



In the Western Customary)
Land Appeal Court)

CLAC no. 2 of 2007
& 3 of 2007

Timber Right Appellant Jurisdiction

In the matter of: **Kazukuru Right Hand Land (KRHL) Timber Rights Appeal**

Between: **Chief Solomon Roni & 3 Others**) First Appellants

And: Donald Bisili & 2 Others) Second Appellants

And: **Alfred Alesasa Bisili & Others**) Respondents

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JUDGMENT
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This is a Timber Right appeal against the determination of the Western Provincial Executive Committee on Kazukuru Right Hand Land (KRHL), in New Georgia Is. The applicant of the timber right is Delta Timber Co. Limited.

The Brief Background:

The interest to log on Kazukuru RHL started in 1982. Allardyce Lumber Co. is the applicant at that time and ten people namely John Roni, Esau Hiele, R. Ege, Simon Sasae, E T Daga, Judah Sakiri, Jonathan Poza, Zonga, S. Pato, J. Zingihite were identified as trustees and determined as right persons to grant timber right on KRHL. Mr John Roni, Esau Hiele and S. Pato were said to have represent their Kalikoqu people that time.

Mr. Willie Paia and Alfred Alesasa Bisili of Voramali tribe were not happy because no one in their tribe was amongst the ten trustees. They brought the matter before Western Customary Land Appeal Court (WCLAC) for that reason.

In 1984 the WCLAC identify Willie Paia and Alfred Alesasa Bisili as representative of Voramali tribe and they were added to the ten, now making up twelve trustees for KRHL. There is no appeal against the determination of the twelve trustees at that time. During the period between 1984 and 2003, Eight out of the twelve trustees passed away leaving only Alfred Alesasa Bisili, Simon Sasae, Judah Sakiri and Jonathan Poza still alive.

In or about 2003, Delta logging Co. show interest to log KRHL. Based on 1984 determination, Delta logging Co. negotiate with the trustees who still alive and their

application was heard by the Western Provincial Executive on 23rd – 24th October 2007. Their determination and Certificate of determination was dated 16th of November 2007.

Being an aggrieved party to that determination, the first and second Appellants in this case filed their appeal to the Western Customary Land Appeal Court.

Grounds of Appeal

The First Appellants grounds of Appeal are:

1. *That the Western Provincial Executive erred in custom when it determined that Messers Jonathan Poza and Judus Sakiri were persons able to grant timber rights when:*
 - (a) *Mr. Jonathan Poza was a deceased person and could not have been identified as a person able to grant timber rights pursuant to section 8 of the Forest Timbers Utilization Act over that portion of land having its boundaries between the Bareke river to Bao to Kazalei thence to Piraka river, hereinafter referred to as Liolavata Land;*
 - (b) *there was overwhelming evidence and representations before the Western Provincial Executive that:*
 - i. *Mr. Judas Sakiri; or*
 - ii. *Mr. Jonathan Poza; or*
 - iii. *any other persons acting on their behalf of Messer's Judas Sakiri and Jonathan Poza Were not authorized by the members of the Kalikoqu tribe to negotiate deal with and or grant timber rights to any person in respect of Liolavata Land.*
2. *That the Western Provincial Executive erred in custom when it determined that the Kazukuru Right Hand Land owing group in particular, Mr Judah Sakiri was a person entitled to grant timber rights over Liolavata Land when:*
 - (a) *the Western Provincial Executive had before it at the hearing on October 23, 2007 and October 24, 2007, the decision of the Roviana Chiefs over Liolavata Land in June 2005, which held that Mr. Judah Sakiri was not entitled in custom to:*
 - i. *own; or*
 - ii. *have any beneficial interest**in the lands, trees or natural resources over Liolava^{Ta} customary land.*

3. That the Western Provincial Executive erred in custom when it determined that the Kazukuru Right Hand Land owning group in particular, Mr. Alfred Alesasa Bisili, who is a member of the Voramali and the Kazukuru right Hand Land owning group, was a person entitled to grant timber rights over Liolavata land when:

- (a) the Western Provincial Executive had before it at the hearing on October 23, 2007 and October 24, 2007, the decision of the Roviana Chiefs over Liolavata Land in June 2005, which held that Hugh Paia, representing the Voramali tribe, of which Mr Alfred Alesasa Bisili is a member, was entitled in custom to:
 - i. own; or
 - ii. have any beneficial interestin the lands, trees or natural resources over Liolavata Land; and
- (b) the Western Provincial Executive had before it at the hearing on October 23, 2007 and October 24, 2007, the decision by the High Court in the case of Allardyce Lumber Company Limited and Alesasa Bisili and others –v- Attorney General and others (High Court Civil Case No. 93 of 1989), in which the High Court ruled that:
 - i. the portion of land belonging to the Kalikoqu people, from Bareke river to Bao Piraka River was excluded from Allardyce Lumber Company Limited's License until agreement is reached with the Kalikogu people ;
 - ii. by virtue of the decisions of the Roviana Chiefs in June 2005, Mr. Alfred Alesasa Bisili and the high Court in the Allardyce Lumber Company Limited and Alesasa Bisili and others –v- Attorney General and others case, both Alfred Alesasa Bisili and Judah Sakiri were not capable of negotiating and granting any timber rights over Liolavata Land.

4. That the Western provincial Executive was biased in its determination of persons entitled to grant timber rights over Liolavata Land because

- (a) prior to the hearing on October 23, 2007 and October 24, 2007, the appellant and or persons acting in the interest of the Applicant had:
 - i. held prior discussions with Mr. Judah Sakiri expressing their interest in acquiring timber;
 - ii. paid substantial of money to Western Provincial Executive funding their costs of hosting the meeting in excess of \$119,000.00.

5. *that Western provincial Executive erred in custom and in law when it failed to identify the Kalikoqu tribe as rightful owners of Liolavata land when there was and still is, a valid decision by the Roviana Chiefs, declaring that Liolavata Land belongs to the Kalikoqu Tribe.*

AND THE FIRST APPELLANTS SEEKS THE FOLLOWING ORDERS:

- (1) *That the person determined by the Western Provincial Executive and published in the public notice and Certificate of determination dated November 16, 2008 are not persons entitle to grant timber rights over Liolavata Land;*
- (2) *That the Western Customary Land Appeal Court determines that the appellants, representing the kalikoqu Tribe, are the rightful persons to grant timber rights over Liolavata land.*
- (3) *That the first and second Defendants meet the costs of the Appellants in this appeal.*

The Second Appellants grounds of appeal are:

1. *That there was no minutes of the proceedings conducted on 23rd – 24th October 2007 ever produced by the Western provincial Executive (WPE), alongside its certificate of determination, evidencing the process of determination conducted by the WPE. To this end, the WPE has not complied with the Forest Resources & Timber utilization Act (Cap. 40) as no actual determination had taken place.*
2. *That as a result of the WPE's omission to conduct an actual determination of the timber rights holders, the Executive failed to consider the objections raised against Delta Timber ltd's application by members of the communities of Voramali Tribe, Dundee, Nusa Roviana, Kindu, Sasavele, Nusa Banga.*
3. *That as a result of the WPE's omission to conduct an actual determination of the timber rights holders, the Executive failed to considers judicial authorities evidencing the Voramali Tribe's land boundaries and customary authority over the use of the Kazukuru Right Hand Land.*
4. *That the WPE purported determination is inconsistent with previous judicial determinations that have recognized the descendants of the Voramali Tribe as having the customary right over the Kazukuru Right Hand Land, hence the appropriate persons to grant timber rights over the same.*
5. *That the persons held to be the appropriate persons entitled to grant timber rights over the kazukuru Right hand land are not the appropriate persons in custom. Alfred Bisili was not authorized in custom to represent Voramali Tribe in any timber rights hearing. Mr. Bisili and the rest of the persons named therein are close associates of hon. Gordon Darcy who owns majority shares in the applicant*

company, Delta timber ltd. Thus, the neutrality of the Applicant Company's application has been comprised.

6. *That the WPE has acted contrary to the intention of the majority of the owners of the Kazukuru Right hand land not to grant timber rights to the applicant company, Delta Timber Ltd.*

The Law

Section 8 (3) (b) (c) of FTRU therefore requires the Provincial Executive to determine the following matters:

1. The persons proposing to grant the timber rights on Kazukuru Right Hand Land,
2. And if they represent all the persons lawfully entitled to grant such rights,
3. And if not who such persons are?
4. The nature and extent of the timber rights, if any, to be granted to the applicant;

It is important to note that the persons and/or land owning groups named in Form 1 (in particular item 6) with whom preliminary discussions have been made regarding land ownership, timber rights and development proposals was with the persons purport to be the owners or land owning groups.

It was at hearing that the Provincial Executive Committee heard claims or objection of the persons who claimed to be lawfully entitled to grant such timber rights on the land. The evidence and submissions should essentially related directly to the question of timber right interest of that customary land, thus may enable the Provincial Executive Committee to determine whether the persons proposing to grant the timber rights are not the persons lawfully entitled to grant such rights and identify who the persons to grant timber right are. Those the Provincial Executive identified as true persons lawfully entitled to grant such rights would eventually have the right to grant timber rights of the land.

1st Appt. Appeal Grounds No.1 (a).

The appellant in this ground of appeal submit that Mr Jonathan Poza was a deceased person and could not have been identified as a person able to grant timber right as required by Section 8 of the FRTU Act.

It was clear from both parties' submissions that Mr Jonathan Poza was died just before the timber right hearing on 23 and 24 of October 2007. To that effect the Western Provincial Executive was erred in determining him as person to grant timber right.

Ground 1. (a) Is upheld.

1st Appt. Appeal Grounds No. 1(b), 2(a), 3(a) (b), 4(a), & 5.

These grounds of appeal raise issues related to point of law, ownership and Boundary of the land subject to the application of Delta Timber Co. Ltd.

2nd Appt. Appeal Ground No. 1, 2, 3, and 4.

These grounds also raises issues related to point of law. On the points that relates to point of law, this Court lack jurisdiction to entertain.

The 1st and 2nd appellant's ground of appeal that relates to point of law is dismissed.

Section 10 of the FRTU Act clearly defines what to be appealed against if any person is aggrieved by the decision of the Provincial Executive Committee. The matters are whether persons proposing to grant the timber rights are and if they represent all the persons lawfully entitled to grant such rights, and if not who such persons are. And the nature and extent of the timber rights, if any, to be granted to the applicant;

On the disputes or claim of ownership of Kazukuru Right Hand Land as do clearly reflected on the submissions of the appellants and respondents as well as the minute of the Western Provincial Executive Committee of 23rd and 24th October 2007 cannot be dealt with by this Court in this process or by way of appeal under FRTU Act.

The legal position with customary land and timber right matters is settled and as follows:

1. A determination by the Provincial Executive as to who are the rightful persons to grant timber rights in the land which is the subject of a hearing is not a decision of ownership of the land. If a decision of ownership of the land is required, the matter has to be brought before a proper forum that is chiefs or Local court (*Gandly Simbe –v- East Choisuel Area Council & Others, Civil Appeal no.8 of 1997 and other later High Court cases*).
2. And this court has no power to decide land ownership issues or method of acquisition where appeal has been filed against the Provincial Executive determination under the FRTU Act (*Lupa Development Ltd –v- Kongunaloso & Others CC no. 110 of 2001, Ruling of 04/07/01*).

Appellants cannot use this court now on the issue of ownership of customary land or Chieftainship on appeal under FRTU Act. The Court can only look into dispute or error on the identification of all the persons identify to grant timber rights.

It is clear that the first appellants in their grounds of ownership and boundary on the land. This court with appeals under the FRTU Act has no powers to determine such issues. However, any evidence relates to ownership of land and other related issues will assist the court to determine, whether the Provincial Executive Committee has properly identified persons to grant timber right on the Land concerned.

The matters raised in 1st Appellants grounds of appeal relate to ownership and law and this Court lack the jurisdiction.

The 1st Appellants grounds of appeal No. 1(b), 2, 3, 4, and 5 is dismissed.

2nd Appt. Appeal Ground No. 5 & 6 relates to timber right.

The second appellant in this two grounds submit that even though they recognized Mr. Alfred Alesasa Bisili as one of their tribal leader, they did not authorized him to represent them in this application nor did they gave their consent to Delta Company to carry out logging Operation on KRH Land. They submit that the Western Provincial Executive failed to identify persons able to grant timber right on KRH Land in their Determination.

ISSUE

Another issue this Court need to consider is whether the Western Provincial Executive Committee had determined that the Respondents or identify the persons to grant timber right on Kazukuru Right Hand Land.

To determine the issue, we have to examine the relevant documents for the purpose so desired. They are submissions from the Appellants and Respondents, the minutes or record of proceeding of 23rd and 24th October 2007 and determination of the Western Provincial Executive committee dated 16th November 2007.

First the Form 1 states that the Applicant is Delta Timber Limited. By the name, Delta Timber Limited is a business name. Alfred Alesasa Bisili, Judah Sakiri, Simon Sasae and Jonathan Poza is named in Form 1 (in particular item 6) as with whom preliminary discussions have been made regarding land ownership, timber rights and development proposals was with the persons purport to be the owners or land owning groups.

From the minute, Alfred Alesasa Bisili, Judah Sakiri, Simon Sasae plus others submitted at the Munda hearing about the description of the location and area they claimed as Kazukuru Right Hand Land. The Appellants and Respondents also referred to various High Courts, CLAC cases and the Chiefs hearings.

The Respondents submitted that their trustees whose names appeared in the Form II were representatives of Kazukuru Right Hand Land Holding group.

The determination of the Provincial Executive Committee is in the following terms and quote:

2. Executive therefore resolved to:

- (A) Approved – Delta Timber Limited application to acquire rights over Kazukuru Right Hand Land; AND

- (B) Directed – that the portion of (also sometimes referred to as Koroga land) still under dispute and pending court determination as presented by the applicant to be excluded from the application; AND
- (C) Directed – that the Executive’s recommendation and approval be forwarded or conveyed to the Commissioner of Forests for further processing of the application.

The minute of the determination as quoted above does not disclose any evidence or information to identify the respondent as the proper persons entitled to grant timber on the land subject to this appeal. It only identifies and approved the applicant being Delta Timber Limited (business name) to acquire timber rights over Kazukuru Right Hand Land.

Section 8 (3) (b) of FTRU requires the Provincial Executive to determine or identify the persons lawfully entitled to grant such timber rights. The person in the text of customary land matters is a human being. It must not be an artificial person or business name. To that effect the Provincial Executive has failed to complete his job as required by the Act.

Ground 5 and 6 is upheld.

Section 10(1) of the FTRU Act gives power to customary land appeal court to hear and determine the appeal. The function of the customary land appeal court is to examine the question afresh and to make its own determination [*Ezekiel Mateni –v- Seri Hite H/C CC No: 155 of 2003 at page 3*].

The Western Customary Land Appeal Court upon hearing the evidences before it, afresh and make its own determination

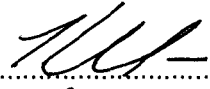


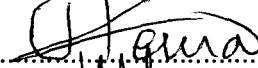
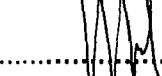
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ORDER

- 1. Determination of the Western Provincial Executive as appeared on the minute and seems to be recorded in Form II of 16th November 2007 is accordingly set aside.
- 2. Afresh and determine the following persons are persons and represent all persons entitled to grant timber right on Kazukuru Right Hand Land.

- | | |
|---|---|
| <ul style="list-style-type: none"> 1. Alfred Alesasa Bisili 2. Judah Sakiri 3. Simon Sasae 4. Stanley Basoe 5. Solomon Roni 6. Willie Dei Kama 7. Nicely Zonga 8. Renelled Mamu | <ul style="list-style-type: none"> -old Trustee -old Trustee - old Trustee - Replaces Jonathan Poza - Replaces John Roni - Replaces Esau Hiele - Replaces Zonga Hite - Replaces Rence Ege |
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- | | | |
|-----|-----------------------|------------------------------|
| 9. | Holden Pato | - Replaces Simeon Pato |
| 10. | Hugh Paia | - Replaces Willie Paia |
| 11. | Gordon Kiko Zingihite | - Replaces Jacob Zingihite |
| 12. | Alphones Daga | - Replaces Edwin Daga |
| 13. | Donald Maepio | - Represent Amoqula clan |
| 14. | Lecy Siosi | - Represent Samson Beti clan |
| 15. | Derrick Gasimata | - Represent Vurupuso clan |

Dated this 6th day of October 2006

Signed:	Wilson Katovai	- (Ag/President)	
	Willington Lioso	- (Member)	
	Allan Hall	- "	
	Jeremaiah Kema	- "	
	Davis D. Vurusu	- Secretary/member	

ROAE

