

R -v- CUSTOMARY LAND APPEAL COURT (WESTERN) exparte Ulekesa

High Court of Solomon Islands

(Ward C.J.)

Civil Case No. 268 of 1989

Hearing: 19 June 1990 at Gizo

Judgment: 5 October 1990

J. Hardiker for the Applicant

WARD CJ: This is an application for an order of certiorari to remove and quash a decision of the Customary Land Appeal Court (Western) made on 6th November 1989.

The decision complained of was the refusal to allow an appeal on the grounds it was out of time and that the CLAC had no power to extend the time. The grounds for relief in the statement pursuant to O.61 r.2 are:

"That the Customary Land Appeal Court clearly erred in law in that it directed its mind to the question of whether it should extend the period of time within which the applicant could appeal rather than to the question of whether a valid appeal was lodged within the one month time limit as prescribed by section 5D (1) of the Forest and Timbers Act 1977 as amended."

The facts are simply stated. On 25th May 1989 the Choiseul Area Council held a meeting on Taro Island and, on 26th May, issued a certificate under section 5C of the Forest Resources and Timber Utilisation Act. The applicant in this case was a person aggrieved and appealed under section 5D (1) which reads:

"Any person who is aggrieved by any act or determination of an area committee under section 5C. may, within one month from the date of the determination, appeal to the customary land appeal court having jurisdiction for the area in which the customary land concerned is situated and such court shall hear and determine the appeal"

Accordingly, the applicant wrote a letter of appeal to the Principal Magistrate (Western) on 20th June 1989 and sent the appropriate appeal fee of \$100 on the same date by registered mail.

The letter of appeal is signed by the Principal Magistrate as having been received on 26th June and a receipt, dated 28.6.89, was issued for the appeal fee. On 29th June, the Principal Magistrate wrote to the applicant stating:

"The intention of your letter seemed to serve as an appeal to the Customary Land Appeal Court. However, before any appeal could be entertained by the customary land appeal court the following items need to be submitted to this office before 10/7/89.

1. A map or sketch plan of the disputed land.
2. Genealogical table or family tree.
3. \$250 security fee.

Should those requirements reach this office later than the deadline mentioned above your appeal will be struck out accordingly."

In fact, for various reasons arising from postage and misunderstanding, only \$78 fee was paid by the date the appeal was listed before the CLAC on 6th November 1989.

At the hearing, the applicant was told his appeal was out of time. The record then continues:

"Clerk/Sec explains that the question to consider here is why this appeal should not be struck out for appeal out of time. It is a preliminary point which we have to consider and if the appellant satisfies this court then we would grant him leave to appeal out of time and proceed with the appeal".

Having then heard the explanation of the applicant the record shows:

"Case struck out, appeal out of time, with costs of \$580".

By section 5D (1) the time for appeal is clearly one month from the act that causes the grievance. In this case it was the issue of the certificate on 26th May. Thus the period of one month started to run on 27th May and so the appeal letter was received in time. It is not clear when the appeal fee was received but, as it was posted at the same time, I consider that the appeal and the appeal fee were in time.

Much of the decision of the CLAC seems to have revolved around the failure fully to pay the security. Provision is made for this by the Forest and Timbers Appeal Regulations, 1985. By these, the appeal must be by way of a public enquiry and, by regulation 3, when the clerk to the CLAC has received an appeal under section 5D, received the appeal fee and given notice to the appropriate Government as provided by section 5D(3) he has to proceed to give notice that an enquiry may be held.

At that stage, an appeal has been lodged. One month after the notice has been given, the clerk must assess the probable cost of a public enquiry and require the applicant for acquisition of the timber rights to deposit the sum as security within 3 months. If the timber operator should fail to pay, the clerk must give, in turn, each of the appellants, each of the claimants and each of the respondents the chance to pay. If all those fail to provide the security, the appeal shall stand adjourned generally. It should be noted that it is the timber operator and not the appellant who must, initially, be asked to deposit the security.

In this case, the appeal was lodged in time and the clerk should have followed the procedure under the Regulations.

I order that the procedures of the CLAC in case number 7 of 1989 be removed into this Court for the purpose of quashing the decision made on 26th of May 1989. I order that the clerk to the CLAC accept the appeal of Jacob Ulekesa and proceed under the Forest and Timbers Regulations 1985

(F.G.R. Ward)
CHIEF JUSTICE