

**BETWEEN:** FRANK LEZUTINI APPELLANT

**AND:** JACK LAGOBE RESPONDENTS  
DALCY TOZAKA

**ABOUT:** RERESARE TIMBER RIGHT

**BEFORE:** JAPHET LILITO PRESIDENT  
IAN MAELAGI MEMBER  
ALLAN HALL "  
JOSEPH LIVA "  
LEONARD R. MAINA SECRETARY/CLERK

**JUDGMENT:**

This is a matter of appeal against the determination of Timber Right by Vella la vella Area Council (VAC) in respect of Reresare Land.

The appellant and the Respondent have both applied timber right for their separate proposed companies to develop the Reresare land. Both parties claimed ownership of the land.

Appellant application for timber right is on the portion of Reresare land which he claimed and called Veala Reresare land. His application was rejected on the hearing by VAC on 17/8/95, and was duly informed by public notice dated 12/9/95.

Respondents application for timber right is for the Reresare land. Their application was heard on 16/8/95 and determination made on 18/8/95, and granted timber right on part of Reresare land.

The appellant Frank Lezutuni appeal grounds are as follows:

- (1) The VAC erred in law by not making its determination at the time and place fixed for the timber right hearing which was 16/8/95 and the place was Paramata and/or
- (2) The VAC erred in law in determining that Dalcy Tozaka and Jack Lagobe are the only persons lawfully entitled to grant timber in respect of Reresare land, and
- (3) The VAC erred in determining that Reresare land included and covered land described as "M and N" in the map attached in the determination.

For the purpose of appeal of the Area Council determination under the Forest Resources and Timber Utilisation (Amendment) Act 1990, S.5 E(1) ~~provinces~~ <sup>provinces</sup> that any person who is aggrieved by the determination of council made under S.5 C(3) (b) or (c) may appeal to the Customary Land Appeal Court.

Respondents in their submission raised that in respect to the appellant's ground no. 1, the CLAC has no jurisdiction, and only on the S.5 C(3) (b) and (c).

To deal with S.5 C(3) (b) and (c) effectively and to the intention or desire of the Act, VAC for that matter must act properly under the requirement of the Act. And as such, our view is that this court has implied Jurisdiction to check or deal with point of law arising in the manner of the deliberation of Area Council in respect to the determination of timber rights.

Further to address the points in the appeal, firstly this court must consider or check the manner in which VAC had acted or followed the requirement of S.5C of the Act and particularly S. 5C (3) (a) then followed by S.5 C (3) (b) and (c).

- Section 5C (a) whether or not the landowner are willing to negotiate for the disposing of their timber rights
- (b) whether the persons proposing to grant timber right, in question are the persons, and represent all the person lawfully entitled to grant such timber right and if not who such persons are:
- (c) the nature and extend of timber rights, if any to be granted to the applicant.

Indeed, to consider S.5C (3)(b) and (c), firstly the landowners are willing to negotiate for the disposal of their timber right with the applicant (S.5 C (3) (a))

In this appeal we will consider the ground 1 and 2 together.

The Respondent's proposed company applied for timber on the Reresare land. Appellant has claimed ownership of the land and according to his submission he was represented at the hearing by Frank Ninamu who among others as per VAC minute and the determination objected the granting of time right to the Respondent's proposed company. The minute and the determination bears the name of objector by letter and those who appeared and presented their objection at the hearing. They raised question of ownership and boundaries in the Reresare land.

Also, interestly, as noted in the determination the VAC divided the Reresare land which Reresare trust Ltd applied for timber right into Division and as in their map as "O,N,M and P".

Upon that VAC exluded "N,M and P" in the determination. For "O" it determined timber right to Dalcy Tozaka and Jack Lagobe and others who are willing to grant timber right. For others as Frank Nimamu who represented the appellant at the hearing, were identified as also have timber right, but were not willing to grant timber right.

The Respondents in their written submission stated that they are chief of Reresare tribe and D. Tozaka, a tribal leader who represent the tribe.

At the hearing of the Respondent's application for timber right for their company, there were objectors, and question of ownership or who should granted the timber right and the question of the boundary of Reresare land.

And since such not yet sort out <sup>at</sup> the time of hearing on 15/8/95, by a competent authority under the Provision of Local Court (Amendment) Act 1985 or at the Local Court hearing, the VAC determination was not proper, and should recommend to Commissioner of Forest a rejection.

Therefore this court quashed the VAC determination regarding timber right application by the Reresare trust Ltd at Paramata on 16/8/95.

We do not need to consider <sup>other</sup> ground No. 1.

The question of making a new application by Reresare trust Ltd to the VAC for timber Right, if the dispute of ownership and boundary already or by now sort out is matter of the Applicant to decide.

Japhet Lilito	President	.....
Ian Maelagi	Member	.....
Allan Hall	"	.....
Joseph Liva	"	.....
Leonard R. Maina	Secretary/Clerk	.....

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DATE: 25 July 1996