



Government, IOI-LCDA win appeal

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KUCHING: The Court of Appeal yesterday set aside a High Court judgment delivered on 31 March, 2010 which ruled that a group of Kayans from Long Teran Kanan on the Sungai Tinjar, Miri Division had native customary rights over 2 parcels of land issued with Provisional Leases to IOI Pelita Plantation Sdn Bhd (a joint venture company between plantation giant IOI and LCDA).

The land had been developed into a palm oil plantation estate. The land, Lot 3 and 8 Dulit Land District was excised from the Bok Tisam Protected Forest which was constituted in April 1951.

The Kayans, led by TK Lah Angie, claimed that they were given the land in 1964 by the Berawans from Long Jegan.

The Court of Appeal, comprising Justices Abdul Wahab Patail, Tengku Maimun Tuan Mat and Dr Hamid Sultan Abu Backer, was told by Datuk JC Fong, state legal counsel, that for the Kayans to succeed in their claim, they must prove that the Berawans had rights in the Bok Tisam Protected Forest (BTPF).

However, Fong pointed out that the undisputed evidence showed that the Berawans did not have rights in the BTPF either before or after its creation in 1951.

He submitted that no NCR can be created over the BTPF through the clearing of trees for cultivation.

Also, in 1964 when the Kayans went to the area, no NCR can be created under Section 5 of the Land Code as no permit was ever issued to the Kayans under section 10 (2) of the Land Code by the superintendent for them to acquire NCR there.

Besides, there is no evidence of any custom of the Berawans which enables them to 'give' away their alleged communal land to another community.

In reply, Harrison Ngau appearing for Lah Angie and the group of Kayans argued that the area was known to be the 'heartland' of the Punans and Berawans and when the BTPF was constituted, the Kenyah chieftains were consulted and their agreement sought.

The Berawans were alleged to be a sub-group of the Kenyahs.

Justice Datuk Abdul Wahab, delivering the judgment of the Court, said that the basic facts do support the decision of the High Court that the plaintiffs, the Kayans from Long Teran Kanan, had native customary rights to the land excised from the Bok Tisam Protected Forest.

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He said that the judges had carefully considered the evidence on record and found that the 'safe' facts did not show that the Berawans had rights in the BTPF which could be 'given' to the Kayans.



The Court ordered Lah Angie and his group to pay costs to the appellants, government of Sarawak, LCDA and IOI Pelita Plantation Sdn Bhd after Fong told the Court that the Kayan group had taken advantage of the High Court judgment and entered into the palm oil plantation to take away the oil palm crops for sale to the mills.

The value of the crops taken away is said to amount to RM26 million.



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