

IN THE WESTERN CUSTOMARY  
LAND APPEAL COURT

CLAC No.14/03

Before: Ian Maelagi - President  
David Laena - Member  
Joseph Liva - "  
Wilson Katovai - "  
Willington Lioso - "  
Leonard R. Maina - Clerk/Secretary

**IN THE MATTER: SUKUVAI TIMBER RIGHT APPEAL**

**PARTIES:** Patson Papo - Appellant  
Mr. Lloyd Bosoboe & others - Respondents

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**JUDGMENT**

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This is an appeal by the appellant appealing against the determination of persons to grant timber right on Sukuvai customary land. The Choisuel Provincial Executive made the determination on 8<sup>th</sup> May 2003 and Public Notice published on 16<sup>th</sup> May 2003.

The appellant lodged in the court two letters as appeals. And the first letter was filed in the court on 20<sup>th</sup> May 2003 and fees were paid on 27<sup>th</sup> May 2003.

And the grounds are:

1. The Sukuvai tribe did not appoint or have a chief yet and it is absolutely important in our traditional custom to have a chief before any land matter. Giving right to someone to harvest land resources is essentially left to the chief and his male counselor who have the authority to decide upon;
2. That the current self imposed acting chief is not the right person to give consent or right to acquire timber right over Sukuvai land;
3. That there was no tribal meeting as required by the Forestry Act before the timber hearing. Moreover, the male descendant of the tribe was not involved or gives consent. This is crucially important

in the patrilineal system as ours that the male descendant and the chief must spearhead all meeting relating to land matters prior to the proposed timber right hearing.

The second letter was lodged in the court office on 19<sup>th</sup> June 2003. Appellant treated it as additional grounds.

1. Land boundary was overlapping to neighboring tribe of Ngtakobo land,
2. Reserving part of Sukuwai land has to be decide by the tribal through consultation meeting and not individual during timber hearing,
3. The genealogy claiming that was introduced by the applicant during both timber hearing and on 12/5/03 was not complete the Sukuwai genealogy but bias and so personal behavior is needed to be solve before entering into any development of Sukuwai land;
4. The list of names of trustees that appeared on form II a total of eleven names was not as endorsed and recommended by the tribal meeting on 12/05/03. That means the attitude of dominating and undermining the tribal decision continues. He has discouraged.

### **Locus standi or standing**

It is important for the appellant to show cause why this matter should not be struck out because the appellant has no locus standi or standing as now appear on the documents before the court.

In his submission Appellant, Mr. Patson Papo told the court that he did not attended the timber right hearing held on 28/4/03.

He claimed that the reason for not attending the Timber Right hearing was that there was no proper Notice of hearing.

The minute of the Choisuel Provincial Executive does not bear or possess any representation or objection by the Appellant at the hearing on 28<sup>th</sup> April 2004. If the appellant has no locus standi then he has no case to pursue in this court.

Section 10(1) of Forest Resources and Timber Utilization 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....."*

This court is an appellate court and whoever is aggrieved by the determination of the Provincial Executive, and then such person would have the right to appeal this court.

And for the purpose of appeal to this court, appellants must to make representation or objection to the Provincial Executive for consideration at the time of hearing of the timber right. It is as a result of that representation that such is not considered or decision is not in your favour, you would then appeal. If you aren't, then you cannot appeal to this Appeal court. You have no case to bring before this court.

It is clear that the appellant did not attend and made representation or objection at the timber hearing. Therefore he has no case to bring before this court or he has no locus standi or standing.

### **Appeal Grounds**

All the appeal grounds contained in both letters relate to custom issues i.e.: the chief of Sukuvai tribe, genealogy and ownership of customary land through male descendant and as such is not the issue on timber right on Sukuvai Land.

While there is an argument on the matters listed by the appellant in his appeal grounds and the timber rights on Sukuvai Land, the issues of chief of Sukuvai tribe, genealogy and ownership of customary land are not the same as issue of ownership of timber rights in the harvestable trees on that same customary land. This is confirmed by the various High Court cases and the recent case is ***Ezekiel Mateni H/C CC no. 155 of 2003.***

This court cannot be asked or use to advance issues on chief of Sukuvai tribe, genealogy and ownership of customary land on appeal arise under the Forest Resources and Timber Utilization Act. This process is for the dispute on the identification of all persons lawfully entitled to grant timber rights.

The appellant has chosen the wrong procedure or process to take up his case. It may be the process through the chiefs and then to the local court before the Court.




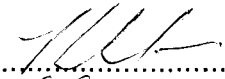

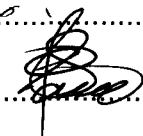
### **ORDER**

1. Appellant has no locus standi or standing,

2. All the Grounds relates to custom i.e.: chief of tribe, genealogy and ownership of customary land cannot be entertained by this court under the appeal or process of the Forest Resources and Timber Utilization Act, and
3. Appeal dismissed

Dated this <sup>23<sup>rd</sup></sup> ~~22<sup>nd</sup>~~ day of October 2004

Signed:

Ian Maelagi	-	President .....	
David Laena	-	Member.....	
Joseph Liva	-	" .....	
Wilson Katovai	-	" .....	
Willington Lioso	-	" .....	
Leonard R. Maina	-	Clerk/Secretary .....	

Right of Appeal explained

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