

IN THE WESTERN/CHOISEUL CUSTOMARY)
 LAND APPEAL COURT)

CLAC APPEAL CASE No: 18 of 2013

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: **RIKI, QUANAHAI, CHOCHOLE AND NJALEIRE CUSTOMARY LAND
 TIMBER RIGHT APPEAL**

BETWEEN: **PACIFIC CREST ENTERPRISES LTD**

1st Appellant

AND : **RIKI NAMUSI**
(Representing his father & Kadiki tribe)

2nd Appellants

AND

WESTERN PROVINCIAL EXECUTIVE

1st Respondent

AND

FAIR TRADE (SI) COMPANY LIMITED
(Chief Chachabule Rebi AMOI, representing the Tebakokorapa tribe)

2nd Respondents

JUDGMENT

Introduction

1. This is one of the timber right appeals filed against the determination of the Western Provincial Executive (WPE) on Riki, Guanahai, Chochole and Njalere customary land timber rights hearing held on the 21st of May 2013 at Seghe sub-station court house, Western Province.
2. At the outset, the Appellants appeal against the entire determination of the WPE in respect of the Riki, Quanahai, Chochole and Njalere customary land.

3. Briefly, the Western Provincial Executive had granted timber rights to the Applicant (Fair Trade (SI) Company) who is the Respondent in this appeal after a timber right hearing held at Seghe Sub-station on the 21st day of May 2013.
4. On the contrary, the objectors who are named as the Appellants in this proceeding, aggrieved by the WPE determination, appeal to the WCLAC on the basis that Western Provincial Executive was wrong in law to grant timber right to the Applicant on portions of land which covered by a valid existing felling license A10515 of the 1st Respondent (Pacific Crest Enterprises Ltd.
5. The brief history of this appeal is noted as follows. That the Western/Choiseul Customary Land Appeal Court (WCCLAC) consequently heard this four appeals and decided in a ruling given on the 3rd of September 2013. In its ruling the WCLAC concluded and determined on preliminary issues that *"The issues raised by parties as stated above are issues relating to point of law which court lacks jurisdiction to entertain. It is our view that these issues are important issues that need to be cleared before this court deal with other grounds of appeals."* Furthermore, the WCLAC ruled *"that this court therefore ruled that either the First and Second Appellants or the Respondents bring these issues before the High Court to determine before we deal with the other grounds of appeal. Meanwhile the hearing of this case be adjourned pending the High Court's ruling on in a ruling on the above issues."*
6. On the 12th of May 2014, the Appellant (who is the Respondents in this proceeding) filed a claim against the Attorney General, who representing the WCLAC for judicial review.
7. On the 18th of October 2014, the claimed was heard at the High Court in which the ruling was delivered on the 18th of February 2015 in apparent disregard for the remedies sought and ruled as follows:
 - Appeal Ground on WCLAC failure to exercise or alternatively exceed the jurisdiction is dismissed,
 - WPE did not make any determination on the matters under section 8(3)(a), (b) and (c) of the FRTUA,

- The determination of the WPEC made on the 23rd May 2013 is squashed,
 - WPE to rehear the application for the timber rights over Riki, Davala, Guanahai, Chochole and Njalele Customary land, de novo, and
 - Costs in the cause.
8. From that High Court Ruling, the Appellants (*Respondent in this proceeding*) appealed further to the Solomon Islands Court of Appeal (*James Puleipi, Chachabule Amoi and Seri Hite (Fair Trade Company Limited vs Attorney General (SICOA-CAC No: 05 of 2015)*). The Solomon Islands Court of Appeal allowed the appeal on the following orders:
- The appeal is allowed,
 - The orders of the Judge made on 18 February 2015 are set aside,
 - Civil Claim No: 140 of 2014 is allowed,
 - It is declared the Western Customary Land Appeal Court in its ruling and decisions dated 3 September 2013:
 - (i) Failed to perform or exercise its jurisdiction conferred on it by the Forest Resources and Timber Utilisation Act as amended; and
 - (ii) Purported to exercise its jurisdiction by taking into account irrelevant considerations.
 - The decision is brought up to the High Court and quashed,
 - The WCLAC shall hear de novo and determine the appeals before it according to law, and
 - costs
9. On 11th of November 2015, the WCLAC again convened and determined on the same appeals on preliminary proceeding. It was then ruled that since there were substantive issues needs to be fully argued in full before the court, the appeals are then listed for WCLAC hearing to fulfil the COA requirements.
10. Consequently, the WCLAC was convened it's sitting on 17th of October 2016, the appeals mentioned on the above cases were listed and heard to satisfy the ordered of the COA.
11. On preliminary proceedings, there were four appeals registered as CLAC appeal Nos: 15/13, 18/13, 19/13 and 20/2013. These appeals were made against the determinations of the Western Provincial Executive held on the 21st of May 2013 at Seghe sub-station in respect of Riki, Qoanahai, Chochole and Njalire customary land.
12. This court has decided to deal with each appeals on a separated decisions.

13. On records, CLAC appeal No: 18 of 2013 is between Pacific Crest Enterprises Ltd as first Appellant and Riki Namusu representing land owners of Geli customary land as 2nd Appellants. On the other hand, WPE was named as 1st Respondent while Fairtrade (SI) Company limited which being represented by Chief Chachabule Rebi AMOI on behalf of the Tebakokorapa tribe as the 2nd Respondents.
14. The spokesperson for the Appellants is Mr. Petrie R. SUTE representing the both appellants.
15. Chief Chachabule Amoi stands for the Respondents (Seri HITE and James PULEIPU) and his Tobakorapa tribe on the other hand.

Grounds of Appeal

Ground 1.

The Western Provincial Executives is wrong in law to determine over the Timber Right hearing over Chochole to the 2nd Respondent covering Geli customary land portion of land currently covered by valid existing felling license A10515 of the 1st Appellant (Pacific Crest Enterprises Ltd). The current existing license awarded to the 1st Appellants was never being challenged or cancel by a court of law.

16. Gathering from the written submission presented by the Appellant, Mr SUTE submitted and present his original objection during the timber right. He said that the WPE cannot issue two felling license to duplicate over one concession area, unless there is shown a specific breach of the FRTUA or license conditions and felling license had been cancelled by a court of law.
17. In response to this contention, Chief Chachabule Rebi AMOI stated that his tribe owns the land in question. His application was in relation to Riki, Quanahai, Chochole and Njalere customary land. His tribe (Tebakokorapa) has owned the land and there is no Geli land within their land boundaries. The land which claimed by the Appellant is part of the Quanahai, Chochole/Mukimuki. Those land was owned by the Tebakokorapa tribe.
18. Furthermore, Chief Amoi stated that the company (Pacific Crest Enterprises) came in through Riki Namasu as he claimed the land as Geli land. He further stated that "when we dispute the land, Mr Namusu never logged or challenge over the land until today. We challenged him to the native court (Marovo Council of Chiefs) he refused to attend."

19. This matter have been to the High Court on the same land trying to justify the contentions who owns the land, and how the Appellant obtained their license. The respondent had tendered those High Court cases for the court perusal as the High Court confirmed that the Appellants cannot be a party to this appeal.
20. This court have the opportunity to assess all the documents tendered especially the High Court cases and conclude as follows.
21. This appeal grounds has raised the issue of point of law. Thus, this court will relying on High Court cases which the court have currently dealt with in respect of the same parties on the same land.
22. In *James Puleipi, Chachabule Amoi and Seri Hite v Attorney General*, Court of Appeal, Civil Appeal Case N0: 5 of 2015; the COA held that the Pacific Crest Enterprises Ltd who is the appellant in this current case does not have standing to be an appellant. This is because a company cannot be an aggrieved person it cannot be respondent or appellant in any appeals before CLAC. Therefore, this court is relying on the COA decision and struck out the first appellant.
23. Since the Pacific Crest Company cannot be a party to this appeal, it is now left that only person that qualifies to be an aggrieved person is Riki NAMUSU. Having considered the position Mr Namusu in this appeal, the court is satisfied that there are fundamental flaws of his position. That is, there is a timber right over Geli land. Geli land is a portion within Chochole land. This position has never been challenge in any court. He has not been able to show proof of his ownership over Chochole and Njalere land. Whereas, the appellants (Hite, Amoi and Puleipi) were able to provide a decision of the Magistrate Court over Chochole /njalere land. Also, the appellants produced a statutory declaration from Namusu's uncle to declare that there is no such land called Geli.
24. The WPE was correct to hold that the landowners are Hite, Amoi and Puleipi and that they are the persons entitled to grant timber rights over Chochole land. Therefore, it is held that the WPE did not commit any errors when they determine that Seri HITE, Chachabule Rebi Amoi and James PULEIPI were the right person to grant timber right over Chole/Njalere land.
25. Having considered all the assessment of both submissions, the court is satisfied and held that this appeal is dismissed without considered other grounds of appeal submitted by the appellants.

Conclusion

26. Having considered both submission through court cross examination, the court is unanimously agree that the WPE is not wrong to grant timber right over Riki, Quanahai, Chochole and Njalire land including to the members of Tepakokorapa tribe.




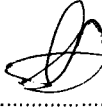
Order:

1. **The appeal is dismissed,**
2. **The Western Provincial Executive (WPE) determination in respect of Timber right hearing on the 21st of May 2013 is upheld;**
3. **The Tebakokorapa tribal members and their tribal trustees named Chief Chachabule Rebi AMOI, Seri HITE, Mala Moses LILA, Casper REBI and Redley VAQO are the right people to grant timber right over Riki, Guanahai, CHOchole and Njalere including Davala customary land, therefore, they can proceed with form 4 process under the FRTUA.**
4. **The court decline to make any order as to cost.**

This judgment was delivered on the 21st of October 2016 at Western Magistrates Court situated at Gizo, in the Western Province.

Duly signed on this date 21st day of October 2016.

Presiding CLAC Justices

1. Allan HALL (President (ag)) 
2. Erick K. GHEMU (V/President (ag)).....
3. Silverio MAEKE (Member)..... 
4. Wellington LIOSO (Member)..... 
5. Tane TA'AKE (Member) 
6. Jim SEUIKA (Clerk/Member)..... 