

# Memo

To: Dr. Jeanette Carter

From: Caleb Stevens, Esq.

CC:

Date: 1/7/2011

Re: Legal Basis for the Claim that Tribal Certificates Are Valid for 7 Years

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## I. Question

What is the legal basis for the claim that tribal certificates are valid for 7 years?

## II. Short Answer

Probably none, the claim that tribal certificates are valid for 7 years is probably legally unsound for at least two reasons: (1) statutory construction, and (2) Liberian Supreme Court case law.

## III. Analysis

There are at least two reasons why the claim that tribal certificates are valid for 7 years is probably legally unsound: (1) statutory construction, and (2) Liberian Supreme Court case law.

### A. Statutory Construction

The Public Lands Law does not mention an expiration date for tribal certificates,<sup>1</sup> and the rules laid down in the General Construction Law do not support reading a 7 year expiration date into the statute. Section 18 of the General Construction Law provides:

In the construction of all Liberian laws and statutes, including this Code, words and phrases shall be read and construed in their context and shall, unless inconsistent with the manifest intent of the Legislature and unless [a] different meaning is expressly indicated, be given their usually accepted meaning according to the approved usage of language.<sup>2</sup>

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<sup>1</sup> Public Lands Law, Title 34 (Liberian Codes Revised).

<sup>2</sup> General Construction Law, Title 15, ch. 2, Section 18 (Liberian Codes Revised).

This provision contains both a general rule and two exceptions to that rule. The exceptions are the Legislature's "manifest intent" and an alternative meaning being "expressly indicated." The fact that the Public Lands Law is silent as to the expiration of tribal certificates removes the interpretative issue from either of the two exceptions, for silence is neither a "manifest intent" nor an 'express indication.' Thus, what remains is the general rule of context and the "usually accepted meaning." The implications of the context and "usually accepted meaning" also seems self-evident, if there is no mention of an expiration then there is no expiration date for tribal certificates. The Liberian Supreme Court has said as much, "Our law does not give us the authority either to add to or take from what the Legislature has commanded unless the said command clearly breaches provisions of the Constitution."<sup>3</sup>

A canon of statutory interpretation applied by US courts also supports this position. US case law may be used to fill lacunae in Liberian law.<sup>4</sup> The General Construction Law does not specify canons of statutory interpretation to aid in determining context and the "usually accepted meaning." Therefore, it seems appropriate to rely on canons of statutory interpretation as applied by US courts. One canon relied upon by the US Supreme Court is, "[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."<sup>5</sup> If the Liberian Legislature included specific language in one part but not in another part of the same law, then it is presumed that the disparity is intentional and purposive.

If the Liberian Legislature intended to impose an expiration date upon tribal certificates it would have included language similar to that found in Section 6 of the Property Law. Section 6 of the Property Law provides, "If any person shall fail to have any instrument affecting or relating to real property probated and registered as provided in this Chapter *within four months after its execution*" his or her title is void as against any other instrument that is duly probated and registered.<sup>6</sup> The four month time limit indicates that the Liberian Legislature knew how to impose a time limit on instruments "affecting or relating to [] real property"<sup>7</sup> when it intended to do so. In the Property Law the Legislature did have such an intention, but in the Public Lands Law it did not.

Although the Property Law and the Public Lands Law appear in the same volume of the Liberian Codes Revised, they are not parts of the same law. Thus, at first blush the above

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<sup>3</sup> *Cavalla Rubber Corp. v. Liberian Trading and Dev. Bank*, 38 Liberian Law Reports 316, 320 (1996) ((quoting *Gabbidon v. Toe*, 23 Liberian Law Reports 43, 47 (1974)).

<sup>4</sup> General Construction Law, Title 15, ch. 3, Section 40 (Liberian Codes Revised) ("Except as modified by laws now in force and those which may hereafter be enacted and by the Liberian common law, the following shall be, when applicable, considered Liberian law: . . . (b) the common law and usages of the courts of . . . the United States of America, as set forth in case law . . .").

<sup>5</sup> *Rodriguez v. United States*, 480 U.S. 522, 525 (1987) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)).

<sup>6</sup> Property Law, Title 29, ch. 1, Section 6 (Liberian Codes Revised) (emphasis added).

<sup>7</sup> *Id.* at Section 2.

canon seems inapplicable as an aid in interpreting the Public Lands Law vis-à-vis the Property Law because the canon concerns disparate parts of the “*same Act*.” However, in the 1956 Liberian Code of Laws (“1956 Laws”) the relevant sections of the Property Law and Public Lands Law contain the same language as that which appears in the Liberian Codes Revised.<sup>8</sup> In the 1956 Laws the Property Law and the Public Lands Law were enacted as parts of the same law, for the cover page of Volume III of the 1956 Laws, of which both the Property Law and the Public Lands Law form a part, indicates, “Adopted by the Legislature of the Republic of Liberia, March 22, 1956.”<sup>9</sup> The Property Law and the Public Lands Law formed part of the same law when Volume III of the 1956 Laws was enacted by the Legislature. Presumably, in passing Volume III of the 1956 Laws as a single law, the Legislature was aware of any disparate language between the Property Law and the Public Lands Law. And because these two laws appear in the Liberian Codes Revised unchanged from the 1956 versions the above canon may be applied to them.

In addition, because the Property Law forms part of the context in which the Public Lands Law should be interpreted, it is appropriate to examine the relationship between the two laws beyond the disparate treatment of time limitations. By imposing a 4 month time limit after which another person may lawfully probate and register, Section 6 incentivizes recipients of tribal certificates to secure deeds and probate and register those deeds as quickly as possible. The only period in which probation and registration by another is prohibited is the 4 months after the tribal certificate becomes a deed pursuant to the Public Lands Law; prior to the tribal certificate becoming a deed the land may be sought by another. Although the Property Law refers to the need to probate and register “any instrument affecting or relating to real property,” the procedure in the Public Lands Law for converting a tribal certificate to a deed, as the more specific law, must occur first, followed by probation and registration in accordance with the Property Law. Any other interpretation would be nonsensical. Put differently, Section 6 of the Property Law and the Public Lands Law make it clear that unless the tribal certificate is converted into a deed and that deed is registered and probated within 4 months other persons may seek title to the land covered by the tribal certificate. The rationale for a 7 year expiration date would likely be to prevent a holder of a tribal certificate from barring indefinitely other efforts to secure title over land covered by the tribal certificate. Read together, the Property Law and Public Lands Law ensure that this does not occur. The combination of both laws prevent a holder of a tribal certificate, merely by possessing the

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<sup>8</sup> Property Law, Title 29, ch. 1, Section 6 (Liberian Code of Laws of 1956) (“If any person shall fail to have any instrument affecting or relating to real property probated and registered as provided in this Chapter within four months after its execution, his title to such real property shall be void as against any party holding a subsequent instrument affecting or relating to such property, which is duly probated and registered.”).

<sup>9</sup> Liberian Code of Laws of 1956.

tribal certificate, from barring other attempts to secure title to land covered by that tribal certificate.<sup>10</sup>

#### B. Liberian Supreme Court Case Law: *Karneh v. Morris*

The Liberian Supreme Court case of *Karneh v. Morris* suggests that tribal certificates do not have a 7 year expiration date. In *Karneh* the Court relayed lower court proceedings that commenced in 1967 regarding competing tribal certificates for land in Nimba County.<sup>11</sup> The lower court was faced with the issue of which tribal certificate had priority.<sup>12</sup> To answer this question the lower court established a Committee to investigate the competing claims.<sup>13</sup> The Committee found that the oldest tribal certificate issued in 1950 had priority over the earlier tribal certificate issued in 1963.<sup>14</sup> Based on the Committee's findings the lower court held that the "holder of the older certificate for the disputed land, should have priority."<sup>15</sup> The lower court also made a number of other rulings which the Court called into question:

[The lower court's] ruling on the estate matter as given on the 21<sup>st</sup> day of September 1967, from which no appeal was taken, was conclusive against the parties and puts finality to the issues of ownership of the subject property for all intents and purposes *no matter how erroneous it might have been.*<sup>16</sup>

In suggesting that the lower court's rulings were erroneous, the Court does not specify which of the rulings may have been erroneous. The lower court recognized the validity of a 1950 tribal certificate that was, at the time of the 1967 proceedings, approximately 17 years old. It may be that the Court's suggestion of error was directed towards the other rulings and not the lower court's recognition of an approximately 17 year old tribal certificate. This would suggest that tribal certificates do not have a 7 year expiration date.

#### IV. Conclusion

There is probably no legal basis for the claim that tribal certificates expire after 7 years for such a claim is contravened by the rules of statutory construction under the General Construction Law and called into doubt by the Liberian Supreme Court case of *Karneh v. Morris*.

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<sup>10</sup> This argument may not apply to certificates in the "County Area." That portion of Section 30 of the Public Lands Law requires the Land Commissioner to be satisfied that the "land in question is not privately owned and is unencumbered . . ." Would the issuance of a certificate encumber the land? If so, once a certificate is issued no other person would be able to seek title over the land covered by the certificate. By retaining their certificate without further action a person would be able to effectively bar others from acquiring title over the land. The 4 month time limit in the Property Law would not remedy this situation.

<sup>11</sup> *Karneh v. Morris*, Liberian Law Reports 388, 390-91 (1982).

<sup>12</sup> *Id.* at 390.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 391.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 392 (emphasis added).