

Land Appellant Jurisdiction:

In the Matter of: **Timber Right Appeal on Madekoloko,
Kakarumu, Susuka, Pari, Paravoe, Konguseni
and Givusu lands within Central Parara
Customary land.**

Between: Hopeful Piosasa 1st Appellants
Chief Hedison Niva
Richard Boso
(Representing Gumi. Ago/Niva and Ghemu tribe)

And: Kuero Magiti 2nd Appellant
(Representing the Ago/Simaema tribe)

And: Mr. Turiti Boso & 30 others Respondents
(Representing the Lamupeza/Voda Tribe)



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JUDGMENT
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The Western Provincial Executive had conducted a timber right on Madekoloko, Kakarumu, Susuka, Pari, Paravoe, Konguseni and Givusu blocks of lands within Central Parara Customary land and public notice of their determination with Form II was published on the 15th August 2007.

From that determination of persons to grant right on Madekoloko, Kakarumu, Susuka, Pari, Paravoe, Konguseni and Givusu lands the Appellants lodged their appeal to the office of Clerk of CLAC/W. There was another separate appeal filed by Mr. Kuero Magiti on behalf of the Ago/Simaema tribe against the same determination

According to the court record Mr. Kuero Magiti's appeal letter was received by the court on 12th September 2007. This appellant thou filed his appeal, did not pay to the court any appeal fees until the date of the hearing of this appeal on 18th/3/07.

It is worth mentioning here that before the commencement of the hearing in this appeal Mr. Warren Paia a representative of Ago/Simaema tribe, together with their legal council in the JSP Legal services called in at the Gizo Magistrates Office and enquire if they could pay the appeal fees before the case proceeds in court. The clerk to CLAC (W) advised them that the matter be dealt with in Court.

In Court:

Mr. Warren Paia submits that his parties were an objector during the timber right hearing. Having aggrieved by the determination of the Western Provincial Executive they filed their appeal in time as required by Section 10 of the Forestry Act. He agreed that his party did not pay the appeal fees, however he submit that section 10 of the forest Act is silent about the appeal fees. He submits that an appeal fee is an administration matter and the clerk has discretion to allow them pay the fees even out of time.

Mr. Hopeful Piosasa agreed with the inclusion of kuero Magiti's party as another Appellant in this hearing. They were party in the last timber right hearing.

Donald Bato for the respondents submit that Mr. Kuero Magiti's party did not pay their appeal fees therefore is disqualified as another party in this appellate court.

Before the court may deal with points in the appeal, it is important to deal with this preliminary issue. This issue whether the appellant Mr. Kuero Magiti had lodged his appeal within the required period of appeal.

It is important for the court to determine this issue at this stage as if it was filed out of time then he has no case to bring before the court.

The law relating to appeal is in Section 10 of FTRU Act

"10.—(1) Any person who is aggrieved by the determination of the Provincial executive 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".

From the record of the Western Provincial Executive, date of the public notice was 15th August 2007 and therefore the one month commenced from that date and lapsed 15th September 2007.

The evidence and record shows that the appellant had lodged his appeal to the court on 12th September 2007. He didn't pay the required fee till today.

In order to constitute a valid appeal the appeal grounds and fee of \$100.00 must be made to the court within the required appeal period. In this case it was not so. The grounds were lodged to the court within the required period, but the appeal fee was not paid till to date.

Therefore the second appellants appeal was out of time.

The appeal is struck out.

Now we turn to deal with the First appellants appeal.

Grounds of Appeal:

The First appellant filed nine appeal points and summarized as follows:-

- Point 1. That the High Court in case HC. CC. 102 of 2007 in its Ruling dated 16th August 2007 quashed the decision of the Commissioner of Forest as per letter of 7th December 2006 authorising the processing of the fifth Defendants application for timber right on the lands already covered under NIDECO's application as per Sanalae land that had reached Form 3 stage.*
- Point 2. As per High Court ruling mentioned above and the subsequent Order dated 22nd August 2007, the processing of Pari Development Company's application is rendered null and void.*
- Point 3. That the appellant, represented by NIDECO has a valid timber right application that must be issued a licence over the same land area applied for by Pari Development Company by virtue of the decision of the High Court in case HC CC. 102/2007.*
- Point 4. That the Fourth Respondent erred in not taking into account the fact that the land applied for by Pari Development Company has been covered by NIDRCO's application as per Sanalae concession area heard by the Executive (W) on 28th and 29th December 2004 and a determination published on 18th January 2005. A certificate of no appeal was issued by the clerk to CLAC (W) on 19th May 2006.*

- Point 5. That the Fourth Respondent erred in not taking into account the fact that a portion of land applied for by Pari Development Company has also been covered by NIDECO's application as per Moumou concession area determined by the Executive (W) on 3^d June 2005 and a certificate of no appeal was issued by the clerk to CLAC (W) on 19th July 2005.*
- Point 6. That the 4th Respondents erred in not accepting the submission made by the appellant in the hearing on 8th – 9th August 2007, that the CLAC (W) in case No. 9 of 2003 had conclusively decided that the appellant on behalf of the Gemu, Gumi and Aqo tribe were persons lawfully entitled to grant timber rights in Central Parara by virtue of section 10 (2) of Forest and Utilisation Act..*
- Point 7. The Fourth Respondent erred in determining that the First Respondents are the persons lawfully able to grant timber rights in Central Parara with the exception of Mr. Peter Paulsen, Lesly Node Dhari, Spencer Magu and Mr. Nelson Boso as decided by CLAC (W) Case No. 9 of 2003.*
- Point 8. The Fourth Respondent erred in custom in determining that the Second Respondents are persons lawfully able and entitled to grant timber rights in Central Parara customary forested land.*
- Point 9. That the island of Central Parara inclusive of the land applied for by Pari Development Company and the Resources therein is under the Authority of Gemu, Aqo and Gumi tribes, which the appellant represent.*

The appellant categorized his nine points of appeals into three groups as follows:

- (i) The effects of the High Court decision in case HC. CC. 102/2007, Niva Development Company –v- Attorney General (on behalf of the Commissioner of Forest) on the respondent's timber right application. Appeal points 1 – 3 falls under this category.*
- (ii) The effects of the Customary Land Appeal court (W) decision on CLAC (W) case No. 9 of 2003, Hugh Paia –vs- Holoti Panapio & others in which the Lamupeza tribe is also a party. Appeal point 4 – 7 falls under this category.*

(iii) *That the sub-tribe/clans that the appellant represents namely Gemu, Gumi and Ago belong to the Parara Butubutu (tribe). That primarily owned the land and resources in Parara including the land areas applied for by the respondents and that we have been deliberately ignored by the applicant and erroneously left out by the Executive (W) in their determination. Appeal point 8 & 9 falls under this category.*

Point of Law and procedure

From the wordings of the appeal points lodged to the court by the 1st Appellant and or with the absence of submission to support Appeal ground no. 1, 2, 3, 4, 5, 6 and 7 in all respect relates to law. On that or as the matters relates to law and procedure this court lack jurisdiction.

Grounds 1, 2, 3, 4, 5, 6 and 7 is accordingly is dismissed.

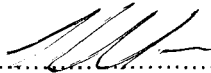




Appeal grounds 8 and 9 though relates to timber rights and ownership, the appellant in his submission raise issues relating to law by referring to section 10 (2) of the Forest Resources Act in which this Court lacks jurisdiction.

Grounds 8 and 9 must also be dismissed.

DECISION

1. The appeal is struck out.
2. No orders of cost.

Dated this 28th day of March 2008.

Signed:	Wilson Katovai	Ag/President 
	David Laena	Member 
	Willington Lioso	Member 
	Jeremaiah Kema	Member 
	Vurusu DD	Clerk/Member 

ROAE
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