

IN THE WESTERN CUSTOMARY]  
LAND APPEAL COURT]

CLAC Case no: 46 of 2014



*Land Appellate jurisdiction:*

IN THE MATTER OF: SASALO CUSTOMARY LAND TIMBER RIGHT APPEAL

BEFORE: Jeremiah Kema - President  
Allan Hall - Member  
Erick K Ghemu - Member  
Willington Lioso - Member  
Davis D. Vurusu - Clerk/Member

BETWEEN: Jacob Soqavare - Appellants

AND : Choiseul Provincial Executives - 1<sup>st</sup> Respondents

AND : Lee Seamakana - 2<sup>nd</sup> -Respondent

*Date of hearing: 26<sup>th</sup> of November 2014*

*Judgment delivered: 28<sup>th</sup> November 2014.*

JUDGMENT

This is a timber right appeal against the determination made by the Choiseul Provincial Executives (CPE) in their Timber Right hearing held in TARO on 29<sup>th</sup> September 2003 over Sasalo Customary Land, in Northeast Choiseul, Choiseul Province.

From that determination the Appellant Mr. Jacob Soqavare filed his appeal to the Western Customary Land Appeal Court (WCLAC).

In considering this appeal, we examined parties submissions both orally and written, documents presented by parties before us and the record of minutes and determination of the CPE during their timber right hearing.

In our judgment we will discuss each party's submissions separately.

**Appellants case;**

The Appellant's appeal was in a form of letter.

The appellant appeal against the inclusion of their two portions of customary land known as PATATUBA and KOBOLOKOROTO land.

The appellant claims that PATATUBA and KOBOLOKOROTO portions of land belong to his clan, MANUKU clan. He submits that his clan has existing properties on these two portions of land and that they have customary evidence to prove their claim.

He submits that there is no consultation made by the Second Respondents prior to their Form 1 Notice. The second respondents did not own PATATUBA and KOBOLOKOROTO lands therefore have no customary rights to grant timber right on the said lands

The First Respondent did not properly consider our submissions before them during the timber right hearing therefore determined the appellants as persons to grant timber right on our customary lands.

He submits that there is irregularity in map boundary and position of places and rivers in the second respondents Form1 map. He also submits that his party is not party to any court decision from 1961 till now. They do not have the chance to express their right in Choiseul custom chief enquiry yet. He claims that PATATUBA and KOBOLOKOROTO lands are owned by his MANUKU descendants.

**The First Respondent's case;**

The First respondent did not attend this hearing therefore has no representation.

**The Second respondents' case;**

The second respondent in responding to the Appellants ground of appeal and submissions, He submit that the Choiseul Provincial Executives determination has no error in it. The made determination after considering both parties submissions before them.

He submits that within Sasalo customary land, there is no other land belonging to any other persons. The appellants have no portions of land within Sasalo Customary land.

He submit that his father late Samson Seamakana has legal court decrees that proved his ownership over Sasalo customary as shown in their Form1 Application.

He submits that the Selevaqa tribes have appointed Mr. Tagolo to represent them in any issues pertaining the whole of Selevaqa customary land. Sasalo is part and parcel of Selevaqa customary land. Selevaqa customary land has been shared amongst the sub-clans of selevaqa tribe and Sasalo land is VATO clans share in which he represent in this court hearing.

He submits that the second respondents are party to the 1961 Local Court decision. His Father has won that case against them. Mr. Taqolo lost his case.

He submits that the Vato tribe genealogy was also brought before the Kiruqela chiefs between Samson Seamakana and Damukana Siope. This was held at Kakalokasa village on January 19, 1984. Appellants are party to this hearing. D. Siope lost this case but did not appeal till today.

### **The Law:**

Section 8 (3) (a) (b) clearly explain the duty of the appropriate Government; in this case the Western Provincial Executive.

*(3) At the time and place referred to in subsection (1), the council shall in consultation with the appropriate Government discuss and determine with the customary landowners and the land the application matters relating to-*

*(a) Whether or not the Land owners are willing to negotiate for the disposal of their timber rights to the applicant;*

*(b) Whether the persons proposing to grant timber rights are the persons, and represent all the persons, lawfully entitled to grant such rights, and if not who such persons are;*

Section 9 (2) (a) (b) state;

On making its determination under section 8(3), the Council (executive) shall as soon as practicable –

*(a) Issue a certificate in the prescribed form setting out its determination;*

*(b) Give the public notice of its determination in the same manner as notice under section 8 (2) was given;*

### **The Court:**

We consider Appellants and Respondents submissions on grounds of appeals; we examine the record of timber rights minute of Choiseul Provincial Executives and their determination.

We remind ourselves that this court has no power to determine who owns the land by way of appeal under FRTU Act. Our duty is to see whether the Choiseul Provincial Executive has erred

in determining persons entitled to grant timber right on any customary land and in this case it is Sasalo Customary land.

Any evidence on ownership should only assist the Provincial Executive and the Court to determine the right persons to grant timber right on Sasalo customary land.

To determine persons lawfully entitled to grant timber rights on any customary land, it is important that Section 8 (3) (a) must be first answered before sub-section (b).

Section 8 (3)-

*(a) Whether or not the Land owners are willing to negotiate for the disposal of their timber rights to the applicant;*

*(b) Whether the persons proposing to grant timber rights are the persons, and represent all the persons, lawfully entitled to grant such rights, and if not who such persons are;*

In this case the question we need to answer before determining the requirement of subsection (b) of FRTU Act Is;

“Whether the Appellants party is a party to 1961 local court decision between Samson Seamakana \_vs\_ Taqolo?”

From the evidence before us we find that Mr. Taqolo represents himself and his Toromeji clan in 1961 case. There is no evidence showing Appellant genealogy connection to Toromeji clan.

From evidence before us we find that the decision of Kiruqela chiefs was binding on the Appellants and Second Respondent. The Kiruqela chiefs disproved Mr. D. Siopes genealogy and awarded ownership of Sasalo Customary to Samson Seamakana the Second Respondents father.

Appellants’ party did not appeal against this decision. The 1984 Kiruqela chiefs decision still stand.

Upon considering what we have discussed earlier in our judgment we find no error in the determination made by the CPE that this court can change. The Appellants appeal must therefore be dismissed.

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**DECISION**  
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Upon considering what we have discussed earlier in this judgment we make our decision as stated below:-

1. The Appellants appeal is dismissed
2. The Choiseul Provincial Executives determination made during their meeting in Taro on 29<sup>th</sup> September 2003 is upheld.
3. Parties meet their own cost.

Dated this 28th day of November 2014.

Signed:

Jeremaiah Kema

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President.....

Allan Hall

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Member.....

Erick K. Ghemu

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Member.....

Willington Lioso

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Member.....

Davis D. Vurusu

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Clerk/Member.....

Right of appeal is explained.