

IN THE WESTERN CUSTOMARY APPEAL COURT


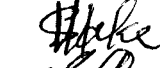


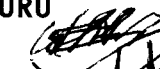

CIVIL CASE NO: 11/2006

BETWEEN: Collin Kobaka APPELLANT

AND L. Deledele
Neko Talavai
Lionel Koroma RESPONDENT

ABOUT: KEKEPOQO 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 25TH TO 29TH September 2006 at Taro, the Provincial Head Quarter of Choiseul Province.

On the 25th to 29th of September 2006 the Choiseul Provincial Executive and Omex logging Company Ltd, the applicant, met with the parties at Taro. The gathering was on purpose to determine and identify persons lawfully able and entitled to grant timber rights.

Section 8 (3) (a-e) of the Forestry Resources and Timber Utilization Act (CAP. 40) outline the duties required by the 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.

Discussion

The grounds of appeal filed by the Appellants are directed to the fact that there was no proper enquiry held by the Choiseul provincial Executive, to select persons lawfully able and entitled to grant timber

rights (section 8(3) (b) or to determine and consider the nature and extent of timber rights, if any to be granted to the applicant (section 8(3) (c). It is clear there was no agreement reached between the parties during the hearing at Taro on the 25th to 29th September 2006.

Appeal Ground one

The executive committee did not complete their duty to identify the person or representative under section 8 (3) (b) or (c).

There was a determination made by the Choiseul Provincial Executive when it preside over this matter. From the minutes of the determination which was provided to court there has been no agreement reached. The requirement under section 8(3)(b) or (c) was never done by the Provincial Executive.

Therefore appeal ground number one is upheld

Appeal Ground Two

Kekepoqo land owned by Kekepoqo tribe... As a spokesman represented the tribe should entitle to grant timber rights...

As discussed under Appeal ground One the provincial Executive did not choose any persons lawfully entitled to grant timber. Their reason was the parties themselves never reached an agreement.

In fact it was suggested that parties should negotiate between themselves for the disposal of the timber rights. There is no evidence that show There was negotiation done.

Decision or determination was made on the 4th of October 2006. It took almost two years before the Customary Land Appeal Court preside over this matter. Any settlement of difference or negotiation should be done then. The respondent in this case submitted that this case should not be head by this court. This case should be dealt with by themselves.

But there is no evidence that show there was initiative taken to settle and negotiate the right to grant timber amongst themselves.

It is for the parties to inform the court why they are the rightful persons to grant timber rights.

Appeal Ground Three

The Committee had erred and wrongly determined the objector have the right over Kekepoqo Land

The Provincial Executive had made a determination but did not include names of objectors in their determination. Names of persons to grant timber rights is one of the requirement. It is very clear from the determination made by the Provincial Executive on the 4th October 2006, the whole application was rejected because of no agreement reached by the parties. Names of person required by the Act to grant timber rights was not made. The objectors names was not included in the Provincial Executive's determination.

Appeal Ground three therefore dismissed.

This Court therefore finds the determination made on the 4th October 2006 by the Choiseul Executive be quashed.

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 as follows
 - a. Collin Kobaka
 - b. Simeon Pitasopa
 - c. Livingston Maria
 - d. Vince Vavasiluku
 - e. Leslies Qalo
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