

IN THE WESTERN DISTRICT CUSTOMARY)
LAND APPEAL COURT)



Case No: 16 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: KOBONGAVA VEVEDA/OJO CUSTOMARY LAND TIMBER RIGHT
APPEAL

BETWEEN: MARK PITAKAJI) *Appellants*
RALTER KATOVAI)
CAIN NAVALA & OTHERS)

AND CHOISEUL PROVINCIAL EXECUTIVE (CPE)) *1st Respondent*

AND MOSES LALA QALO)
MICHAEL PITAKAKA)
WILSON PITA)
CHERRY TANITO & OTHERS) *2nd Respondents*

JUDGMENT

Introduction

1. This is a timber right appeal filed at the Western Customary Land Appeal Court (WCLAC) and registered as Kobongava Veveda customary land timber right. This appeal includes some other portion of land with the Kobongava Veveda.

Preliminary matters

2. On preliminary outset, the Appellants have identified their respective spokespersons to be Mr. Mark PITAKAJI, Chief Mettely KATOVAI and Cain NAVALA.
3. For the Respondents party, they have mandated Mr Moses Lala GALOKAMAKE, Michael PITAKAKA, Wilson PITA and, Cherry TANITO as their spokesman.
4. One of the issues raised by Mr TANITO in relation to representation of tribe. He contended that spokesperson for the appellant Mr Mark PITAKAJI does not well representing the Rengana tribe.
5. A brief application was sought and the court allows Mark PITAKAJI to proceed with his appeal submission.
6. Mr Melty KATOVAI and Mr Mark PITAKAJI are speaking on written submissions with supporting documents.
7. Mr Cain NAVALA who appears as the third Appellant had formally withdrawn his appeal on the basis that he was satisfied with explanation produced by the Chpiseul Provincial Executive.

Brief background of Timber right hearing on 17th to 18th July 2012

8. A Form 1 application was filed by the Oceania Trading Company Limited in pursuant to section 8 of the Forest Resources and Timber Utilisation (Amendment) Act (FRTUA).
9. As a result of a form 1 application, followed by a notice of publication under the provisions of the FRTUA (Cap. 40), the Choiseul Provincial Executive (CPE) held its sitting on 17th of July 2012 conducting a timber rights hearing at the Provincial Executive conference room at Taro.
10. The Putative landowners attending the timber rights hearing are as follows:

17. By the receipt dated 28th of September 2012, Mr Mark PITAKAJI and others aggrieved by the determination of the said Provincial Executive lodged an appeal to the CLAC (western) against the Choiseul Provincial Executive (CHE) determination on 17th and 18th of July 2012.

Grounds of appeal

Ground 1

The Choiseul Provincial Executive is erred to determine over the Kobongava veveda Customary lands without considering that there was no area bounded in red on the attached map as stated in page 3 of the determination.

18. Mr KATOVAI and Mr PITAKAJI for the appellants contended that there was a submission made by Mr. Lapo appeared in Form 2, however, was not indicated in the attached map in Form 2.

19. Mr. PITAKAKA for the respondents argued that this is not a proper ground of appeal. He further stated that, if the appellants care to cause an enquiry with the Secretary of the CHE, he is in a good position to clarify it.

20. After considering all submissions from both parties in relation to appeal ground 1, the court panel tends to agree with the Respondent that this is an issue where need to clarify from the secretary of the provincial executive. Further to that this ground is not a proper ground of appeal, a mere issue without clarification cannot be stand itself as ground of appeal, therefore, ground one is dismissed.

Ground 2

That the Choiseul Provincial Executive did not considered the question in custom in regard to the return of Kesa (bride price) as questioned raised by Mark PITAKAJI when making determination.

21. According to documents available in court, the panel has gone through the minutes of the timber rights hearing held on the 17th and 18th of July 2012, together with other documents provided by both parties, there was no clause or caption to indicates that Mark Pitakaji raised this contention. However, if this contention is raise during the first hearing on the 17th of July 2012, it would contradict the agreements made by Mr Mark PITAKAJI as in the minutes.
22. First, in the timber right hearing, Mr Mark PITAKAJI agreed with the boundaries of Kubobangava Veeda, therefore, withdraws his objection in relation to boundaries.
23. Secondly, parties were already negotiated in a tribal meeting held on the 30th of July 2012 at Gizo.
24. Any claims or disputes arise from that meeting; the court is of the view that it is an issue outside of the Choiseul Provincial Executive determination held on 17th and 18th of July 2012.
25. That is, the appellants have already agreed to resolve their differences in a meeting to be fixed on a later date as it was a family matters, thus, advised the CPE to proceed with the proposals. This has indicates that the CPE is not error to determined over the Kubongava Veeda customary land. This ground of appeal has no standing, therefore, dismissed.

Ground 3

The Choiseul Provincial Executive is erred to determine that the trustees as stipulated in Form 2 were the right and lawful persons proposing to grant timber right that represents the whole Kubobangava Veveda tribes.

26. According to all the documents made available in court by both parties, the Choiseul Provincial Executive has duly discharged their duty requires under section 8 (3) of the FRTUA.

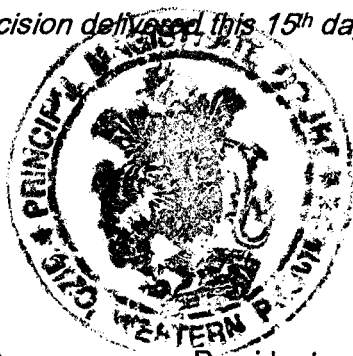
27. Nominating of trustees is vested with the landowning group. It is evident that trustees submitted in form 2 have been agreed to by the aggrieved party. Any disagreement would be the responsibilities of the landowning group, in this case, the appellants and the Respondents. Again, names of trustee have been duly resolved at the conclusion of the timer rights hearing on 18th July 2012, and, during the tribal meeting held at Gizo on 30th of July 2012. This ground of appeal has no standing therefore, is dismissed.

Conclusion

28. 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 28th September, 2012 is dismissed.
- Upheld the Choiseul Provincial Executive determination held on the 17th and 18th of July 2012, that the lawful persons to grant timber rights over Kobongava Veveda customary land are the person's names as in form 2, requires under section 9 of the FRTUA [Cap 40].
- Court declined to make any order as cost.
- Right of appeal extended.

Decision delivered this 15th day of February 2013.



Signed:

1. Jeremiah KAMA

President

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2. Willington LIOSO

Member

Handwritten signature of Willington LIOSO in black ink.

3. Allan HALL

Member

Handwritten signature of Allan HALL in black ink.

4. Tane TA'AKE

Member

Handwritten signature of Tane TA'AKE in black ink.

5. Jim SEUIKA

Secretary/member

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