

IN THE SOLOMON ISLANDS COURT OF APPEAL

NATURE OF JURISDICTION:	Appeal from Judgment of The High Court of Solomon Islands (Faukona DCJ)
COURT FILE NUMBER:	Civil Appeal Case No. 58 of 2023 (On Appeal from High Court Civil Case No. 513 of 2015 and 641 of 2022)
DATE OF HEARING:	16 October 2023
DATE OF JUDGMENT:	31 October 2025
THE COURT:	Muria P Gavara-Nanu JA Morrison JA
PARTIES:	ATTORNEY GENERAL -V- LEVERS SOLOMON LIMITED
ADVOCATES:	
APPELLANT:	B. Pitry
RESPONDENT:	G D McDonald with A Willy
KEY WORDS:	
EX TEMPORE/RESERVED	RESERVED
ALLOWED/DISMISSED	ALLOWED
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JUDGMENT OF THE COURT

1. The Appellant is appealing the decision of the learned Deputy Chief Justice given on 20th October 2023. The decision was in respect of an application for interlocutory orders by the Respondent in the court below in *Civil Case No. 541 of 2022* which was a judicial proceeding and an application for renewal of Enforcement Orders in *Civil Case No. 513 of 2015*. The application for interlocutory orders was made pursuant to *Rule 7.1* of the *Civil Procedure Rules, 2007* (“*the CPR*” hereon).
2. The Application for leave to appeal was granted on 1st November 2023, by the then Acting President of the Court of Appeal, Sir John Nansen. The Acting President in granting leave also stayed all the Orders made by the learned Deputy Chief Justice.
3. The Appellant filed this Appeal on 2nd November 2023.
4. The terms of the Respondent’s Application for urgent interim Orders filed on 11th November 2022 are as follows: -
 1. *An interim declaration that it was beyond the power of the Commissioner of Inland Revenue to issue an assessment to the Claimant, on 1 September 2022, for the year to 31st December 2022 (“the Assessment”).*
 2. *An interim declaration that the Commissioner of Inland Revenue is prohibited from acting on the 2022 Assessment, including issuing any further notice under s. 85 of the Income Tax Act in relation to the Assessment.*
 3. *Alternatively, an interim order prohibiting the Commissioner of Inland Revenue from acting on the 2022 Assessment, including issuing any further notice under s. 85 of the Income Tax in relation to the Assessment.*
 4. *Further and in the alternative, an interim mandatory order requiring the Commissioner of Inland Revenue to withdraw and rescind the notice given to the Accountant General on 1 September 2022 under s. 85 of the Income Tax Act in relation to the Assessment and or the notice given to the Accountant General on 21st October 2022 under s. 85 of the Income Tax Act in relation to the Assessment.*

5. *Alternatively, an interim declaration that the Commissioner of Inland Revenue is obligated to withdraw and rescind the notice given to the Accountant General on 1st September 2022 under s. 85 of the Income Tax Act in relation to the Assessment and or the notice given to the Accountant General on 21st October 2022 under s. 85 of the Income Tax Act in relation to the Assessment.*
6. *Further and in the alternative, an interim order prohibiting the Attorney General or alternatively, the Accountant General from acting on the notice under s. 85 of the Income Tax Act in relation to the Assessment.*
7. *Alternatively, an interim declaration that the Attorney General or alternatively, the Accountant General are not entitled to act on the notice under s. 85 of the Income Tax Act in relation to the Assessment.*
8. *An interim mandatory order, further to the Orders in the proceedings in this Court being Civil Court Case 513 of 2015, signed perfected and sealed on 25 March 2022, or otherwise, requiring the Attorney General to explain to the Court, by way of a Sworn Statement, the failure by the Attorney General to comply with order 2 made by the High Court on 2 November 2017 and order 3 made on 16 August 2022 and further, or in the alternative, an order under Rule 21. 38 that he be examined about the financial circumstances and how the Defendant proposes to pay the amount of the judgment debt and bring sufficient documents to enable them to give a fair and accurate picture of their financial circumstances.*
9. *An interim mandatory order, further to the Orders in the proceedings in this Court being Civil Court Case 513 of 2025, signed perfected and sealed on 25 March 2022, or otherwise, requiring the Accountant General to explain to the Court, by way of a Sworn Statement, the failure by him to comply with order 3 made by the High Court on 2 November 2017 an order 6 made by the High Court on 16 August 2022 and further, or in the alternative, an order under Rule 21.38 that he be examined about the financial circumstances and how the Defendant proposes to pay the amount of the judgment debt and bring sufficient documents to enable them to give a fair and accurate picture of their financial circumstances.*

10. Costs

11. Such further or other orders as the court sees fit.

Statement of case in accordance with rule 5.3:

1. *The Applicant relies on the sworn statement of Patrick Shung Wong sworn and filed in support of these proceedings.*

Grounds of Appeal

5. The Appellant's Grounds of Appeal are as follows: -

Application for Interlocutory Orders

1. *The trial judge erred in law and fact in issuing interim orders in final terms after the hearing of the Application for Interlocutory Orders when such orders could only have been issued, if at all, at the conclusion of the substantive judicial review hearing, when all issues of fact and law have been addressed, including:*

(a) *Declaring, without qualification, that the Commissioner of Inland Revenue had exceeded his powers in issuing an assessment to the Claimant on 1st September 2022, for the year 31st December 2022 (the Assessment).*

(b) *Prohibiting the Commissioner Inland (sic.) Revenue from acting upon 2022 Assessment from acting upon the 2022 Assessment (sic.) including issuing any further orders under Section 85 of the Income Tax Act in relation to the Assessment.*

2. *The trial judge erred in law and fact in issuing an interim mandatory order to withdraw and rescind the notice given to the Accountant General on the (sic.) 1st of September 2022 under Section 85 of the Income Tax Act in relation to the notice given to the Accountant-General on 21st October (sic.) under Section 85 of the Income Tax Act in relation to the Assessment.*

- (a) *When the interim mandatory order, in the final terms it was couched in exceeded the ambit of the authority vesting on the Court to issue interim orders against the Crown – Compass Co Ltd v. CIR [2021] SBCA 9.*
- (b) *It is premature for the Court to issue an interim mandatory order in in final terms to withdraw and rescind a Notice under Section 85 of the Income Tax Act, in a judicial review proceeding, when a decision is yet to be made pursuant to r 15,3.18 (d) of the Solomon Islands Courts (Civil Procedure) Rules 2007 on whether the Respondent's plaint (sic.) can be dealt with alternately fully and directly under the Income Tax Act, rather than by way of judicial review.*

Application for Further Enforcement Orders

3 *The trial judge erred in fact and law and misdirected itself (sic.) in ruling that the rule intent (sic.) in compulsory acquiring (sic.) Hell's Point land was to derail the execution of the enforcement orders, when the evidence placed before it, clearly indicated otherwise; in the sworn statement of the Attorney-General filed on the 6th April 2023.*

- (a). *That the Crown fully intended to satisfy its outstanding obligations as evidence in the part payment of SBD\$20 million, by direct electronic transfer on 13th September 2022, but that it has been difficult for parties to agree to a final amount to settle the outstanding dues owed to the Respondent.*
- (b). *That the Court and any of the parties in this appeal are bound by Gazette Notice No. 64 of 2021 published in the Solomon Islands Gazette of the Decision to Compulsory acquire Parcel No. 192-018-157, Lot 2014 of LR 83/R a total of 121.09 hectares published on Wednesday 17th March 2021, as evidence of compulsory acquisition, pursuant to s. 85 of the Interpretation and General Provisions Act [Cap.85].*

4. *The trial judge erred in law and fact in finding that the Appellant cannot raise the issue of compulsory acquisition because of the issue estoppel and res judicata because of the subsistence (sic.) of separate proceedings (Civil Case No. 47 of 2022 involving the Respondent (as Appellant) challenging the issue of compulsory acquisition which indicates that it was fully aware of the decision to compulsory acquire and was utilizing its statutory right of appeal pursuant to Section 76 of the Land and Titles Act [Cap 133] to challenge it.*
5. *The trial judge erred in law and in fact in issuing further enforcement orders in favour of the Respondent, as Enforcement Creditor, against the Appellant/Enforcement Debtor in application for Renewal of the Enforcement Orders, when all interest held by the Respondent/Enforcement Creditor over Parcel no. (sic.) 192-018-157, Lot 2014 of LR 83R a total of 102.09 hectares, had ceased to subsist pursuant to Section 75 of the Lands and Titles Act [Cap. 133] on the publication of the declaration that the land was required for public purposes on Wednesday 17th March 2021, subject to an appeal, pursuant to section (sic.) 76 of the Act and the perpetual estate therein free from all other interests is vested in the Commissioner of Lands.*
6. *The trial judge erred in law and in fact in issuing further enforcement orders in favour of the Respondent/Enforcement Creditor in this proceeding when the proceeding is not an appeal convened pursuant to Section 76 of the Land and Titles Act [Cap. 133].*
7. *The Appellant seeks the following orders in lieu (sic.) of the Notice of Appeal:*
 1. *That the Appeal is allowed.*
 2. *That the interlocutory Orders made pursuant to the Application for Further Enforcement Orders and Application for Interlocutory Orders dated 20 October 2023 be set aside.*
 3. *Any other order the Court deems fit.*
 4. *Cost of the Appeal be paid by the Respondent.*

Submissions

(i) By the Appellant

6. Mr. Brenton Pitry of counsel for the Appellant, submitted that the primary judge erred in granting orders which were substantive in nature. He argued that such orders could only be made in a substantive judicial review hearing. It was submitted that the orders included declarations that the Commissioner of Inland Revenue exceeded his powers in issuing assessments on Claimant's income for 2022 and issuing a Prohibition Order against the Commissioner from acting on the 2022 assessments. Mr. Pitry submitted that the learned primary judge also gave orders against the Commissioner of Inland Revenue to withdraw notice he issued regarding the Respondent's assessments to the Accountant General. It was argued that the primary judge had no power to issue such orders. It was also submitted that the primary judge erred in ruling that the compulsory acquisition of Hells Point land by the Minister for Lands was to derail the execution of the Enforcement Orders made in Civil Case No. 513 of 2015 without any evidence to support such finding and without the issue of compulsory acquisition being argued by the parties. Mr Pitry submitted that the primary judge erred in giving Enforcement Orders when there were still ongoing attempts to settle the terms of the Orders.

(ii) By the Respondent

7. Mr. Geoffery McDonald of Counsel for the Respondent submitted that the application before the primary judge was related to financial accounts of the Respondent and the assessments made by the Commissioner of Inland Revenue on incomes of the Respondent. The application sought interim relief for the Respondent in respect of those assessments. It was submitted that the orders made by the primary judge were also interim pending trial of the issues. Mr McDonald argued that there was no miscarriage of justice in the primary judge's decisions and there was no error in the exercise of his discretion. It was submitted that the Application sought interlocutory orders and the orders given by the primary judge were not final and substantive in their nature. It was argued that the orders given by the primary judge did not finally determine the rights of the parties. Mr McDonald submitted that the primary judge was at pains to emphasize that issues were to be left for, or be argued and deliberated at the trial. Thus, there could not be any doubt that the primary judge intended to make orders that were of interim or interlocutory in nature. Mr McDonald submitted that the relief and orders sought were also expressed to

be interim. It was submitted that this being a judicial review case, the primary judge turned his mind to the issue of arguable case and his Lordship knew that the issues had to be tried later.

8. It was nonetheless argued that *Rule 15.3.18* of the *Civil Procedure Rules, 2007* was not raised before the primary judge, thus the Appellant cannot raise it on appeal.
9. It was argued that compulsory acquisition of the Hells Point land was made when the Enforcement Orders were on foot and the balance of the amount agreed to be paid by the Crown under the Enforcement Orders was still owing. It was therefore argued that, it was open for the judge to make findings, including finding that the compulsory acquisition was to derail the Enforcement Orders. It was submitted that the Enforcement Orders were based on a sworn statement by an officer of the Respondent.
10. It was nonetheless submitted that s. 76 of the *Land and Titles Act, Cap. 133* under which the land was compulsorily acquired by the Minister for Lands was not raised before the primary judge thus, it cannot be raised on appeal.

Consideration

11. There is no dispute that the Interlocutory Application by the Respondent in the court below was made pursuant to *Rule 7.1* of the *Civil Procedure Rules, 2007* (“the CPR” hereon). This *Rule* is under *Chapter 7* of *CPR* with the Heading – “*Interlocutory Applications*” and the *Rule* is invoked only for the purposes of interim relief. The Sub-heading of *Chapter 7* is in a form of a question. It reads – “*What is an interlocutory order*”. The answer is provided by *Rule 7.1* which reads – “*An interlocutory order does not finally determine the rights, duties and obligations of the parties to a proceeding*”.
12. There is no dispute that the power of the primary court under *Chapter 7* of the *CPR* is limited to granting interlocutory orders. In this case, the court below for that reason had no power to grant substantive orders; *viz*; orders which finally determined the rights, duties and obligations of the parties in the proceeding. See, *Attorney General v. Speaker of Western Province Assembly* [2022] SBCA 16; SCOA-CAC 33 of 2012 (12 August 2022). In that case, the Court said the primary judge erred in making an order that had the effect of a final order. This is an established principle of law which is applied by the courts in this jurisdiction. The principle is universal in its application. See, *Talasila v.*

Attorney General [1995] SBHC 27; HC-CC 043 of 1995 (15 May 1995; *Ashley v. Kosol Corporation Ltd* [2013] SBHC HCSI CC 198 of 2013 (13 December 2013).

13. The National Court of Papua New Guinea in *John Momis and Others v. Attorney General and Others* [2000] PGNC 100; [2000] PNGLR 109 (10 March 2000), Kapi DCJ (as he then was) in applying the same principle held that: - *“If the party, at the same time as filing the originating summons, filed a notice of motion seeking orders in exactly the same terms as the originating summons to determine the issues raised in the originating summons in a speedy manner, this constitutes an abuse of process”*. This principle has been adopted by both the trial court and the appellate court of Papua New Guinea. Thus, where orders sought in an interlocutory application are either merely of substantive nature or are same substantive orders as those sought in the proceeding then, the application becomes an abuse of process. This is because it is improper use of the court processes and is therefore an abuse of process. This situation was described by the Supreme Court of Papua New Guinea in *Michael Newall Wilson v. Clement Kubaram and Ors* [2016] PGSC 7; SC 1489 (11 March 2016). The Court said: -

*“The types of abuses of process may vary from case to case but to establish an abuse of process there must be evidence showing that the processes of the court have been improperly used; or have been used for an improper purpose; or have been used in an improper way; or that such abuse of process have resulted in the right of the other party being denied, defeated or prejudiced: *National Executive Council v. Public Employees Association* [1993] PNGLR 264 and *The State v. Peter Painke* [1976] PNGLR 210.”* (Our underlining).


14. Looking at the types of relief sought in this case, they are clearly substantive in nature and they are essentially same or seek similar relief as those sought in the substantive judicial review proceeding under *Rule 15.3* of the *CPR*. There was not a Defence or an Objection filed regarding the assessments made by the Commissioner of Inland Revenue by the Respondent under *Rule 15.3.16* and no *Conference* was held under *Rule 15.3.17* to consider matters relating to those listed under *Rule 15.3.18* of the *CPR*. These are mandatory requirements. These requirements were by-passed by the learned primary judge in giving the orders which were substantive in nature.

15. The learned primary judge also said the compulsory acquisition of Hells Point land by the Minister for Lands was to derail the *Enforcement Orders* in *Civil Case No. 513 of 2015*. But there was no evidence before the primary judge upon which the learned primary judge could make such findings. The compulsory acquisition of the land was made by the Minister in the exercise of his statutory power under s. 71 of the *Land and Title Act*, for a public purpose *viz*; for police training, for purposes of firing range and bomb disposal. The acquisition was gazetted in the National Gazette No. 64 of 2021. Therefore, the land has by law under s. 75 of the *Land and Title Act* reverted to the Commissioner of Lands. In any case, the acquisition is being challenged by the Respondent in *Civil Case No. 47 of 2022*, so the issue is *sub judice* and should be left at that.

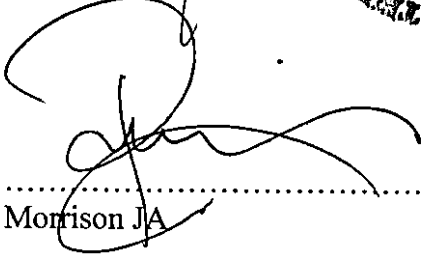
16. In the result, we make following orders: -

1. The Appeal is allowed.
2. The orders given by the primary judge are set aside.
3. The Respondent will pay the Appellant's costs of and incidental to this appeal and the costs of the proceeding in the court below, which are to be taxed if not otherwise agreed.

17. Orders accordingly.


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Muria P


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Gavara-Nanu JA


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Morrison JA

