

In the Western Customary Land
Appeal Court

CLAC no.11 of 1997

In the Matter of: Timber rights Appeal on Lokongari Land

Between: Moses Gasirigolomo (Appellant)

And Chief Moses Lumete & Others (Respondent)

JUDGMENT

This is an appeal against the North West Choisuel Area Council determination on timber rights on Lokongari Land of the heard on 14th May 1997.

The Appellant are Moses Gassirigolomo and Respondent is Chief Lumete & Others, represented by Ilene Sasau.

Appellant Moses Gasirigolomo has raised three grounds of appeal, but repetitive and is summarized as follows:

That the area of land appeared in Form II map is not Lokonagari Land but is Zamara Land and appellant claimed ownership.

Appellant's Case

On the appeal points the appellant told the court the concerned area of land is Zamara Land and not Lokongari Land. The land concerned land is situated between Tonuru River and Zamara River.

He claimed that Respondent Chief Lumete and his people can work on the land. They have not yet put the issue before the chief's hearing. Before they had went to the court over a small portion of in the land.

Respondent's Case

Ms I. Sasau (Spokesperson) claimed that the appellant has no standing because he did not attend the Area Council hearing on timber right.

She told the court that the land concerned was the subject of land enquiry on 27th December 1926 before Mr. R. Thompson. And the ownership of Lokangari

land was determined and vested to respondent. And so they have the rights over trees.

With the issue on land enquiry on 27th December 1926 before Mr. R. Thompson, the respondent made reference to the High case Havea Maori –v- Oliver Jino & Others HC CC no. 261 of 2002. And at page 9:-

"The decision of the 26th July 1914, then, is a valid decision in accordance with law, customary law which applied with full force and effect, over customary matters including land rights"

Ms Sasau argued that on that basis, the decision obtained by respondent in 1926 must be treated on the principles.

She told the court the ground of appeal does not relate to matters on Form II or timber rights matters, but on the ownership issues. This court in this proceeding under Forest Resources and Timber Utilization Act has no jurisdiction.

Ms Sasau seeks an order to strike out the appeal.

Locus Standi/Standing

Appellant Moses Gasirisolomo in his submission told the court that he did not attend the Area Council hearing at Taro nor made any objection.

Before the court consider the points of appeal of the appellants it is important to determine the issue of standing. This is so because if the appellants lack the standing, then this court has no case to entertain or no issue to determine.

This CLAC is an appellant court and whoever is aggrieved by the determination of the Area Council must establish his standing or right to appeal to this court. And for the purpose of appeal to this court, such appellant must make representation or objection to Area Council for consideration at the time of the hearing of timber rights. It is as result of that representation that such was not considered or decision not in his favour thus you would then appeal to this court. If you aren't then you cannot appeal to this court. You have no case to bring before this court.

On the issue of standing to challenge the determination of the Area Council of the persons identified to grant timber right on Lokongari Land is concerned, it is clear that the appellants have no standing. He had made no representation and never identified as being part of the persons lawfully entitled to grant timber rights over Lokongari Land at the hearing.

Does the appeal relate to timber right?

For this court to entertain an appeal on matters determined under Forest Resources and Timber Utilization Act it must be on timber rights issues and none other.

Section 10 (1) of Forest Resources and Timber Utilization Act provides:

(1) Any person who is aggrieved by the determination of the Provincial Executive Committee made under section 8(3)(b) or (c) may, within one month from the date public notice was given in the manner set out in section 9(2)(b), 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.

Section 8 (3) Forest Resources and Timber Utilization Act provides:

"(3) At the time and place referred to in subsection (1), the area council shall in consultation with the appropriate Government discuss and determine with the customary landowners and the applicant matters relating to—

(a)

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

(c) the nature and extent of the timber rights, if any, to be granted to the applicant;"


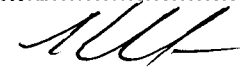



Appellant claimed the land situated between Tonuru River and Zamara River is Zamara Land and not Lokongari Land. And although chief Lumate and his people can work on the land, parties yet to put the issue before the chief's hearing. By the appearance of the appeal points and the evidence of the appellant in his submission, the appeal by the appellant is on the ownership concerned land.

In this appeal the appellant Moses Gasirigolomo has no Locus Standi/standing. The issue raised relates to ownership of the concerned land which cannot be determined by this court on appeal under Forest Resources and Timber Utilization Act.

And accordingly,

ORDER

1. Appellant has no locus standi/standing;
2. Appeal is dismissed;
3. No order of cost.

1.	David Laena	Ag President	
2.	Wilson Katovai	Member	
3.	Joseph Liva	"	
4.	Wellington Liosa	"	
5.	Maina LR	Clerk/P/Magistrate	

Dated: 4th May 2005

*Right of Appeal to the High Court is explained

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