IN THE SOLOMON ISLANDS COURT OF APPEAL

NATURE OF JURISDICTION:	Appeal from Judgment of The High Court of Solomon Islands, Kouhota PJ)
COURT FILE NUMBER:	Civil Appeal Cases No 64 of 2024 (On Appeal from High Court Civil Case No 41 of 2024)
DATE OF HEARING:	7 April 2025
DATE OF JUDGMENT:	11 April 2025
THE COURT:	Gavara-Nanu AP Faukona JA Lawry JA
PARTIES:	**MILNER TOZAKA, TEDDY PAVO, KEVIN SEME, SILAS PILUMU, SIMON KURUTU, MANOVAKI EDIKERA and MARTHA PALEVIDO** (Representing themselves and their tribal members of Reresare tribe) **Appellants** *-V-* **JONATHAN DIVE, JOHN MEKARONI, FREEDOM TOZAKA, VIRGINIA KUPER and NOELYN LUAHITE** - Representing themselves and their tribal members of the Reresare tribe) **First Respondents** **RT FORESTS LIMITED** **Second Respondent** **CHIA TAI ENTERPRISES (SI) LIMITED** **Second Respondent**
ADVOCATES: APPELLANT: RESPONDENT:	Mr. T Matthews KC and Mr L Puhimana Mr. J Sullivan KC and Mr J Wale
KEY WORDS:	
EX TEMPORE/RESERVED	RESERVED
ALLOWED/DISMISSED	DISMISSED
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JUDGMENT OF THE COURT

Introduction

1. There are two appeals in the Court of Appeal that are yet to be heard that are inter-related. Those are CA 34 of 2024 and 64 of 2024. The second of those came before the President sitting as a single Judge of the Court of Appeal to hear an application for an injunction brought by the Appellants. That application was granted on 29 January 2025 and perfected on 10 February 2025. The terms of the order were as follows:

> *(1) The Applicants are granted leave to appeal.*
>
> *(2) Upon the Applicants' usual undertaking as to damages previously given in the High Court and continued in this Court –*
>
> *(a) The Respondents and their servants, agents, contractors, licensees and invitees are immediately restrained, until determination of the appeal or further order from felling or harvesting any timber or conducting any ancillary logging operations on Reresare customary land (including without limitation Stage 2 Reresare Customary Land) PROVIDED THAT any logs harvested and remaining in Reresare Customary Land as at the date of this Order may be removed from Reresare Customary Land within 14 days of the date of this Order and may, subject to strict compliance with paragraph 2(b) hereof, be exported;*
>
> *(b) A Mandatory order requiring the Respondents and their servants, agents, contractors, licensees and invitees to –*
>
> (i) *Within 21 days of the making of this Order, file and serve a full account, including FOB proceeds, of all logs already felled and exported by the Respondents from Reresare customary land including Stage 2 Reresare customary land including a full account of all export duty paid being 25% of the FOB export proceeds;*
>
> (ii) *Thereafter, within 7 days of the export of any logs pursuant to paragraph 2(a) hereof, file and serve an updated account of logs so exported in accordance with paragraph (2)(b)(i) hereof;*
>
> (iii) *Within 21 days of the making of this Order, pay into the Sol-Law Trust Account No. 1 an amount equal to 15% of the total FOB proceeds from the Respondents' logging operations on Reresare customary land including Stage 2 Reresare customary land to abide judgment in Civil Case No.41 of 2024;*
>
> (iv) *Thereafter, within 7 days of the export of any logs pursuant to paragraph 2(a) hereof, pay into the Sol-Law Trust Account No.1 a further amount equal to 15% of the total FOB proceeds from the export of such logs;*

(v) *Within 21 days of the making of this Order, remove all logging machines, plant and equipment (including vehicles) from Reresare customary land including Stage 2 Reresare customary land;*

(3) Costs of the application shall be costs in the Appeal."

2. On 6 February 2025 the Respondents filed an urgent application to set aside the Appellants' injunctive orders dated 30 January 2025. From the Applicants (being the Respondents in the appeal) we have had the benefit of sworn statements from Jonathan Dive, Freedom Tozaka, Wryne Bennett and William Wong and Lionel Puhimana in support of the application as well as two statements from Richard Kaku proving service. In addition to the application we have received the Applicants' written submissions. We have also received sworn statements from Milner Tozaka for the Appellants, who are the Respondents in the present application. We have also considered the submissions filed on behalf of the Appellants and heard submissions from both Mr Matthews KC and Mr Sullivan KC.

The Application

3. Mr Matthews submitted that the President went beyond the power he had sitting as a single Judge of the Court of Appeal. He relied on the wording of section 19 of the Court of Appeal Act which provides:

> "***19.*** *The powers of the Court under this Part of this Act-*
>
> *(a) to give leave to appeal;*
>
> *(b) to extend the time within which a notice of appeal or an application for leave to appeal may be given or within which any other matter or thing may be done;*
>
> *(c) to give leave to amend a notice of appeal or respondent's notice;*
>
> *(d) to give directions as to service;*
>
> *(e) to admit a person to appeal in forma pauperis;*
>
> *(f) to stay execution or make any interim order to prevent prejudice to the claims of any party pending an appeal;*
>
> *(g) generally, to hear any application, make any order, or give any direction incidental to an appeal or intended appeal, not involving the decision of the appeal,*
>
> *may be exercised by any judge of the Court in the same manner as they may be exercised by the Court and subject to the same provisions; but, if the judge*

> *refuses an application to exercise any such power or if any party is aggrieved by the exercise of such power, the applicant or party aggrieved shall be entitled to have the matter determined by the Court as duly constituted for the hearing and determining of appeals under this Act."*

4. Mr Matthews submitted that the appeal concerned the decision of the High Court Judge to set aside an injunction that had been in place earlier in 2024. His submission was that by hearing the application for an injunction and granting that injunction the President had made an order contrary to section 19 (g) of the Court of Appeal Act. He relied on a decision from this Court delivered on 4 November 2022 ***Maka v Malaita Customary Land Appeal Court*** [2022] SBCA 30. In that case the Court considered submissions about another case, ***Williams v Honi*** [2009] SBCA 6, then said at paragraphs [5], [6] and [7]:

> *"5. It does demonstrate that a single judge may determine an application incidental to an appeal. But that is not the issue here. The issue here is whether a single judge can dismiss an appeal. It requires consideration of the qualification "not involving the decision of the appeal", found in section 19 (g) of the Court of Appeal Act [cap 6].*
>
> *6. The submission that "the rule explicitly utters that a single judge in the Court of Appeal has the power to dismiss an appeal" is, quite simply, wrong. An application which may be described as incidental to an appeal is limited to any matter which does not involve the decision of the appeal. Such an application might be an application to stay an appeal. Such an application and possible subsequent decision of a single judge does not determine the appeal. It means the appeal remains on foot and could be revived provided there is compliance with the stay order.*
>
> *7. But beyond a stay order a single judge may not go."*

5. Mr Matthews's argument was that the same issues to be determined on the appeal were necessarily determined by granting the orders on 30 January 2025. We do not agree. The appeal remains alive. The issue for the President in considering the Appellants' application heard by the President was, if the Court is satisfied that there is a serious issue to be tried on the appeal, where does the balance of convenience lie until the appeal can be heard? That raises the issue of whether or not damages can be an adequate remedy. The issue for the Court to determine on the appeal is much wider than that.

The President did not determine the appeal. However there is a greater issue with which the Applicant must deal.

6. The Court invited counsel to make submissions in light of the Court of Appeal decision of ***African Hills Limited v BRED (Vanuatu) Limited*** [2024] SBCA 14. The Court in ***African Hills v BRED*** discussed the final sentence of section 19 of the Act and said at paragraph [4]:

> *"We wish to point out that the renewal of an application before the full Court is not an appeal from the decision of the single Judge of this Court, on new grounds premised on the decision of the single Judge, for consideration by the Full Court. The aggrieved party comes to the Full Court by way of renewal of the application which was before the single Judge. The power to do so is set out in section 19 of the Court of Appeal Act..."*

7. The Court then set out rule 18(3) of the Court of Appeal Rules which provides:

> *"(3) A party aggrieved by the determination of the judge may by notice of application filed within seven days of the service of the notification under paragraph (2) upon him apply to have the matter heard and determined by the full court."*

Then the Court said at paragraph [6]:

> *"On a plain reading of section 19(g) of the Act and rule 18(3) of the Rules, it is crystal clear that there is no right of appeal against the decision of the single Judge of the Court of Appeal to the Full Court. An application to the Full Court is to have the matter heard and determined by the Full Court. That can only mean the 'matter' which was heard and determined by the single Judge and now to be renewed before the Full Court. Any application for renewed hearing presented as an appeal against the ruling of a single Judge of this Court is plainly incompetent."*

8. The application filed was for the Court to set aside the injunctive orders of 30 January 2025 and the submissions in support are plainly presented as an appeal against the ruling of the President. Mr Matthews sought to distinguish the decision in ***African Hills v BRED*** from the present application. He submitted that in that case the application before the single Judge was refused. The application could then be renewed before the Full Court. He submitted that in the present case it was the Appellants who had brought the application that was heard by the President not the Respondents so the Respondents were not seeking to renew the application. That submission must be rejected. Section 19 of the Act and Rule 18 of the Rules make it plain that the procedure for an aggrieved party is to ask for the application that was before the single Judge to be heard by the

Full Court. It does not matter whether the party who applied to have it heard by the Full Court was the party that brought the application before the single Judge. The words: "*or* ***if any party is aggrieved*** *by the exercise of such power, the applicant or* ***party aggrieved shall be entitled to have the matter determined by the Court as duly constituted for the hearing and determining of appeals*** *under this Act*" in section 19 make that abundantly clear. The Respondents were aggrieved by the exercise of the power by the President. They were then entitled to have the matter determined by the Full Court. They chose to not do so but to appeal the decision of the President. There is no power to do so. The application must therefore be refused.

9. Mr Sullivan said that he understood that the Applicants wished to argue the application that had been before the President. We made it clear that we would determine the application that was before us which we have done. Having said that we have had the opportunity of perusing the material placed before the Court in respect of the Appellants' application for injunctive orders. We note that they were addressed in the written submissions filed by Mr Matthews. We consider that there is a serious issue to be tried and have considered the balance of convenience. We come to the same conclusion as the President. The orders made by the President on 30 January 2025 are now the orders of the Full Court.

Orders

1. **The application to set aside the injunctive orders dated 30 January 2025 is dismissed.**

2. **The Respondents in the appeal are to pay the costs of the Appellants certified for King's Counsel, if not agreed to be taxed.**

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Gavara-Nanu (AP)

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Faukona (JA)

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Lawry (JA)

THE COURT OF APPEAL OF SOLOMON ISLANDS