincial Executive for a timber right hearing over the same land on the notion that a new logging company to do the operation.
9. The Choiseul Provincial Executive however, accepted an application filed by the Bulacan Integrated Wood Industry Ltd under section 7 of the Forestry Resources and Timber License. A Form 1 has been disbursed and a timber rights hearing held in Taro Provincial headquarter on the 14<sup>th</sup> Day November 2011.
10. The Choiseul Provincial Executive did not allowed the Barokesa tribe and the Kubobagara tribes to present as objectors on the basis that they were parties in the 1995 timber rights on the same customary land (Suvabalu).
11. The CPE continue to put on public notice of Form II on the 6<sup>th</sup> of February 2012.
12. The appellant make an application requires under section 10 of the FRTU (amendment) Act 2000, CAP 40. This is where: Any person, who is aggrieved by the determination of the said Provincial Executive, may within a month from the date of this notice, appeal to the Customary Land of Appeal Court (CLAC).

### **Grounds of Appeal**

13. Both defendants agree to consolidate their appeal grounds to deal with as one since most of the appeal grounds are similar in nature. These are the grounds of appeal accepted to deal with by this court.

#### **Ground 1.**

*The Choiseul Provincial Executives is erred to give determination to one party (Subavalu tribe) without considering the other parties (Barokesa tribe, Kubobagara tribe and Kubolavata tribe) on a land that has not properly determining its ownership and boundary proper demarcation.*

Mr Frank Vivo for the Barokasa tribe has submitted that the land in question is part of the forest of Barokasa land. The Land called Subavalu is only a small portion of land inside the Barokasa land. He presents a consented map to the court with explanation on boundaries.

Furthermore, the defendant has contended that the concession mapping submitted on the timber right hearing held on the 14 of November 2011 is different from the demarcation determined by the South Choiseul Area council in 1995. That is, the determination is made to land marked "A" in the original mapping determined on the 11<sup>th</sup> of September 1995. This decision was not challenged because it was according to their knowledge on their land. Apparently, the Respondents make an application to include land 'marked' B' in the original determination in 1995.

On the Respondent side, Mr Philip Bavare for the Subavalu tribes also presents their genealogy and the mapping which indicates the demarcation of the concession area. He also highlighted that there was a determination on the same land in 1995, a CLAC decision in 2008 on the same land was not challenged in any court.

The map that was tendered to court by both parties was unreliable. The court rejected them and calls for clean and certifies copies to be tendered as courts exhibits.

Both parties complied and present copies with different versions in relation to demarcation of the land.

This ownership Subavalu land was claimed by two different tribes. This has identified by the court as customary triable issue.

If a dispute is raise over a customary land and the issue is of ownership, this has to be sorted out by appropriate forum. That is to through the council of chiefs and determine in the Choiseul local court. This has never happen in this present case.

There is no evidence adduced in this appeal by both side to show that the issue of ownership of Subavalu (land 'B") was shorted out by appropriate court.

This is what the Choiseul Provincial Executive should dwell and consider before proceeds determination on timber rights hearing on 14 November 2011.

After considering both submissions in relation to the original demarcation on Subavalu land determined by the South choisuel Area Council, this court is of the view that there have been some changes to the original determination boundaries. This ground of appeal is upheld.

#### **Ground 2.**

*The Choiseul Provincial Executive has erred to accept the application by the Bulacan Integrated Wood Industry to acquire timber rights in Suvabalu customary land which has already approved and operated by the Eagon Resources Limited.*

This ground of appeal was not argued by both parties in t his current sitting. Thus, this is an issue that would raise the question of whether it is lawful under the Forest Resources and Timber Utilisation Act. This court has no jurisdiction to determine on it, therefore this appeal ground is dismissed.

#### **Ground 3.**

*The Choisuel Provincial Executive (CPE) is erred to consider the application while some outstanding issues regarding boundary from other customary land owner has still not resolved.*

In relation to this ground of appeal, both the defendants Mr. James ALEPIO and Mr. Alpha KIMATA submitted that the Subavalu Concession boundaries

overlapped to their customary land known as Kubobangara land boundary, and Kubolavata customary land.

In respond to their submissions, Mr Philip BAVARE contested that there was no overlapping to the Kubobangara land. In actual fact, it was the Kubobangara land encroachment that was overlapping Subavalu concession area. It is conceded that both parties have never resolve the boundary between Subavalu and Kubobagara land.

However, in relation to claim made by the Kubolavata tribe, Mr BAVARE conceded that his tribe has no problem entering negotiation with them which indicates that the determination of the persons entitled to grant timber rights on Subavalu land was made without considering any objection validly made.

The essence of the procedure leading to granting of timber rights is to ensure that those persons who in custom are entitled to the timber rights, as define in the Forest Resources and Timber Utilisation Act.

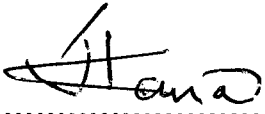
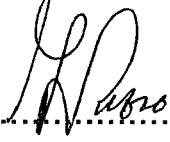
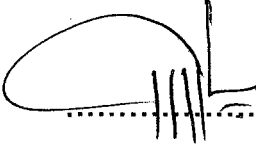

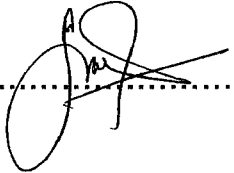
In this view, the Choiseul Provincial Executive erred to consider and approved the application on Subavalu land while there was boundary issues yet to resolve between the land owners.

#### **Ground 4.**

***The Choiseul Provincial Executive (CPE) has is wrong in law to deny the rights of parties who claimed as objectors to present their case during the timber right hearing on 14<sup>th</sup> of November 2011.***

This ground of appeal is raised only by Mr Frank VIVO and James ALEPIO. In their submissions, they have claimed that their respective tribes were not allowed to present their objection view during the timber right hearing held at Taro on the 14<sup>th</sup> of November 2011.

Signed this date the 7<sup>th</sup> day of November 2012;

1. Jeremiah KAMA	President [ag]	 .....
2. Willington LIOSO	Member	 .....
3. Erick GHEMU	Member	 .....
4. Tane TA'AKE	Member	 .....
5. Jim SEUIKA	Secretary/member	 .....

Right of appeal extended

