

IN THE WESTERN CUSTOMARY)
LAND APPEAL COURT)



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]
REGULATIONLN 22/1905**

IN THE MATTER OF: **GAMESE CUSTOMARY LAND TIMBER RIGHT APPEAL**

BETWEEN: **LEBAN ZOTE** *Appellants*
BEN KAE

AND **FREDSON KIKOBULE**
JOEL SOGA
ABRAHAM LINCOLN
ZAPHANIAH KUKUI *Respondents*

JUDGMENT

Introduction

1. This is a timber right appeal filed against the decision of the Western Provincial Executive (WPE) on Gamese customary land timber rights hearing held at Noro Township on the 8th day of September 2011.
2. The determination was made in favour of the Respondents as the right people to grant timber rights over Gamese customary land.
3. From that decision, the appellants filed an application against it on the 24th of October 2011.

4. All parties to the sitting were served by way of notice to attend the hearing at Gizo magistrates' court on the 10th day of December 2012 without failed.
5. In responding upon the notice, Mr. Jocab Billy MANA (spokeperson) with his party for the appellants, and Mr. Abraham LINCOLN (spokeperson) and his party appearing for the respondents.

Brief history of this case

6. On the 28th of June 2011, the Western Provincial Executive (WPE) had undertaking on a notice under section 7(2) of the Forrest Resources and Timber Utilisation Act in respond to an application lodged by the Golden Fountain Development Company Limited (GFDCL) to acquire timber rights over Gameese customary land on New Georgia Island, western province. A timber right hearing was designated and conducted at Noro Township on the 8th day of September 2011.
7. Another Executive meeting was held on the 9th day of September, in which the WPE made internal resolution by inclusion of one additional trustee to the original application submitted earlier on by the Gameese land owning group.
8. The appellants were aggrieved by the determination of the WPE, therefore, make an application accordance to section 10 of the FRTU (amendment) Act 2000, [CAP 40]. This is where: Any person, who is aggrieved by the determination of the said Provincial Executive, may within a month from the date of this notice, appeal to the Customary Land of Appeal Court (CLAC).

Grounds of Appeal

9. These are the collective grounds of appeal submitted by the appellant in respect to the determination of the Western provincial Executive. The court will deliberate to each appeal ground respectively.

Ground 1.

The Western Provincial Executives is erred to grant determination over Gameese customary land when there was no proper consultation to all the rightful land ownership.

Mr Jocab Billy MANA contended that they are from the Gameese tribe which they also have the right over Gameese customary land, therefore, a wholly consultation should have extended to all land owners before any undertaking on logging development at Gameese land.

He further conceded that his group (appellants) are also legitimate members of the Gameese tribes.

In responding to the appellant's submission, Mr Abraham LINCOLN contended that in the very beginning of this undertaking, a wide representation was made when consulting to other members of the Gameese ultimate tribe. Only few of the members who are now the appellants of this appeal opposing to be part of the Gameese owning group. They claimed to be a separated group of the tribe.

After considering the evidence adduced by both parties, and evidence available in court, it is of the view that there has been an undertaking well before an application was lodged.

The WPE is not erred to conclude that there was an exclusive consultation to the members of the Damese tribe at the beginning of the undertaking. This ground of appeal is dismissed.

Ground 2.

As legitimate members of the Gameese landowning group, we are deeply disagreeing to the trusteeship of Gameese land.

Spokesperson for the appellant, Mr MANA had submitted that his group did not agree to the trusteeship of Gameese land appears in the certificate of ownership.

In particular, the appellants object to three trustees who have nominated among the Gameese trustees stipulated in Form II. They are initially from the same family, which are not representing the majority interest of Gameese landowning people.

Mr Mana further contended that they have been neglected from their rights to benefits on such development, seeking to omit the three current trustees and replace with 3 members of other clan of Gameese tribe.

In responding to the appellant's submission on this issue, Mr LINCOLN for the respondent reveals that the current trustees of the Gameese landowning group are chosen under a proper process and has fairly representing the entire Gameese tribe.

It is important to note here that mandating of trustees is a requirement under the Forest Resources and Timber Utilisation Act, Cap 40. This kind of undertaking is solely the responsibility rendered to the landowning people. Whether or not the trustees are fairly chosen, it is the duty of the landowners to see that the people who are mandated are duly the chosen by the majority interest of the tribes or land owning group. In the event that a disagreement may arise, this court has no jurisdiction to make direct remedy to it.

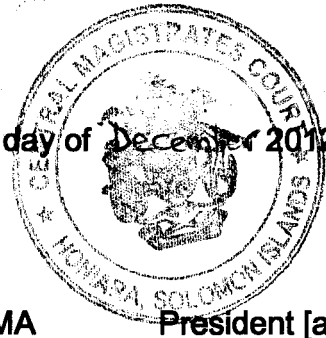
This court has no jurisdiction to deal with any matters in relation to land that raise question of law. This appeal ground is dismissed.

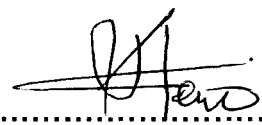

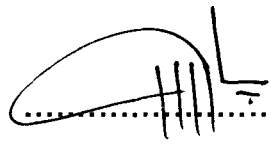

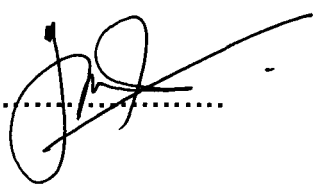
Conclusion

10. Base on the above findings, this court is of the view that the appeal is dismissed and make the following orders.

1. The determination made by the Western Provincial Executive on the 8th of September 2011 is upheld,
2. The court decline to make order as to cost.

Signed this date the 12th day of December 2012;



- 1. Jeremiah KAMA President [ag] 
- 2. Wellington LIOSO Member 
- 3. Erick GHEMU Member 
- 4. Tane TA'AKE Member 
- 5. Jim SEUIKA Secretary/member 

Right of appeal extended