

(Court copy)

**In the Western Customary
Land Appeal Court**

CLAC no. 03/05

Between: **Seth Piruku**) Appellant
 Leadley Whitney & Others) Respondents



JUDGMENT

1. Brief Background

The Respondents Leadley Whitney & Others held a preliminary discussion with Omex Ltd and invited the company enter and carry out logging on Ozanga Lavata Land on Vangunu Island, Marovo, Western Province. Upon the preliminary discussions the company lodged Form 1 to the Commissioner of Forest. The Commissioner of Forest as required by FRTU Act forwarded a copy to the Western Provincial Executive Committee and requested them to meet and determined the persons who have rights to grant timber right on Ozanga Lavata land.

A public notice dated 13th September 2004 was made which states that the Provincial Executive had fixed 17th November 2004 as the date for the meeting and Seghe substation Marovo Lagoon, as the place for the meeting to determine person to grant timber rights on Ozanga Lavata land.

Another public notice was published on 1st March 2005 which states that by copy of the application that was displayed with the notice of 13th September 2004, Provincial Executive had rescheduled 10th March 2005 as the date for the meeting and again named Seghe substation Marovo Lagoon, as the place for the meeting to determine person to grant timber rights on Ozanga Lavata land.

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The Provincial Executive Committee met and determined Respondent Leadley Whitney & others as all the right persons lawfully entitled to grant timber rights over the Ozanga Lavata land.

2. Appeal Grounds

The Appellant Seth Piruku aggrieved by the determination of the Provincial Executive Committee and appealed to this court on the determination on Ozanga Lavata Land timber rights made on 10th March 2005.

He raises two grounds:

1. The ownership of Ozanga Lavata land had already been determined by the Marovo Chiefs in favour of the appellant. Ownership of Ozanga Lavata land cannot be separated from the ownership of the trees growing on the land. Who owns the said the land owns the trees on it. Therefore the Western Provincial Executive Committee was wrong in its determination in that, it was the appellant who ought to be determined as being entitled to grant timber right over Ozanga Lavata land and not the respondents. This Form 2 determination was wrong.
2. The Western Provincial Executive Committee held a timber right hearing and made its determination on 10th March 2005, six months after it received Form 1 Application and clearly outside of the statutory period of three months required under section 8 (1). The Executive should not have conducted the timber hearing and should not have made the determination in favour of the Respondents as breached of section 8 (1) of the FRTU Act.

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The Appellants seeks the order of this court:

- (a) to quash the determination made by Executive on the 10th March 2005,
- (b) determine that the Appellant is the person entitled to grant the timber right over Ozanga Lavata land

3. Submissions

Appellant Seth Piruku and his Spokesman Mr. Andrew Landa presented their submission by way of written submission and verbal presentation. The written submission was accepted by the court and exhibited "**Appt. E1**".

The same way of submission was made by Respondent Rob Whitney. He presented their submission by way of written submission and verbal presentation and exhibited "**Respt. E1**".

The written submissions is then form part of the record of the proceeding of the court.

4. Ground 1

This ground can be summarised as Appellant who owns the land also owns the trees on growing on the land concern. Land and timber or tree growing on the land cannot be separated.

Appellant submitted that the Marovo Council of Chiefs had already determined ownership of Ozanga Lavata land to their favour. And to support his argument he presented to the court two copies of Unaccepted Settlement Form 2. The first chief hearing was on 22nd July 2003 between Seth Piruku -v- Steven Veno, Tui Kavusu. The decision was in favour of Seth Piruku.

The second hearing was on 9th June 2006 between Seth Piruku -v- Chief Leadley Whitney, Steven Veno & others. The decision was in favour of Seth Piruku.

Appellant also made reference to *Grandley Simbe & others -v- Harrison Benjamin & others H/C Case no. 205 of 2004* and *Eddie Muna & other -v- Holland Billy & other H/C case no. 284 of 2001* to support his argument.

To this appeal ground, Respondent submitted that the issue raised by the Appellant on this ground relates to the issue of ownership of the land. The fact that the ownership of land cannot be separate from the ownership of trees growing on the land as raised by the Appellant is an issue of the ownership of land.

To support his argument, Respondent relies on the High Court case of *Ezekiel Mateni -v- Seri Hite HC.CC no. 155 of 2003*. He said the ownership of the land is a different matter from the ownership of trees according to the law.

5. The Court

Appellant relies on the chiefs' decisions as the basis of his claim thus gives him the right to grant timber on Ozanga Lavata land. This is also shown in the Minute of the Provincial Executive Committee and summarised at p. 4 of that minute.

In respect to the chief's decision on 22nd July 2003 on Ozanga Lavata land ownership and relied to by the Appellant, two cases on that decision are pending before the Marovo Local Court, *Seth Piruku -v- Steven Veno, Tui Kavusu M/LCC no. 8 of 2003* and *Steven Veno, Tui Kavusu -v- Seth Piruku M/LCC no. 1 of 2004*

The court is satisfied that issues raised by the Appellants on ground 1 is a matter or relates to land ownership and is currently challenged before the Marovo.

As with this, the other issues for the court to determine in Ground 1 are:

1. Whether this court has power to deal the issue of ownership raised in appeals under FRTU Act?

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2. And whether the basis of *Grandley Simbe & others -v- Harrison Benjamin & others H/C Case no. 205 of 2004* and *Eddie Muna & other -v- Holland Billy & other H/C case no. 284 of 2001* allows this court to hear and afresh the determination of the Provincial Executive Committee ?

The law which deals with the determination and appeal of the timber right is under the Forest, Resources & Timber Utilization Act (Cap 40).

Sections 8 (b) and (c) of the Act requires the Provincial Executive Committee to determine 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 and the nature and extent of the timber rights, if any, to be granted to the applicant.

And section 10 (1) of the FRTU Act provides that 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.

It is clear from section 10 (1) of the Act that the CLAC only has the power to entertain issues or matters stated to section 8(3) (b) or (c) on appeal under FRTU Act. It has no jurisdiction to deal with matters or appeal with land ownership through the process under the FRTU Acts.

Further this court is aware of the artificial distinction of ownership of customary land and timber right created by legislations as the land is a different matter and the timber right is another. In his judgment of Kabui J, in the case of Ezekiel Mateni -v- Seri Hite also said at p 4:

"Any issue relates to ownership and custom custodian 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".

Although the Marovo chief's decision on the land is favour to the Appellant, such may only assist the Provincial Executive Committee to identify the proper persons to grant timber right on Ozanga Lavata Land.

On the second question, it is important to understand the thrust or basis of the decision in *Grandley Simbe & others -v- Harrison Benjamin & others H/C Case no. 205 of 2004* and *Eddie Muna & other -v- Holland Billy & other H/C case no. 284 of 2001*.

The thrusts or basis of the above cases is that the High Court made such decisions of the fact that the chief's decisions were unchallenged. But in this case, whether the Provincial Executive may or may not aware, the fact is that the chief's decision which the Appellant relies on is challenged in the Marovo Local Court, *Seth Piruku -v- Steven Veno, Tui Kavusu M/LCC no. 8 of 2003* and *Steven Veno, Tui Kavusu-v- Seth Piruku M/LCC no 1. of 2004*. Let alone the chief's decision on 9th June 2006 between Seth Piruku (Compt.) -v- Chief Leadley Whitney, Steven Veno & others as it was just recently heard. The interesting matter to note with two chief's decision is that it seems to be heard by the same Marovo chiefs and secretary. Also according to the Form 2 presented to the court the Respondents did not attend the hearing on 22nd July 2003.

The case laws presented or raised to support this argument cannot assist in this case.

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And further for this court to determine this ground under this process may also amount to the determination of land ownership on Ozanga Lavata land.

Ground 1 is dismissed.

6. Ground 2

This ground questioned the procedure or the conduct of the Provincial Executive when it determined the persons to grant timber right on Ozanga Lavata Land.

It seeks an order from this court to quash the determination of the Provincial Executive Committee on the 10th March 2005 on the ground that it held a timber right hearing outside the required statutory period.

In our view, this appeal ground is misconceived. It is misconceived in that it assumes that the Western CLAC did have jurisdiction to hear an appeal on a point of law arising from the decision of the Provincial Executive Committee it held a timber right hearing outside the required statutory period.

A Customary Land Appeal Court is a court established to hear appeals from the decision of any Local Court on the question of ownership of customary land. It is also to hear appeals from Provincial Executive Committee on the matter on relates to the granting the timber rights.

Its membership consists of men who are knowledgeable about customary law governing the ownership of customary land and timber rights. It has no power to decide legal issues such as the procedures or manner on the conduct of determining timber right, breach of natural justice etc. The correct forum that has jurisdiction to decide such issues is the High Court under section 84(1) of the Constitution. That is to say, the High Court shall have jurisdiction to supervise any civil or criminal proceedings before any subordinate court and may make such orders, issue such writs and give such directions as it may consider

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appropriate for the purpose of ensuring that justice is duly administered by any such court.

Ground 2 is also dismissed.

ORDER

1. Appeal grounds 1 and 2 is dismissed
2. No order for costs.

Dated this 18th day of August 2006

Signed: Ian Maelagi

Ag President



Wilson Katovai

Member



Willington Lioso

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Allan Hall

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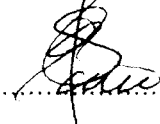
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Clerk/Member



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