

IN THE WESTERN CUSTOMARY)
LAND APPEAL COURT)

CLAC No: 12 of 2002

Timber Right Appellant Jurisdiction

IN THE MATTER OF: Bolopoe Land Timber Right Appeal

BETWEEN: Marlon Kuve Appellant

Philip Samuel Respondents
& Others



JUDGMENT

an appeal against the determination of Western Provincial Executive Committee on the Bolopoe Land Timber Right. The appeal was filed to the court on 11th December 2002.

THE BRIEF BACKGROUND

The Western Provincial Executive Committee convened timber right hearing on 23rd October 2002.

It identified or determined the persons named in the list attached to Form II as person lawfully able and entitled to grant timber on Bolopoe Barakasi Land. The list referred to contained or named 72 names of persons of Barakasi tribal land trustees.

GROUND OF APPEAL

Appeal is summarized as follows:

1. Timber right hearing never took place on 23rd October 2002 as appeared in the certificate of determination dated 14th November 2002,
2. It is impractical or in the alternative impossible for a timber right hearing and determination to simultaneously take place on the same day,
3. Samuel Philip & others named in Form I were not consulted,
4. Mendana Novu named to be consulted hand died in 1st June 2002,
5. The persons named to grant timber right were not all the land owners or have no primary right on the land.

With the timber right matters, the appeal bears issues relate to law and ownership of land. The issue to be dealt with first is whether this court has jurisdiction to deal with issues raised by the way of this appeal?

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 Bolopoe Barakasi 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.

This is the only area allowed by the law for this court to decide on appeal under timber right and nothing else.

From the wordings of the appeal points 1, 2, 3 and 4, in all respect relates to law and procedure and this court lacks the jurisdiction to deal with the matters stated therein.

Appeal grounds no. 1, 2, 3 and 4 is dismissed.

Ground 5 raise an issue that the persons identified to grant timber right on the land concerned were not all the land owners or have no primary right on the land.

On this issue, appellant made submission is on the ownership of land.

Among others, the appellant in his written submission in 5 stated:

"The Provincial Executive determination that the following persons (refer to list attached) are persons lawfully able and are entitled to grant timber rights is illogical misleading and erroneous in that the persons named are not all from the same tribe and they all do not own or have primary right in the land and subject matter of the timber right hearing ie; Barekasi land....."

This statement questions the issues of membership of the tribe and ownership of land subject to the timber determination.

On the ownership of land issues, this court under appeal from timber right lacks the jurisdiction.

There is an artificial or legal distinction of ownership of customary land and timber right created by legislations. This is opposed to custom as the one who owns the land owns the trees on the land. This legal position is made clear by Kabui J, in the case of Ezekiel Mateni –v- Seri Hite HC.CC no. 155 of 2003 at p 4.

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. However, 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.

The matters raised by the appellant in Grounds 5 concerns the claim on ownership of the land and for the court to make ruling on those issues will amount to the determination of ownership of the land concerns.

What appears to be wrong on part of the Provincial Executive is that although it identified the persons who have the timber right or interest on Bolopoe Barakasi land they fail to determine among the persons in the list of names before them, the persons to grant the timber rights the land in question.

With the Determination of the Provincial Executive and information on Form II it states as follows:

"3. Upon the conclusion of its determinations the Provincial Executive determined:

(a) that the following persons are the persons lawfully able and entitle to grant timber rights bounded in red on the attached map being the land held by land owning group.

See Attached list

(b)"

The list stated above contains 72 names of persons and appears as Bolopoe Baraksi land trustees.

For the respondent the spokesman submitted that the persons named in the list are the trustee for the Bolopoe tribal Land. When questioned by the court for who should be the proper persons entitle to timber right for the landowners, he named David Hemi, Egan Satebule, Eli Volosi, Philip Samaul Roy Lelapitu and Joel Parovaki.

Section 8 (3) (b) FTRU requires the Provincial Executive to determine the persons and 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. In that context it is among 72 persons list as trustees and others to be identified and determine to grant the timber right on their behalf.

If the court discover such in the appeal before it, does court has power to correct or afresh?

In the case of Ezekiel Mateni –v- Seri Hite H/C CC No: 155 of 2003 at page 3 the court made reference in the judgment of the court of Appeal, in the case of Aquila Talasasa , Jacob Zingihite and Nathan Maisasa Losa –v- Rex Biku, John Kevesi, and WCLAC, Civil Appeal No. of 1987.

".....The function of the Customary land Appeal court once an appeal was instituted is, as set out in S. 5D(1), to hear and determine the appeal. In this statutory context this must mean that it is the duty of the Appellate court to examine whether the determination certified by the Area Council and determine whether it correctly identified all the persons lawfully able and entitled to grant the rights in question..... It follows that it is the function of the customary land appeal court to examine the question afresh and to make its own determination...."

On that basis, this court therefore has power to examine matters raised in the case by way of afresh and make its own determination.

The Provincial Executive did not correctly identify the persons lawfully able and entitled to grant the rights in question on Bolopoe Land and therefore this court examine the question or matter afresh and make its own determination.

Order

1. All Grounds of appeal is dismissed
2. However, the names of persons identified in the list is amended as follows:

the persons lawfully able and entitle to grant timber right on Bolopoe Land are:

- (i) David Hemi,
- (ii) Egan Satebule,
- (iii) Eli Volosi,
- (iv) Philip Samaul,
- (v) Roy Lelapitu and
- (vi) Joel Parovaki.

2. No Order for cost.

Dated this.....16th..... Day of Tamara.....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>
	Maina LR	-	Clerk/Member	<u>[Signature]</u>

Right of Appeal Explained

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