

IN THE HIGH COURT OF SOLOMON ISLANDS
Civil Jurisdiction

Civil Case No. 614 of 2019 Consolidated with CC 41 and 116 of 2024

BETWEEN: Jack Lagobe, Teddy Pavo, Milner Tozaka, Kevin Seme, Silas Pilumu,
Simon Kurutu, Manovaki Edikera and Martha Palevido **First Appellants/Claimants**

AND: Attorney General
(Representing the Commissioner of Forest Resources) **First Defendants/Respondents**

AND: Jonathan Dive and Others **Second Defendants/Respondents**

Date of Hearing 16th May 2024

Date of Ruling: 17th June 2024

For the Claimants/Appellants: Soma E/ J Sullivan KC

For the First Respondent/Defendant: NA

For the Second, Respondent/Defendant: Puhimana L

Ruling on Application to Struck out Notice of Appeal.

Kouhota PJ

This is an application by the Second Respondent to struck out the notice of appeal filed by the Appellant against the decision of the Western CLAC in an appeal from the Western Provincial Executive determination of timber rights in favour of the Respondents. The grounds of appeal are as follows:

1. The Western Customary Land Appeal Court (WCLAC) erred in law by holding to the effect that in exercising its jurisdiction to deal with issues of Customary Land ownership, boundaries, genealogies, chieftainship and other matters pertaining to custom it is not bound by injunctive orders granted by the High Court unless the High Court makes an order of mandamus or certiorari against the CLAC.
2. Having accepted and acknowledged that there was currently in existence an existing High Court order restraining the Vella La Vella Chiefs from proceeding with the installation ceremony of Jonathan Dive (An order which has not been set aside, varied or overturned on appeal), the WCLAC erred in law by-
 - (a) Refusing to accept a submission that should not proceed to deal with the appeal before it, notwithstanding the existence of the injunction, as the proceedings in which the

- injunction was granted was yet to reach trial, notwithstanding the restraining order not having been set aside, varied or overturned on appeal;
- (b) Holding that the WCLAC was nevertheless bound by a decision of the WCLAC in WCLAC Case N0.3 and 29 of 2013 which upheld the installation of Dive as Chief of Reresare Tribe in the face and in spite of the High Court injunction.
3. The CLAC erred in law by holding that the Western Provincial Executive was bound by the previous decision of CLAC, a decision which upheld the installation of Jonathan Dive despite that installation being held by the High Court to have been conducted in breach of the High Court injunction.
4. Having held that Dalcy Tozaka was a person entitled to and representing all the persons lawfully entitled to grant timber rights over Reresare land, the CLAC erred in law by holding that the Second Respondents were the persons entitled to and represent all the persons lawfully entitled to grant timber rights over Reresare land in circumstances where –
- (a) Milner Tozaka, one of the Second Respondents was the eldest son of the late Dalcy Tozaka;
- (b) All the Second Respondents were members of the Reresare Tribe;
5. There was no evidence that in Vella La Vella custom, the Second Respondents were required to consult with Jonathan Dive before granting timber Rights over Reresare Land.

The Respondent/ Applicants in support of his application relied on the following documents;

- (a) The application to strike out filed on 12th January 2024;
- (b) Sworn statement of Simon Wong filed on 12th January 2024;
- (c) Sworn statement of Jonathan Dive filed on 9th May 2024;
- (d) The submissions.

Before I proceed to deal with the application, I noticed that this is an application to struck out a notice of appeal against the decision of the Western Customary Land Appeal Court. The decision the subject of this appeal is a WCLAC decision in an appeal against the determination of Timbers rights by Western Provincial Assembly. Counsel Puhimana for applicant did referred to section 10(2) of the Forest Resources Timber Utilization Act, Cap 49 in his submission but did not raised it specifically as point to strike out the appeal. Section 10(2) of the FRTUA is a point of law relevant to this appeal and is now brought to the attention of the Court so the Court must consider it. That I now do.

Section 10 (1) of the Forest Resources Timber Utilization Act, Cap 49. states “*Any person who is aggrieved by a determination of the area Council (now Provincial Assembly Executive) made under section 8(3) (b) or (c) may within one month from the date of public notice given in the manner set out in section 9(2) (b), appeal to the Customary land appeal court having jurisdiction for the area in which the disputed customary land concern is situated and such Court shall hear and determine the appeal*”

Section 10(2) states “*Notwithstanding any provision to the contrary in any other law, the order of or decision of the customary land appeal court on appeal entertained by it under subsection(1) shall be final and conclusive and shall not be question in any proceeding whatsoever*”

Section 10(2) uses strong words such *no withstanding any provision to the contrary, shall be final and conclusive, and shall not be questioned in any legal proceedings whatsoever*. Section 10(2) is finality strongly worded provision and must understood in that context.

I am of the view that this provision clearly ousted and override any contrary provision in any other law. In this respect, appeals to CLAC from the Provincial Executive determination of timber rights, section 10 (2) clearly intend to end any such appeals or proceedings with the CLAC. In the present case, the WCLAC had heard and made a decision on the appeal against the Western Provincial Assembly Executive determination of timber rights. By virtue of section 10(2) of FRTUA, that should be end of the matter hence any appeal against the decision of the CLAC on timbers rights cannot be entertained by this Court.

I am aware of a number of cases in this jurisdiction which deal with “ouster clauses” I had view these cases but they mainly discuss Judicial Reviews. In *Veno v Jino* SBCA 22: CA –CAC 002 of 2004, the Court of Appeal addresses the issue of ouster clauses. The Court held that while the ouster clauses aim to restrict judicial review, they could not entirely preclude it, especially when fundamental legal principle are at stake. In *Talasila V Biku*, the Court of Appeal held that although the High Court’s jurisdiction hear appeals was ousted, it retained jurisdiction to ensure that an inferior tribunal did not exceed it jurisdiction.

In the present case, the Appellant is not seeking judicial review of the decision of the WCLAC but filed an appeal against it. In that respect, the Court’s jurisdiction to hear the appeal is ousted by section 10(2) of the Forest Resources Timber Utilization Act, Cap 40 so it cannot hear the appeal.

I had consider the appeal grounds and of the view that the Western Provincial Executive and WCLAC did not exceed their jurisdictions in dealing with this matter.

I consider that section 10(2) of the FRTUA, is tantamount to the provisions of the Lands and Title Act, and the Local Court Act, which takes away jurisdiction from the High Court and all other Courts in land matters and left jurisdiction only to the Local Court and the Customary land Appeal Court. I think the Court should give the same effect it gives to the provision of the Lands and Title Act and the Local Court Act to section 10(2) of the FRTUA.

I think this Court is bound by section 10 (2) of the FRTUA in respect of this appeal, thus the Court refused to entertain this appeal but will struck out the Notice of Appeal. I so order.

Obiter

I had made my conclusion based on a point of law but wish to make some observation on the issues raised in the submission of counsels. The Court had observed that there have been numerous cases between the same parties and some others over Reresare land going back as far as to the 1990s.

In regard to the recent issue of chieftainship, if the Chorena Local Court was acting on direction of the Court of Appeal and the High Court, when it heard civil case number 13 of 2012, which its decision was appealed to WCLAC and upheld by the WCLAC in WCLAC No. 3 of 2013, that WCLAC decision stands and settles the issue of chieftainship as the decision was never appealed. The WCLAC decision No.3 of 2013, should be final as it is a ruling on a decision of the Chorena Local Court acting on the direction from the SI Court of Appeal and the High Court. In any event, I also believe that the parties are from the same tribe and the issues they are making their numerous claims over are issues that should be settled between themselves as one people.

Since this case is consolidated with two other civil cases, civil case number 41 of 2024 and civil case No. 116 of 2024, this decision on issues in this appeal may affect the same issues if they are issues in the other cases.

Orders;

1. The Notice of appeal is stuck out,
2. Cost against the Appellant to be assessed if not agreed.
3. Counsel Puhimana to file direction orders in respect of CC 41 of 2024 and CC 116 of 2024 for Court's perfection.

THE COURT


Emmanuel Kouhota
Puisne Judge