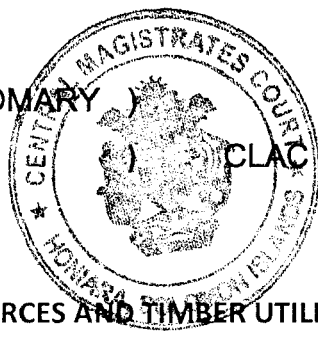


IN THE WESTERN DISTRICT CUSTOMARY
LAND APPEAL COURT



CLAC case No: 02 of 2012

Timber Right Appellant Jurisdiction

IN THE MATTER OF: **THE FOREST RESOURCES AND TIMBER UTILISATION ACT [CAP 40]**

AND **THE FOREST RESOURCES AND TIMBER UTILISATION [APPEALS]
REGULATIONLN 22/1905**

IN THE MATTER OF: **PUIBANGARA CUSTOMARY LAND TIMBER RIGHT APPEAL**

BETWEEN: **MATHEW MATAVA**) *Appellant*

AND **JAMES SOQEKANA,
MARTIN LUTHA,
SACHARIA VOLOVANA
Samuel Poloso & OTHERS**) *Respondents*

JUDGMENT

Introduction

1. This is a timber right appeal filed at the Western Customary Land Appeal Court (WCLAC) and registered as Puibangara customary land timber right.
2. This appeal is made against the Western Provincial Executive (WPE) determination in which approving the application of timber rights on Puibangara customary land on Choiseul Province, pursuant to section 10(1) of the Forest Resources and Timber Utilisation Act (FRTU).

Brief background of events

3. On the 28th day of November 2011, the WPE presiding over an application of Form 1 filed by Sumisi (SI) Limited in compliance to section 7 of the FRTU Act, for acquire timber rights on Puibangara customary land in Choiseul province.
4. As a result of a form 1 application, followed by a notice of publication under the provisions of the FRTUA (Cap. 40), the Western Provincial Executive (WPE) held its sitting on 28th of November 2011 conducting a timber rights hearing at the Provincial Executive conference room at Gizo.
5. Pursuant to the provision under section 7 of the FRTU, the publication of Form II in relation to Puibagara timber rights has been published and the Choiseul Provincial Executive has duly determined that the rightful land owners to grant timber rights over Puibangara customary lands are as follows:
 - James Soqakana
 - Martin Lutha
 - Zacharia Volovana
 - Michael Pitakaka
 - Samuel Poloso
 - Glenson Joshua
 - Manasha Sogavare
 - Paul Pogara
 - Daniel Qalosoqa
 - Johnson Tome
 - Davis Pitamama
6. By the receipt dated 24th of January 2012, Mr Mathew MATAVA aggrieved by the determination of the said Provincial Executive, lodged an appeal to the CLAC (western) against the WPE determination on 28th November 2011.

Preliminary issues

7. Before the sitting proper takes in order, a call over was convened and confirmed the outstanding issues of the appeal, and the spokespersons of each parties.
8. The Appellant has identified that Mr Mathew MATAVA is the spokesperson for the appellant.
9. For the Respondent, Mr Samuel POLOSO as the spokesperson representing the Puibagara tribe.
10. Both parties presenting their written submission and supporting documents, however, they have agreed to make oral submissions.

Grounds of appeal

Ground 1

The WPE is erred to determine over the Puibangara customary lands without considering who the legitimate ownerships are.

11. Mr. MATAVA for the appellant contended that the ownership of Kaliburu land is vested on Mamakana clan and tribes. The mamaka clans and the members of the tribe owned the portion of land known as the Kaliburu land. It is not owned by the whole Puibagara tribe. They have fresh evidence to prove the legitimate customary ownership of that said land.
12. On the other hand, Mr. POLOSO for the respondent has responded by making references to a court decision on that said land in 1951. This native court decision was in favour of his tribe as the legitimate owner of puibangara land as the mother land in which Kio, Kaliburi and other portion of land in it. This court decision has never been challenged in any court until this date.

13. During the cross-examination, the appellant confirmed that there was a court decision on that land in 1951, however, this decision is only mentioning the ownership of the ngali nuts, but not the Kaliburu land.

14. The content of the Native Court's decision under the stamp of the British Solomon Islands Protectorate (BSIP) is as follows:

" It is hereby decreed that consequent upon an arbitration held under the "Pacific Order in Council 1893, that the parcel of land known as Kio on the islands of Choiseul has been adjudged to belong to Luke of Zaru representing the Puibangara line, his heirs and successors in perpetuity.

The Nhali nut trees given by Gadebose of the Puibagara to Aturukana of the Goza line are declared to be the property of the Qoza line as represented by Quilagaza."

Signed: a deputy Commissioner (for the Western Pacific)

dated, 12th April 1951.

15. After considering the material available in court, there was no fresh evidence where appellant has proved that his tribes owned the Puibagara customary land. Although the native court decision did not mention the Kaliburu land, the court is of the view that the respondent is relying to the 1951 court decision, where Puibagara tribes owned the mother land.

16. Any proceeding based on any unchallenged court decision, this court has no jurisdiction to rule over that decision. The 1951 court decision on the said land has never been challenged in any court, therefore, still binding. Ground one of the appeal is dismissed.

Ground 2

Kaliburi customary land is not part of Kio land as referred by the Court decision held in 1951 as claimed. No satisfactory evidence had been shown by the putative landowners or group to support that contention.

Ground 3.

Kaliburi is different parcel of the land as it is clearly demarcated on the map. On the contrary, there is evidence from the 1951 court decision that arbitration only gave its decision on the parcel of land known as Kio. We have fresh evidence to proof our rights.

Ground 4.

We are not part of the Luke Kimasaru of Puibangara tribe when he disputed over Kio land against Aturukana in 1951. We have fresh evidence to dispute the court decision.

17. The above grounds of appeal are abstracted from the original submission of the appellant's written submission available in court. After considering the contents of the above appeal grounds (2, 3 & 4), the court is of the view that those grounds are in line with the tone of appeal ground one. Therefore, these grounds of appeal are dismissed.

Ground 5

We dispute that those who claimed to be listed and trustees of the Puibangara land are not at all original owner of the kaliburu customary land.

18. The court cannot make any directives on issues relating to trustees requires by the Forest Resources and Timber Utilisation Act. Any disputes arises from nominating trusteeship is vested on the duty of land owning group. They have customary obligation and authority to nominate and choose their land trustees. Any objection to any mandated trustees would be the duty and responsibility of the entire land owning groups to vary, omitted or replace within their tribal rights. This court has no jurisdiction to rule over this ground of appeal, therefore, ground 5 is dismissed.

Ground 6.

We dispute that Puibangara is not the name of the land but the name of the tribe or person.

19. After considering the weight of appeal ground 5, this court is of the view that it cannot stand its own to make a valid ground of appeal. Ground 6 is dismissed.

Ground 7.

Under section 8 (3) (a) of the FRTUA, the Choiseul Provincial Executive failed to take into accounts the customary evidence produced by the spokesman of the Mamaka clan and its members.

20. The above ground of appeal is questioning the ownership of the land in question. This should be a supporting contention to ground of appeal 1. The court has already dealt with the issue of ownership in ground number one. In actual fact, there was no new evidence adduced by the appellant in his presentation. Ground 7 is dismissed.

Ground 8.

According to section 8(3)(b) of FRTUA, the CPE is erred in law to take into account all viable customary evidence by objectors who owned the Kaliburu land.

21. The above grounds of appeal should be consolidating each other to form a single ground of appeal on the issue of ownership. The court cannot further elaborate on it, therefore, be dismissed.

Ground 9

The CPE is erred in law to consider and determined the right people to grant timber right over Puibangara. Certain members of the Provincial Executive

holding a timber right hearing have interest in the land being discussed for the interest of the licence applicant.

22. This court has no jurisdiction to deal with issues pertaining question of law.

This ground of appeal is dismissed.

Ground 10.

The CPE was biased towards one side because one the trustees in the land was the nephew of the Hon. Premier.

23. Again, this ground of appeal raised the question of biasness in law. This court cannot deliberate on it; therefore, ground 10 is dismissed.



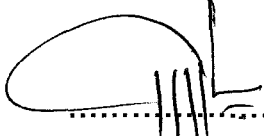

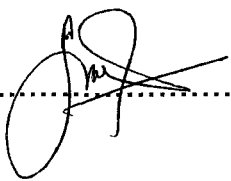
Conclusion

24. Base on the above findings, this court is not satisfied that the appellant has strong supportive evidence on his application. This court is of the view that the appeal is dismissed and makes the following orders.

- Appeal file on the 24th January 2012 is dismissed.
- Upheld the WPE determination held on 28th November 2011 that the lawful persons to grant timber rights over Puibangara customary land are the person's names as in form 2, requires under section 9 of the FRTUA [Cap 40].
- The rightful persons to grant timber rights over Puibangara customary land are those names mentioned in caps 5 of this decision.
- Court declined to make any order as cost.
- Right of appeal extended.

Signed this date the 13th day of December 2012.



1. Jeremiah KAMA President [ag] 
.....
2. Willington LIOSO Member 
.....
3. Erick GHEMU Member 
.....
4. Tane TA'AKE Member 
.....
5. Jim SEUIKA Secretary/member 
.....

Right of appeal extended

