IN THE HIGH COURT OF SOLOMON ISLANDS
Civil Jurisdiction
(Bird J)

Civil Case No. 143 of 2018

BETWEEN: PETER BAEWAI, ARMSTRONG KEKE & TIMOTHY TARIASI (Representing the Ngongo/Bora Tribe of Ubuna Village, Arosi 1, West Makira, Makira/Ulawa Province) Claimants

AND: **ISACC MARU** (Representing the Amaeo Tribe of Marou Bay, Arosi 2, Makira/Ulawa Province) First Defendant

AND: **ATTORNEY GENERAL** (Representing the Makira/Ulawa Provincial Executive) Second Defendant

AND: **ATTORNEY GENERAL** (Representing the Eastern Magistrate Court) Third Defendant

AND: **ATTORNY GENERAL** (Representing the Commissioner of Forest) Fourth Defendant

AND: **AROSI VISION LINK SERVICES LIMITED** Fifth Defendant

AND: **EARTHMOVERS SOLOMON LIMITED** Sixth Defendant

Date of Hearing: 18th & 22nd August 2025
Date of Decision: 26th September 2025

Mr Donald Marahare for the Claimants
Mr Lionel Puhimana for the 1st Defendant
Mr Howard Lapo for the 2nd, 3rd & 4th Defendants
No Appearance for the 5th Defendant
Ms Alice Willy for the 6th Defendant

JUDGMENT

Bird PJ:

1. This is a claim for judicial review. Messrs Peter Baewai, Armstrong Keke and Timothy Tariasi (Claimants) initially filed a Category C Claim seeking leave of the court to extend time to file a claim for judicial review pursuant to rule 15.3.9 of the Solomon Islands Courts (Civil Procedure) Rules 2007 (CPR). Leave was subsequently granted by

the court. The Claimants thereafter filed their claim for judicial review on the 31st August 2018.

2. The Claimants are members of the Ngongo/Bora Tribe of Arosi 1, West Makira. They claim to own the Ngongo customary land, situated between the border of Arosi 1 and Arosi 2. The land cover a big land mass and different portions of land are located within the land mass. The land portion that is in dispute in this proceeding is Mwanewawa/Wawae (subject land). That land and many other lands were a subject of a timber rights process in about 2015. Their tribe have nominated Willie Pwaru, Arnold Harold, John Cristim Ha'amori and David Ben Didi as their trustees.

3. A timber rights hearing was conducted by the Makira/Ulawa Provincial Executive (2nd Defendant) on the 25th August 2015. During the hearing, Isaac Maru (1st Defendant) representing his Ameao tribe raised objection on the subject land. In their determination dated the 9th September 2015, the 1st Defendant was determined to be the person lawfully entitled to grant timber right on the subject land.

4. The Claimants through Mr Tariasi paid appeal fee of $100.00 to the Makira/Ulawa Customary Land Appeal Court (non-party to this proceeding) against the determination of the 2nd Defendant. A notice of appeal was asserted to have been filed. A certificate of no appeal was thereafter engrossed by the 2nd Defendant and forwarded to the Commissioner of Forest (4th Defendant). Subsequent to the notice, the 4th Defendant issued Felling License No. A 101537 to Arosi Vison Link Services Limited (5th Defendant) on the 17th March 2016. By a Technology and Marketing Agreement dated the 11th May 2016, executed between the 5th Defendant, landowners and Earth Movers Solomons Limited (6th Defendant), the 6th Defendant was authorised to conduct logging operations inside the subject land and various other lands.

5. The Claimants claim for judicial review as amended sought a number of orders namely:-
   1. An order that the timber rights determination dated 9th September 2015 of the Makra/Ulawa Provincial Executive be brought up under rule 15.3.4 of the CPR and be quashed.
   2. Consequent upon order 1 above, a declaration that the following which were subsequently issued by the Eastern District Magistrates Court and the Commissioner of Forest respectively are null and void and of no effect:-
      i) The Certificate of No Appeal dated 20th October 2015; and
      ii) The Sixth Defendant's Felling License No. A 101537 issued to it on 7th March 2016;
   3. Consequent upon 1 and 2 above, an order for damages for trespass for trespass to the Claimants Mwanewawa customary land and other concerned portions within their larger Ngongo customary land to be assessed;

4. An order that the 1st, 2nd, 3rd, 4th, 5th and 6th Defendants pay the Claimants costs of and incidental t this action on indemnity basis; and
5. Any further and other orders as the court thinks fit to make in the circumstances.

6. Having outlined the background to this proceeding and the orders sought, I have noted that the parties have agreed to a number of issues to be determined by this court as follows:-
   i) Whether or the Certificate of No Appeal issued by the Eastern District Magistrate Court relating to Mwanewawa customary land was issued in a timely manner and thus valid and of legal effect;
   ii) If not, then whether Felling License No. A101537 issued by the Commissioner of Forest to Arosi Vision Link Services Limited is invalid and void ab initio;
   iii) Whether in the given circumstances, the Claimants are entitled to the reliefs sought in the judicial review claim.

7. I have perused the Claimants amended claim for judicial review and the amended defences of the 1st, 2nd, 3rd, 4th and 6th Defendants together with all of the filed submissions, I am of the view that the main issue that this court must deal with, and consider is whether or not the 2nd Defendant conducted the timber rights hearing according to law. The second most important issue is whether or not the Makira/Ulawa Customary Land Appeal Court, a non-party in this proceeding, heard the purported appeal to it by the Claimants according to law. If these issues are considered and determined, then the three issues outlined in paragraph 6 above will naturally fall into place.

The issues

8. It is undisputed that the 2nd Defendant conducted a timber rights hearing on the 25th August 2015. It produced its determination on the 9th September 2015. The 1st Defendant was nominated as the person who was lawfully entitled to grant timber right on the subject land. The duties and obligations of the 2nd Defendant during a timber rights hearing is conferred upon it under section 8 (3) of the Forest Resources and Timber Utilisation Act (FRTUA).

9. The provision stipulates that during a timber rights hearing, the appropriate Provincial Executive shall discuss and determined with the customary landowners and the applicant matters relating to –
   a) Whether or not the landowners are willing to negotiate for the disposal of their timber rights to the applicant;
   b) Whether the persons proposing to grant the timber rights in question are the persons, and represent all the persons, lawfully entitled to grant such rights, and if not who such persons are;
   c) The nature and extent of the timber rights, if any, to be granted to the applicant;
   d) The sharing of the profits in the venture with the landowners; and

e) The participation of the appropriate Government in the venture of the applicant.

10. I have perused the minutes of the timber rights hearing on pages 41 to 45 of court book 1. As to requirement written s.8 (3) (a), I am satisfied that all of the nominated trustees per each block of land were willing to negotiate for the disposal of their timber rights to the applicant. As per requirement (b), in respect of the subject land at page 42, the four nominated trustees consented to the applicant's application. The 1st Defendant raised objection claiming that he was the true owner of the land. He therefore, should replace the nominated trustees.

11. I have noted that there is no record in the minutes to show that the 2nd Defendant has properly dealt with the objection by the 1st Defendant. The is no record to show me that the nominated trustees were given an opportunity to respond to the objection as raised. I have also noted that the 1st Defendant relied upon and tendered to the 2nd Defendant a copy of a decision in a CLAC case B/3/239 B dated 24/11/14.

12. That decision can be found on page 79 of court book 1. A prior decision of the local Court that led to the appeal to the CLAC is on pages 77 and 78. Upon perusal of the decision relied upon by the 1st Defendant, it is obvious that the 1st Defendant withdrew his appeal before the CLAC on the 24th November 2014. That document therefore is not worth the paper written on it. It is of no value to support his objection.

13. That would bring me back to pages 77 and 78 that contained the decision appeal against. The name of land under dispute between the 1st Defendant and John Cristom Ha'amori was Toroi Wai land. John Cristom Ha'amori was one of the nominated trustees over the subject land in this proceeding. It is important to note that Mr Ha'amori represented the Araha clan then. There is no record by the Local Court that he represented the Ngongo/Boru Tribe, the tribe that the nominated trustees represented during the timber rights hearing.

14. In any event, it is essential to take further note that on paragraph 6 of the Local Court's decision they said the following, "The court proved that the Mwanewawa land (subject land), none of both parties own that land. No tribal stories or tambu sites have been found by the court at the Mwanewawa land". The statement in the Local Court judgment would further confirm that the decision tendered by the 1st Defendant during the hearing is of no value to him at all.

15. Had the 2nd Defendant been prudent and vigilant in the discharge of their duties as prescribed under s.8 (3) (b) of the FRTUA and perused the decision tendered to them on the 25th August, they might have been able to reach another conclusion as they did on the 9th September 2015.

16. In noting the objection, the option under section 9 of the FRTUA could have been utilised by the 2nd Defendant. It must have been obvious to them then, that a dispute of ownership of the subject land was an issue. They lack jurisdiction to entertain any issue of land ownership. They could have used the option available to them under the section to reject the application in respect of the subject land and advise the Commissioner of Forest accordingly. They have failed to do what could have been in the best interest of the parties.

17. It is therefore my considered view that the 2nd Defendant had not discharged their duty under s. 8 (3) (b) of the Act. They merely took into account what the 1st Defendant said and ruled in his favour. Their duty does not stop in merely recording objections. They must deal with any objection according to law.

18. I have perused the amended claim, the amended defences and the various sworn statement filed in this proceeding and having noted the minutes of the hearing, I am satisfied that the 2nd Defendant had discharged their duties as required by s. 8 (3) (c) and (d) of the Act.

19. In relation to the final requirement under (c), I am unsure whether or not that duty was discharged by the 2nd Defendant. I have noted on paragraph 8 of the minutes the revenue sharing formula between the applicant, landowners, licensee and the Solomon Islands Government. I have failed to see the 2nd Defendant discussing the participation of the appropriate government in the venture. The appropriate government referred to in s. 8 (3) (e) is the Makira/Ulawa Provincial Assembly. The minutes does not include any participation of the appropriate government in the applicant's venture.

20. The requirements under section 8 (3) are mandatory in nature because of the use of the word "shall" therein. In view of that position, it is mandatory for the 2nd Defendant to adhere to and conduct the timber rights hearing as prescribed. If they fail to deal with one of the other requirements, their determination could be subjected to a review by this court.

21. It is also important to state at this juncture, that in a document produced by the Commissioner of Forest on page 323 of court book 1, the type written names of the nominated trustees over the subject land were crossed out with a pen and the 1st Defendant was inscribed therein also with a pen. Whosoever did it, could not have been correct.

22. The circumstances of this case are similar to the case of William Ngao & Johnson Tua -v- Attorney General & Rainforest Lumber Company Limited (1999) SBHC 146; HCSI-CC 108 of 1999. In that case, an objection was raised. The Area Council without properly considering the objection, had gone ahead and made determination in the matters objected to. This court held that there was an obvious failure by the Area Council to consider an important matter under section 8 (3) (b) of the Act. The failure is fatal to the subsequent actions taken in the process of granting the license to the second respondent. There is certainly no agreement as to the matter required to be agreed upon under paragraph (b) of subsection (3). There is also no evidence that requirement (e) was complied with by the 2nd Defendant.

23. In this proceeding, the aggrieved party had lodged an appeal to the Makira/Ulawa Customary Land Appeal Court and paid the filing fee. That implies that the 2nd Defendant had not properly discharged their duty under s. 8 (3) (b) of the Act.

24. Having perused and noted the authority cited above, I am satisfied that the 2nd Defendant had failed to conduct the timber rights hearing on the 25th August 2025 according to law. It is therefore within this court's jurisdiction to have the determination dated the 9th September 2015 quashed.

25. On the issue of whether or not the Makira/Ulawa Customary Land Appeal Court, a non-party in this proceeding, heard the purported appeal to it by the Claimants according to law, it is essential for this court to discuss it. This issue was a contentious one between the parties during hearing. The Claimants assert there was an appeal lodged by them to the MUCLAC. The appellant paid the required filing fee on the 2nd October 2015 on GTR No. 1753961 at page 39 of court book 2. The assertion was denied by the 1st, 2nd, 3rd, 4th and 6th Defendants. Judgement in respect of that appeal was infact delivered by the MUCLAC on the 2nd July 2019 on pages 76 and 77 of court book 2.

26. The parties to the appeal were Timothy Tariasi, Willie Pwaro and the 2nd Defendant. On the face of the document, there was an obvious error in respect of the named parties. The 1st Respondent was the determined trustee. He should have been named as 1st Respondent in the appeal. He is the 1st Defendant in this proceeding.

27. The MUCLAC during its first sitting should have enquired into the irregularity. They were at liberty to assist parties by including the 1st Defendant as a party to the appeal and make necessary directions to that effect. They did not but continued with the hearing which has led to an absurdity in their judgment.

28. The 1st, 2nd, 3rd, 4th and 6th Defendants contended that no appeal was filed by the Claimants in respect of the subject land. They alleged that the purported appeal which was filed by the third named Claimant was not made against the determined

trustee, being the 1st Defendant in this proceeding. They also say, there was no notice of appeal filed. That notice of appeal is not evidence before this court. They therefore are of the view that the determination of the 2nd Defendant remained extant. Subsequently, there was no error in the Certificate of No Appeal by the 3rd Defendant and the 4th Defendant was at liberty to issue to the 5th Defendant Felling License No. 101357. The 5th Defendant have validly transferred their right to the 6th Defendant to conduct logging on the subject land.

29. In the case of Majoria -v- Jino & The Clerk to the Customary Appeal Court (Western) (2007) SBCA 20; CA- CAC 36 of 2006, the Court of Appeal ordered that the appeal against the decision of the WPE to be remitted to the WCLAC for hearing and determination according to their judgment.

30. In that case, the WCLAC had initially heard the appeal and quashed the decision of the WPE. They however, did not substitute names of any determined trustees in accordance with section 8 (3) (b) of the FRTUA. They were ordered by the Court of Appeal to rehear the appeal in accordance with the law.

31. In relation to the notion that there was no appeal lodged with the MUCLAC against the 2nd Defendant's determination over the subject land, I have perused and noted their judgment on pages 76 and 77 of court book 2. I have especially noted the contents of paragraphs 2 and 4 of the judgment. In paragraph 2, they were discussing the first point of appeal. The appellant complained that the 2nd Defendant erred when they replaced their nominated trustees with the 1st Defendant.

32. The second ground of appeal is contained in paragraph 4 therein. It is alleged that the nominated trustees names were erased and replaced by Isaac Maru, the 1st Defendant.

33. In reading between the lines, there is a high possibility that there was in fact an appeal lodged with the MUCLAC at the material time. A copy of that letter or notice of appeal could have been obtained from the CLAC court file. It would seem possible that parties to this proceeding could have obtained a copy of the appeal from the MUCLAC but no attempts were made by any one of them in order to assist this court. Notwithstanding, from the judgment hereby discussed, I am reasonable satisfied that there indeed was an appeal filed in respect of the subject land to the said CLAC. A decision was made by the said court which is produced before me as evidence.

34. The 2nd Defendant's determination on Mwanewawa and Wawae is quashed and parties to meet their own cost.

35. On this point, I was referred to by counsel for the 6th Defendant about the possibility that no notice of appeal was filed by the Claimants within the prescribed period to the MUCLAC. I have taken the time to peruse the letter written by the first named Claimant to the Principal Magistrate, Eastern Magistrate Court enquiring about the Certificate of No Appeal.

36. The 6th Defendant asserts that the letter could be the appeal by them. If it was, then it was not filed within the time allowed by law. I have compared the contents of the letter and the judgment of the MUCLAC, to see if there was any connection between the documents. Upon my perusal, the letter would seem to be an enquiry about why the subject land was included in the Certificate of No Appeal whilst an appeal was pending. He requested a copy of the certificate.

37. I have stated the two appeal points of the Claimants before the MUCLAC in paragraphs 31 and 32. Upon my reading of the judgment of the MUCLAC, the two appeal point as were discussed, are not stated in the first named Claimant's letter dated 24th October 2017. From the two documents, I am unable to find that the letter could have been the appeal.

38. Having discussed the essence of the appeal, I am of the considered view that what is lacking in the said decision is the MUCLAC, has failed to substitute fresh trustees to replace the 1st Defendant as the persons lawfully entitled to grant timber rights on the subject land. It is therefore obvious that even the MUCLAC have failed to comply with the mandatory requirement of s. 8 (3) (b) of the FRTUA.

39. In discussing the two issues raised in paragraph 7 above, the summary is that both the 2nd Defendant and the MUCLAC have failed in their mandatory duty under section 8 (3) of the FRTUA, to properly conduct the timber rights hearing and in determining the appeal according to law. The effect of their respective failures would mean that both of their decisions could be brought to this court and be quashed.

40. The court has noted that the MUCLAC had quashed the decision of the 2nd Defendant on the 2nd July 2019. That issue was not even canvassed by the parties during hearing. In effect, the first relief by the Claimants in their amended claim for judicial review was for the quashing of the of the timber rights determination of the 2nd Defendant dated 9th September 2015.

41. If the decision of the MUCLAC is ineffective in law, it would mean that the whole timber rights process from the start is derailed. That would further mean that there was no grant of any timber rights by the landowners to the 5th and 6th Defendant.

42. Having discussed the two issues that the court has raised to be paramount in this proceeding, I am able to conclude that the 2nd Defendant has failed to conduct the timber rights hearing on the 25th August according to law. I am also able to further conclude that the MUCLAC, a non-party in this proceeding, further failed to properly deal with the appeal before it according to law. Consequently, I hereby bring up both decisions to this court and quash them accordingly.

43. In passing, I wish to further state that I am inclined to quash the decision of the MUCLAC upon the basis that it would cause an absurdity if it is allowed to stand and be considered to be extant. Since I have quashed the decision of the 2nd Defendant, the decision of the MUCLAC must not be allowed to exist. The decision appealed against that gave them right to hear the appeal is non-existent. Therefore notwithstanding that it is a non- party to this proceeding, I must make an order according to law.

Issues raised by counsel

44. In view of my decision outlined above, the issue of the validity of the Certificate of No Appeal is moot. In any event, the clerk is not required to produce to the Commissioner a Certificate of No Appeal. In my considered view, the requirement of the certificate is an erroneous interpretation of section 10 (3) of the FRTUA. I have seen in numerous cases before this court that the clerk produces to the Commissioner a Certificate of No Appeal. I must stress here that a clerk's duty is to notify the Commissioner that an appeal has been filed in respect of a particular land. Thereafter the clerk must further inform him and the appropriate Government of the result of the appeal and provide them with copies.

45. I have perused and noted the comments by this court in the case of Zaku -v- Eastern Development Enterprises Ltd & others; HC-SI Civil Case No. 575 of 2007 whereby Justice Chetwynd stated inter alia that the Act does not impose on a clerk a duty to issue a certificate of no appeal. He further stated that the Commissioner should have been more concerned with the proper processes under the Act than the certificate.

46. In this case, the Commissioner has set his mind entirely on the certificate of no appeal. He did not even turn his mind and question the authenticity and or validity of the document attached to his sworn statement on page 323 of court book 1. It was evident from that document that names were erased and replaced. There was no explanation by the Commissioner why that document was tampered with, by whom and what purpose. Such are the very essential issues that the Commissioner should have dealt with rather than the certificate which is not required under s. 10 (3) of the Act.

Validity of Felling License No. A 101537

47. In respect of the validity of Felling License No. A 101537, this issue can be easily disposed of in light of the quashing of the decision of the 2nd Defendant dated the 9th September 2015. The quashing of the 2nd Defendant's determination derails the whole process. The natural consequence therefore, would mean that there was no timber right process conducted at all.

48. The quashing order in my view has a domino effect on all subsequent actions including the action of the Commissioner of Forest to issue Felling License No. 101537 to the 5th Defendant on the 7th March 2016. I hereby conclude that Felling License No. 101537 is null and void ab initio.

Claim for trespass and damages

49. The Claimants sought relief for trespass and damages in their amended claim. The land in issue before the court is Mwanewawa/Wawae customary land. In their relief, they sought damages for trespass on other portions of land within the boundary of their Ngongo customary land. I have noted, those portions are not named therein.

50. I have determined that Felling License No. A 101537 is null and void ab initio. As a consequent, any logging operation carried out by the 5th and 6th Defendants within the subject land under the felling license is unlawful.

51. Pursuant to section 7 of the FRTUA, any person who wishes to carry on business in Solomon Islands as a timber exporter or sawmiller and desires to acquire rights on customary land shall make an application to the commissioner in the prescribed form and manner and obtain his consent to negotiate with the appropriate Government and the owners of such customary land.

52. In this proceeding, the 5th Defendant made an application in the prescribed form as required. The Commissioner had given his consent. However, as per my discussion above, the prescribed timber rights process was flawed during the timber rights hearing by the appropriate Government, being the 2nd Defendant. I have quashed their determination dated the 9th September 2015, as it was not so conducted according to law. I have also nullified the felling license which was issued to the 5th Defendant.

53. The consequence of theses orders means that no agreement was reached between the applicant, the appropriate Government and the owners of the subject land. As a result the entry by the 5th and 6th Defendants into the subject land to carry out logging therein is contrary to s. 7 of the Act. Their joint action in entering the subject land and carrying out logging activities therein amount to trespass. With the issue of trespass

determined, the Claimants are entitled to damages caused by their logging operations in the subject land. On the totality, the Claimants claim succeeds and they are entitled to cost.

Orders of the court:

1. The determination of the 2nd Defendant dated the 9th September 2015 is hereby quashed.
2. The judgment of the Makira/Ulawa Customary Land Appeal Court dated the 2nd July 2019 is hereby quashed.
   As a consequent of orders 1 & 2 above, I further order:-
3. The Certificate of No Appeal is moot.
4. Felling License No. A 101537 is null and void ab intio.
5. The Claimants relief for trespass and damages in respect of Mwanewawa/Wawae customary land is granted.
6. Damages are to be assessed upon filing of application for assessment
7. Cost is against the 1st, 2nd, 3rd, 4th, 5th and 6th Defendants jointly and or severally.

THE COURT

HIGH COURT OF SOLOMON ISLANDS PUISNE JUDGE

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Justice Maelyn Bird

Puisne Judge