

IN THE WESTERN CUSTOMARY)
LAND APPEAL COURT)

CLAC Nos: of 2012



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]
REGULATION LN 22/1905**

IN THE MATTER OF: **KOKOA CUSTOMARY LAND TIMBER RIGHT APPEAL**

BETWEEN: **ROBSON TANA DJOKOVIC** *Appellant*

AND

**BEKERI TAVO
DAVIS PITAKERE
WILLIAM KEGA
DALSON PITA & OTHERS**

Respondents

JUDGMENT

Introduction

1. This is a timber right appeal filed against the decision of the Choiseul Provincial Executive (CPE) over Kokoa customary land timber rights hearing held on the 22nd of April 2013 at Taro Station.
2. Briefly, on the 4th of June 2013, the Choiseul Provincial Executive determined in favour of the Respondents as the right people to grant timber rights on

Kokoa customary land. From that decision, the appellants filed an application against it.

3. The application was filed by Mr Robson Tana Djokovic on behalf of his family and members of the Kokoa tribe.
4. All parties to the sitting were served by way of notice to attend the hearing at Gizo magistrates' court on the 28th of October 2013 without failed. In responding upon the notice, the following parties appear, Robson TANA for the appellants and Bkeri TAVO for the respondent.

Brief history of this case

5. This appeal was made on the basis that the CPE has ignored the documents which shown the portion of land in question is a portion of land lawfully transferred under the name of Robson Tana DJOKOVIC.
6. On a public notice, the application covers the massive boundaries of the Piripea river up to the course of that river to the summit of Kuboro mountain down the line of the valley to the head of Ghibi river and down the course of that river to the sea as evidence by the attached agreement and map outlining the boundaries.
7. During the timber right hearing held at Taro station on the 22nd of April 2013, the Father of the Appellant did not appear, however, produced a written objection on behalf of his son, Robson Tana DJOKOVIC (Appellant).
8. The Choiseul Provincial Executive except to have the written objection read out during the timber right, however, denied the content of the objection, granting timber right to the respondents as the right persons to grant timber rights over Kokoa portion of land.
9. The appellant make an application requires under section 10 of the FRTU (amendment) Act 2000, CAP 40. This is where: Any person, who is aggrieved by the determination of the said Provincial Executive, may within a month

from the date of this notice, appeal to the Customary Land of Appeal Court (CLAC).

Grounds of Appeal

10. Ground 1.

The Choisel Provincial Executive is erred in law to grant timber rights over Kokoa customary land to the people that is not legitimately representing the Kokoa tribe.

11. Mr Robson TANA has submitted that the land in question is part of the forest of the land which was legally transferred to him by his uncle the late Mannaseh TAVO. The ownership of the land in question was vested on Chief Manaseh TAVO. He is the one that takes custody of this land, he acquires the land in 1973.

12. The Appellant further contended that he had produced a document that shows the legal transferred of the portion of land to him by his uncle, therefore, by virtue of this legal transferred; the Oceania Trading Company Ltd has no permission to obtain timber rights without his consent.

13. In respond to this appeal ground, spokesperson for the Respondents, Mr Bekeru TAVO has submitted that the legal transferred presented by the appellant has been made null and void by his tribes' man on a legal transferred case tendered before the court.

14. The Respondent tendered to the court a number of documents which he relied to it as part of his responsive submission. He further contended that he has representing the majority members of the KOKOA tribe.

15. This court has the opportunity to go through the documents tendered by both parties. There were a number of cases which have mentioned the land in question, where no clear indications of who is the rightful owner of the portion of land. However, during the cross examination made by the court panel on both parties, there were clear indications that the documents are valid in

which agreement has been endorsed and bound by the parties involved. This document was even presented during the timber right, thus, the Choiseul Provincial Executive refused to accept although it was acknowledged to be the sole reason of the objection.

16. After considering all submissions from both the appellants and Respondent, the court formed the opinion that the Respondent is not representing the entire KOKOA tribe that a consent to negotiate on their resources has not reached, therefore, the ground of appeal is granted.

Ground 2.

The Choiseul Provincial Executive (CPE) has error to accept the application as contrary to 8 (3) (d) that the Respondent and the Applicant company cannot be trusted with the sharing of the profits in the venture with landowners.

17. This is not a ground of appeal; therefore, the court cannot deal with any interference of landowning group on sharing of royalties. It is a matter that can be discuss fairly among land owners. This ground of appeal is dismissed.

Ground 3.

The Choiseul Provincial Executive (CPE) is error not to consider objection, however, granting timber rights to persons who are not lawfully entitled to grant timber rights over KOKOA customary land.

18. In relation to this ground of appeal, the Appellant submitted that the Respondents and whoever team up to form the support to the application made over KOKOA land, are not the lawful representation of KOKOA tribe. Not all of the kokoa tribe involves in this development. To support his contention, a letter of acknowledgment was tendered to indicate that some of the prominent elders of the Kokoa tribe were part of the land owners who

object the application made by the Ocean Trading Company which facilitated by Bekerri TAVO.

19. In responding, the spokesperson for the Respondent contested and claimed that they are the rightful people who representing the Kokoa tribe. They referred to the same contentions submitted on the first ground of appeal.

20. Considering evidence available after cross-examination of both parties, the court allows this ground of appeal.

Conclusion

21. Base on the above findings, this court is of the view that the appeal is allowed on the basis that the Choiseul Provincial Executive is erred to grant timber rights to the Respondents over Kokoa land, which was objected from members of the tribe. Thus, the CPE should advise the commissioner of Forest and terminate the application to be resolve among the members of the tribe.

Appeal allows and grants the following orders;

1. Appeal allowed,
2. The CPE determination on 4th of June 2013 is set aside.
3. We decline to make any order as to cost.

Right of appeal is extended.

Decision was verbally announced on 30th day of October, 2013 and written judgment delivered on dated this 8th day of November 2013.

Signed:

1. Jeremiah KAMA	President [ag]	
2. Willington LIOSO	Member	
3. Allan HALL	Member	
4. Erick K. GHEMU	Member	
5. Jim SEUIKA	Secretary/member	