

IN THE WESTER DISTRICT]
CUSTOMARY LAND APPEAL COURT]

WCLAC CASE No: 03 of 2012.

Timber Right Appellant Jurisdiction:

IN THE MATTER OF: THE FOREST RESOURCES AND TIMBER UTILISATION ACT [CAP 40]

AND: THE FOREST RESOURCES AND TIMBER UTILISATION [APPEALS]
REGULATION 22/1805

IN THE MATTER OF: Bingo Customary Land Timber Right Appeal.

Between: Collish Leketo Tutua (Appellant)

And: Choiseul Provincial Executive (1st Respondents)

And: Eddie Kodo (2nd Respondents)
Dudley Kombalakeo
Jacob Vozoto
Dilenty Pitavoqa
Billy Rupakana
Alick Soqati

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Judgment
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This is a timber rights appeal on Bingo Customary Land. The Choiseul Provincial Executive [CPE] after hearing both parties' submissions decided to reject the application. Their reason for the rejection was for both parties to go back and sought out issues relating to Chieftaincy and ownership.

The Applicant before the CPE is Bingo Natural Resource Owners Enterprises.

From that determination, Mr. Collish Leketo Tutua (Appellant) filed his appeal before Western Customary Land Appeal Court

Grounds of Appeal:

There are five grounds of appeal filed by the appellant that can be summed up as below;

"That the CPE erred in its determination to reject the application when the appellants gave overwhelming customary evidence together with supportive documents during the timber right hearing".

Notice of Hearing before WCLAC

The notice of hearing was sent to all parties by way of Service messages through Radio Happy Isles on 1st and 2nd October 2012. The hearing before WCLAC was commenced on 8th October 2012.

All the Respondents did not attend this hearing. Evidence revealed that some objectors live close to where appellants party live in Choiseul. No information received from any of the respondents as to why they are not able to attend court.

Upon considering that this court decided to proceed and hear the appellants appeal.

The Law:

Section 8.- (3) clearly explained that,

"At the time and place referred to in subsection (1), the Area Council, now Provincial Executive' in consultation with the appropriate Government discuss and determine with the customary landowners and the applicant matters relating to –

- (a) Whether or not the landowners are willing to negotiate for the disposal of their timber rights to the applicant;
- (b) Whether the persons proposing to grant 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 timber rights, if any, to be granted to the applicant;

For this court to determine this appeal, we need to examine both parties' submissions as recorded in the records of Proceeding or minute of the CPE, together with the appellant's submission before this court.

Appellants Submission:

The appellant in his submission in court submit that the CPE has heard enough evidence from both parties that could have assisted them in deciding who are the right person to grant timber rights on Bingo Customary land.

The appellants produced their genealogical table before the executive whilst the second respondents did not.

The appellants produced before the CPE their sketch map showing the boundaries of Bingo Customary land whilst the second respondents did not.

The appellants after proper consultation with all members of Bingo tribe, select persons to represent them as trustees in this timber right process.

Out of the six (6) objectors, only one by the name of Dudley Kombalakeo claimed to be member of Bingo tribe.

According to appellants, Mr. Dudley Kombalakeo came from a matrilineal descendant of Bingo tribe. Mr. Dudley Kombalakeo and his groups' representative or trustee in this timber right process is Mr. Simi Nalo. Simi Nalo is Dudley's Kombalakeos cousin brother.

The other five objectors are of different tribe, raised disputes on boundary.

None of the Second respondents raise disputed objection to the capacity of the ten putative trustees listed in form I before the CPE hearing.

The Court:

The duty of the Provincial Executive, in this case, the Choiseul Provincial Executive (CPE) under section 8 (3) (a) and (b) is to find out;

"Whether or not the landowners are willing to negotiate for the disposal of their timber rights to the applicant;

And,

"Whether the persons proposing to grant 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;

To answer the above questions, Parties must produce before the Provincial Executive their custom evidence supporting their claim. Though the Provincial Executive has no power to determine claim of ownership, Evidence on ownership will assist them to decide right persons to grant timber rights on Bingo Customary land.

From the record of proceedings of the CPE, The objectors failed to prove their claim before the CPE. They fail to demarcate their claimed boundaries on the map presented by the appellants before the CPE.

One of the objectors namely Stanley Rivoqani when asked by the Executive if he could show his claimed boundary, He said no.

The second respondents did not give enough evidence that would warrant rejection of the application of the applicants.

Though the WCLAC cannot award ownership of customary land by way of appeal under Forestry Act, Evidence on ownership will assist us identify who are the right persons to grant timber rights on Bingo Customary land.

We are satisfied with the evidence given by the appellants before the Choiseul Provincial Executive and WCLAC.

Point of law and Procedure

Section 10(1) of the FTRU Act gives power to customary land appeal court to hear and determine the appeal. The function of the customary land appeal court is to examine the question and to make its own determination or afresh [*Ezekiel Mateni –v- Seri Hite H/C CC No: 155 of 2003 at page 3*].

The Western Customary Land Appeal Court UPON hearing submissions of the appellant and the reasons upon which the appeal was made, and UPON reading the timber rights minutes or records of proceeding of the CPE endorse and afresh persons and representing all persons, lawfully able and entitled to grant timber right on Bingo Customary land.

DECISION

1. That the determination of the Choiseul Provincial Executive made during the sitting on 10th November 2011 be set aside.

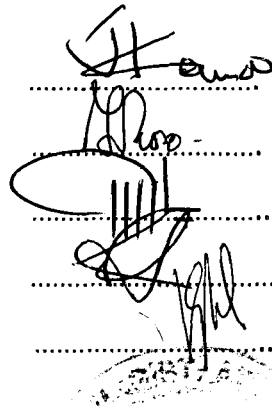
2. That the persons and resending all persons, lawfully able and entitled to grant timber rights on Bingo Customary land are as listed below:-

1. Peter Tutua
2. Ronald Vaekesa
3. Standish Tutua
4. Simi Nalo
5. Evans Zama
6. Alosi Jonah
7. Collish Leketo Tutua
8. Mason Andrew
9. Amildah Nelson
10. Max Vazua.

3. No order for cost.

Dated 10TH day of October 2012.

Signed:	Jeremaiah Kema	-	President
	Willington Lioso	-	Member
	Erick K Ghemu	-	Member
	Tane Ta'ake	-	"
	Davis D Vurusu	-	Clerk/Member



Right of Appeal Explained.
