

Court copy.

In the Western Customary Land Appeal Court

CLAC no. 1/04

In the Matter of: Malizata Timber Right Appeal

BETWEEN: Lesley Pitisopa (Appellant)

AND: Irvin Polosovai (Respondents)  
Joshua Luito  
Peter Mallory  
Maxwell Polosovai



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**JUDGMENT**  
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This is an appeal against the determination of the Choiseul Provincial Executive committee of the Timber Right on Malizata land, South Choiseul.

The brief Background:

The Choiseul Provincial Executive Committee held a Timber Right hearing on 29/4/04 on Malizata land.

The Choiseul Provincial Executive committee made a determination in favour of the Respondents as persons entitled to grant Timber Right on Malizata land.

The appellant party having aggrieved by that determination appealed against the said determination to the Western customary land Appeal court having jurisdiction on the area in question.

Grounds of appeal summarizes as follows:

1. The Choiseul Provincial Executive Committee erred in law as the Commissioner of Forest had not given his consent as required under Section 7 (2) of the FTRU Act.
2. The Choiseul Provincial Executive Committee erred in law in that the Appellant and concerned landowners were not willing to negotiate for the disposal of timber right, The Choiseul Provincial Executive Committee erred in law as when the Respondent was determined as a person to grant timber right, there is a Local court with between the parties,

3. The Choiseul Provincial Executive Committee erred in law as when the Respondent was determined as a person to grant timber right, there is a Local court case on the ownership of this land with between the parties,

4. The Choiseul Provincial Executive Committee made error in the custom land transfer ceremony (sipa lua) as it was not made to the Appellant by Lukulobore being the original land owners.

5. The Choiseul Provincial Executive Committee made the error in custom of use and cultivation is evidence of the permission by different people to use Malizata land.

The grounds of appeal raised by Appellant relates to points of Law and customary ownership of the Malizata land.

### **The Law**

Section 8 (3) (b) (c) of Forest Timber Resources and Utilization Act (FTRU) provides:

*"8 (3) At the time and place referred to in subsection (1), the Provincial Executive Committee shall in consultation with the appropriate Government discuss and determine with the customary landowners 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;*

*....."*

*10.—(1) Any person who is aggrieved by the determination of the Provincial Executive Committee 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.*

The above provision therefore requires the Provincial Executive committee to determine:

1. Persons proposing to grant the timber rights on Malizata Land, and if they represent all the persons lawfully entitled to grant such rights, and if not who such persons are?,
2. And the nature and extent of the timber rights, if any, to be granted to the applicant.

The matters raise in grounds 1, 2 and 3 relates to law and this court lacks the jurisdiction.

Grounds 1, 2 and 3 is accordingly is dismissed.

On Grounds 4 and 5, in order to determine the persons lawfully entitle to grant timber right, Provincial Executive is to hear the claims from the landowners. It is from the claims that it will identify the persons lawfully entitled to grant timber right on the customary land.

With is case the record of the proceeding of the Provincial Executive shows that the parties were arguing on the ownership issues. Even with their presentation, there is no clear evidence to suggest better title of the concern land from either party.

What seems or suggest as better title is the determination of the chiefs, but a matter related to the decision is pending with Choisuel Local Court.

There was no evidence from the record over the claim of timber right.

As such the Provincial Executive has no basis to determine the Respondent as persons lawfully entitle to grant timber right on Malizata land.

There is an artificial or legal distinction of ownership of customary land and Timber Right created by legislation.

Kabui J, in the case of *Ezekiel Mateni –v- Seri Hite HC.CC no. 155 of 2003* at p 4 states that any issue relates to ownership of land is to be determined under the Lands and Titles Act and Local Court Act, while the acquisition or persons to grant timber rights to be determined under the FRTU Act.

He further stated that persons identified to own the land may only assist the Provincial Executive Committee to identify the proper persons to grant timber right on the Land concerned.

As noted earlier the Provincial Executive was not able to identify who should have a better customary title on the land. It is this matter that should be cleared to the Provincial Executive that it may assist them to identify the proper persons to grant timber right on the Land concerned.

In all respect this situation suggests that no agreement can be reached between the applicant and the customary landowners, therefore the Provincial Executive Committee should recommend to the Commissioner of Forest. to reject the application.

The Provincial Executive Committee therefore fails to determine matters as the required under Section 8(3) (b) (c) as read with Section 9 (1) of FRTU Act.

From the appeal grounds and the submissions of the parties, it is clear that the issues on this ground relates to customary ownership of Malizata land

This court also lacks the jurisdiction to determine ownership issues made on appeal under the FRTU Act.

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**ORDER**  
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1. Determination of Provincial Executive Committee is quashed
2. No order for costs

Dated this 16<sup>th</sup> Day of January 2006

Signed:	Wilson Katovai	-	Acting President	<u>[Signature]</u>
	Willington Lioso	-	Member	<u>[Signature]</u>
	Joseph Liva	-	"	<u>[Signature]</u>
	Naingimea Beiaruru	-	"	<u>[Signature]</u>
	Vurusu DD	-	Clerk/Member	<u>[Signature]</u>

Right of Appeal Explained

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