

**IN THE WESTERN CUSTOMARY]
LAND APPEAL COURT]**

CLAC Case no: 3, 4,5,6,7, & 8 of 2014

Land Appellate jurisdiction:

IN THE MATTER OF: TULA CUSTOMARY LAND TIMBER RIGHT APPEAL

BEFORE: Jeremiah Kema - President
Willington Lioso - Member
Tane Ta'ake - Member
Erick K Ghemu - Member
Davis D. Vurusu - Clerk/Member

BETWEEN: Francis Siorobui - First Appellants

Francis Sioronui - Second Appellant

Chief Bernard Otuaana - Third Appellant
Joseph Gorae
Philip Bari
Dion Ninamo & others

Henry Sibū & others - Fourth Appellant

Thomas Salena - Fifth Appellant

Charles Levo - Sixth Appellant

AND : Western Provincial Executives - 1- Respondents

AND : Steve Haiea - 2 -Respondent
Brian Isamate
Andrew Ninamo
Jacob Kia
Philip Macdonald

Date of hearing: 15th, 16th, 17, April 2014

Judgment delivered: 23rd April 2014.

JUDGMENT

This is a timber right appeal against the determination made by the Western Provincial Executives (WPE) on Tula Customary Land, Fauro Island.

The WPE in their Form II published names of persons lawfully able and entitled to grant timber rights on Tula customary lands. Their names are as follows;

1. Steve Haiea
2. Brian Isamate
3. Andrew Ninamo
4. Jacob Kia
5. Philip Macdonald

From that determination the Appellants filed their appeals to the Western Customary Land Appeal Court (WPE).

In considering these appeals, we examined parties submissions both orally and written, documents presented by parties in court and the record of minutes and determination of the WPE during their timber right hearing.

In our judgment we will discuss each party's submissions separately.

First & Second Appellants case;

The First Appellants has filed two separate appeals. His first appeal covers the portion of customary land known as Mogatai land. His second appeal covers the portion of customary land known as Korua and Tarama land.

In this appeal hearing Mr. Francis Siorobui is the spokesperson for his group on Mogatai land and Mr. Willie Macnickle represent them on Korua and Tarama portions of land.

The appellant's grounds of appeal on the above mention land all related to claim of land ownership.

Mr. Francis Siorobui submits that the Second Respondents erred when they include Mogatai portion of land in their Form-1 application. Mogatai portion of land belongs to his clan. He

submits that, that land was given to their great grandfather and they use or cultivate the land until today.

He submits that the respondent's party did not consult them before putting up their Form 1 application.

The boundary not Mogatai land starts from Siqosia stream and goes up to Lokesea hill and across to Kaboheka waterfall and follows the river down to the sea. They have customary evidences to prove their claim of ownership.

Mr. Willie Macnickle in his submission to the court, state that the portion of land known as Koria and Tarama belongs to their clan. The Second respondents did not consult them but include their portion of land in their Form 1 application.

Mr. Willie Macnickle submits that Koria and Tarama portion of land belongs to his Talapuini tribe and not the respondents' party. They have their historical evidences of ownership over Koria and Tarama lands. The respondents are wrong persons to grant timber right on our land.

The Western Provincial Executive ignored our submission on claim of ownership and identifies the Second respondents as persons to grant timber right on our customary land.

Third appellant's case:

There are four persons named as appellants in this appeal. Their names are Chief Bernard Otuana, Joseph Gorae, Philip Bari, Dion Ninamo & others representing the Karakara clan.

Chief Bernard Otuana speak on behalf of himself and his party the Karakara clan in this appeal hearing.

The third appellants filed four grounds of appeal and we sum up as follows;

Point 1 - relates to point of law in which this court lacks jurisdiction to entertain.

Point 2 & 3 - The Western Provincial Executive erroneously made its determination to grant timber right to the second respondent after they have heard evidences that the Appellants did not agree to negotiate with the applicant for the disposal of their timber rights on the said customary land.

Point 4- The Western Provincial executive has no jurisdiction to determine land ownership and issues pertaining to custom.

Chief Bernard Otuana presents to the court his written submissions. He then explains to the court the content of their argument. In his submission he submit that his party and the Second respondents all descendants of Karakara of Silakanegana tribe. Being members of the tribe

which owns Tula customary land they should be consulted before applying for any logging activities.

The Second respondents did not consult them prior to putting up their form 1 application. The Third appellants are not willing to negotiate for the disposal of their timber right to the applicant.

He submits that The WPE failed to consider the overwhelming customary evidence they present before them during the timber right hearing and determine the second respondent as person to grant timber right on Tula Customary land. Chief B. Otuana presents genealogical evidence to prove the connection between his party and the second respondent.

Fourth appellant's case:

The fourth appellant Mr. Henry Sibiu filed four grounds of appeal.

Ground no; 1 relates to point of law

Grounds no; 2 relates to land ownership

Ground no; 3 & 4 relates to the jurisdiction of the WPE.

Mr. Henry Sibiu in his short submission to the court, submit that the WPE was erred when it determine the Second respondents as person lawfully able to grant timber right on Tula customary land when it already heard his parties claim of ownership over Tabantatae and Panau portions on land. These two portions of lands were within the concession area applied for by the Second respondents.

Mr. Henry Sibiu submits that there was no proper consultation made by the Second respondents' party prior to putting up the Form 1 application.

Mr. H. Sibiu submits that his party owns the land therefore have right to grand any rights on their land and not the Second respondents. The WPE has no jurisdiction to determine issues pertaining to ownership the land under Forest Resources and Timber utilization Act.

Fifth Appellants case:

Mr. Thomas Salena is the fifth appellant in this case.

Mr. T. Salena did not attend this hearing; however, he authorized Mr. George Taylor to represent him in this appeal hearing. His ground of appeal was in a form of letter.

His appeal can be summed up as follows:

“There is no proper consultation made by the Second respondents prior to putting up their Form 1 application over Tula customary land. He claims Tavantatae to Simirua portion of land within Tula customary land belongs to his group. There are unresolved issues still exist within the tribe that need to be resolve before any intended logging operation.”

Mr. George Taylor for the fifth appellant submit that the portion of land Tavantatae to Simirua a family owned land and not sole owned by any one person. Proper consultation is very important before any development such as logging takes place. This was not done. There are issues needed to be resolve between members of the tribe who claim ownership over Tula customary land. Within Tula customary land there are portions of land owned by individuals, family and clans.

Person identify by the WPE are not representing all land owners.

Sixth appellants' case:

Mr. Charles Levo is the sixth appellant. His appeal was based on the map covering (i) Susuvuna (Ore) to Paraparaharoata, (ii) Koria river to Obene Ovau. These two concessions have been excluded by the WPE in their determination but still appear in their form two.

Mr. Charle Levo submit that this must be sorted out by the respondents in this court hearing.

The Respondent's case;

The First spokesperson for the respondent M. Philip McDonald responds to the first and second appellants' submission.

In responding to their grounds of appeal and submissions, Mr. McDonald submit that Koria and Tarama portion of lands belongs to Tula people in which the second respondents represent.

Mr. McDonald then gave a lengthy submission on claim of ownership of Koria and Tarama portion of lands in which we will not repeat it in this judgment. He submits that Mr. Francis Siorobui and his party did not own Koria and Tarama portion of lands therefore have no right to be included as persons to grant timber right.

The respondents' second spokesperson Mr. Jacob Kia responds to the fifth appellants grounds of appeal.

Mr. Jacob Kia submit that Simirua portion of land is part and parcel of Tula land. He claims sole ownership of Simirua portion of land. He has properties like Coconut Plantation, Sago palm and betel nuts in that land.

He further submits that in 1991, the Tula group gave him and his father permission to grant timber right on simirua portion of land. The Area council then identified him as person to grant timber right on the said land. Mr. Jacob Kia is the eldest son in the family.

The respondents' third spokesperson is Mr. Lawrence Wyne.

Mr. Lawrence Wyne responded to Mr. Charles Levo (Sixth appellant), Francis Siorobui (Second appellant) , Mr. Bernard Otuanas (Third appellant), and Mr. Henry Sibiu (fourth appellant) grounds of appeal.

In responding to Mr. C. Levos appeal, Mr. Lawrence Wyne confirms that the area from (i) Susuvuna (Ore) to Paraparaharoata, and (ii) Koria river to Obene Ovau belongs to Mr. Charles Levos party. Those portions of land have been excluded in the Second respondents' timber right application.

In responding to Mr. Francis Siorobuis appeal on Magotai portion of land, Mr. L. Wyne submits that there is no court decision on the whole concession of Tula customary land except a timber right in 1991.

He further submit that Mr. Francis Siorobui is a respected man, they need to agree together on certain things.

In responding to Mr. Henry Sibus appeal, Mr. L. Wyne submits that previously Mr. Henry Sibiu confirm that Tabantatae land was part of Tula customary land not Karakara. In this court hearing he claim that Tabantatae land to be from Karakara tribe.

Mr. L. Wyne confirm that Mr. Henry Sibiu have a block of land known as Tabantatae within Tula customary land and not from Karakara line.

He further submit that Panau land is outside of their concession area.

Mr. Lawrence Wyne in responding to Chief Bernard Otuanas appeal submit that This appellants grounds of appeal were all point of law, he will not respond on that however, he only respond on their geneology in two parts.

1. Family genealogy
2. Tula genealogy

Mr. L. Wyne submits that his party claim ownership from Chief Rigon Tula who conquers Fauro Island. Chief Rigon Tula (the conqueror did not have children.

When Chief Rigon T is getting old, he makes a big feast at Hamuva. During that feast He then hands over the land at Fauro. He hand over chiefly power and land to his granny, Chief Rigon Tula (II).

Mr. L. Wyne submits that Patu is not Rigon Tula (1) child; his wife's child. He submits that his party connected to the appellants from Karakara and Vele line. That is their family line, But the ownership of Tula Customary land goes to Chief Regon Tulas' line in which the Second respondents descended from.

He submit that his parties claim of ownership over Tula land does not come from Karakara line where chief Bernard Otuana's group descended from but from chief Rigon Tula. He further submits that His party came from Rigon Tula and the appellants' party came from Karakara.

The Law:

Section 8 (3) (a) (b) clearly explain the duty of the appropriate Government; in this case the Western Provincial Executive.

(3) At the time and place referred to in subsection (1), the council shall in consultation with the appropriate Government discuss and determine with the customary landowners and the land the application matters relating to-

(a) Whether or not the Land owners are willing to negotiate for the disposal of their timber rights to the applicant;

(b) Whether the persons proposing to grant timber rights are the persons, and represent all the persons, lawfully entitled to grant such rights, and if not who such persons are;

Section 9 (2) (a) (b) state;

On making its determination under section 8(3), the Council (executive) shall as soon as practicable –

(a) Issue a certificate in the prescribed form setting out its determination;

(b) Give the public notice of its determination in the same manner as notice under section 8 (2) was given;

The Court:

We consider all Appellants and Respondents submissions on grounds of appeals; we examine the record of timber rights minute of Western Provincial Executives and their determination.

We remind ourselves that this court has no power to determine who owns the land by way of appeal under FRTU Act. Our duty is to see whether the Provincial Executive has erred in determining persons entitled to grant timber right on any customary land and in this case it is Tula Customary land.

Any evidence on ownership should only assist the Provincial Executive and the Court to determine the right persons to grant timber right on Tula customary land.

To determine persons lawfully entitled to grant timber rights on any customary land, it is important that Section 8 (3) (a) must be first answered before sub-section (3) (b).

Section 8 (3)-

(a) Whether or not the Land owners are willing to negotiate for the disposal of their timber rights to the applicant;

In this case the question of Land Ownership and membership of Tula customary land and tribe is in dispute.

(b) Whether the persons proposing to grant timber rights are the persons, and represent all the persons, lawfully entitled to grant such rights, and if not who such persons are;

If the question of land ownership is disputed then sub-section (b) cannot be answered.

In this case the question we need to answer before determining the requirement of section 8 (3) (a) and (b) of FRTU Act is;

“Whether Chief Bernard Otuan’s party and other appellants and the Second respondents jointly own Tula Customary land”

Section 10(1) of the FTRU Act gives power to customary land appeal court to hear and determine the appeal. The function of the customary land appeal court is to examine the question afresh and to make its own determination [*Ezekiel Mateni –v- Seri Hite H/C CC No: 155 of 2003 at page 3*].

In this case there are customary issues and ownership that are in dispute, this court lack jurisdiction to entertain it by way of appeal under FRTU Act therefore this court is unable to examine the question afresh. Parties should first settle their customary disputes through appropriate avenues, beginning from the chiefs before considering making any Form 1 application under FRTU Act.

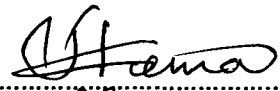
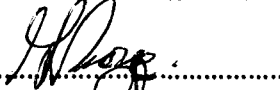
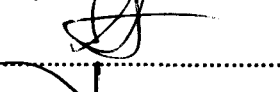

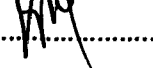
Appellants number 1, 2, 3, 4, 5, and 6 appeals is upheld.

Order:

1. *The determination made by the Western Provincial Executive (WPE) over Tula Customary Land on 31st of January 2014 is set aside in its entirety.*
2. *The Court decline to make order as to cost.*

Dated this 23rd day of April 2014.

Signed:

1. Jeremiah Kema	President.....	
2. Wellington Lioso	Member.....	
3. Tane Ta'ake	Member.....	
4. Erick K. Ghemu	Member.....	
5. Davis Vurusu	Secretary/Member.....	

Right of Appeal is explained.

