FA'AFEROA -v- TAISOL COMPANY LIMITED

High Court of Solomon Islands
(Ward C.J.)
Civil Case No. 15 of 1991
Hearing: 27 February 1991
Judgment: 27 February 1991

J. Remobatu for the Appellant
Jansi (Assistant Manager) for the Respondent

WARD CJ: In the Magistrates' Court, the appellant claimed $1500 for forty two of his trees cut down and left on his ground by the respondent company.

The facts were not in dispute. A total of forty two trees were felled by the defendant's employees within 50 metres of a water course. It was agreed that this was not permitted under the agreement and it was also found that they could not be removed without damaging the water supply. Had they been removed and used or exported they would have been worth $1500.

The learned Magistrate dismissed the plaintiff's claim and he now appeals on the following grounds:

"(i) *Although both parties agreed that the contract was based on a 'standard agreement' the Court was not shown any such agreement. The Defendant, being an experienced operator in Malaita Province, must surely have had a copy of a standard agreement. It was further the responsibility of the Court to take steps to obtain a copy of the standard agreement before proceeding to trial, and without such agreement being before the Court it was unable to consider fully all the relevant factors.*

(ii) *It is standard practice in logging agreements on Malaita Province that the party extracting the timber is obliged to comply with the River Waters Act and to ensure that all its employees comply with those statutory obligations. It is*

further standard practice that a standard agreement will require a penalty to be paid by the party extracting the timber if any saleable log is felled and left in the bush. The spirit and content of logging agreements clearly make the party extracting the timber responsible for ensuring that only those logs which can subsequently be removed are felled in the first place. As the Court did not consider these relevant contractual provisions its decision was erroneous. Indeed the Court intimated that the standard agreement might make the Defendant liable in any event for logs which are felled, and in fact this was the case, although the point was not argued in the Court.

(iii) *The Court concluded erroneously that Vincent Koniramo, although employed by the Defendant, was "there to protect the interests of the Plaintiff, not the Company" and that he was "agent first and foremost for the Plaintiff". In view of the contractual obligations placed on the Defendant, Vincent Koniramo was employed by the Defendant to protect the interests of the Defendant. The interests of the Plaintiff were already protected by the contractual obligations requiring the Defendant to compensate the Plaintiff for any felled but unsaleable logs."*

The first two grounds refer to the form of agreement. In his judgment the learned Magistrate referred to the fact that a standard agreement had been used but that he had not seen a copy. In those circumstances, he could clearly not take any notice of its terms. The appeal fails on grounds one and two.

In this case, neither party was represented by a lawyer in the lower court. It is not normally any part of the Magistrate's duty in a civil claim to seek evidence on matters not advanced by the parties themselves. However, where the parties are unrepresented and reference is made to an agreement the terms of which must be likely to provide the answer to the case, the magistrate would be wise at least to suggest that a copy could be produced. If the parties decline that is a matter for them but it is more likely they have failed to appreciate the best way to present their case and so are likely to accept the invitation.

The third ground refers to the position of Vincent Koniramo. It was clear on the evidence that he advised the cutting of these trees and that the chain saw operators acted on his instructions.

In his evidence, Koniramo said -

"I was guiding the Company in 1989 - I was employed by the Company - I was to control holy places and boundaries. Nothing else"

In dealing with his position, the learned Magistrate said:

"It is necessary then to decide the position of Vincent Koniramo, because liability will follow on from the answer to that question.

The Company says that Vincent Koniramo was employed by them on behalf of the landowner (the Plaintiff) to guide their operations. He was so employed because he had intimate knowledge of the area as he is closely related to the Plaintiff. The Company had no such knowledge. The Plaintiff says he was employed to tell the Company where the tambu sites were and where the boundaries occurred. He was there to protect the interests of the Plaintiff not the Company. The Company relied on Vincent Koniramo to advise them where logs could or could not be felled. He clearly was not just a simple servant of the Company. He was agent first and foremost for the Plaintiff landowner. Both parties were aware that logs could not be felled within 50 metres of water courses and both were aware that the water supply source for Fote was within the area.

When working in dense bush the situation is not always clear by inspection on the ground. That is why the Company had Vincent Koniramo to guide them. It was not unreasonable for the Company to rely on his intimate knowledge of the land. Vincent Koniramo should have known and in all probability did know that the 42 logs cut down were within an area where skidding or removal of them would damage the Fote water supply. He was under an obligation to tell the Company. He did not do so. As he was primarily the agent for the Plaintiff the Plaintiff cannot rely on his negligence to found his claim. The claim must fail and I find for the Defendant Company."

I agree with the suggestion that liability depends on the status of Koniramo and, whilst there is clear evidence that he was employed by the Company, I can find nothing to support the suggestion that was on behalf of the landowners.

Clearly his employment was to ensure tambu sites and similar places were protected. It may be that his duties extended to pointing out the 50 metre zone around water. Observation of that is similarly very much in the landowner's interests. But to say he was therefore an agent for the plaintiff landowner is not correct. He was employed by the company to protect their

interests by making sure they did not unwittingly break any of the terms of the agreement. When he advised the company chain saw operators he was acting for the company and, if that advice is wrong and leads to breach, the company is liable.

Appeal allowed.

Judgment entered for plaintiff in the sum of $1500 plus costs here and in the court below.

(F.G.R. Ward)
CHIEF JUSTICE