

IN THE WESTERN/CHOISEUL CUSTOMARY)
 LAND APPEAL COURT)

CLAC APPEAL CASE No: 20 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]
 REGULATION LN 22/1905**

IN THE MATTER OF: **RIKI, QUANAHAI, CHOCHOLE AND NJALEIRE CUSTOMARY LAND
 TIMBER RIGHT APPEAL**

**BETWEEN: QUANAHAI INTER DEVELOPMENT COMPANY LIMITED
 (BURNLEY KIMITORA)**

Appellant

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 Appellant (Quanahai Integrated Development Company Limited).
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 regard 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 quashed,

- 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: 20 of 2013 is between Qoanahai Integrated Development Company Limited as Appellant on one party

and on the other party is the 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. Burnley KIMITORA representing the Quanahai Integrated Development Company Limited.
15. Chief Chachabule Amoi stands for the Respondents (Seri HITE and James PULEIPU) and his Tobakorapa tribe.

Grounds of Appeal

Ground 1.

The Western Provincial Executives is wrong in law to determine over the Timber Right hearing over Guanahai land to the 2nd Respondent covering Davala customary land portion of land currently covered by valid existing felling license A10554 of the Appellant (Quanahai Integrated Development Company Limited). 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 KIMITORA, it is in court's view that he had submitted the same grounds which he submitted during the last CLAC hearing in 2013.
17. Although the grounds of appeal was not written in a normal form of appeal, the court will deal with them the way it is submitted.
18. In his verbal submission, Mr. Kimitora was reading from a written submission and asked to rely on it. His first appeal ground, he make references to civil case No: 79 of 2013, now being replace by HC civil case No: 109 of 2014, and say that it is currently pending at the High Court, probably the hearing date is on the 25th of October 2016.
19. Again, the Appellant has summarised his appeal grounds by merging other grounds of appeal, seeking the court to quash the timber rights process as it is related to Davala land, and consequently sought orders for exclusion of Davala land that was affected by the current timber rights process.
20. In response to this appeal, 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 including Davala land. His tribe (Tebakokorapa) has owned the land. The land which claimed by

the Appellant is part of the Quanahai, Chochole/Davala/Mukimuki land. Those land was owned by the Tebakokorapa tribe.

21. 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.
22. This court have the opportunity to assess all the documents tendered especially the High Court and Court of Appeal cases and conclude as follows.
23. 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.
24. 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 Quanahai Integrated Development Co Ltd in WCLAC No. 20 of 2013 and Pacific Crest Enterprises Ltd WCLAC No. 18 of 2013 who are the appellants 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 appellant.

" the question of whether companies could be appellants was not a matter on which the court should have needed the High Court's ruling. It should be appreciated that they could not be persons aggrieved; Simbe v East Choiseul Area Council [1999] SBCA 8/97, 12 and declined to hear the appeal."

25. According to the High Court in **Lomulo v Amoi** [2011] SBHC 160; HCSI-CC 332 of 2007, the Quanahai Int. Development Co. Ltd and Mr Kimitora who is the appellants in this current appeal are no longer have the standing to claim timber rights.

"the Decision of the WCLAC does not purport to change the judgment in the 1972 case as between Rebi (and his descendants) and Koni (and his descendants) in respect of Ghoanahai/Riki land and Ben Lomulo and Rebi in respect of Davala /Riki land."

Again, the High Court further stated:

"All the previous decisions remain intact and effective so that Koni's descendants cannot say as against Rebi's descendants, they own

Davala/Riki land. Nor can hahata's descendants, as against Rebi's line, say they own Tapokorapa/Riki land."

"There is no doubt that the Second Defendants own the land described in the Native Land Appeal case in 1974. If anyone who does not have proven superior rights of ownership to them enters the land or takes anything away from the land without their permission or authority, the interlopers may well end up being liable in trespass and/ or conversion."

26. Based on the above findings, the court is of the view that the WPE was correct to hold that the landowners are Hite, Amoi and Puleipi and the Tapokorapa tribe who is the descendants of Rebi are the persons entitled to grant timber rights over Riki, Quanahai, Chochole and Njalere including Davala/Riki land. Therefore, this court is unanimously 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 the said mentioned land.
27. 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

28. 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, Njalire including Davala land 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)..... 