

**IN THE HIGH COURT
OF SOLOMON ISLANDS**

Civil Jurisdiction

<u>BETWEEN:</u>	AARON KAMA, EDWIN QORA RONI AND BRIAN OVERCOME KAMA <i>(representing the landowners of Liolavata land within the Kazukuru Right Hand Land)</i>	First Claimant
<u>AND:</u>	KALIQUOQU DEVELOPMENT COMPANY LIMITED	Second Claimant
<u>AND:</u>	DELTA TIMBER LIMITED	First Defendant
<u>AND:</u>	PACIFIC CREST LIMITED	Second Defendant
<u>AND:</u>	ATTORNEY GENERAL <i>(representing the Commissioner of Forests)</i>	Third Defendant

Date of Hearing: 19 April 2010

Date of Decision: 12 May 2010

Mr. M. Tagini for claimants

Mrs. N. Tongarutu for first and second defendants

**DECISION ON APPLICATION FOR INTERIM
RESTRAINING ORDERS**

Cameron PJ:

- 1 The first and second claimants apply for interim restraining orders to halt logging on Liolavata land on South New Georgia, Western Province. The first claimants are members of the Kalikoqu tribe which has customary ownership of that land, and contend that they and many other members of the Kalikoqu tribe have not authorised the first and second defendants to log that land. The second claimant is a logging company established by some members of the Kalikoqu tribe and it maintains that since 1993 it has held a timber licence over Liolavata land, and that the subsequent grant of a licence dated 31 August 2009 to the first defendant to log that land was accordingly invalid.

Second Claimant's Position

- 2 The second claimant was apparently issued with a licence over the Kalikoqu customary land (or a portion of it) in 1993. I say apparently because no copy of the licence is in the material before the court. That licence was said to have been renewed in 2010 and is for the period 26 February 2010 to 26 February 2015. As it is a renewal, it is accepted that the concession area covered by the renewed licence is identical to the concession area covered by the original licence (of which no copy is before the Court). The issue is whether this concession area includes Liolavata customary land.
- 3 There is a copy of the renewed licence available. No map is attached to it. The document describes the area to which the licence applies as 'Kalikoqu customary land, Tagosage and Lio-Zuzulongo only, Western Province'.
- 4 In relation to the original licence, there is available a record of the timber rights hearing of 20 May 1993, and the Form 2 certificates which were issued as a result of that determination. The two certificates are first in respect of Tagosage land, and secondly in respect of Liozuzulongo land. Each is treated as separate parcels of land. In addition, the timber rights determination records (para. 3):

"3. The land from Piraka River – West, shown as crossed out on attached map is excluded. That land is Kazukuru land, the spokesmen for whom is Donald Maepio, who doesn't wish to grant timber-rights on that land."
- 5 There is also a reference in the minutes of that timber rights hearing (p 2, para 5) as follows:

"Mr. Donald Maepio, Kazukuru land, did not wish to grant timber rights on boundary, West of Piraka River. The land has been included in Form I Map application. Everyone agreed that land belongs to Kazukuru therefore boundary be amended."
- 6 While no complete map with a crossed out area is available, it is apparent that what was excluded from the proposed licence area was the land to the west of the Piraka river. From the material before the Court, it is apparent that the parcel of land

immediately to the west of the Piraka river is Liolavata land.

- 7 The combination of the minutes of the 1993 timber rights hearing, the determination which followed, and the Form 2 certificates which were then issued, leads to the conclusion that excluded from the 1993 licence issued to the second claimant was the Liolavata parcel of land lying to the west of the Piraka river. Against this background, I consider the description of the concession area contained in the 'renewed' licence of 2010. As earlier stated, it is described as:

"Kalikoqu customary land, Tagosage and Lio-zuzulongo only, Western Province."

It is apparent that the reference to Kalikoqu customary land, of which the Tagosage and Lio-zuzulongo lands form only a part, is immediately qualified by the words which follow. The word, 'only' operates to restrict the area to the Tagosage and Lio-zuzulongo portions of Kalikoqu customary land. An argument that the whole of Kalikoqu customary land is included is therefore untenable.

- 8 Restricting the concession area to only two portions of Kalikoqu land means that the area covered by the renewed licence is the same as that covered in the original licence. This is consistent with the intention to issue a renewed licence.
- 9 It follows that excluded from the concession area covered by the renewed licence of 2010 is the Liolavata portion of Kalikoqu customary land, that is the parcel of land lying to the west of the Piraka river.
- 10 It follows that the contention of the second claimant that the first and second defendants ought to be restrained from logging in Liolavata land because of the existence of the second claimant's licence fails.

First Claimants' Position

- 11 The first claimant's position is that as members of the Kalikoqu tribe they and a number of other members of the tribe have not authorised the first and second defendants to log Liolavata land, and that they ought to be restrained accordingly.
- 12 They point out that objection was taken to the inclusion of Liolavata land when in 2007 the first defendant applied for

timber rights over Kazukuru Right Hand Land (KRHL land) (which land includes the Liolavata land).

- 13 When the Western Provincial Executive failed to exclude Liolavata land (instead, identifying 4 trustees as the persons entitled to grant timber rights over KRHL land), an appeal was lodged to the Western Customary Land Appeal Court.
- 14 That appeal was determined on 6 October 2007. The WCLAC decision did not exclude Liolavata land, but identified afresh 15 persons as being entitled to grant timber rights over the whole of KRHL (including Liolavata land). 3 of the 4 original trustees were renamed (the fourth, Jonathan Poza, being deceased), and 12 new trustees were added, making a total of 15 trustees. Of these 15 persons, 7 were from the Kalikoqu tribe.
- 15 One of the 15 named trustees, Willie Dei Kama, is one of the chiefs of the Kalikoqu tribe. Another named person, Solomon Roni, is also a chief of the Kalikoqu tribe. As mentioned, a further 5 trustees are also named as representatives of the Kalikoqu tribe.
- 16 The first claimants are 3 in number. The first named claimant is Aaron Kama, who is the younger brother of Willie Dei Kama (a chief and a named trustee). The second named claimant is Edwin Qora Roni, who is the brother of Solomon Roni (a chief and a named trustee). The third named claimant is Brian Overcome Kama, the nephew of Willie Dei Kama. Brian Overcome Kama was a named appellant in the appeal to the WCLAC, but was not included as one of the 15 trustees identified by WCLAC as being entitled to grant timber rights.
- 17 There was no appeal to the High Court from the 6 October 2007 WCLAC decision (s.256(3) Land and Titles Act affords limited appeal rights).
- 18 Based on the facts as described, the first and second defendants contend that the first claimants have no standing to bring this claim, and secondly, and as a related point that they are bound by the 6 October 2007 decision of the WCLAC.
- 19 As to standing, the claimant Aaron Kama deposes that his father Chief Joseph Kama represented the Kalikoqu tribe before the Roviana Chiefs in June 2005, when it was determined on 23 June 2005 that Liolavata land belonged in custom to the Kalikoqu tribe. A further Roviana Chiefs determination of the

same date but involving a different challenger also awarded customary ownership of Liolavata land to Chief Joseph Kama and his tribe. Aaron Kama also asserts that he was authorised 'on behalf of the other claimants and on behalf of members of my Kalikoqu tribe' to make his sworn statement of 13 April 2010 (para. 1 sworn statement).

- 20 It is not disputed by the first and second defendants that the Kalikoqu tribe owns the Liolavata customary land. What is in issue is the standing of the 3 first named claimants to bring this claim and accompanying application.
- 21 Given that the WCLAC in its 6 October 2007 decision identified 7 trustees from the Kalikoqu tribe as being entitled to grant timber rights, two of whom are chiefs to whom each of the 3 first claimants are closely related, I consider that the first claimants both lack standing to bring this claim and are bound by that decision (section 10(2) of the Forest Resources and Timber Utilisation Act applies). The claimants complain that the thrust of the appeal to WCLAC was to have Liolavata land excluded, and that the WCLAC of its own volition adopted the different approach of identifying 15 trustees afresh. However, there was no appeal from that decision alleging that approach was erroneous as a point of law, and the claimants are bound by it.
- 22 This conclusion is reinforced by the fact that the 15 persons who were named as trustees subsequently acquiesced to their appointment by signing as the grantors of timber rights a standard logging agreement with the third defendant over KRHL land (which includes Liolavata land).
- 23 For the reasons given, the first and second claimants have failed to establish an arguable case, and the application for interim relief is declined.
- 24 As the claimants lack standing and the claim itself discloses no reasonable cause of action, the Court of its own volition now orders that the entire proceeding be dismissed. (Rule 9.75 of the Solomon Islands Courts (Civil Procedure) Rules 2007).
- 25 Costs are awarded against the first and second claimants in favour of the first and second defendants (the third defendant having taken no active part) on a standard basis, both in respect of the claim itself and this application. Failing

agreement on the amount within 28 days, the costs are to be taxed.

BY THE COURT

**Justice IDR Cameron
Puisne Judge**