

IN THE WESTERN CUSTOMARY)
LAND APPEAL COURT)

CLAC Case No: 08 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: **BAITO CUSTOMARY LAND TIMBER RIGHT APPEAL**

BETWEEN: **NELSON ADOVO QIUNA** *Appellants*
STANLEY KABOKERA & OTHERS

AND **MILTON SIBISOPERE**
ROBIN MESEPITU & OTHERS *Respondents*

JUDGMENT

Introduction

1. This is a timber right appeal filed against the decision of the Western Provincial Executive (WPE) on Dedede Baito customary land timber rights hearing held at Lambulambu Village, Vella la Vela Island on the 11th day of October 2011.
2. The determination was made in favour of the Respondents group that the following persons are the right people to grant timber rights over Dedede Baito customary land.
 - Chief Redley KIKAI, Ronald ROTO, Nedlyn PITAVATO, Laury VIOBELE and Silas SIKA.

3. From that decision, the appellants filed an application against it on the 28th of February 2012.
4. In responding upon the notice, Mr Nelson Adova QIUNA (spokesperson) with his party for the appellants, and Mr. Robin MESEPITU (spokesperson) and his party appearing for the respondents.

Brief history of this case

5. On the 11th of October 2011, the Western Provincial Executive (WPE) had undertaken on a notice under section 7(2) of the Forrest Resources and Timber Utilisation Act in response to an application lodged by the Maximus International Limited to acquire timber rights over customary lands covered under the Timber Rights application, at Vapeo, Sirumbai, Roraovakasi and Baito customary lands on Vella la vela Island, western province. A timber right hearing was designated and conducted at LambuLambu village, Vella la vela on 11th day of October 2011.
6. The appellants were aggrieved by the determination of the WPE, therefore, make an application accordance to 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

7. These are the collective grounds of appeal submitted by the Appellants in respect of the determination of the Western provincial Executive. The court will deliberate on each appeal ground respectively.

Ground 1.

The Western Provincial Executives is erred to grant determination over Dedede Baito customary land after refusing to consider their genealogy.

8. Mr Nelson QUINA contended that they are the right tribe which they have right over Dedede Baito customary land; therefore, the WPE should consider their tribal genealogy, as according to Vella la vela custom, genealogy determines the ownership of the land. Wholly consultation should have extended to all land owners before any undertaking on logging development at Dedede Baito land.

He further express that his group (appellants) are also legitimate members of the Dedede Baito tribes.

9. In responding to the appellant's submission, Mr Robin MESEPITU contended that why the WPE refused the genealogy of Dedede Baito tribes because those who present at the timber right hearing and present it are the same persons who did not allow their land portion within the Dedede Baito for inclusion in the timber right hearing.

He further argue that the Dedede Baito genealogy is not important because they have six genealogies but not chief.

He then conceded that the ownership and boundaries of those plots of land need to verify in custom in order to establish their authenticity that is in the local court.

10. After considering the evidence adduced by both parties, and evidence available in court, it is of the view that there has never been any compromise between both parties to willing for negotiation for the disposal of timber rights over Dedede Baito customary land.

11. The WPE should take further steps to consider the genealogy of those who owns those plots of land before determine who is the right persons to grant timber rights over Dedede Baito customary land.

In this respect, the court is of the view that the Western Provincial Executive is erred to determine on the land that being disputed, where undertaking should be done to see that the land owners should short out their disputes or willing

to negotiate before determine the right people to grant timber right over Dedede Baito customary land. This ground of appeal is upheld.

Ground 2.

The WPE is erred when refusing to consider the decision from Vella la vela Ward 8 House of Chief decision.

12. Spokesperson for the appellant, Mr Nelson Qiuna had submitted that his tribe seek to tender the said decision during the timber right, however, the WPE had refused to accept it.
13. The decision is the determination of Ward 8 House of Chiefs over Dedede Baito customary land. It was submitted that, should the WPE accept and consider this chiefs determination during the timeber rights, they would have make known the legitimate chief of Dedede Baito where currently vested upon the decedents of Tadavuru. Since the WPE did not accept to consider the decision, they have made an error to determined wrong persons on granting timber rights on Dedede Baito customary land.
14. In responding to the appellant's submission on this issue, Mr Robin Mesepitu contended that Baito tribal land genealogy and chieftainship were established by the ward 7 House of Chiefs held at Beiporo on 12to 13th of November 2008. The genealogy supplied that of matrilineal tribes that inherited right through until current is as follows; Rude paqo, Matu Subiduri, Sasa Subiduri, Ruqua, Malio, Podokalo, Subiduri, Chief Ian Viobele.
15. The succession of Baito tribe chieftainship identified during the Timber right hearing is as follows: Tada, Langono, Kajoro, Viobele 1, Rotobanana, viqulu, Valu, Ian Viobele and Readily Kikai.
16. At the outset, there were two decisions obtained from two separate houses of Chiefs in south Choiseul. This indicates that the two parties have their own

genealogy on the same land. The court is of the view, that the Western Provincial Executive should deliberate further to identify the dispute rather determining on the disputed land on behalf of the one party. In law, the WPE cannot determined who are the right people to grant timber rights over Dedede Baito customary land knowing there were disputes among landowners, therefore, is error in law to determine on a disputed land. This ground of appeal is upheld.

Ground 3

The Western Provincial Executive (WPE) is wrong to determined upon the land that has no proper mapping.

17. The appellant argued that the Respondents failed to make proper demarcation to show their proper boundaries. The map provided during the Timber right is unclear and unreadable.
18. Mr. Nelson Quina further contended that in custom it is very important to determine on clear boundaries rather than draw lines indicating boundaries. Boundaries means a lot to land owners, for instance, there must be streams, river, mountain and so forth to indicate the boundaries of demarcation. The form 2 does not specify which area is to be logged; it was not clearly mark on the map provided during the timber right hearing.
19. The second Respondent who is the spokesperson for the appellant in the timber right hearing says as quoted on page 2 of the WPE minutes, "*certain blocks of land such as those within Memele and Zura Baito are excluded.*" This statement does not indicate the clear picture which area the determination was referring to. Therefore, the WPE is erred to determine on an unclear and un- proper demarcation area.
20. In response to this ground of appeal, Mr. Robin Mesepitu clarifies that prior to timber rights hearing within not less than 60 days, all relevant documents

including letters of approval, map, form 1 application and so forth, and were been displayed in public.

21. During the timber rights hearing a map was produced which indicating Baito land from Ruruvai to Eroerozavana. No one from the objectors identifies or claims their boundaries. Therefore, the process was not abused.
22. The court has an opportunity to go through the documents provided by both parties, including the minutes of the timber rights hearing on 11th of October 2011, at Lambulambu village in Vella la vela. The aggrieved parties are concerning about what has been provided during the timber rights hearing on that particular date. The minutes does not provides any explanations from the applicant that they make reference to the demarcation indicates in the map provides to the hearing panel.
23. The only map provided to this court is the one attached to the certificate of determination. That map in our view does not assist the court to find conclusion which area is the subject of the determination.
24. Although there was some disputes and findings over this documents, it was shown from documents available in court that there was a map produced according to the requirement of FRTUA. This ground is dismissed.

Ground 4

The Western Provincial Executive made a contradictory determination which contained in the certificate of determination and in the certificate of customary ownership.

25. The appellant contended that the Certificate of Determination spell out seven customary land which was excluded. Six of these portions of land were within Dedede Baito customary land. It covers from the river mouth of Ruruvai to the river mouth of Banono river to the coastal and going inland.

26. In the certificate of ownership (form 2) the Western Province Executive determined that the right persons to grant timber rights over the area bounded in red in the map provided named 15 people. This has excluded those blocks of land that have been excluded and named in the certificate of determination. The contradictory determination comes in when the WPE determined the mass area that bounded red on the map, that covers all the land mass of Dedede Baito.
27. On the other hand, the respondents response and say that based on relevant facts received by the Western Provincial Executive from both contending parties, it was seen proper that the names provided in the certificate of ownership (form 2) are the right people to grant timber rights over the bounded area between Ruruvai river to Eroerozavana.
28. According to the minutes provided for the Timber rights hearing on the 11th of October 2011, spokesperson for the landowners Mr Sibisopere said, *“although the map in the form 1 is big, it only shows the boundary covers by form 1 application to that certain blocks of land such as those that are within the Memele and Zurabaito tribal are excluded because one can only talk about their own block of land.”*
29. It is suggested on the face of the summary of documents available in court, there was no clear indication of which land is the real subject of this appeal. The WPE recognised that the Appellants and his tribe are land owners of some portion of land within Dedede Baito customary land. However, the certificate of determination does not have room for the Appellants to be part of the process. It is clear that there were some contradictory determination contained in the process of the outcome. This ground of appeal is upheld.

Ground 5

The WPE is erred to determine over boundaries that are not proper demarcated.

The issue of boundaries has already disclosed on appeal ground No: 3, therefore, we cannot elaborate further on that issue.

Conclusion

30. Base on the above findings, this court is of the view that the determination made by the Western Provincial Executive in relation to Dedede Baito customary land on 11th of October 2011, does not satisfy the requirements provided under the Forest Resource and Timber Utilisation Act; that the landowners are willing to negotiate for the disposal of the timber right over Dedede Baito land; and the persons proposing the grant of timber rights are entitled, or represent the whole tribe of Dedede Baito customary land. The appeal is allowed and makes the following order.

Order:

- 1. The determination made by the Western Provincial Executive over Dedede Baito Customary Land on 11th day of October 2011 is set aside.***

- 2. The court decline to make order as to cost.***

