

**In the Western Customary Land
Appeal Court**

CLAC no.9 of 2003

Appellant Jurisdiction

In the Matter of: **Timber rights Appeal on Central Parara Land**

Between: **Hugh Paia**) Appellant

And: **Holoti Panapio & Others**) Respondent



JUDGMENT

This is an appeal filed by Mr. Hugh Paia The Appellant against the determination of the Western Provincial Executive and carried in their Certificate issued on the 10th February 2003. Central Timber Right on Parara. In This Appeal the Appellant Mr. Hugh Paia representing Ago/Simaema Tribe, fitted seven appeal points in which appeal point five, six and seven were points of law. Ports one to four were points relate to Tribe Right or ownership. Out ruled that, Parties will only discuss or deliberate on Point 1 – 4 only. Point 5 to 7 this court has lacks jurisdiction to entertain.

Both the Appellant and Respondants make submission before Court on Points 1 – 4. In which we will summarise them separately.

Summary of Appellants Case:

Appeal Point 1, 2 and 3 through they were separately given they seen too argue the same thing. In deliberating in these points, the appellant Mr. H. Paia submits in court that those persons determined by the Western Provincial Executive were not the right persons to grant Timber Right on Central Parara. He said that the Western Provincial Executive did not hold a public hearing to determine them. The Western Provincial Executive adopted determination of Roviana Area Council in 1989 – thus issue a certificate of determination. He argued that persons determined by the Western Provincial Executive were not the same persons determine by RHC as persons having right to grant such right.

Persons determine by Roviana Area Council in 1989 were now deceased. Western Provincial Executive determined the replacement of the deceased without holding in public hearing to allow any objectors to object. He argued that this tribe Ago/Simaema didn't appoint William Niva and David Litolo to replace Nepia Niva and Isaac Edolo as determined by Roviana Area Council - 1989.

He argued that replacement should be made according to custom and in public hearing. He argues that this was not done by the Western Provincial Executive. He argued that Respondent 1 - 5 was not the right person in custom to grant that Timber Right.

Point 4. He claimed Central Parara to be owned by his tribe the Ago/Simaema Tribe. His claim of ownership of Central will be channeled through the right owner to deal with.

Appt. w.1. Appt. witness Mr. Steward Evo in his evidence testifies a little bit ownership over Central Parara or Kohigo. He confirms the Ago/Simaema tribe owned Central Parara.

Summary of Respondent Case:

There were 4 spokes person for the Respondent who made the reply or Respond to appeal points 1.2.3,4 file by the Appellant. The spokesperson representing their respective tribes as follows:-

- 1) Hopeful Piosasa representing Gemu Tribe
- 2) Rex Biku representing Gumi Tribe
- 3) Richard Boso representing Gumi Tribe
- 4) Peter Paulsen representing Lamupeza Tribe

The respondent s in there reply to the grounds of appeal submit that in order to assess person who rightful, has right to grant timber, one must consider the ownership of the said land on which the trees stand. Based on that thinking Respondents gave their customary evidence of ownership over the whole of Parara Is. in which Central Parara is part of. They adduce evidences in genealogies. Respondent Claimed ownership of Parara Is. through Customary inherits. That they also claim that Respondents party has legal rights of ownership over Parara Is. They produced to the court documents to prove their right of ownership. There are document presented to court after the hearing in which we will not consider. Arguments over legal right of ownership ie: 1905 land case, 1910 land case, and 1923 Commissioner of Enquiry into levers claim by Judge Philips on claim 31, Denson Island. They also adduce evidence that in

1970 Ago/Simaema Tribe invited a Gilbertise namely Gedeon who carried out logging operation on Central Parara. Chief J Gemu. Edwin Biku plus others stopped them. The operation ceased.

Respondents also stated that there was a timber right hearing before Roviana Area Council in 1989 who determine the following people representing their tribes as right person in custom to grant timber right.

1. John Gemu & K Kaepeza Represent Gemu Tribe
2. Edwin Biku and Wilson Sunga – Rep. Gemu tribe
3. William Lamupeza and John Roni representing Lamupeza and Voda Tribe
4. Nepia Niva and Issac Edolo represent Ago Tribe

Respondents submit that appellants did not appeal against this timber right hearing. Thus give them right to grant timbers on Central Parara. Respondents said that the inclusion of the present Respondents is to replace those determined by Roviana Area Council in 1989 RAC who have already died. They were sons and daughter of those deceased persons determine in 1989. That is basically the summary of both the Appellant and Respondents case. Having studied all the evidence before us, there are questions that this court must answer when determining this appeal.

1. The question of whether the Appellant has a standing in this court.

Locus Standi

This means before you have a standing in this court, you must first present your objection or argument in The Timber Right Hearing and if you are aggrieved party then you do not have standing in this court. (See George Pou & other – v – Tropical Forest Products & Others HC.CC. NO.42 OF 2004). It is clear from the evidence that The Appellant did not attend when the Western Provincial Executive made it determination on the 10th February 2004. However ever before we conclude the question whether Appellant has no standing we must first see if there is a Public Hearing convened by Western Provincial Executive in this matter that Appellant did not attend. It is clear from the evidence that there is no Public Hearing convine in the matter by Western Provincial Executive. Therefore conclude that Appellant have a standing in this court.

2. Ownership of Land /Timber Right

There were legal documents produced before this court regarding ownership over Parara Island in which Central Parara is part of and also custom evidences

of land ownership. The argument is that question whether parties who legally own customary on Parara Islands have right to grant timber right on the same land.

The answer to that argument is that ownership of Parara Is or Central Parara is not the same issue as ownership of Timber Right in the harvestable trees on that same land.

There is artificial distinction between ownership of customary land and the timber right on the land. In custom they are who owns the land owns the trees on that land unless the trees have been planted by someone else in which case the trees are owned by the planter but the land is owned by another person. (See Ezekiel Matani – V – Seri Hite – HC.CC.No.155 of 2003).

The question raised in the appeal point 1 – 3 is a question of whether the persons determined by this Western Provincial Executive as person replacing those who were being determined by the Roviana Area Council in 1989 valid.

This court answers this question in this way. The validity of the Rovian Area Council determination in 1989 can be said to apply only to those persons named in the determination made by the Roviana Area Council at that time. The determination cannot be said to be accurate since the death of eight of the original Trustees for the appointment of the replacement is not the work of the Western Provincial Executive or neither of CLAC Western. (See Hugh Paia and others – v- Judas Sakiri and others civil appeal No. 368 of 2004].

The appointment of the replacement should be done in accordance with custom and then brought before the Western Provincial Executive for endorsement. According to evidence before us, this was not done.

It is now clear that the Roviana Area Council determined persons lawfully able to grant timber right on Central Parara in 1989. Those persons now all deceased. The question now is who should replace them. This must be done by the tribes themselves in accordance with custom and then put before CLAC Western for endorsement. It need not go through another timber right hearing. The court sees fit to make an order for the replacement of the persons previously identified by the Roviana Area Council in 1989 to grant timber right on Central Parara.

And accordingly the

DECISION: Appeal is Allowed

Order:

- (1) Matters is referred to the parties:
 - (a) To choose the replacements of the persons (now deceased) who have been determined by the Roviana Area Council in 1989
 - (b) Such to be done according to the custom.
- (2) Upon replacement the names to be put before court for endorsement .
- (3) Parties meet their own cost
- (4) Matter Adj. generally

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|---------|------------------|--------------|---------------------------|
| Signed: | David Laena | A/President | <i>Laena</i> |
| | Wilson Katovai | Member | <i>Wilson</i> |
| | Willington Lioso | " | <i>Lioso</i> |
| | Joseph Liva | " | <i>Liva</i> |
| | Davis Vurusu | Clerk/Member | <i>Vurusu</i> |

Date: 02/5/05

ROAE