

This is an appeal against the Vella Lavella area council determination of timber rights made U/S 5c of the Forest Resources and Timber Utilisation (Amendment) Act 1990. The area council determination was made on 1st August 1995 following a timber right meeting held at Leona village, Vella Lavella on 4th July 1995 in respect of Pezoporo land.

Under section by 5 E of the Act an appeal can only be brought to this court by persons aggrieved by the determination of the council made under section 5c(3)(b) or (c) of the Act.

Subsection (b) reads - whether the persons proposing to grant Timber rights in question are persons, and represent all persons lawfully entitled to grants such rights, and if not who such persons are;

(c) the nature and extend to grant such rights, if any to the applicant;

There are 4 appellants in the present case namely 1. John Sina (Sauro tribe); 2. Amos Loku (Pezoporo tribe) 3. Winston Vouku (Zapana tribe) and 4. Rezi Noibule (Kaurabo tribe).

Having viewed the minutes of the Vella Lavella area council meeting held on 4/7/95 at Leona village, it became apparent that two of the appellants Winston Vouku and Rezi Noibule were not present as their names were not in the list of objectors. Likewise their names were not in the Form II as persons identified as lawfully entitled to grant timber rights in Pezoporo lands but who are not willing to negotiate for the grant of their timber rights.

We are of the view that if they have any claim of rights to timbers rights within the Pezoporo land then they should attend the Timber Right meeting to ascertain their rights. In our view they can not sleep over their rights and wait until the area council made its determination before coming to this court to claim those rights and asking this court to recognise them. Their failure to attend the Area Council Meeting or even if they attended but do not ascertain their rights before the Area Council leaves the council with no option but to arrived at their determination as it so happened in this case. They can not now claim that the area council erred in its determination. Even if they do have genuine claims it is not for this court to determine that now, the appeal of Winston Vouku and Rezi Noibule must therefore be dismissed for the above reasons.

We now turn to the appeal of John Sina. This appellant was present at the timber right meeting and made objections to the granting of timber to the first respondent. His name appeared in the Form II as of one the persons who is lawfully able and entitled to grant timber rights. However in his name also appeared in the second schedule to the Form II as person who will not grant timber rights to the Pezoporo Company.

At page 2 of the area council determination paragraph 1. John Sina's name also appear with the following

1. George Gado - Rauru Tribe
2. John Tiketike - Zambana Tribe
3. William Netepitu - Kumbo Tribe
4. Nelson Edikera - Reresare
5. Nathaniel Luluku - Jervo Sarapaito

as persons representing other tribes who have lawful rights to grant timber rights within Pezoporo land but who are not willing to grant their timber rights to the company.

Below the names of the these people was a sentence which reads as follows "The areas of the above persons and tribes have been exclude in the Timber Rights application by the applicant (Sasa Pezoporo).(Sic).

If that is so, we see no basis for John Sina's appeal as the his area was excluded from timber rights application. For this reason his appeal is without basis and must also be dismissed.

We now turn to the appeal of Emos Loku. This appellant is a younger brother of Chief Monty Jale, as such he is also a member of the Pezoporo tribe. This was not in dispute. There was also no dispute as to the chieftainship of Monty Jale. The appellants was present at the timber right hearing and raise objection to the granting of timber on the basis of environmental purposes. There is no evidence that he dispute anything else such as the ownership of Pezoporo land, or the authority of chief Monty Jale over Pezoporo land, tribe and those living within Pezoporo land.

Since the appellant and the second respondent are brothers and of the same tribe the court feels that there is no land dispute between them or dispute as to Chief Monty Jale's authority.

The facts of this case in our opinion are distinguishable from the case of Hyundai & others -v- Attorney General and others civil case No.79 of 1993. Since the objection was within the tribe we have to base our decision on the basis of who of these two brothers has authority over the Pezoporo land and tribe and those living within the Pezoporo land. The person who is found to have such authority is in our view, under section 5C(3)(b) represent all the persons who are lawfully entitled to grant timber rights in that land.

In the present case we are satisfied on all the evidence before us that Chief Monty Jale is the person with such authority and therefore represent the tribe for the purpose of granting timber rights on Pezoporo land.

On this basis we do not find that the Vella La Vella area council has erred in law, proceedure or custom in making its determination and the appeal by this appellant must also be dismissed.

The whole appeal is therefore dismissed and the determination of the Vella La Vella Area Council, made on 1st August 1995 confirmed.
No Right of appeal.

- President - R. Paizovaki
- V. President - J. Lilito
- Member - I. Maelagi
- " - J. Zoti
- " - A. Hall
- Clerk - E. Kouhota
- Respondent - We will submit claim for cost in writing.

VELLA LA VELLA AREA COUNCIL DETERMINATION ON 1/8/95
REGARDING TIMBER RIGHTS APPLICATION BY SASA PEZOPORO
COMPANY

A. Introduction

The Area Council determination was made in accordance to section 20 of the Forest Resource and Timber Utilisation (Amendment) Act 1990 after a Form 1 Timber rights hearing held at Leona Village on 4/7/95

Although the Council made its determination. Some matter remain unresolve and this determination contain claims which could be channelled through court proceeding in order that matters be solve.

Attach is a map showing the boundary which has not been surveyed therefore the Council cannot guarantee the accuracy of the boundary. It is merely an indication of the area of claims and details of claims and boundaries could be obtained from the minute of the hearing.

B.1. Area Council Determination in relation to the land marked (B)

The following people representing their tribes are lawfully entitled to give timber right on the Pezoporo land (B) and are willing to grant their timber right to the Company

Monty Jale	Pezoporo tribe
Jacob Rove	Pezoporo tribe
Caleb Pitaoe	Pezoporo tribe
Mick Mamikana	Pezoporo tribe
Joseph Mellan	Pezoporo tribe
Hendrick Pana	Pezoporo tribe
Bano Nunala	Pezoporo tribe
Pita Fona	Rannoga Pezoporo
Frank Sito	Eleoteva Pezoporo

2. The following people are also from Pezoporo tribe who also have lawful rights to grant timber rights but are not willing to grant their Timber Rights to the Company.

Amos Loku	Pezoporo tribe
Vaelat	Pezoporo tribe
Sam Keso	Pezoporo tribe
Henry Zulubaso	Pezoporo tribe
Vira	Pezoporo tribe
Harold Muisi	Pezoporo tribe

3. The following persons represent the following tribes who have lawful rights to grant timber rights within Pezoporo land and are willing to grant their Timber rights to the Company

Mondana Novu	Sorezaru tribe
Liasa Pulicaba	Zambana tribe
Milton Maji	Barera Zambana

The following are the persons representing other tribes who have lawful rights to grant timber rights within Pezoporo land but are not willing to grant their timber rights to the company.

John Sina	Sauro tribe
George Gado	Rauru tribe
John Tiketike	Zambana tribe
William Netepitu	Kumbo tribe
Nelson Edikera	Rerasare
Nathaniel Luluku	Jeruo Scrapito

The areas of the above persons and tribes have been excluded in the Timber rights application by the applicant (Sasa Pezoporo)

The Area Councils determination in relation to the land marked (A)

The person representing Jeruo tribe and who has lawful rights to give timber on the land marked (A) is Luluku Nathaniel

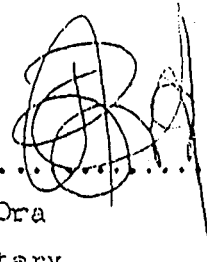
The Council determine that the land marked (A) be excluded in the application

The Councils determination in relation to the land marked (B) will be issued by way of Form II in accordance to Forest Resource AND TIMBER UTILISATION AMENDMENT ACT 1990.

Any persons who is aggrieved by the Councils determination may appeal within one month of the determination.



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Frank Ozapitu
Vic President



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John Ora
Secretary

