

**IN THE WESTERN/CHOISEUL CUSTOMARY)
LAND APPEAL COURT)**

Customary land Appellant Jurisdiction

CLAC Appeal case number: 23 of 2014

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

AND **SECTION 10 OF THE FRTUA**

IN THE MATTER OF: **SOMEGE CUSTOMARY LAND APPEAL**

BETWEEN: **NELSON KOLOVATU
DILENTLY PITAVOGA
(Representing Ngatakobo tribe)**

Appellant

AND : **MASON ANDREW
STEADY NASON) (representing Somege tribe)**

1st Respondents

AND : **CHOISEUL PROVINCIAL EXECUTIVE**

2nd Respondent

AND : **MIDDLE ISLAND INVESTMENT LTD**

3RD Respondent

JUDGMENT

1. An application to negotiate for timber rights over Somege customary land under section 7 of FRTUA was heard before the CPE and delivered on 16TH July 2014. The determination was in favour of the Respondent as the right people to grant timber right over Somege customary land.
2. The Appellant was aggrieved by the Choiseul Provincial Executive (CPE), filed an appeal to the WCCLAC against the entire determination.
3. On preliminary proceeding, it appears on records that the appellants were represented by Nelson KOLOVATU and other members of Ngatakobo tribe, while Mason ANDREW speaks for the respondents.

Grounds of Appeal

Ground 1.

The Choiseul Provincial Executive is erred in its determination by not considering the evidences adduced or giving weight thereon and has taken into account irrelevant consideration in its findings.

4. Speaking for the appellant, Mr KOLOVATU has contested that Somege land is the subject of the timber rights application which his tribe (Ngatakobo tribe) has objected. The appellant claimed that there were court cases already determining the ownership of the said land.
5. In 1972 Kope Tribe a purported giver of Somege land lost its claim to the Baravasiu sub-tribe of Ngatakoro tribe.
6. We have obtained a determination of the Senga House of Chiefs in 2014 proving our ownership claim inside Galoruata sub-tribe and Baravaziu sub-tribe. In this determination, the Segqa house of chiefs determined that there is no such land been existing to be known as Somege land.
7. This was still confirmed by the Senga House of Chief determination on 2nd of October 2015. In the determination of the recent House of Chiefs, they confirmed that there is no Kope tribe within Galoruata sub-tribe, therefore, no Somege land.
8. According to the North Choiseul Local Court in 1978 and CLAC in 1980, the Ngatobo tribe was named after its first ancestor Ngatakobo. It has six sons with their own share of land. Tere is no Somege land and there is no Kope land within Ngatakobo tribe.
9. There were material evidences presented before the CPE during the timber rights, like previous court cases. However, the CPE ignore the presentation and continued to grant the timber right application over the purported Somege land.
10. In respond to this point of appeal, the Respondent submitted and say that this court is guided by the minutes of the Timber rights hearing held on Taro on the

16th of July 2014. The Respondent further contested that although the right avenue to determine the rightful ownership of customary land is the House of Chief, it is different from the process of Timber right hearing.

11. It is noted here that the Respondent claimed that the determination of the Senga House of Chief was addressing the wrong people or party. Even, the House of Chief had summon the wrong person to attend the hearing. It was submitted that the land which the Senga House of Chief determined over it is a portion of land that is outside of the Somege land.
12. The court has the opportunity to assess the materials made available by both parties. It was not denied that there was an application made before the CPE during the Timber right hearing on the 16th July. The Appellant's party objected to the application on the basis that there were court cases already determining the ownership of the purported land called Somege land.
13. Among other contentions, the court has the opportunity to assess the minutes of the Timber right hearing and also the copy of the previous determinations of the House of Chiefs.
14. Having heard and considered all submission presented on this ground of appeal, the court has noted that the Segga House of Chiefs Determination that has mentioned the right parties and land boundaries was convened after the timber rights hearing in 2014. The court also noted that the parties to other Chief determination are not bidding the current Respondents. Therefore, the court is of the view that the CPE is not wrong to grant the timber rights without considering the evidence put before them. This ground of appeal is dismissed.

Ground 2

- ***The CPE is erred in law when they refused to considered strong evidences in supporting their objection that there is no proper consultation among the landowners, however, granting timber rights to the third Respondents.***

15. Although this ground of appeal was written down on notice of appeal submitted by the Appellants, it has never argued during the CLAC proceeding. Most of the contentions is based on all the court determinations of ownership. This appeal ground is dismissed.

Ground 3

The CPE is wrong in law to grant timber rights over the entire purported Somege customary land which ownership thereof were under disputed between the Appellant and the First Respondents.

16. This appeal point has been discussed in appeal ground one. The evidence of ownership was based on local court and House of Chiefs determinations. According to the CPE, those determination was made among different parties. The appellants were not party to those Chiefs hearing. This court unanimously held that the only evidence which really support the ownership of the Appellants is the determination of the Senga House of Chiefs. However, this determination was obtained after the timber rights in July 2014. Should the determination is made before the timber rights, the CPE would have different approached otherwise. This ground of appeal is dismissed.

17. Having considered the assessments on this appeal, the court is of the view that the grounds of appeal submitted by the appellants has been covered in appeal point one.

18. The court is satisfied from submissions before the court and through cross examination of both parties, the CPE is not wrong in law to determined and grant timber right to the Respondent.

19. It is the function of the customary land appeal court to examine the question afresh and to make its own determination. As for this case, the court is not satisfied that there is sufficient evidence for this court to rely on it. This appeal is dismissed on the following orders.

Order

- Appeal 23 of 2014 is dismissed
- The determination of the Choiseul Provincial Executive held on the 16th of July 2014 is upheld.
- The court declines to make order for cost.


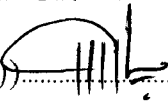



Right of appeal is explain and extended



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. Wellington LIOSO (Member) 
5. Tane TA'AKE (Member) 
6. Jim SEUIKA (Clerk/Member) 