

IN THE WESTERN CUSTOMARY)
LAND APPEAL COURT)

CLAC Nos: of 17 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]
REGULATIONLN 22/1905**

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

BETWEEN: **RASVOLPITAKERE** *Appellant*

AND

**ANDREW MASON
RENCE ZAMA
HICK SARE & OTHERS**

Respondents

JUDGMENT

Introduction

1. This is a timber right appeal filed against the decision of the Choiseul Provincial Executive (CPE) over the Magila customary land timber rights hearing held on the 22nd to 24th of April 2013 at Taro Station.
2. Briefly, on the 4th of June 2013, the Choiseul Provincial Executive determined in favour of the Respondents as the right people to grant timber rights on Magila customary land. From that decision, the appellants filed an application against it.

3. The application was filed by Mr Rasvol PITAKERE on behalf of his family and members of the Magila tribe.
4. All parties to the sitting were served by way of notice to attend the hearing at Gizo magistrates' court on the 28th of October 2013 without failed. In responding upon the notice, the following parties appear, Rasvol PITAKERE for the appellants and Andrew MASON for the respondents.

Brief history of this case

5. On the 4th day of June 2013, the Choiseul Provincial Executive determined over an application made by the Oceania Trading Company Limited under section 7 of the FRTUA.
6. A timber right hearing was conducted at Taro sub-station on the 22nd and 24th of April 2013 after a public notice was submitted.
7. On that Timber right hearing, parties were availing themselves and present their submissions. This includes the appellant of this case Mr. Rasvol PITAKERE. In his submission, he objected on the basis that there was no proper consultation as he claims to be a member of the Magila tribe.
8. The appellant make an application requires under 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. Ground 1.

The Choiseul Provincial Executive is erred in law to grant timber rights over Magila customary land to the people that is not representing the whole Magila tribe.

10. Mr PITAKERE contended that the CPE is wrong to grant timber right over Magila customary land when the persons are not representing the whole tribe. He stated in his evidence in this court that he is a member of the Magila tribe, yet they never consulting him before venturing on the application.
11. He further contested that he and Andrew Mason are members of the Magila tribe as second cousins. When he submits his objection based on that proposition, the CPE ignored his call during the timber right, granted the application to the respondents.
12. In response to this claim, Mr Andrew MASON contested at the outset that the members of the Magila tribes agreed to invite the Oceania Trading Company Limited to enter their customary land. He further claimed that Mr PITAKERE is representing his family members alone and not the interest of the Magila tribe members. His agreement is only on the names pertaining in the Form 1.
13. Both parties were given each opportunities on cross examination to make representation on the issues of whether the CPE is wrong to grant timber rights on that particular land on the following questions:
 - Whether or not the land owners are willing to negotiate for the disposal of their timber rights, or
 - Whether the persons proposing to grant timber right in question are the persons representing all the lawful or legitimate members of the land owning group?
14. After considering the evidence submitted by both parties, the court is satisfied that both parties have the equal rights as members of the Magila tribes, which negotiation should be extended to Mr Pitakere. This appeal ground is allowed.

Ground 2

The Choiseul Provincial Executive (CPE) is wrong to grant timber right over Magila customary land without considering documentation of High Court case in relation to Magila customary history.

15. Mr PITAKERE contended that during the timber right held at Taro sub-station on the 22nd to 24th of April 2013, he actually present to the CPE panel that he had a High Court decision in relation to the issues of Chieftaincy and ownership of Magila land. He further submits that he explained the content of the court decision when he explained the genealogy of Magila tribe, yet the CPE did not consider that point. He urged this court to consider the content of the high court decision. In this court decision, the court indicates who is the rightful chief of the Magila tribe, which he claimed that the chieftaincy of Magila was handed down to Sarujopa to Pepelona then to Mani, which is his mother. On that sense, his mother MANI claimed as the head of the Magila tribe.
16. For the respondents, Mr Andrew MASON responded and say that the CPE has responded well and considered the HC No: 2 of 1970, however, still uphold the decision of the HC case No: 128 of 2007 that favours Andrew MASON. In that decision, Mr MASON claimed that Rasvol PITAKERE has no locus standi in this action, no reasonable cause of action against the defendant who is Chief Andrew Mason.
17. Both the appellant and the respondent were cross examined by the court panel and the court is satisfied that both the respondent and the appellant are blooded brothers. They have claimed over Ownership, Chieftancy of the land in question. In such, the court observed that the CPE should consider the both claimed and advice the Commissioner of Forest to terminate this proceeding and allow both parties to settle their differences or to advice both parties to proceed on lawful avenue of ownership. This court is of the view, allowing this ground of appeal.

Conclusion

18. Base on the above findings, this court is of the view that the appeal is allowed on the basis that the Choiseul Provincial Executive is erred to grant timber rights to the Respondents over Magila Customary land, which was objected

from members of the tribe. Thus, the CPE should advise the commissioner of Forest and terminate the application to be resolve among the members of the tribe. If the matter was not resolve as suggested, then proceed with lawful avenue to determine on the ownership of the land in question. There was no evidence from both parties to convince the court that the land in question has been gone through lawful court of ownership.

Appeal allows and grants the following orders;

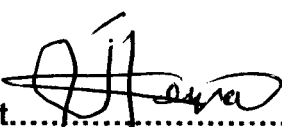
1. The appeal allowed,
2. The Choiseul Provincial Executive determination on 4th of June 2013 is set aside.
3. Afresh, that both parties to either resolve the differences among themselves on the issue of willing to negotiate among the landowners or to proceed to resolve the issue of Ownership of land through the lawful court and authority.
4. We decline to make any order as to cost.

Right of appeal is extended.

Note: The verbal Decision of this appeal was delivered on 30th day of October 2013 and, written judgment is available on 8th day of November 2013.

Signed:

1. Jeremiah Kema

President.....

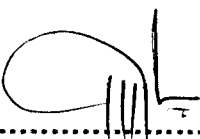
2. Allan HALL

Member.....

3. Willington LIOSO

Member.....

4. Eric K. GHEMU

Member.....

5. Jim SEUIKA

Secretary member.....

