

IN THE WESTERN CUSTOMARY APPEAL COURT



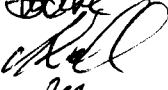



CIVIL CASE NO: 07/2009

BETWEEN: Arnold Pitu APPELLANT
And seven others

AND David Kera
Nelson Huti RESPONDENT

ABOUT: Lot 9 & 12 LAND

MEMBERS:

DAVID LAENA		PRESIDENT
SILVERIO MAIKE		MEMBER
ALLAN HALL		"
WELLINGTON LIOSO		"
NAINGIMEA BEIARURU		"
FLICKSON SAMANI		CLERK

JUDGMENT

Introduction

This is an appeal by the Appellants against a Timber Right Determination heard on the 27TH May 2009 at Munda, by the Western Provincia Executive.

Section 8 (3) (a-e) of the Forestry Resources and Timber Utilization Act (CAP. 40) outline the duties required by a provincial executive when conducting a timber rights hearing. Whether the Choiseul Provincial Executive had followed the requirements set out above is not a matter for this Court to find out.

section 10 (1) of the Forestry Resources and Timber Utilization (Amended Act 2000), provides that "Any person who is aggrieved by the determination of "an appropriate Government" made under **section 8(3)(b) or (c) (FR&TU)** may..." appeal to the Customary Land Appeal Court (CLAC) to hear and determine the appeal.

The significance of any appeal from a Timber right hearing by the provincial government to the Customary Land Appeal Court must be made under section 10 (1) of the FR&TU in compliance with section 8(3)(b) or (c) of the FR&TU.

Discussion

The appellant in this case had strongly submitted that Lot 9 & 12 is owned by the people of Kalena. And they should be the rightful person to grant timber rights. Appellant also submitted that the land Lot 9 & 12 is belonging to them but not the respondent.

The respondent in this case had submitted that Saikile owns the whole area and it has the right to grant timber rights. Kalena people should not be allowed to grant timber rights. The respondent referred to a High Court Case (CC 20 of 1972) saying that Nathan Kera is the owner and therefore has the right under Saikile Chieftainship to grant timber rights.

This court had carefully looked at all documents provided to court by both parties. This court wants to remind us that section 8(3)(b) or (c) provides for persons, meaning the right to grant timber rights must be made by a person. The Law is very clear when it comes to granting of timber rights.

The best way to hold a determination is to identify the piece of land and then collect the names of possible people who may grant timber rights. Then their names should be called at the meeting (determination) so that every body at the meeting may decide whether the person should be the rightful person lawfully entitle to grant timber rights.

In that it will reduce the chance of making an appeal. Not only that but a decision taken must be made to be fare and just.

This Court after carefully looking at the materials provided for by the parties have decided and therefore makes the following order.

Orders:

1. That the determination made by the Provincial Executive is dismissed.
2. That the Form 2 Determination is dismissed.
3. That the rightful persons to grant timber rights are.
 - a. Arnold Siuta Pitu
 - b. John Kilatu
 - c. Rupasi Mare
 - d. Lemeck Bile
 - e. Kelrick Roy
 - f. Peni Haro
 - g. Chief Dilently Vula
 - h. Arnold Minu
 - i. Masuru Vudere
 - j. Harry Finau
4. The parties to bear their own cost.

Members: David Laena	President
Silverio Maeke	Member
Allan Hall	"
Willington Lioso	"
Naingimea Beiaruru	"
Flickson Samani	Clerk

Dated 26th November 2009