

IN THE WESTERN CUSTOMARY
LAND APPEAL COURT

CLAC No.20/03

Before: Ian Maelagi - President
David Laena - Member
Joseph Liva - "
Wilson Katovai - "
Willington Lioso - "
Davis Vurusu - Secretary



IN THE MATTER: KUTCHIBULAO T/R APPEAL

PARTIES: Melton Eto and others - Appellants
Mr. Isaac Nonga and others - Respondents

JUDGMENT

This is an appeal by the Appellant Melton Eto and others appealing against the determination of persons to grant timber right on Kuchibulao customary land and was filed in the court on 16th June 2003. The Western Provincial Executive made the determination on 18th May 2003 and Public Notice published on 18th May 2003. The applicant for timber right under Form 1 was Omex Ltd.

The appeal was by way of letter and briefly the appeal points are summarized as:

1. We feel that the Executive is inconsiderate, inconclusive biased with no legal facts to be based upon. The determination is totally unacceptable to us,
2. We have produced our High Court decision to proof to the Western Provincial Executive members that the piece of land (Kuchibulao) being applied by for by Omex Ltd, is right inside the customary Land owner and control by Podokana tribe,
3. Despite all the documental evidence, presented to the Timber Right hearers (Executive Members) as the basis of our objection. The Provincial Executive categorically denied our customary rights of our land ownership and publicized a certificate of Determination in favour of the applicant (Omex Ltd, which now appears in form 2.

The above grounds of appeal have both points of law and ownership of customary land and timber rights.

The Law

Section 10(1) of Forest Resources and Timber Utilisation Act provides that:

"Any person who is aggrieved by the determination of the Provincial Executive 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.

(2) Notwithstanding any provision to the contrary in any other law, the order or decision of a customary land appeal court on any appeal entertained by it under subsection (1) shall be final and conclusive and shall not be questioned in any proceedings whatsoever.

Section 8 (1) (3) (b) and (c) of Forest Resources and Timber Utilisation Act provides that:

Section 8 (1) "Upon receipt of a copy of the application forwarded to it under section 7, the Provincial Executive shall fix a place within the area of its authority and a date, not being earlier than two months, nor later than three months, from the date of receipt of the copy of the application for a meeting to be held with the appropriate Government, the customary landowners and the applicant to determine the matters specified in subsection (3).

(3) At the time and place referred to in subsection (1), the Provincial Executive shall in consultation with the appropriate Government discuss and determine with the customary landowners and the applicant matters relating to—

(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;....."

Ground 1

When this matter was mentioned earlier the spokesman of the Appellant Mr. Alex Lokopio briefly submitted that the appeal before the court is appealing against the Omex Ltd who applied to operate on the customary land. He said the Land

belongs to his Podokana tribe and the Omex Ltd did not come to his tribe but just made the application at the hearing.

Mr. Lokopio said that they made the appeal on bias because Omex Ltd applied to operate on their customary land. The reasons given are:

1. Land does not belong to individual, but belong to Podokana tribe. There was no consultation with them before granting of timber right and
2. They made it very clear that the land is theirs, but the Provincial Executive failed to consider their evidence of ownership. It is a transferred land to Podokana tribe by Vangunu people.

The court examined the minute of the Provincial Executive and noted that the Podokana tribe was represented at the meeting and the spokesman was James Kamasae. Mr. Kamasae made representation at the meeting and recorded in the minute.

For this ground the Appellant made general comments with allegation that the Provincial Executive was bias because Omex Ltd applied to operate on their customary land. This ground has no merit

Further on the issues of bias as by the wording on this ground even if it is raised it is a point of law, which this court has no jurisdiction to deal with it.

This ground therefore fails.

Grounds 2 and 3

The Grounds 2 and 3 relates to each other and will be dealt with together.

In his submission, the Appellant spokesman told the court that, they have produced their High Court Decision No. 17/74 to the Timber Right hearing, which confirms the boundary and their ownership of the said and subject to s the Timber Right application. He also submits that, beside the High Court Decision there are other legal documents produce in the hearing in which the Provincial executive failed to consider or ignored.

The appellant's claim of ownership of the said land is through payment of work done by Podokana tribal warrior in protecting chief Kasama's people from being brutally killed by other aggressive warriors.

Appellant spokesman submitted the Provincial Executive on Appeal point 2 and 3 have failed to consider all their legal documents in the Timber Right hearing.

Respondent in his submission claimed ownership of Kutchibulao land and therefore have right to grant timber right. They have won ownership of the said land in Marovo Local Court Case No. 4/76 which the Appellant's party did not appeal against it.

He claimed that this is the basis of his party's claim and that gives all the rights to be identified as persons entitled to grant timber on Kutchibulao land

The question on Grounds 2 and 3 of the appeal is whether the Appellant have produced the High Court Decision plus other documents evidences in the Timber Right hearing.

Having looked at the timber right minute, there is no mention of Appellant producing High Court Decision No. 17/74. There was also no mention of the Appellant produce the customary land transfer document in the Timber Right hearing.

The only document mentioned by the Appellant is the Timber Right hearing is the boundary decisions made on 16th November 1932. However, Appellant failed to produce this document to this court to see the content of that document.

Upon considering evidence before the court and checking the Timber rights minutes, the court found that Appellant has failed to prove Appeal point 2 and 3. Therefore Appeal point 2 and 3 fail and must also be dismissed.

Order: Appeal dismissed.

Dated this 22nd day of October 2004

Signed:

Ian Maelagi	-	President
David Laena	-	Member.....
Joseph Liva	-	"
Wilson Katovai	-	"
Willington Lioso	-	"
Davis Vurusu	-	Secretary

Right of Appeal explained

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