

Court copy.

In the Western Customary
Land Appeal Court

CLAC NO: 2 of 1997

In the Matter of: Gabili Timber Right Appeal

BETWEEN:

Washington Vasaro

(Appellant)

VS:

Leadley Medoko & others

(Respondents)



JUDGMENT

This is an appeal against the North West Choiseul Area Council determination on Timber Right on Gabili land. The determination was made on 11th January 1996 and the Form 11 was dated 2nd January 1997.

The Brief Background;

The North West Choiseul Area Council convened a Timber Right hearing on 7/12/96 on Gabili land. On 11/12/96 the North West Choiseul Area Council made a determination in favour of the Respondents as Persons entitled to grant timber right on Gabili land.

The appellant party having aggrieved by that determination, they appeal against that said determination to the Western Customary Land Appeal Court having jurisdiction on the area in question.

Grounds of appeal

There are twelve grounds of appeal filed by the appellant. The grounds are as follows:-

- (1) After the Customary Land Committee hearing at Voza village on 20 – 25/11/96, we fully rejected the decisions were determined; but the President of the North-West Choiseul Area Council members said there is no law or ordinance to stop me to hear the case, and he automatically declare the case and grant the Gabili Land to form 11 on 10.12.96.

- (2) The Northwest Choiseul Area Council members only accepted and followed up the decision made by the chiefs committee, rather than their own decision with decisions on the case.
- (3) At the house of the Assembly (Taro) Mr. Leadly Medoko (spokesman for Kopana branch) did not presenting himself the value of the case, but instead the chairman of the customary land committee (Mr. Cornelius Joe) only give the decision of the meeting on 20 – 25/11/96, in which we rejected, to the members of the council, then the President of the council, Mr. Jimmy Pitakaji accepted him.
- (4) The Gabili land should not grant as for Timber Rights hearing, because the two branches namely Kirasie and Kopana did not make any fully arrangement of agreement to submit to land as to Form1.
- (5) After the Customary Land Committee hearing at Voza village, Mr. Leadly Medoko failed to call for an arrangement of negotiations meeting of the two (2) branches for the land to submit but instead, the land was submitted to Form 1 by Kopana branches only. Well Sir, this is a kind of greedy person.
- (6) All the decisions or judgments were determined by the chiefs committee, now fully rejected by the Kirasie branch in which we want to appeal against into local court.
- (7) The decision given by the chiefs committees were unfair, this involving a favourable system:
 - (a) They appointed Mr. Leadly Medoko to be Gabili chief, rather than the people of Gabili in which Kirasie and Kopana branch to appoint. We haven't choose or appointed our respected leader yet.
 - (b) The chairman of the customary land Committee Mr. Cornelius Joe represented Kopana branch to stand on behalf, during the Timber Rights hearing at Taro Is on 10.12.96.
- (8) The members of the Customary land committees did not have the same opinion with decision during the case was heard, that is why, we appeal this case into local court.

- (9) Eleven (11) skulls, one long bone, one shell money (Salaka) some broken pots which on Vanalazara Tabu place (Sope) are new things which they just put sometimes last year.
- (10) Boundary of Gabili land in Form 2 was incorrect.
- (11) Genealogy, Chief Mogo who was adopted son is not true.
- (12) The custom priest (Sisiama) priest Nuapa was married which they said was not married and not look nice was not true.

The Appeal grounds relate to timber rights and matters on custom and ownerships of land.

In this case Grounds 1, 2, 3, 4 and 5 seems to relate to the issues of persons entitle to grant Timber Right, while grounds 6, 7, 8, 9, 10, 11 and 12 concerns with the matters of custom and ownership of the land.

Grounds 1, 2, 3, 4 and 5

These grounds relate to each other and raise the same issue and so we will deal with them together.

From appeal grounds and the submissions, the issue in these grounds is on the Appellant rejection of the decision of chief's hearing on Gabili land and used or relied on by the Area council to identify and determine the Respondent as persons to grant the Timber Rights on Gabili land.

The record of proceeding or minute of the Area council shows that only the chief's decision was presented and they relied and based their determination on it. There was no other submission from the parties and objectors to the Area Councils.

The Appellant in his submission submitted that his party rejected the decision of the chiefs as it denies them from ownership of the land, however both parties originates from Kirasie and Kopana who were brothers and so both parties have ownership and right to grant timber right on Gabili land.

Kabui J, in the case of Ezekiel Mateni –v- Seri Hite HC.CC no. 155 of 2003 at p 4 states:

"....., persons identified to own the land may only assist the Area Council to identify the proper persons to grant timber right on the Land concerned".

As stated in the above case, ownership of land may only assist the Area Council to identify the proper persons to grant timber right on the Land concerned. The question is what the chiefs said about the right of the parties on the land.

The record of chief's decision tendered in court by the Respondents, among others customary matters at page 6, para. 2 states:

"One thing we know and understand between both sides, you are one people, live and stay together in side the land the tribe of Gabili. Therefore, the panel urges both parties to live together like forefathers did before"

This identifies who seems to own the Gabili land. Both the Appellant and Respondent therefore have better title in custom to Gabili land and such should assist the Area Council to identify the proper persons to grant timber right on the Land concerned. The court have considered the other matters in the chiefs decision, they relates to custom issues.

Upon considering the submissions of the parties, record of proceeding or minute of the Area Council it is clear that Area Council made an error by identifying and determine that the Respondents were the proper persons to grant timber right on Gabili Land.

Grounds 1, 2, 3, 4, 5 and 6 is Upheld

Grounds 6, 7, 8, 9, 10, 11 and 12

The grounds raise in these grounds relates to custom and ownership of Gabili land.

This court is aware of the artificial or legal distinction of ownership of customary land and timber right created by legislations as the land is a different matter and the timber right is another. This is as stated in the judgment of Kabui J, in the case of Ezekiel Mateni –v- Seri Hite HC.CC no. 155 of 2003 at p 4.

"Any issue relates to ownership and custom custodian of land is to be determined under the Lands and Titles Act and Local Court Act, while the acquisition or persons to grant timber rights to be determined under the FRTU Act. However, persons identified to own the land may only assist the Provincial Executive Committee to identify the proper persons to grant timber right on the Land concerned".

This in all respect require that timber issues to be determined under the FRTU Act while issues relates to land to be determined under the Lands and Titles Act and Local Court Act

It is therefore clear that the issue of ownership raised under timber right cannot be dealt by the CLAC in this process, but this court will have jurisdiction if it is brought by way of appeal from local court.

From the appeal grounds and the submissions of the parties, the issues on this ground relates to customary ownership of Gabili land and manner in which the chiefs dealt with the land issues.

As such the issues raised cannot be dealt by this court or lacks the jurisdiction to determine customary ownership issues and related made in the appeal under the FRTU Act.

Grounds 6, 7, 8, 9, 10, 11 and 12 is dismissed

ORDER

1. Appeal grounds 1, 2, 3, and 5 is upheld
2. Appeal grounds 6, 7, 8, 9, 10, 11 and 12 dismissed,
3. That Mr. Leviticus Pelesebatu and Siope Takelekana is identified as persons to grant Timber Right with the Respondents and others on Gabili land.
4. No Order for cost.

Dated this *16th* day of *January* 2006

Signed: Wilson Katovai	Ag President	<i>[Signature]</i>
Willington Lioso	Member	<i>[Signature]</i>
Joseph Liva	"	<i>[Signature]</i>
Nangimea Beiaruru	"	<i>[Signature]</i>
David Vurusu	Clerk/Member	<i>[Signature]</i>