

IN THE WESTERN CUSTOMARY)
LAND APPEAL COURT)



Timber Right Appellant Jurisdiction

~~CLAG~~ Cases Nos: 12 of 2013

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

AND THE FOREST RESOURCES AND TIMBER UTILISATION [APPEALS]
REGULATION LN 22/1905

IN THE MATTER OF: UHO ISLAND, ASIE ISLAND, OBEANI TO KIRIKIRIBORA TO
PATUKOVELAI TO OBEANI OVAU, PANAU RIVER, KOREA TO TOGA
RIVER TO KIRAHAI TO POPOLEA TO PARAPARAHAROATA TO
PAURIRIBA, PATABOLEALA CUSTOMARY LANDS TIMBER RIGHT
APPEAL

BETWEEN:

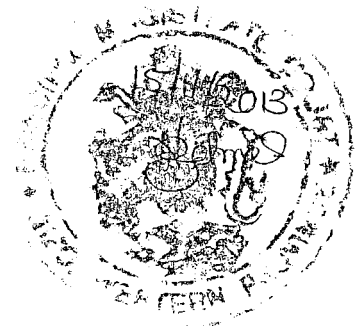
JOHN ALISAE
LESTER SOGABULE & CHARLES LEVO
JOHN ALISAE & THOMAS SALENA
CHRIS MULE & GILBERT BEATO
GEORGE MACKENZI & SIOROBUI
PHILIP MACDONALD
LAWRENCE KIBULE, JAMES KITO & JOEL IAGOI
CHIEF BENARD OTUANA & OTHERS

Appellants

AND DOMINIC JOMU

Respondents

JUDGMENT



Introduction

1. This is a timber right appeal filed against the Western Provincial Executive (WPE) determination over the Uho Island, Asie Island, Obeani to kirikiribora to Patukobealei to Obeani ovau, Panau river koera to Toga River to Kirahai to Popolea to Panau River, paraparaharoata to pauririba customary land timber rights hearing held at Samanago village, Short lands, on the 30th April 2013.
2. The determination was made in favour of the Respondents group as the rightful people to grant timber rights over Uho Island, Obeani ovau to Kirikiribora to patukobealei, Panau River to kamareka to Toga River to kirahai to popolea.
3. In responding upon that determination, eight (8) land owners representing their own tribal group aggrieved and jointly file their appeals to the Western Customary Land Appeal Court (WCLAC). They are as follows:
 - (i) John Alisae
 - (ii) Lester Sogabule and Charles Levo
 - (iii) John Alisae & Thomas Salena
 - (iv) Chris Mule & Gilbert Beato,
 - (v) George MacKenzi & Francis Siorobui
 - (vi) Philip Mcdonald
 - (vii) Lawrence Kibule, James Kito & Joel Iagoi
 - (viii) Chief Benard Otuana & Chief Philip Regan

Brief history of this case

4. On the 30th of April 2013, the Western Provincial Executive (WPE) had undertaken on a notice under section 7(2) of the Forrester Resources and Timber Utilisation Act in response to an application lodged by the Oita Holdings to acquire timber rights over customary lands covered under the Timber Rights application. A timber right hearing was designated and conducted at Samanago village, Shortland Islands.

5. The appellants were aggrieved by the determination of the WPE, therefore, filed their application in accordance to section 10(1) of the FRTU (amendment) Act 2000, [CAP 40]. This section stated 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

6. These are the collective grounds of appeal submitted by the Appellants in respect of the determination of the Western provincial Executive. The court will deliberate on each appeal grounds in respect of all Appellants in turns.

1.01 John ALISAE

Ground of appeal

- *The Western Provincial Executives is erred to determined and grant timber rights over heavy disputed lands on (i) Uho island, (ii) Obeani ovau to Karikaribora to Patukobealeai, (iii) Panau river to Kamareka to Toga river to Kirahai to Popolea.*
 - *The WPE is wrong to determine over the land which there was no proper consultation among parties.*
7. Mr ALISAE has contended that his tribe owns some portion of land within the concession area demarcated in the determination. He further contended that there was no proper consultation from the Oita Holdings before they venture into their portion of land, either on whole or boundary.
8. He further expressed that he and his tribe have the same claim of right over those land indicated in the map by Dominic Jomu and his tribe. To prove that contention, the Appellant produced his genealogy which he claimed they came as far from the same great grandfather as the Respondent's tribe.

9. In respond to the appellant's submission, Mr Dominic JOMU denying has any traditional connection with the Appellant's tribe. He further contended that his tribe inherited Uho Island from their ancestors. This was not disputed in the past and was known to the people of the Shortland land tenure.
10. After considering both submissions, the court considered and make references to the minutes of the Timber right hearing held on the 30th of April 2013 at Samanago village, confirmed that the WPE is erred to determine over the said land (UHO island) when it was heavy disputed from both parties.
11. The WPE should advise the relevant authority on their findings regarding the said land and refers to section 9 of the FRTUA .
12. Appeal is granted.

1.02 John ALISAE and Thomas SALENA

Ground of Appeal

The Western Provincial Executive (WPE) is wrong in law to determine upon Obeani Ovau to Kirikiri Bora to Patukovelai, and from Panau River to Popolea land that has no proper consultation among all members of the tribe.

13. Mr John ALISAE together with Mr Thomas SALENA jointly appeals against the determination of the WPE over the same portions of land mentioned earlier in this judgment.
14. In considering this appeal, the court held that this appeal should travel along together with appeal number 4/13. Therefore, this appeal is granted.

1.03 Charles LEVO & Lester SOGABULE

Grounds of appeal 1

- *The Western Provincial Executive (WPE) is wrong to determine over Naveneva to Kirikiribora to Patukoveleai land which has been disputed during the timber right.*

- *No proper consultation among the Applicant and the land owners, there was no agreement to negotiate over the resources before logging process.*

15. A joint submission made by the Spokespersons for the appellants, Mr Charles LEVO and Mr Lester SOGABATU indicating their tribal obligations and power over the land in question. They have submitted that their land was not allocated on block holding. Their land has been divided by their ancestors and the usage of it should benefit the whole tribe. Any wishes of such development should be by virtue of the tribe's interest and not on individual. The perpetual title of ownership is the tribe. What appears in the maps produced during the timber right was small portion of boundaries. The appellants further submits that their tribe was never consulted even they are the legitimate owners of the land.

16. In addition, Mr Charles LEVO claimed on behalf of his tribe (Simea) that the areas encompass by numerous blocks is owned by different tribes, families and individuals. For his tribe, they have objects to Paraparaharoata to Susuvuna lands on the east and from Nevaneva to Paurivaland to the southwest.

17. In responding to the appellant's submission, Mr Dominic JOMU contended that he owns the land in question. He never claimed neither overlapping any land claimed by the appellant's tribe. He maintains that the lawful persons to grant timber rights over Patukovelai land are his tribe.

18. The court has an opportunity to go through the entire minutes of the timber right held on the 30th April and the determination on the 10th of May 2013. It was confirmed that the Appellants did disputing the area of land in which the WPE has determined over it. To that contrary, the WPE also acknowledged that the objectors submits their objection over the land, however, the Oita Holdings should venture on their own land.

19. Having considered that proposition, the court is satisfied that the minutes of the WPE is clearly on record that the application was heavily disputed during the timber right held on the 30th April 2013. However, the WPE failed to take those submissions into account and advise the Ministry responsible under section 9 of the FRTUA [CAP 40]. Therefore, upheld and grant the appeal.

1.04 Chris MULE & Gilbert BEATO

20. The appellant has written to the court and tendered his intention to withdraw his appeal against the Respondent. At the actual hearing, he asks the court to reinstate his appeal for hearing.

21. In responding to the Appellant during the course of the hearing, a letter dated 7th June 2013 was revealed and confirmed that Chief Chris MULE and Stephen HAIEA has agreed to withdraw their appeal on the basis that they are now a party with Chief Bernard OTUANA.

22. The appellant insisted that he wishes to tender some document that pertaining Chief's decision over those lands in question. He further reiterated that he is willing to proceed if some of the issues which he suggested to the respondent are not met.

23. After the court considered his appeal, the majority agrees that the Appellant does not have any firm decision which side of the line he belongs. It was indicated in his letter of withdrawal. Based on that finding, the court is of the view that the appeal is dismissed.

George MacKeanzi and Francis Sirobui

Ground of Appeal:

- *The Western Provincial Executive is erroneously determined and granting Timber Right to the Mr Dominic JOMU as the right person to grant timber*

rights on Eruapau, Buroa and Korua customary land, without considering the rightful persons to grant timber right over Erukana, Bauro and Korua portion of land.

Jemke Teoh

There was no proper consultation among parties, and that the Talapuni tribe is not willing to negotiate their land to dispose under the determination of Dominic JOMU.

24. The appellant contended that Mr Dominic JOMU had failed to make proper negotiation with the Talapuni tribe before submitting his application over Erukana, Bauro and Korua customary land.
25. He further exclaimed that during the timber right hearing on 20th of April 2013, his tribe (Talapuni tribe) strongly objects the application on the ground that they are the legitimate land owning tribe of the said land up to date.
26. In responding to the Appellant contentions, Mr Dominic Jomu denies any claimed of right over the said portions of land. He insisted that the lands in questions are owned by his tribe or his family.
27. According to the WPE Timber Right minutes, it confirms that the appellant and his tribe did object the application during the timber right hearing on 20th of April 2013 at Samanago Village, Shortlands. It was also confirmed in the determination held on the 2nd of May 2013.
28. After considering submissions from both parties, in support of the WPE Timber right minutes, the court is satisfied that there was no proper consultation or any agreement to negotiate between the Applicant and the Talapuini tribe in respect of Eruapau, Buroa and Korua portions of land. Therefore, the court is in favour of allowing the appeal.

1.06 Philip MacDonald

Grounds of appeal

The Western Provincial Executive erred in Law to determine over Koría portion of land shaded in red as block (3) shown in form II, and held the right person to grant timber right on that land is Domini JOMU.

29. The appellant is one of the Talapuini tribe members who also aggrieved over the determination of the WPE over Koría portion of land. In his submission, he argued that the portion of land known as Koría was inhabited by his ancestors who are known as the Talapuini tribe. They have their own history over the genealogy, customary boundaries, tabu sites, hunting grounds and so forth.
30. He further contested that the land marks indicated in the form II on Koría land covers from Bohea to Kilekilena land. These portions of land are the interior of Koría land own by the Talapuini tribe.
31. Mr Dominic JOMU responds orally and denies submission of the Appellant. He contended that those portions of land are owned by his tribe. There was no further issue raised apart from claim of ownership. It is cleared from the outset that the application was heavily objected, however, the WPE determined over it. This appeal is granted.

1.07 Chief Bernard OTUANA

Grounds of appeal

The Western Provincial Executive erred in law to grant the following portions of land, Obani to Kirikiribora to Patukovelai to Obeani, to Panau river to Kemareka and to Koera to Panau river situated within the land owned by Karakara clan of Silakanegana, when the rightful landowners of these portions of land are not willing to negotiate for the disposal of their timber rights to the applicant.

32. At the outset, there was no customary evidence produced by the applicant to substantiate their claimed of right as the right persons to grant timber right

over the portions of land mention above. For example, there was no map produced except they indicate the lands by names.

33. The appellant further contended and relied to section 8(3)(a) that his tribe are not a willing party to negotiate with the appellant on their land. Granting portions of Karakara customary land to the applicant without their consent is a breach of section 8(a) of the Act.
34. Another ground of appeal submitted by Chief OTUANA to substantiate his appeal is that the western Provincial Executive is error to determined timber right to persons not lawfully representing all persons lawfully entitled to grant such right.
35. On the other hand, Mr. JOMU for the respondent contested that some of those portions of land was owned by his family and tribe. He pointed out that he present that evidence during the Timber right hearing, and confirmed that in the CLAC.
36. This appeal ground is upheld.

1.08 Lawrence KIBULE. James KITO and Joel IAGOI

Ground of Appeal

The Western Provincial Executive is wrong to determine over the land boundaries on Ore on the east, to Kavakava on the west without considering other landowning groups.

37. The lands in questions are known to the Fauro island communities. The ownership of it, the boundaries and the usage of the land. The land form Nevaneva to Patukovela is owned by the Hanapara and Simea (Popo) tribe of Kariki. The land from Nevaneva to Kavakava is within the boundary between Hanapara and Simea tribes of Kariki.

38. There was no consultation between the applicant (Oita Holdings) and the entire tribes mentioned above. The three respective tribes are not willing to negotiate with the Respondent because he never respects our right of ownership. We have raised those objections during the timber right hearing held at Samanago village on the 30th of April 2013. Yet the WPE did not take our aggrieved on board, however, determine and grant that the right persons to grant timber right over those lands are Dominic Jomu and his tribe.
39. After considering all submission from both parties, the court has an opportunity to go through the minutes of the WPE on the Timber Right hearing on the 30th of April 2013, and confirmed that the defendants did heavily objects the application on the ground submitted in their respective appeals.
40. The court is of the view that the WPE had received the objections well during the timber right hearing, however, determined and grant to the applicant.
41. This appeal is granted.

Conclusion

42. Base on the above findings, this court is of the view that the determination made by the Western Provincial Executive in relation to Uho island, Asie island, Obeani to Kirikiribora to Patukobelai to ObeaniOvau, Panau river to Korea to Toga river to Kirahai to Popolea to Panau river, Paraparaharoata to Pauririba customary land on 10th of May 2013, does not satisfy the requirements provided under the Forest Resource and Timber Utilisation Act (FRUA); that the landowners are not willing to negotiate for the disposal of the timber right over the said mentioned land; and the persons proposing the grant of timber rights are entitled, or represent the whole tribe of the said land. The appeals are allowed and make the following order.

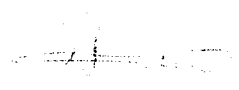
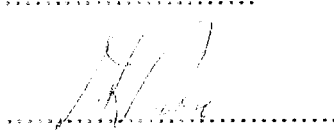
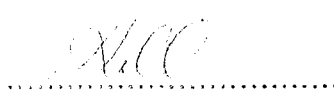
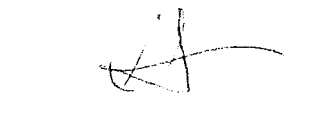
Order:

1. *The determination made by the Western Provincial Executive (WPE) over Uho Island, Asie Island, Obeani Kirikiribora to Patukobelai to Obeani Ovau, Panau River to Koera to Toga River to Kirahai to Popolea to Panau River, Paraparaharoata to Pauririba Customary Land on 10th of May 2013 is set aside.*
2. *Afresh; that the Oita holding to operate on portions of land that was legitimately owned by Dominic JOMU and his tribe. Any new proposal to enter with resolution among parties.*
3. *The court decline to make order as to cost.*

Right of appeal is explained and extended.

*Note: The verbal Decision of this appeal was delivered on 9th day of October 2013,
written judgment was available on 20th October 2013.*

Signed:

1. Jeremiah KEMA President [ag] 
2. Willington LIOSO Member 
3. Allan HALL Member 
4. Tane TA'AKE Member 
5. Jim SEUIKA Secretary/member 