

IN THE WESTERN CUSTOMARY)
LAND APPEAL COURT)

CLAC No: 10 of 2005

Timber Right Appellant Jurisdiction

IN THE MATTER OF: Belobelo Island Timber Right Appeal

BETWEEN:

Chief Nathan Kera

Appellant

Isaac Maebule Hite
& Others

Respondents



JUDGMENT

This is an appeal against the determination of Western Provincial Executive Committee on the Belobelo Island Timber Right. The appeal was filed to the court on 12th August 2005.

THE BRIEF BACKGROUND

The Western Provincial Executive Committee convened timber right hearing on 23rd and 24th of June 2005 and considered the application of Belobelo Tribe to determine the persons to grant timber right on Belobelo Island.

The Western Provincial Executive Committee made a determination and identified:

1. Isaac Maebule Hite
2. John Lau
3. Benjaman Kegou
4. Aaron Minu
5. Arnold Siuta Pitu
6. Chief Dilenty Vula;
7. Rupasi Mare

as lawfully entitle to grant timber right on Belobelo Island.

GROUND OF APPEAL

With the determination the appellant filed an appeal and summarized as follows:

1. The Provincial Executive did not comply with the procedure of the publication of public notice for the hearing of timber right ,
2. One of the applicants Robert Pentani believed to have followed the Premier to Gizo after the timber hearing and such raises serious doubts on the impartiality of the Premier.
3. The place of hearing in the public notice was changed from Lambete, Munda to Nusa Hope and intended to mislead,
4. The significant of the meeting in 1948 to hand over the island to Paramount chief was ignored by the Provincial Executive,
5. Chief Nathan Kera is the custodian of Saikile land including Belobelo island, public Knowledge to the people of Roviana for 53 years,
6. Saikile's submission is supported a Local Court decision on Kalena Land no. 33/57 which made reference to Belobelo as part of Saikile customary land was ignored by the Provincial Executive,
7. The voting ratio- for v against 2:3 contradicting the final outcome contained in Form II, a clear inconsistency of hearing process,
8. The allowances were paid by the applicant, therefore seen as gesture of favour,
9. Involvement of Arnold Pitu in the distributing of hearing public notice shows him being agent of the Provincial Executive, and his influence the members to achieve his objective,
10. Withdrawn
11. The legality of the certificate of determination raises question as the Western Provincial election was already announced before the publication of the first notice for the hearing on 23rd June 2005.

ISSUES

While this appeal relates to timber rights matters on Belobelo Island, the points raise issues relates to law and ownership or authority that suggest to amount to ownership. As such, the issues to be dealt with by this court are:

1. Whether this court has jurisdiction to deal with issues raised by the way of this appeal?

2. Whether the persons identified by Provincial Executive Committee were the proper persons to grant timber right on Belobelo Island?

THE LAW

The first issue for the court to determine on the merit of the appeal or is whether this court has jurisdiction to deal with issues raised by the way of this appeal

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

"Section 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;

-----"

Section 10,-(1) Any person aggrieved by the determination of the Provincial Executive Committee made under section 8 (3) (b) or (c) may, within one month from the dated 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".

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

And by the provision of section 10 (1), this court only have jurisdiction on the matters stipulated or relates to section 8 (3) (b) or (c) of FTRU Act.

Merit of Ground of Appeals

Before the court may deal with the issues raised in the appeal it must satisfy that the appellants have a case or the issues raised in the ground of appeal can be

entertained by this court in the process of appeal under the FTRU Act. In another word, whether this court has jurisdiction to deal with the issues raised in this appeal

In order to determine this it is important to categorize the issues raise in the appeal.

Point of Law and procedure

From the wordings of the appeal points lodged to the court on 12/8/05 and or with the absence of submission to support Appeal grounds no. 1, 2, 3, 7, 8, 9 and 11, in all respect relates to law

This view is supported by the submission of David Kera for the appellant. On that or as the matters relates to law and procedure this court lack the jurisdiction.

Appeal grounds no. 1, 2, 3, 7, 8, 9 and 11 is struck out and dismissed.

Ownership and Custom Custodian of Land

Grounds 4, 5 and 6 raises the same issue and will be dealt with together. It relates to the question of custody of the island or an issue which the appellant's spokesman has described in his submission as Nathan Kera's traditional authority as land custodian over Belobelo Island.

To support their case Mr. Kera submitted that in 1948's meeting at Nusa Hope Siso Pitu publicly announced the renewal or the return of Belobelo Island to Chief Nathan Kera. He also produced an uncertified copy of case no. 3/57 purported to be record of Roviana Local Court on the issue.

At the final submission the appellant further claim Chief Nathan Kera's ownership of the island.

For the purpose of clarity, the appellant's appeal on the related matters is summarized as by 1948's meeting at Nusa Hope when Siso Pitu publicly announced the renewal or the return of Belobelo Island to Chief Nathan Kera and decision of Roviana Local Court Case no. 3/57 have or vested control to him.

On the issue of land custodian, it is a question of authority whether Nathan Kere has an absolute authority by custom to dispose all the matters relate to Belobelo Island. But so far from the appearance of the purported case no. 3/57 it does not suggest so.

It is the view of this court that to determine the issues would amount to the determination of ownership of Land or Belobelo Island, which this court lacks jurisdiction from the appeal made under the FTRU Act.

There is an artificial or legal distinction of ownership of customary land and timber right created by legislations. This is opposed to custom as the one who owns the land owns the trees on the land. This legal position is made clear by 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".

Grounds 4, 5 and 6 is dismissed

ORDER

- (1) All grounds of Appeal is dismissed
- (2) The decision of the Provincial Executive is upheld
- (3) No Order for cost.

Dated this.....16th..... Day of January.....2006

Signed: Wilson Katovai - Acting President[Signature].....
 Willington Lioso - Member[Signature].....
 Joseph Liva - "[Signature].....
 Naingimea Beiaruru - "[Signature].....
 Maina LR - Clerk/Member[Signature].....

Right of Appeal Explained