

IN THE WESTERN/CHOISEUL CUSTOMARY)
 LAND APPEAL COURT)

CLAC APPEAL CASE No: 15 of 2013

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: **MUKIMUKI AND DAVALA CUSTOMARY LAND TIMBER RIGHT APPEAL**

BETWEEN: **AUDREY KALE
 MARK KALE
 DOMINIC LODI**
(Representing his father & Kadiki tribe) **Appellants**

AND **WESTERN PROVINCIAL EXECUTIVE**
1st Respondent

AND **FAIR TRADE (SI) COMPANY LIMITED**
(Chief Chachabule Rebi AMOI, representing the Tebakokorapa tribe)
2nd Respondents

JUDGMENT

Introduction

1. This is one of the timber right appeals filed against the determination of the Western Provincial Executive (WPE) on Riki, Guanahai, Chochole and Njalere customary land timber rights hearing held on the 21st of May 2013 at Seghe sub-station court house, Western Province.

2. At the outset, the Appellants appeal against the WPE determination using the land name as Mukimuki and Davala customary land. The determination of the WPE was made in respect of the Riki, Quanahai, Chochole and Njalere customary land. Hence, the court has noted that there was no minutes of WPE timber rights hearing in respect of

Mukimuki/Davala land, however, it also noted that Mukimuki/Davala land is within the Riki, Quanahai, Chochole and Njalire customary land.

3. Briefly, the Western Provincial Executive had granted timber rights to the Applicant (Fair Trade (SI) Company) who is the Respondent in this appeal after a timber right hearing held at Seghe Sub-station on the 21st day of May 2013.
4. On the contrary, the objectors who are named as the Appellants in this proceeding, aggrieved by the WPE determination, appeal to the WCLAC on the basis that Western Provincial Executive was wrong in law to grant timber right to the Applicant as the company has no ownership of the said land portions (Riki, Guanahai, Chochole and Njalere customary land).
5. This appeals was heard by the Western/Choiseul Customary land appeal court (WCCLAC) and decided in a ruling given on the 3rd of September 2013. In this ruling the WCLAC concluded and said the following: *"The issues raised by parties as stated above are issues relating to point of law which court lacks jurisdiction to entertain. It is our view that these issues are important issues that need to be cleared before this court deal with other grounds of appeals."* Furthermore, the WCLAC ruled *"that this court therefore ruled that either the First and Second Appellants or the Respondents bring these issues before the High Court to determine before we deal with the other grounds of appeal. Meanwhile the hearing of this case be adjourned pending the High Court's ruling on in a ruling on the above issues."*
6. On the 12th of May 2014, the Appellant (who is the Respondents in this proceeding) filed a claim against the Attorney General, who representing the WCLAC for judicial review.
7. On the 18th of October 2014, the claimed was heard at the High Court in which the ruling was delivered on the 18th of February 2015 in apparent disregard for the remedies sought and ruled as follows:
 - Appeal Ground on WCLAC failure to exercise or alternatively exceed the jurisdiction is dismissed,
 - WPE did not make any determination on the matters under section 8(3)(a), (b) and (c) of the FRTUA,

- The determination of the WPEC made on the 23rd May 2013 is squashed,
 - WPE to rehear the application for the timber rights over Riki, Davala, Guanahai, Chochole and Njalele Customary land, de novo, and
 - Costs in the cause.
8. From that High Court Ruling, the Appellants (*Respondent in this proceeding*) appealed further to the Solomon Islands Court of Appeal (*James Puleipi, Chachabule Amoi and Seri Hite (Fair Trade Company Limited vs Attorney General (SICOA-CAC No: 05 of 2015)*). The Solomon Islands Court of Appeal allowed the appeal on the following orders:
- The appeal is allowed,
 - The orders of the Judge made on 18 February 2015 are set aside,
 - Civil Claim No: 140 of 2014 is allowed,
 - It is declared the Western Customary Land Appeal Court in its ruling and decisions dated 3 September 2013:
 - (i) Failed to perform or exercise its jurisdiction conferred on it by the Forest Resources and Timber Utilisation Act as amended; and
 - (ii) Purported to exercise its jurisdiction by taking into account irrelevant considerations.
 - The decision is brought up to the High Court and quashed,
 - The WCLAC shall hear de novo and determine the appeals before it according to law, and
 - costs
9. On the 17th of October 2016, the appeals mentioned on the above cases were listed and heard before the Western/Choiseul Customary Land Appeal Court.
10. On preliminary proceedings, there were four appeals registered as CLAC appeal Nos: 15/13, 18/13, 19/13 and 20/2013. These appeals were made against the determinations of the Western Provincial Executive held on the 21st of May 2013 at Seghe sub-station in respect of Riki, Qoanahai, Chochole and Njalire customary land.
11. This court has decided to deal with each appeals on a separated decisions.
12. On records, CLAC appeal No: 15 of 2013 is between Audrey KALE, Mark KALE and DominicLODI vs Fairtrade (SI) Company Limited which being represented by Chief Chachabule Rebi AMOI.
13. The spokesperson for the Appellants is Mr. Dominic LODI representing the appellants of Kadiki tribe.

14. On the other hand, Chief Chachabule Amoi stands for the Respondents (Seri HITE and James PULEIPU) and his Tobakorapa tribe.

Grounds of Appeal

Ground 1.

The Western Provincial Executives is wrong in law to determine over the Timber Right hearing on Mukimuki and Davala land to people who are not right people to grant timber right over it. No proper consultation made to the Kadiki tribe who owns the land.

15. At the outset, the Appellant was speaking through a written submission. Although, the appeal grounds was not drafted in any formal format, the court has considered and deal with generally on points of submissions.
16. The Appellant make reference to section 8(3)(a) of the FRTUA and say that the Kadiki tribe are the land owners of Mukimuki and Davala customary land. They have neither agreed nor given their consent in any negotiation for disposing of the timber rights to the applicants. It is absolutely neither of any communal meetings nor public hearing or whatsoever, convened to discussed or have dialog between parties involve on the issues of exposing timber rights on their land.
17. It is submitted that the kadiki tribe had inhabited and cultivate the land ever since they have explores and settled on the island. The customary names of the land was from the kadiki tribes and not any other tribe within Vangunu Island.
18. The customary land boundary and ownership of Mukimuki and Davala land was recorded under the determination of the native court on 14th of May 1928 in favour of the Kadiki tribe. Therefore, this court cannot dealt with it under the legal principles of *res judicata*.
19. There was so much relevant evidence of customary ownership with supporting legal documents like court decisions presented before the WPE, thus, it was not considered.
20. In such, the Western Provincial Executive (WPE) was wrong in law to determined or see fit and arrive in granting the timber right to the Respondents.
21. In respond, Chief AMOI had submitted on behalf of his Tebakokorapa tribe and say that prior to the timber right on 21st of May 2013, he had several meetings with his tribal members before they submits their application over their tribal land. All the minutes of the tribal meetings were presented before the WPE during the Timber rights meeting. His

tribe (Tebakokorapa) has no customary obligation to seek consent from the kadiki tribe as they are not the land owners of Riki, Quannahai, Chochole and Njalire customary land which includes Davala/Mukimuki land. The Tebakokorapa tribe members are descendents from Rebi who won those lands in the native court in 1972 and had inherited the said land from immemorial up until today. No members from Kadiki inhabited this land and he seeks the court to note if they can visit the land to prove who actually inhabited the land at this present time. That is the very reasons as why the Tebakokorapa tribe did not obliged to consult the appellants consent to their application.

22. Chief AMOI has presented the same documents his tribe do presented before the WPE and seek the court indulgence if the documents can be used and compared to the WPE minutes and its certificate of determination, especially the Marovo native court decision in 1971, the court case involving T Koni and J Rebi, some High Court cases like *Lomulo vs Amoi* [2011] SBHC 160.
23. During the Timber right hearing held at Seghe sub-station, Audry KALE was standing on behalf of her kadiki tribe and object the application. In the CLAC hearing, Dominic LODI was speaking on their behalf.

Court assessment

24. The court panel have the opportunity to assess through submissions and documents been tendered from both parties. The court has also considering all the cases from the High Court pertaining ruling on the same land.
25. There are two issues that has drawn the court's attention and the court will deal with them respectively.
26. First the issue of who is the rightful people owns Mukimuki/Davala land, and secondly, whether or not the legal issue of *res judicata* is applicable in this case.
27. Having heard from both the Appellants and the Respondents, the court could not come out firmly to believe who are the right people that claims ownership of Davala and Mukimuki land. Base on that contentions, the court has to assess through some rulings from the High Court cases and also the native courts.
28. In *Lomulo v Amoi* [2011] SBHC 160, the court make some clarifications in references to Ghoannahai land, Riki land, Davala land and Mukimuki land. There is also reference to land names which seem to be interchangeable with tribal names such as Topakokorapa.

29. In this case, the court rules that in 2005 the WCLAC has identified Ben Romulo as the right person to grant timber rights over a portion of land called Davala. It was held that the 1971 native court of Marovo confirms that the Rebi descendants are the rightful owner of Ghaonahai and Riki Land, including Davala.
30. The difficulty we had in this appeal is that we failed to see that the appellants has no standing whether they represent the descendants of Koni or Rebi. If the Kadiki tribe comes from the decendant of Koni, they have no beneficial interest in native customary tenure in any part of the land known as Ghoanahai including Davala land.
31. Having considered the court position in relation to the land in question, this court is of the view that the decedents of J Rebi are the right people to grant timber right over Ghaonahai land which include Davala land.
32. In our assessment, Chief Chachabule and the Tebakokorapa tribal members are the right peole to grant timber rights over the Riki, Ghuanahai, Chochole and Njalere land which includes Davala /Mukimuki portion of land.
33. There were objections made by some members of the tribe during the timber right hearing on the 21st of May 2013. They have different interest when they object the application.
34. On that basis, the court is of the view that WPE is not wrong when they determined and grant timber rights to the Respondents and his tribal members. These appeal grounds should be dismissed.

Ground 2.

The WPE is erred to determine over the land that has been determined under the native court in 1928.

The issue of res judicata

35. The issue of res judicata has been raised by the same appellants during the CLAC proceeding held on the 13th September 2013. In this CLAC proceeding the WCLAC refused to deliberated on this case as it raised issues relating to point of law which they have no jurisdiction to entertain. However, the WCLAC refers the case to be heard at the High Court.
36. The matter went through as far as Court of Appeal and ordered that the WCLAC shall hear de novo and determine the appeals before it according to law.
37. The WCLAC had convened its hearing on the 17th of October 2016 to satisfy the ordered of the Court of Appeal. During the CLAC proceeding, the Appellant appeared and submit the same issue of *res judicata*.

38. Having considered what has been submitted by the Appellants and the Respondent, the court is of the view that the issue of *res judicata* falls short within the terms of those paragraphs in section 8(3)(b) of the Forest Resources Timber and Utilisation Act (FRTUA), this court is of the view that the issue in question falls out of this provision. The court refused to hear it.

Conclusion

39. Having considered both submission through court cross examination, the court is unanimously agree that the WPE is not wrong to grant timber right over Riki, Quanahai, Chochole and Njalire land including Davala land to the members of Tebakokorapa tribe.
40. In respect of the issue of *res judicata*, this court is of the view that this issue falls short on the terms under section 8 (3) of the FRTUA. Therefore, the court refused to accept this ground of appeal and dismissed.
41. Upon final assessment made in respect of this appeal, the court refused the appeal and be dismissed.






Order:

1. **The appeal is dismissed,**
2. **The Western Provincial Executive (WPE) determination in respect of Timber right hearing on the 21st of May 2013 is upheld;**
3. **The Tebakokorapa tribal members and their tribal trustees named Chief Chachabule Rebi AMOI, Seri HITE, Mala Moses LILA, Casper REBI and Redley VAQO are the right people to grant timber right over Riki, Guanahai, Chochole and Njalere including Davala customary land, therefore, they can proceed with form 4 process under the FRTUA.**
4. **The court decline to make any order as to cost.**

This judgment was delivered on the 21st of October 2016 at Western Magistrates Court situated at Gizo, in the Western Province.

Duly signed on this date 21st day of October 2016.

Presiding CLAC Justices

1. Allan HALL (President (ag)) 
2. Erick K. GHEMU (V/President (ag)) 
3. Silverio MAEKE (Member) 
4. Willington LIOSO (Member) 
5. Tane TA'AKE (Member) 
6. Jim SEUIKA (Clerk/Member) 