

In the Western Customary Land  
Appeal Court

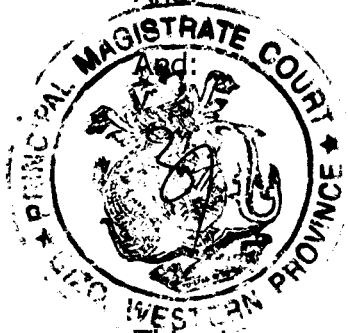
CLAC no.43 & 44/03

In the Matter of: Timber rights Appeal on Talubuku Land

Between: Nicholas Biliki (First Appellant)

And: Ezra Poloso (Second Appellant)

And: Eddison Biliki Respondent



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**JUDGMENT**  
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This is an appeal against the Choisuel Provincial Executive Committee determination on timber rights on Talubuku Land on 22<sup>nd</sup> October 2003.

Appellant Nicholas Biliki raised seven grounds of appeal, but merely relates to each other and is summarized as follows:

1. The venue and timetable of the hearing is not fair to the objections,
2. The application should not be accepted as it overlaps existing application,
3. Certain members of the Executive committee fail to declare their interest,
4. Executive committee did not consider points of objections on custom issues i.e. boundaries, tabu and burial sites, tribe/clan issues, identity of the land,
5. Presentation of documents, books and resolutions,

For Ezra Poloso, his appeal point is summarized as follows:

1. Executive committee did not consider points of objections on custom issues i.e. boundaries Zirunangonango

2. Accepting false statements from putative landowners on Ririo Area meeting record book and 1945 Pinaqele Resolutions.

It is important at this stage to point out the matters relate or claims of ownership of land, chieftaincy and other related issues as well as procedure and law raised in this appeal will not be determined by the court. This court with appeals under the FRTU Act has no powers to determine such issues. However any evidence relates to ownership of land and chieftaincy will assist the court to determine, whether the Provincial Executive Committee has properly identified persons to grant timber right on the Land concerned.

### **First Appellant's Case**

#### Locus Standi/Standing

At the commencement of the hearing Mr. John Qaqara assisting Respondent raised an issue of Locus Standi/Standing that First Appellant has no case to put before this court on the fact he did not make any representation to the Executive Committee hearing.

The court allowed the First Appellant present his appeal to the court on the bases that record or minute of the Executive Committee at the initial hearing he had participated at the hearing.

Before the court consider the points of appeal of the appellant it is important to determine this issue of standing and whether he had made representation before the Executive Committee. This is so because if the appellant has standing or made representation which the Executive Committee did not consider or erred in deciding then the appellant has case before this court.

This CLAC is an appellant court and whoever is aggrieved by the determination of the Area Council must establish his standing or right to appeal to this court. And for the purpose of appeal to this court, such appellant must make representation or objection to Area Council for consideration at the time of the hearing of timber rights. It is as result of that representation that such was not considered or decision not in his favour thus you would then appeal to this court. If you aren't then you cannot appeal to this court. You have no case to bring before this court.

Having pursued the minute or record of the Executive Committee on 2/10/03 and 3/10/03, the First Appellant had appeared and raised questions at the hearing. But the record did not state that he had made representation of claims or objection at the hearing for the Executive Committee to consider.

The court is satisfied that the First Appellant has standing in this matter. However, the record shows that he had made no representation or objection to the Executive Committee to consider with other claims. What he put in the appeal grounds was presented before the hearing neither as representation nor as objection. They are new evidence except on Ground 3 which was addressed at the hearing. Also he had never identified as being part of the persons lawfully entitled to grant timber rights over Talubuku Land at the hearing. It is clear that the appellants have no case to present before this court by way of appeal.

On the appeal grounds 1, 2 and 3, the issues relates to procedure which this court has no jurisdiction. For other grounds it is customary issues which cannot be determine by this court by way of appeal through FRTU Act. He may purse those issues in through the chiefs and local court process.

And accordingly order as follows:

### Order

1. All Appeal Grounds dismissed
2. No award on cost

### **Second Appellant's Case**

On the appeal points the appellant told the court the Executive fail to consider that they live, cultivate and have tabu site, hunt, shrines, and old villages on Zirunangonango land. Provincial Executive committee fails to consider the boundary. He made reference to Bisi stream ... to Qubangara to head of lokamaja as mistake by Respondent. He claimed that Ririo Area meeting record book and 1945 Pinaqele Resolutions recognized by Lauru Land Conference.

### **Respondent's Case**

In reply to the appeal grounds, Respondent submitted that the land in question is Talubuku land and not Zirunangonango land. This was confirmed by three main tribes of Ririo.

There was no objection by the Zirunangonango tribe on Tirokana land (part of Talubuku land during the timber right hearing in 1996.

Ririo Area meeting record book and 1945 Pinaqele Resolutions are actually one resolution. Ririo confirmed the 1945 Pinaqele Resolutions.

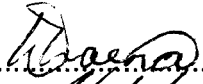
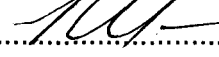

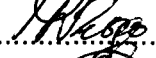
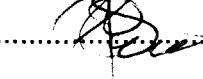
The claim by the Appellant of ownership of timber right is not true or no evidence to support his claim. The Executive Committee was right to identify Talubuku tribe to grant timber right on Talubuku Land.

Having pursued the record or minute of the Executive Committee from the 2<sup>nd</sup> to 7<sup>th</sup> October 2003 and considering the submissions of the by the Appellant and respondent, it is clear that Appellant's issues relates to custom issues. Those issues as to the determination of the timber right were before the Executive Committee. We are satisfy that the Executive Committee made no error in determining that Respondent has right to grant timber right on Talubuku Land.

And accordingly,

### Order

1. All Appeal Grounds dismissed
2. No award on cost

1.	David Laena	Ag President	
2.	Wilson Katovai	Member	
3.	Joseph Liva	"	
4.	Wellington Lioso	"	
5.	Maina LR.	P/Magistrate/Clerk	

Dated: 18<sup>th</sup> May 2005

\*Right of Appeal to the High Court is explained

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