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In the Western Customary Land Appeal Court

Land Appellant Jurisdiction

CLAC no: 1 of 1978

In the Matter of: **Miga Land Timber Right Appeal**

Between: **Robert Chris Kimisi**) Appellant

And: **Donili Kaki & others**) Respondents



.....
JUDGMENT
.....

This is a timber right appeal on Miga land which was heard and determined by the Vella La Vella Area Council on the 19th November 1997.

THE BRIEF BACKGROUND:

The Vella La Vella Area Council convened timber right hearing on 19th November 1997. The applicant for timber was Wagena Development Co. Ltd.

The Vella La Vella Area Council granted or made an approval that the applicant company to proceed with the issue of Form II in respect of Wagena Land Block A. The public notice of the determination was published on 1st December 1997.

The appellant appealed against the determination and seek an order of this court to quash the determination of Area Council.

Grounds of Appeal

The Appellant raised 13 appeal points which are relates to each other and summarized below. We will deal the appeal points on the basis of the summarized points.

1. The Respondent Donily Kaki and Walter Semepitu are not the rightful owners to negotiate for the disposal timber right on Miga Land where

the Belobelo tribe resides. They should not be appointed as trustees or person entitled to grant timber right on Miga Land.

2. And Area Council noted the dispute on the land which should be referred to the appropriate court. It should recommend to the Commissioner of Forest to reject the application.
3. The various chiefs hearing on the land subject to this appeal was not done according to the requirement of Local Court.

The Law

Section 8 (3) (b) (c) of Forest Timber Resources and Utilization Act (FTRU) provides:

"8 (3) At the time and place referred to in subsection (1), the Provincial Executive Committee shall in consultation with the appropriate Government discuss and determine with the customary landowners and the applicant matters relating to—

(a).....

(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;

....."

10.—(1) Any person who is aggrieved by the determination of the Provincial Executive Committee made under section 8(3)(b) or (c) may, within one month from the date public notice was 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 customary land concerned is situated and such court shall hear and determine the appeal.

The Western Provincial Executive Committee is therefore required to determine the matter set in section 8(3) of FTRU Act.

Ground 1

This ground relates to the determination of the respondents as the person able and entitle to grant timber right.

For this appeal point it is important to examine the hearing and determination of the Area Council. This is to see whether the Area Council had actually determined or identified the persons entitle to grant timber right on Miga Land Block A.

The Applicant is Miga Development Co. Ltd (Registered Company). From the minute, Thornley Hite as consultant and spokesman for the applicant submitted to the Area Council submitted evidence of claims of ownership and declaration of ownership of Miga Land by Wagena Tribe. He claims that Donili Kaki and others are the persons who have the ability to grant timber on Miga Land.

Roy Lelapitu of Belobelo tribe supports the submission of the applicant. Other spokesmen told the hearing that they did not dispute the ownership of the land by Wagena tribe.

The minute also shows that a member from the appellant tribe, Rupert Bula made an objection to the application. He claim the the ownership of the concern land is vested on the by virtue of a Will made in 1916.

The Area Council also received 4 letters of objection and among them is a letter by the applicant which was also read out at hearing.

Upon the submission as noted above, the Area Council determined and as quote:

"DETERMINATION ON WAGENA LAND BLOCK A AND B

8.1 The Vella La Vella Area Council in accordance with section 5D (1) and (2) of the FRTU (Amend) Act 1990 acting in line with up date to High Court Judgment by Justice Albert Palmer case no. HC CC 33 of 1997 between Gandly Simbe vs East Choisuel Area Council & others do hereby give its determination on the questions 5C(3) (a) and (b) of the Act to approve the application of Wagena Land Development Company Limited and proceed to issue of Form II in respect of Wagena Block A and B".

Form II which is a certificate for the setting out its determination as required by Section 9 (2) of the FRTU Act states that the Respondent were identified as person lawfully able and entitled to grant timber right on the Miga Land and Block A as shaded in the map.

Section 8 (3) (b) of FTRU requires the Area Council to determine or identify the persons lawfully entitled to grant such timber rights. The persons must be identified or determined and such determination must state who such persons are, to entitle to grant timber right.

At least the representations by the parties form the evidences to assist the Area Council to determine the persons as required by law. Such evidence of ownership of land and other related issues may also assist the Area Council to determine who should be the right persons to grant timber right on the Land or to recommendation to the Commissioner of Forest.

For this case, Area Council did not identify the persons except gave its approval to proceed with Form II. Therefore the Area Council had fail to determine the person entitle to grant timber right on Miga Block A as so required by Section 8 (3) (b) of FTRU.

Ground 1 is upheld.

Ground 2 and 3

The matters raised to grounds 2 and 3 with this timber right appeal relates to the ownership of land issues.

The legal position on issues of customary land and timber right matters is settled. A determination by the Area Council as to who are the rightful persons to grant timber rights in the land which is the subject of a hearing is not a decision of ownership of the land. If a decision of ownership of the land is required, the matter has to be brought before a proper forum that is chiefs or Local court (*Gandy Simbe –v- East Choisuel Area Council & Others, Civil Appeal no.8 of 1997 and other later High Court cases*).

And this court has no power to decide land ownership issues or method of acquisition where appeal has been filed against the Area Council determination under the FRTU Act (*Lupa Development Ltd –v- Kongunaloso & Others CC no. 110 of 2001, Ruling of 04/07/01*).

The issue of ownership of customary land on appeal under FRTU Act cannot come to court through this process. The court can only look into dispute or error on the identification of all the persons identify to grant timber rights.

The matters raised in these grounds of appeal relate to custom which this court lack the jurisdiction by way of appeal through the FRTU Act.

Ground 2 and 3 is dismissed

Afresh

The function of the customary land appeal court once an appeal was instituted is, as set out in Section 10(1) of the FRTU Act, to hear and determine the

appeal. In this statutory context this means that it is the duty of the Appellate court to examine whether the determination certified by the Area Council and determine whether it correctly identified all the persons lawfully able and entitled to grant the rights in question. It follows that it is the function of the customary land appeal court to examine the question afresh and to make its own determine (*Ezekiel Mateni –v- Seri Hite H/C CC No: 155 of 2003 at page 3*)

In this case the Area Council had not done so or the court discovers that it did not determine or identify the persons to grant timber right on Miga land.

With the evidences and submissions from the parties, the court now determines the persons lawfully able and entitled to grant the rights. They are the Respondents and Appellant.

Obviously the appellant's submission shows that he is entitle to represent his Belobelo tribe to grant timber right on Miga land. And the inclusion of the appellant is further supported by one Respondent in his letter of 10th November 2006 to the Principal Magistrate/Clerk and also member this Court. This letter was written and handed by Respondent Mr. Walter Semepitu along with the Respondent's final submission to the clerk at the courthouse on 10th November 2006.

Inter alia, that letter is in the following term and quote:

"I wish to admit to you the following matters with regard to above land (Miga Land).

.....

(2) That half of Belobelo tribe (the Appellant's tribe) are with Wagena tribe. They always conform and become witnesses to the ownership of Wagena Tribe

..... "



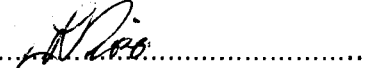
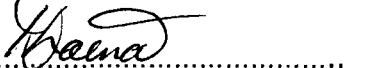
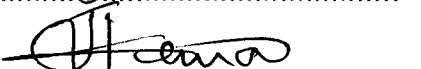
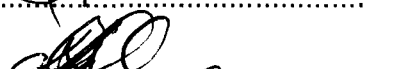
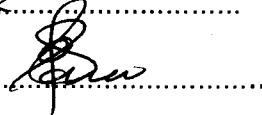
The decision of Vella La Vella Area Council is afresh and this court determines that Respondent and appellant are identified as all the persons lawfully able and entitled to grant the rights on Miga Land.

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ORDER
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1. The purported or determination of the Vella La Vella Area Council as appeared on the minute and seems to be record in Form II of 1st December 1997 is accordingly set aside.
2. Afresh and determine that persons lawfully able and entitled to grant the rights on Miga Land are:
 - (i) Donili Kaki
 - (ii) Walter Semepitu
 - (iii) Lio Bazupala
 - (iv) Motikai Deura
 - (v) Daniel Kipili and
 - (vi) Robert Chris Kimisi
2. No order for cost

Dated this 14th day of November 2006

Signed:

Ian Maelagi	Ag President 
Wilson Katovai	Member 
Wellington Lioso	" 
David Laena	" 
Jeremiah Kema	" 
Allan Hall	" 
Maina LR	Clerk/Member 

ROAE

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