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IN THE CUSTOMARY LAND APPEAL)
COURT FOR WESTERN DISTRICT)

Land Appeal Case No: 12/91

BETWEEN:

John Wesley Levo
(Appellant)

AND:

1. Paul Bakele
2. B. Piloa
3. L. Alisae
(Respondent)

In The Matter Of Appeal Against Famoia Area
Council Determination

AND

In The Matter Of Patukovelai To Pauniniva
Boundary.

JUDGMENT

This is an application against Famoia Area Council determination dated 30th May 1991. The purported determination by the Council was made in accordance with the powers vested upon it by S.5 C (3) and (4) of the Forest Resources and Timber Utilisation (Amendment) Act 1990.

S.5 E (1) provides for right of appeal by an aggrieved party to Customary land Appeal Court having jurisdiction in the area. That right of appeal specifically to the determination of the Area Council in respect of S.C(3)(b) and (c).

S.5 E (1)

Any person who is aggrieved by the determination of the Council made under S.5 C (3) (b) or (c) may, within one month from the date public notice was given in the manner set out in S.5 D (2) (b), appeal to the Customary Land Appeal Court having jurisdiction for the area in which Customary Land concerned is situated and such Court shall hear and determine the appeal.

Western Customary Land Appeal Court is identified as having jurisdiction over the area which the land concerned is situated therefore entertained hearing of the appeal.

The appeal was lodged to Western Customary Land Appeal Court, the appropriate avenue having jurisdiction, by the appellant Mr. John Wesley Levo, per his letter dated 17th May 1991.

Before considering the appeal points, there is a preliminary matter of law which the Court has to determine. It is the requirement of S.5 D (1) of the Forest Resources and Timber Utilisation (Amendment) Act 1990.

S.5 D (1) provides for a legal option if there was no agreement reached.

S.5 D (1)

" Where no agreement is reached between the applicant and the Customary Land owners, the Council shall recommend to the Commissioner to reject the application and the Commissioner shall reject the application accordingly".

The word "No Agreement" as enshrined in S.5 D (1) can be interpreted to mean objection. Any objection that may have been tendered whether in written form or verbally, during the Area Council hearing, indicated that there was no agreement reached. And the Council by the powers vested upon it shall rightfully recommend to the Commissioner to reject the application.

The appellant's spokesman submitted, in evidence, that during the Area Council hearing on 22nd April 1991, he submitted on behalf of three tribes namely, Simea tribe, Hanapara tribe and Baoahu tribe, that they rejected the company, Allardyce Lumber Company, to carry out any logging at all.

The Respondent's spokesman asserted that the appellant's spokesman and others of Kariki did present themselves at the hearing of the area Council, and the spokesman Mr. Lester was given the privilege to talk. He further reiterated that there was a common understanding that any land owned by the Kariki people was outside of the concessionary area.

However whilst this might be the case, that there had been consensus, it is rather vague or very general, there should have been clear and defined demarcated line that separate lands owned by Kariki people and lands that were owned by the Toumoa people.

If the Company carry on business on land claimed to have been owned by Kariki people that comes under the general objection submitted by Mr. Lester. Then it is the question of customary boundary which must be definitely made and demarcated by the parties.

It seemed crystaline that the dispute circles around the area of boundary dispute. Has the Area Council right to determine customary dispute.

By the authority of the case *Hyundai Timber Co. and Others -V- The Attorney General and Others* civil Case No.79 of 1993, Judge Palmer stated on P.6;-

" Face with such conflicting claims, what should the Area Council do? Should it go on to consider the questions in S.5 C 3 (b). In this case this is what the Vella La Vella Area Council did. Is this the correct approach? I would venture to say no. S.5 C 3 (b) in my view can only be considered after S.5 C (3) (a) had been answered affirmative. If S.5 C (3) (a) cannot be answered in the affirmative it is my humble opinion that a rejection must be recommended to the Commissioner of Forest under S.5 D (1)".

What power therefore has the Area Council to determine where there had been no agreement reached or where there had been objection.

In the same case Hyundai Timber Co. and Others -V- The Attorney General and Others, Judge Palmer expressed on P.9 as thus;-

"It is very important to bear in mind that the Area Council is not empowered to deal with the situation where there is land dispute between two or more landowners as to the question of land Ownership. If it is clear to the Area Council that there is dispute as to the question of ownership over the customary land or even a dispute as to the boundaries, then the Area Council in my view must reject the application and ask the parties (ie:- the land owners) to sort their disputes in the appropriate Courts specifically provided".

We have the privilege to view the minute of Famoia Area Council held at Toumoia on 4/3/91, in relation to Allardyce Lumber Co's application to log in the concessionary area as marked in map marked 'C'.

It is noted from the minutes that the Area Council have usurped the powers vested upon the Local Courts. It need not necessary to encourage submission of geneology table or parties be cross - examined after their submissions. In doing so transcend the requirement of the Act.

We also noted that there was no privilege afforded to any one who might wish to object to the application. Although parties agreed that privilege was afforded to Mr.lester Sogabule, it did not appear from the face of the minute. Hence, we can able to glean that the Council had failed to record in the minute the objection submitted by Mr.Sogabule. Mr.Sogabule stated in evidence that the Council did not take note of his submission. And we belief this to be true.

It was transpired from the minute that the Famoia Area Council had failed to address itself the legal requirements of S.5C(3) but determine the application by adopting Local Court procedures.

The question whether Area Council had deliberately omitted the submission made by Mr.Sogabule, was perhaps to harmonize with their determination to accept the application. In doing so, therefore, had not complied with S.5D(1).

Relying on the authority of the High Court decision in Civil Case No.79 quoted earlier, we therefore decided that the rightfull avenue whereby which the parties to resort to, to resolve the boundary dispute is to go to the Chiefs and hence forth complied with Local Court (Ammendment) Act 1985.

Dispute therefore refer to the Chiefs to determine the land boundary from Patukovelai to Pauniniva.

Signed By:-

1. R. Baizovaki - President
2. J. Lilito - Member
3. J. Liva - "
4. A. Hall - "
5. R. Faulkona - Secretary

Dated: 30/4/97.

Right of Appeal within 3 months.