

ORIGINAL

IN THE SOLOMON ISLANDS COURT OF APPEAL

NATURE OF JURISDICTION:	Appeal from Judgment of the High Court of Solomon Islands (Maina J.)
COURT FILE NUMBER:	Civil Appeal Case No. 05 of 2015 (On Appeal from High Court Civil Case No. 140 of 2014)
DATE OF HEARING:	20 April 2015
DATE OF JUDGMENT:	24 April 2015
THE COURT:	Goldsbrough P Ward JA Wilson JA
PARTIES:	JAMES PULEIPI, CHACHABULE AMOI AND SERI HITE. FAIRTRADE COMPANY LIMITED - V - ATTORNEY GENERAL (Rep Western Customary Land Appeal Court)
ADVOCATES:	
Appellant:	Mr T. Mathews QC & Mr Wilson Rano – Rano & Company
Respondent:	Mr. Banuve - Attorney General
KEY WORDS:	
EX TEMPORE/RESERVED:	RESERVED
ALLOWED/DISMISSED	Allowed
PAGES	1- 6

Judgment of the Court

[1] On 21 May 2013, the Western Provincial Executive Council (WPEC) held a meeting to determine the timber rights in respect of Riki, Guanahai, Chochole and Njale customary land in Marovo, Western Province. The three first appellants were named as the land owners with whom the second appellant, Fairtrade Company Limited (Fairtrade), (which was the applicant), had held preliminary discussions. On 23 May, the WPEC confirmed the matters required of it under section 8 (3) (a) to (e) of the Forest Resources and Timber Utilisation Act (FRTU), including their satisfaction that the three first appellants were the persons lawfully entitled to represent all the persons entitled to grant timber rights over the four customary lands. It also endorsed the application by Fairtrade for timber rights.

[2] That decision resulted in four appeals to the Western Customary Lands Appeal Court (WCLAC) from (1) Guanahai Integrated Development Company Ltd, (2) Pacific Crest Enterprises Ltd and a representative of the landowners of Geli, (3) two representatives of the descendants of Jonah Rebi and Noqu Kinio respectively and (4) three representatives of the Piduru Clan.

[3] The WCLAC met to hear the appeals on 28 August 2013. At the outset of the hearing, some of the parties raised what they referred to as preliminary issues. In summary, they were that Guanahai land is the subject of an action pending in the High Court, that Davala customary land should have been separated out because it had been determined in the first appellant's favour by the WCLAC in 2005 and was covered by an existing and valid licence, that any grant of timber rights covering Geli land was wrong because there was an existing timber licence over that land and, by the respondents (present appellants), that Guanahai Integrated Development is not a landowner and, therefore, disqualified as an appellant.

[4] The WCLAC decided, in a ruling given on 3 September 2013:

“The issues raised by parties as stated above are issues relating to point of law which court lacks jurisdiction to entertain. It is our view that these issues are important issues that need to be cleared before this court deal with other ground of appeals.

This court therefore ruled that either the First and Second Appellants or the Respondents bring these issues before the High Court to determine before we deal with other grounds of appeals.

Meanwhile the hearing of this case be adjourned pending the High Court's ruling on in a ruling on the above issues.”

[5] The request by the WCLAC to the parties that they, or one of them, bring the issues to the High Court for determination appears, unsurprisingly perhaps, to have had no response but, on 12 May 2014, the present appellants filed a claim against the Attorney General, representing the WCLAC, for judicial review. They sought:

1. A declaration that the Defendant fails to perform or exercise its jurisdiction conferred upon it by the Forest Resources and Timber Utilisation Act (Cap 40) as amended.

2. Alternatively, a declaration the Defendant has exceeded its jurisdiction in taking into account irrelevant considerations.
3. A quashing order that the decision of the Customary Land Appeal Court dated 3 September 2013 be brought up to this Court and quashed.
4. An order that the Western Customary Land Appeal Court rehear the appeal de novo specifically required by Section 8 (b) or (c) of the Forest Resources and Timber Utilisation Act.
5. Any other orders and costs.

[6] The case was heard on 18 October 2014 and, in a ruling delivered on 18 February 2015, the learned judge ruled, in apparent disregard for the remedies sought:

1. Appeal Ground on WCLAC failure to exercise or alternatively exceed the jurisdiction is dismissed.
2. WPEC did not make any determination on the matters under section 8 (3) (a), (b) and (c) of the FRTU Act
3. The determination of the WPEC made on 23 May 2013 is quashed
4. WPEC to rehear the application for the timber rights over Riki, Davala, Guanaha, Chocchole and Njalele Customary Land, De novo.
5. Costs in the cause.

[7] This is an appeal from that decision. The grounds can be summarised as:

1. That the learned judge erred when he dismissed the Appellants' Claim on the basis that there was no improper conduct on the part of the WCLAC when it held that it had no jurisdiction to deal with issues of law
2. That the learned judge went beyond the matters sought in the claim when he quashed the determination of the WPEC and ordered that it rehear the application.

[8] The judge based his ruling on the conclusion that the evidence placed before him required determination of two issues which he described as:

1. "Whether the WCLAC's ruling was a failure to exercise or exceeded jurisdiction under section 8 (3) (b) and (c) of FRTU; and
2. An underlying issue that instigated or made happen the appeals to the WLAC and where the WPEC had made a determination of the persons or nature and extent of the timber right as conferred on them" by the same section.

The grounds of appeal reflect that division.

Appeal Ground One

[9] Mr Matthews, for the appellants, suggested that the judge dealt with the case before him as if it was an appeal against the CLAC rather than an application for judicial review. Much of the judge's reasoning and the first of his Orders certainly lend support to that suggestion although the judge had, in his introductory background to the case, recognised that "The claimants ... in pursuance of

Rule 15.3.4 of the Civil Procedure Rules 2007 bring the ruling [of the WCLAC] to the High Court for judicial review”.

[10] Whilst dealing with his first issue, The judge explained:

“It is crucial on the part of CLAC to first establish the jurisdiction before it can hear and determine the timber rights appeal and if the matters are related to sections 8 (3) (b) and (c) as read with section 10 (1) of the FRTU Act. The mere existence of the facts or an appeal purported to be made under that provision is not sufficient to invoke the jurisdiction of the CLAC. In the language of section 10 (1), “*any person who is aggrieved by the determination made under section 8 (3) (b) or (c) appeal to the Customary land appeal court*”. This provision relates to the issues of persons to grant timber right and the nature and extent of the timber rights. If the appeal grounds are not on these matters then the CLAC has no jurisdiction.

What is perfectly clear from the ruling and appeal grounds to CLAC as point of law were the issues of cases pending before High Court, res judicata, companies as parties in the appeals before CLAC and overlap of felling licences and companies as appellant to CLAC. And these are not the matters under section 8 (3) (b) or (c) of the FRTU Act for the CLAC to determine which it decline to entertain otherwise it can hear but would make decision them. In the case the WCLAC ruled these are points of law and it has no jurisdiction to hear and determine these matters.

I do not find any improper means and CLAC was right to decline to deal with those matters that relates to points of law. This appeal ground is dismissed.”

[11] The reference to an appeal ground is repeated in the first order the judge made that “Appeal Ground on WCLAC failure to exercise or alternatively exceed the jurisdiction is dismissed”.

[12] The learned judge was in error when he accepted the WCLAC’s decision to decline to hear the issues which it had decided were matters of law. The CLAC is created by section 255 of the Land and Titles Act and its powers are limited to those given by that and any other statute. Right of appeal to the CLAC from the determination by the appropriate Government following discussions under section 8 of the FRTU is provided by section 10 (1):

10. (1) Any person who is aggrieved by the determination of the appropriate Government made under section 8 (3) (b) or (c) may, within one month from the date 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.

[13] As is clear in section 10 (1), the jurisdiction of the CLAC in such a case is limited solely to the matters covered by paragraphs (3) (b) and (c) which provide:

(3) At the time and place referred to in subsection (1), the appropriate Government shall discuss and determine with the customary land owners 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;
- (d) ...
- (e) ...

[14] The powers of the court are restricted to those matters but it has a duty to consider any such matter properly brought to it on appeal from either of those two paragraphs. If an appeal includes issues of law relevant to those matters, it is within the court's jurisdiction to decide them. If they do not fall within the scope of paragraphs (b) and (c), the court should decline to hear them and/or dismiss the appeal.

[15] The matters the judge referred to as being outside the court's jurisdiction were a case pending in the High Court, issues of res judicata arising from previous decisions of the CLAC, Companies as parties or as appellants before the CLAC and overlap of felling licences.

[16] Clearly the CLAC would be correct to await the outcome of a pending High Court case if it was satisfied it was relevant to the matter under appeal. (We were advised from the Bar table that the decision in that case had been handed down ten days before the hearing of the application for judicial review by the present appellants.)

[17] The question of whether companies could be appellants was not a matter on which the court should have needed the High Court's ruling. It should have appreciated that they could not be persons aggrieved; *Simbe v East Choiseul Area Council* [1999] SBCA 8/97 12 and declined to hear the appeal.

[18] Many cases under the FRTU come before the courts with a long 'tail' of cases about the same or similar customary land. We would suggest that the CLAC must be the best body to consider and decide whether and, if so, how they may bear on the appeal it is then considering. The restriction imposed on the High Court's power to make decisions in respect to ownership of customary land makes it unlikely a reference to it on such matters is likely to achieve much more than an order to refer it to the local court or the CLAC. Similar comment must be made on difficulties with apparently overlapping timber felling rights depending, as they so often do, on ownership of customary land. If they have previously been granted and have not been revoked, another grant may not be made. Whether or not they do overlap is a decision the CLAC can and should make in the course of hearing the appeal.

[19] The question the CLAC must ask when any apparent problem arises with an appeal from section 8(3) (b) or (c) is whether it falls within the terms of those paragraphs. If it does, they should hear it. If it does not, they should refuse to do so.

[20] Mr Banuve for the WCLAC suggested to the Court that it might have sought the assistance of the High Court by special case under the provisions of Chapter 16.2.1 of the Civil Procedure Rules. Where a genuinely difficult point of law arises, that is a possible remedy and the procedure for stating a special case ensures it is clear exactly what is the question to which an answer is sought. However, that is not what the court chose to do in the present case. These matters were not difficult questions of law which needed answering before the CLAC could proceed with an appeal. They

were issues the court itself could have decided or matters which it was specifically appointed to determine. If they were not in those categories, it should simply have refused to hear them and dismissed the appeal.

[21] The CLAC's decision that it had no jurisdiction was incorrect and amounted to a refusal to exercise its jurisdiction. The appellants' decision to seek judicial review was therefore an appropriate step to try and have the appeals to the CLAC resolved so that the application for timber rights could proceed. As counsel for the appellants suggested, the judge incorrectly treated the application as an appeal instead of an application for judicial review with the result that he ignored the remedies sought by the applicants.

Appeal Ground two

[22] The judge's confusion about the basis of the application for review extended to his findings on his second issue and resulted in the remaining orders. His approach, with respect, was confused and resulted in a clear error of law.

[23] He introduced the second issue in the following passage:

“An underlying issue has instigated, make happened or propelled of the appeals to the WCLAC and this judicial review. It is the purported WPEC's determination and the question is whether the WPEC had made a determination on matters as so required on them under section 8 (3) (a), (b) and (c) of the FRTU Act?

Essentially it was the act and determination of WPEC that led to all these and now appeals before the court. It need to be checked otherwise the all processes is put into disrepute, abuse of law and judicial process, waste of money, time and resources of all concerned.

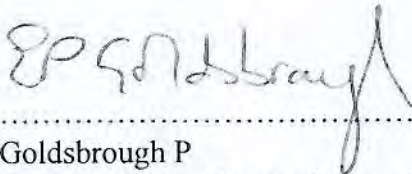
This issue has emerged from the claim and arguments by the claimants on the alleged CLAC failure to exercise or exceed jurisdiction and the documentary evidences used to support by the claimant's claim.”

[24] The judge then deals with the conduct of the WPEC in respect to the meeting on 23 May 2013 and its suggested failure to observe the limitation of section 8. He concludes:

“WPEC has erred with its determination and I do not think the determination should stand as to the present format and final determination. Therefore, the determination of WPEC made on 23 May 2013 is quashed.”

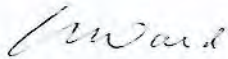
[25] It was a surprising approach. The appellants had made no mention of the WPEC and the judge's orders 2, 3 and 4 related exclusively to the WPEC and clearly usurped the function of the WCLAC. The orders he made cannot stand. They affect numerous people who were not, and could not have been, parties to the review proceedings but had been involved in and affected by the WPEC decision.

1. The appeal is allowed.
2. The orders of the judge made on 18 February 2015 are set aside.
3. Civil Claim no 140 of 2014 is allowed.
4. It is declared the the Western Customary Land Appeal Court in its ruling and decisions dated 3 September 2013:
 - (a) failed to perform or exercise its jurisdiction conferred on it by the Forest Resources and Timber Utilisation Act as amended; and
 - (b) purported to exercise its jurisdiction by taking into account irrelevant considerations.
- 5 The decision is brought up to the High Court and quashed.
6. The Western Customary Land Appeal shall hear de novo and determine the appeals before it according to law.
- 7 Costs of this appeal, inclusive of certified costs for overseas Queen's Counsel, and the costs of Civil Claim No140 of 2014 be paid by the Respondent to be taxed if not agreed.



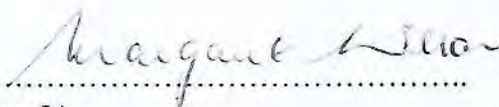
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Goldsbrough P
President of the Court of Appeal





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Ward JA
Member of the Court of Appeal





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Wilson JA
Member of the Court of Appeal



