

COMMODITIES EXPORT MARKETING AUTHORITY -v- PREMIER OF WESTERN PROVINCE FIRST DEFENDANT, PREMIER OF CENTRAL PROVINCE SECOND DEFENDANT, PREMIER OF TEMOTU PROVINCE THIRD DEFENDANT, PREMIER OF ISABEL PROVINCE FOURTH DEFENDANT, PREMIER OF MAKIRA PROVINCE FIFTH DEFENDANT, PREMIER OF GUADALCANAL PROVINCE SIXTH DEFENDANT, PREMIER OF MALAITA PROVINCE SEVENTH DEFENDANT, HONIARA TOWN COUNCIL EIGHTH DEFENDANT, AND PREMIER OF CHOISEUL PROVINCE, NINTH DEFENDANT

High Court of Solomon Islands

(Palmer J.)

Civil Case No. 19 of 1993

Hearing:

Judgement: 5 September 1994

J. Corrin	for Plaintiff
	for First Defendant
	for Second Defendant
Sylvia Bluck	for Third Defendant
Joyce Kelsey	for Fourth Defendant
	for Fifth Defendant
	for Sixth Defendant
David Philips	for Seventh Defendant
Suzanne Jackson	for Eight Defendant
Jane Davey	for Ninth Defendant

PALMER J: By originating summons filed on the 22nd of January, 1993 the Plaintiff sought answers to a number of questions from this Court. The questions posed can be confined to two main questions as follows:

(1) Whether the Plaintiff is carrying on a business under the Defendant's Provincial Business Licence Ordinances?:

(2) Whether the Plaintiff is exempted from requiring a licence in respect of those Ordinances?

Let me at the outset express my gratitude to learned Counsels for their extensive and erudite written submissions in respect of the matters in issue in this case.

All the Defendants except the Eighth Defendant represent the Provincial Assemblies set up under the Provincial Government Act - No.7 of 1981. The Eighth Defendant is set up under the Local Government Act.

Pursuant to section 33(1) of the Provincial Government Act, the Provincial Assemblies are given powers to make laws within their legislative competence. One of the matters within their legislative competence are the 'local licensing oftrades and business'; (see section 28(3) and Schedule 4 of the Provincial Government Act).

Pursuant to these powers, the Defendants have enacted legislation which include the Plaintiff's activities in the provinces as 'businesses', and requiring the Plaintiff to obtain business licenses for its operations within their provincial boundaries.

The Plaintiff comes to this Court with the submission that it does not carry on a business within the meaning of the term 'businesses' as used in Schedule 4 of the Provincial Government Act, and therefore does not require a business license.

THE MEANING OF 'BUSINESSES'

Schedule 4 of the Provincial Government Act is headed 'Legislative Matters'. Under the subheading 'Trade and Industry', in Schedule 4, sub-clause 1(1) reads: 'Local licensing of professions, trades and businesses, Local marketing'. It is important to identify at the outset, the correct meaning to be attached to the words 'trades and businesses'. It is my view, that the contextual meaning must necessarily relate to the sub-heading 'trade and industry'. It is important therefore to identify the meanings of the words 'trade' and 'industry'.

Halsbury's Laws of England, 4th Edition, Vol 47, at paragraph 1 defines 'trade' as follows:

"Trade' in its primary meaning is the exchange of goods for goods or goods for money, and in a secondary meaning it is any business carried on with a view to profit, whether manual or mercantile, as is distinguished from the liberal arts or learned professions and from agriculture. However, the word is of very general application, and must always be considered in the context in which it is used."

In Black's Law Dictionary, Sixth Edition, the word 'trade' is defined as "*The act of the business of buying and selling for money; traffic; barter. ... Purchase and sale of goods and services between businesses, states or nations.*"

Osborn's Concise Law Dictionary, Sixth Edition, defines the word 'trade' as:

"The business of selling with a view to profit goods which the trader has either manufactured or himself purchased."

The Australian Little Oxford Dictionary defines 'trade' as: *"exchange of goods for money or other goods; business carried on as a means of livelihood or profit....."*

The word 'industry' in turn is defined in Black's Law Dictionary 6th Edition, as *"Any department or branch of art, occupation, or business conducted as a means of livelihood or for profit; especially, one which employs much labour and capital and is a distinct branch of trade."*

The definitions quoted recognise the important part that motives for gain or profit play, but do not categorically state that it is an essential element in the definition.

The learned author in Halsbury's Laws of England, (ibid) at paragraph 1 pointed out that the primary definition of the word 'trade' is the *".....exchange of goods for goods or goods for money...."* and at paragraph 3, the learned author continued:

"Profit or the intention to make profit is not an essential part of the legal definition of a trade or business unless the particular context so requires; and payment or profit does not of itself constitute a trade or business."

In the case of *Re Duty on Estate of Incorporated Council of Law Reporting for England and Wales (1888) 22 QBD 279 at 293, per Lord Coleridge CJ*, he states that "the definition of the mere word 'trade' does not necessarily mean something by which a profit is made'. However, the particular context in which the word is used may import profit.

In the case of *Rael-Brook Ltd -v- Minister of Housing and Local Government [1967] 1 All E.R. 262, per Widgery J.*, one of the questions considered by his Lordship was whether the activities of a local authority in providing meals under statutory powers was carried on in the course of trade or business. The learned judge held:

"In our opinion neither the making of profit nor any commercial activity is an essential in order that a process may be carried on in the course of trade or business Even on the meagre findings of fact in the present case it can be inferred that the provision of School meals by the local authority in possession of the building from 1940 to 1946 was an occupation as opposed to a pleasure,that it was continuous rather than sporadic and that it was a serious undertaking earnestly pursued for the purpose of fulfilling a duty assumed by the occupier. Without attempting to decide that these features must necessarily all be present in order that an activity may

amount to a business for present purposes, we are satisfied that they suffice in this case."

In the passage referred to by learned Counsel for the Third Defendant in the case of *Customs and Excise Commissioners v. Lord Fisher (1981) 2 All E.R. 147 at p.157, per judgment of Gibson J.* it reads:

"It is clear that all ordinary business, trades, professions and vocations can be carried on with differences from this standard and norm in regularity or seriousness of application in the pursuit or disregard of profit or earnings and in the use or neglect of ordinary commercial principals of organisation. As the decision in the Morrison's Academy case (Customs and Excise Commissioner V. Morrison's Academy Boarding Houses Association (1978 STC1) has shown, the absence of one common attribute of ordinary business ... such as the pursuit of profit or earnings, does not necessarily mean that the activity is not a business or trade etc. If in other respects the activity is plainly a 'business'."

It is my view that the contextual meaning of the terms 'trade and business' should primarily be considered in the light of an intention to make a profit or gain. However, each particular case should be considered on its own facts as it is possible that there may be cases in which profit or gain is not contemplated and yet be regarded as a business. I might add that the elements of profit or gain are specifically recognised in the Defendant's Provincial Business Licence Ordinances, and I am satisfied that those Ordinances should be construed in that context.

IS THE PLAINTIFF A 'BUSINESS'?

The Plaintiff is a Statutory Corporation set up under The Commodities Export Marketing Authority Act 1984 (The CEMA Act). Its overall function is set out in section 6(1):

"For the purpose of promoting the export of commodities, the Authority shall be responsible for the development of their production, and for securing their efficient and regulated marketing."

Subsection 6(2), in turn sets out in more detail the functions of the Plaintiff. Section 7, sets out further additional functions of the Plaintiff, and section 8, specifies the powers of the Plaintiff.

The crucial submission of the Plaintiff is that it does not carry on a business within the true sense of the word. Ms Corrin argues that the Plaintiff is only carrying out its

statutory functions as provided for in The CEMA Act. Further, she points out that the Authority was set up not with a view to making a profit, but with the view of providing the export of commodities in the public interest. She also pointed out that the Authority is not self-supported but obtains funds from the Government and overseas aid packages such as STABEX funds.

The defendant's submission on the other hand, can be condensed to the argument that the Plaintiff engages in trading activities in competition with other local traders over various commodities, and thereby seeks to make a profit, and actually makes a profit. The fact that some of its functions do not include trading activities is not sufficient to exempt it from being regarded as a business. They argue that there are organisations which in their set up are not classed as businesses per se, and yet engage in commercial activities. So even if the Plaintiff is not a business, the fact that it engages in trading activities qualifies it as a business and therefore must obtain a business licence from the respective Provincial Governments.

It is not in dispute that the Plaintiff operates Provincial Marketing Centres at Choiseul Bay, (Choiseul Province), Buala, (Ysabel Province), Auki, (Malaita Province), Kaonasungu, (Makira Province), and Lata, (Temotu Province). In paragraph 6 of the affidavit of Solomon Ilala, filed on the 9th of June, 1993, he states:

"The object of Marketing Centres is to provide marketing services throughout the country for the purchase of copra, the supply of materials (such as drier parts, twine, and sacks) to producers, and the dissemination of trade information. At these Centres the Plaintiff purchases and stores copra, and ships it to Export Centres. Grading for export quality control is also performed by the Plaintiff's inspectors at those Marketing Centres. Each Marketing Centre has a warehouse, staff housing, a wharf, and a vehicle and equipment."

From those Marketing Centres, the Plaintiff ships the copra purchased to three Export Centres; namely, Noro, Yandina and Honiara. At paragraph 9 of the same affidavit of Solomon Ilala, he points out that the Plaintiff since 1988 had been implementing and co-ordinating the establishment of a national network of 32 Buying Points throughout the country. Some of these buying points he says have been completed and operated by the private sector.

The crucial area of contention, in my view, can be narrowed down, to the Plaintiff's activities in respect of those Buying Points, Marketing Centres and Export Centres, and the sale of drier parts, twine and sacks.

At paragraph 12 of the same affidavit of Solomon Ilala, he states that the Plaintiff does not operate for or make a profit.

When one considers the over-riding function of the Plaintiff, which is three-fold;

- (i) the promotion of the export of commodities;
- (ii) the development of their production; and
- (iii) the securing of their efficient and regulated marketing; and

analysing those functions as submitted by Ms Corrin, from the view point of providing a service to the public, it would hardly be said that the Plaintiff is a business for profit or gain. The submissions of Ms Corrin would be correct, and the answer to the question as to whether the Plaintiff is a business in my view, would be, no. However, the crucial question lies on how the operations of the Plaintiff in respect of the Buying Points, Marketing Centres and Export Centres are viewed.

It is important therefore to understand first of all, why those Centres were set up. At paragraph 6, of the same affidavit of Solomon Ilala, he states that the "*.....object of Marketing Centres is to provide marketing services throughout the country for the purchase of copra, the supply of materials (such as drier parts, twine, and sacks) to producers, and the dissemination of trade information. At these Centres the Plaintiff purchases and stores copra....*"

In her submission, Ms Corrin also points out that such activities were "*..... not 'business functions' but 'public interest functions', as for example 'providing for convenient copra outlets for producers and balancing the need to maintain 'a domestic copra price sufficient to meet the costs incurred by the producer' with the need 'to cut the domestic prices in order to help sustain funds for longer term copra development'.*"

It is not in dispute that the Plaintiff provides a vital marketing service throughout the country to copra producers for the purchase of copra. However, I am not convinced that this service is provided on a charitable, or non-profitable basis.

Take for instance the question of fixing the domestic prices of commodities. Section 6(2)(b)(iv) specifically provides for this:

"In particular, and without prejudice to the generality of the foregoing provision, the functions of the Authority shall be -

- (b) *with a view to securing efficient marketing in commodities for the purpose of their export to -*
- (iv) *fix by order published in the Gazette, the prices of commodities, for their buying or selling having regard to the cost of any prescribed activity in a*

commodity, the margin of profit expected by a producer from the export of the commodity, prevailing price of similar products in the local market in Solomon Islands, and other relevant considerations, and stabilise such prices, as far as possible, by taking such measures as it may consider necessary, notwithstanding fluctuations in the prices of the commodities overseas."

I can accept that the prime objective in fixing the domestic prices of commodities, is to seek to secure their efficient marketing for purposes of export. However, in seeking to perform this statutory function, ie. the efficient marketing of commodities, the Plaintiff is not obliged to do so at a non-profitable basis or at a loss to itself. Ms Corrin concedes that there is a balancing act between the need to make some profit to help sustain funds for longer term copra development and the need to meet the 'costs incurred by the producer'. Sub-paragraph 6(2)(b)(iv) requires the Plaintiff to have regard to the matters set out in that sub-paragraph, and then to "stabilise such prices as far as possible, by taking such measures as it may consider necessary, notwithstanding fluctuations in the prices of commodities overseas." It is clear that the Plaintiff has a wide discretion on the question of fixing of domestic prices. What might appear to be losses may not necessarily be so in view of the set up of the Domestic Price Support Fund (DPSF) which is used to compensate for fluctuations in world market prices of copra. But if for argument's sake, the DPSF should become exhausted, then it seems to me, that unless other sources of funding are obtained, the Plaintiff will have to, as a measure of last resort, adjust prices on a competitive basis to prevent further losses. This the Plaintiff has power to do. The Plaintiff therefore is not tied to any statutory requirement to fix prices on a reasonable basis (see *Guadalcanal Province v. SIEA*) or non-profitable basis. Rather, it seems to me that the opposite is true. Not only is the Plaintiff engaged in the purchase of commodities but it also engages in their export. It is obvious to me that the performance of such activities, which is one essentially of a commercial nature, must necessarily contemplate the making of profit or gain. The fact that there are other functions which the Plaintiff engages in which are of a public interest nature, is immaterial. Also the fact that those commercial activities of the Plaintiff were done pursuant to its statutory powers, in my view is immaterial. (*see Rael-Brook v. Minister of Housing and Local Government (1967) 1 All ER 262*). I am satisfied that its activities in respect of the Buying Points, Marketing Centres and Export Centres are done with the aim of making a profit, apart from its statutory functions.

To a certain extent too the Plaintiff operates its activities in the open market. There are other buyers and exporters of copra and cocoa in the open market apart from the Plaintiff. There is therefore in existence already, an element of competition. Those private organisations are required to obtain business licences before they can operate.

It would seem unfair on such businesses if the Plaintiff who engages in such similar activities should be exempted merely because it is a statutory authority.

There is however, a more important point to note. The Plaintiff does not have exclusive rights for the performance of its operations over those Buying Points, Marketing Centres and Exporting Centres in the Provincial Centres. This is to be contrasted with the statutory powers of the Solomon Islands Electricity Authority under the Electricity Act, which restricts the provision of the supply of electricity within 'Supply Areas' as designated by the Act, to the SIEA. There is no similar clause in The CEMA Act which would statutorily authorise the Plaintiff to perform its statutory functions within the provincial boundaries. Learned Counsel for the Third Defendant therefore is correct in pointing out that the Plaintiff is obliged to comply with the statutory requirements of the Provincial Assemblies. In the Guadalcanal Province v. SIEA case, (ibid) the SIEA had the statutory authority to carry out its statutory functions within the designated 'Supply Areas'. It therefore did not require the authority of a licence to perform its functions in those supply areas. It already had the authority of the law itself, and that authority was to the exclusion of others, save with the consent of the Authority.

By contrast, The CEMA Act only provides powers for the purchase and/or sale of and export of commodities. It also provides powers to issue licenses to anyone who wishes to engage inter alia in the export of commodities. But apart from these powers, there is no exclusive powers of operation within those Provincial Centres. The Plaintiff therefore must comply with the requirements of the Provincial Assemblies, and if it fails to do so, then the Provincial Assemblies have the right to prohibit the Plaintiff from performing its activities in their provinces. This is consistent with section 4(1) of the CEMA Act.

There is evidence also that in the years 1987, 1988 and 1990, the Plaintiff incurred a trade surplus in its accounts. This simply meant that the Plaintiff made a profit in those years. This further supports the view that the Plaintiff carries on a business with the view to profit.

Taking all the above factors into account, I am satisfied that although the Plaintiff is not a business per se, it carries on business in respect of the Buying Points, Marketing Centres and the Export Centres and the sale of drier parts, twine and sacks. I am satisfied its activities come within the definition of the word 'businesses' as used in the context of the terms 'trade and industry'.

The case of *Guadalcanal Province -v- SIEA* CC375/92, unreported judgment delivered on the 5th of March 1993 has been referred to by Ms Corrin in support of her submissions. With respect, that case is distinguishable on its own facts.

IS THE PLAINTIFF EXEMPTED FROM REQUIRING A BUSINESS LICENCE.

The answer to this question will depend on how the Provincial Assemblies view the functions of the Plaintiff, the service it provides, and the operations of the Buying Points, Marketing Centres, and Export Centres. The mere fact that the Plaintiff carries on a business within their province does not necessarily mean that its activities must be included as a business within their Provincial Business Licence Ordinances. The Provincial Assemblies can specifically provide for its exemption from the payment of business licence fees. The inclusion of such an extra charge on the Plaintiff may be extra revenue for the Provincial Assembly, but it may mean that the Plaintiff's activities may be curtailed or prices adjusted accordingly to recover such extra costs. But even if no exemption is given, there is nothing to stop the Plaintiff from seeking from Parliament ultimately, an amendment to The CEMA Act which would exempt it from payment of such fees.

It has also been submitted by Ms Corrin on behalf of the Plaintiff that in order for a Business Licence fee to be payable the activities of the Plaintiff must in some way utilise the economic resources of the Province for the purpose of gain or profit. She submits that the incidental presence within the boundaries of a Province or Honiara Town would not be enough, according to the dicta in *Malaita Provincial Executive v. SI Navigation Services (1987)* (Solomon Islands Magistrates Court, unreported, decided on 29th December 1987.) With respect, the presence of the Plaintiff within those provincial boundaries is not incidental, but real, permanent and a serious undertaking. In the affidavit of Solomon Ilala filed on the 9th June 1993, at paragraph 6, he states that each Marketing Centre has a warehouse, staff housing, a wharf, and a vehicle and equipment. That can hardly be said to be a mere incidental presence.

TEMOTU PROVINCE BUSINESS LICENCE ORDINANCE

The Temotu Province Business Licence Ordinance 1992, at section 2 defines a business as:

"any activity or undertaking, service, trade, profession, occupation or other venture determined by the Executive to be a business (whether or not listed in Schedule 2) and carried out by any person for the purpose of gain, profit or payment of any kind, whether or not any such gain, profit or payment has been received ..."

Schedule 2 in turn lists Copra Exporting, Copra Paying Centre, Copra Purchasing and Cocoa Pod Purchasing as some of the activities under which a business licence is required.

The Plaintiff submits that it is a community organisation and therefore is exempted from requiring a licence. The Black's Law Dictionary, sixth edition, defines the word 'community' as:

"Neighbourhood; vicinity; synonymous with locality. People who reside in a locality in more or less proximity. A society or body of people living in the same place, under the same laws and regulations, who have common rights, privileges, or interest."

Learned Counsel for the Third Defendant submits that the usual meaning of the term "community organisation" is a local organisation formed from a local community. The Plaintiff is not an organisation formed from the local community. It is a statutory corporation performing functions on a nationwide basis.

I am satisfied the correct meaning to be ascribed to the term 'community organisation' is as described by learned Counsel for the Third Defendant. The Plaintiff is therefore not exempted.

ISABEL PROVINCE BUSINESS LICENCE ORDINANCE

The Isabel Provincial Business Licence Ordinance defines the word 'business' as:

"any activity or undertaking, service trade profession, occupation or other venture determined by the Executive to be a business (whether or not listed in Schedule 2 hereof) and carried on by persons or persons for the purposes of gain, profit or payment of any kind whether or not any such gain, profit or payment has been received, but does not include activities or services in the course of employment or in a local market; or hawkers."

The Plaintiff submits that the Ordinance is silent as to how the determination of the Executive is to be made or published. And therefore it is submitted that the determination is to be reflected in the Schedule to the Ordinance. Ms Corrin submits that there is no category in the Schedule which covers the activities of the Plaintiff. However, the definition of 'business' specifically provides for businesses as determined by the Executive, 'whether or not listed in Schedule 2...'. Thus the mere fact that the activities of the Plaintiff had not been listed in Schedule 2 does not mean that it is to be automatically excluded.

The Plaintiff also submits that the Plaintiffs activities come under the definition of a 'charitable organisation' and therefore is entitled to rely on its protection, as provided for under section 13 of the Ordinance. That submission unfortunately is misconceived.

The mere fact that no motive for profit-making is present does not automatically bring the Plaintiff within the definition of a Charitable Organisation. The definition of the term 'charitable organisation' is qualified by the word 'charitable purposes'. The word 'charitable purposes' in turn is defined under section 2 of the Charitable Trust Act. When that definition is considered, it is my view that the Plaintiff's activities in respect of the Buying Centres and Export Centres and the sale of drier parts, twine and sacks cannot be brought within the bounds of a charitable organisation.

The Plaintiff is therefore not exempted from requiring a business licence under the Isabel Provincial Business Licence Ordinance.

MALAITA PROVINCE BUSINESS LICENCE ORDINANCE

The Malaita Province Business Licence Ordinance 1992 defines the term 'Business' as: "any activity or undertaking, service, trade, profession, occupation or other venture determined by the Executive to be a business (whether or not listed in Schedule 2) and carried out by a person for the purpose of gain, profit or payment has been received, but does not include activities or services set out in section 3."

The Plaintiff submits that it is exempted from requiring a business licence under section 3(c) of the Ordinance. The activities exempted under that sub-section are: 'fundraising where the proceeds are used solely for charitable, religious, educational, sporting or other community purposes.' Learned Counsel for the Seventh Defendant submits that the activities of the Plaintiff do not constitute 'fundraising' within the spirit and intention of the provision. I agree. It cannot be said too that the proceeds of the activities of the Plaintiff are used solely for charitable, religious, educational, sporting or other community purposes. In the affidavit of Solomon Ilala filed on the 9th of June 1993 at paragraph 14, he states: "Funds to meet the Plaintiff's recurrent operational costs come primarily from export proceeds from copra." I am satisfied the Plaintiff is not exempted from requiring a business licence.

HONIARA (LICENSING OF BUSINESS) (AMENDMENT) BYE-LAW 1990

Bye-law 3(1) of The Honiara (Licensing of Business) (Amendment) Bye-laws 1990, provides:

"any person who, within the limits of the Honiara Town Boundaries, carries on a designated business, save under and in accordance with terms and conditions of a valid licence for that business issued under these Bye-laws, shall be guilty of an offence..."

The term 'designated business' is defined in Bye-law 2 as:

"means business as a tailor, bakery or store of any category (other than a category required to be licensed under any Act) which is for the time being designed for the purposes of these bye-laws by the Council by resolution."

It is conceded by Learned Counsel for the eight Defendant that the Plaintiff's activities do not fall within the definition of designated business. No issue therefore arises as to whether the Plaintiff is required to obtain a business licence from the Council.

CHOISEUL PROVINCE BUSINESS LICENCE ORDINANCE 1993

Section 3(1) of the Ordinance provides that:

"No person shall within the boundaries of Choiseul Province operate a prescribed business except under and in accordance with the terms, conditions and limitations of a valid business licence issued by the Executive in accordance with section 5 of this Ordinance."

The term 'prescribed business' is defined under section 2 of the Ordinance:

- "(a) any business included in Schedule 1 hereof; or*
- (b) any other business, but does not include any business to which section 3(2) of the Ordinance applies."*

'Business' in turn is defined as:

"..... any activity or undertaking, service, trade, profession or occupation or other ventures determined by the Provincial Executive to be a business withing the intent of this Ordinance carried on, undertaken or operated by any person within the boundaries of Choiseul Province for the purpose of gain or profit or for payment of any kind but does not include any activity or service undertaken by an employee in the course of that employee's duties."

The Plaintiff submits that it is exempted from requiring a business licence under section 3(2) of the Ordinance, which provides:

"A business run by an organisation, group or association or its members or owners and whose profits are used for charitable, religious, educational, sporting or other community purposes."

The Plaintiff submits that the profits of the Plaintiff are being used for a community purpose by virtue of the performance of its functions under the Act. Unfortunately, the definition of the word 'community' has been extended by the Plaintiff beyond the locality in which it was intended to apply. The Choiseul Province Business Licence Ordinance applies only to its provincial boundary. The term 'community purposes' must necessarily relate to the local communities within the province. When construed in that context, the profits of the Plaintiff cannot possibly be considered to be used for community purposes. They go towards enabling the plaintiff to perform its functions and any other expenses and or commitments that the Plaintiff may have. Setting aside money for say, the construction of a clinic, water supply, a road, or wharf may be regarded as community purposes. I am not satisfied that the performance of its statutory duties can be regarded as being done for community purposes. The Plaintiff therefore is not exempted from requiring a business licence.

GUADALCANAL PROVINCE BUSINESS AND HAWKERS LICENSING ORDINANCE

The Plaintiff submits that it is exempted from requiring a business licence pursuant to section 4(2) of the Guadalcanal Province Business and Hawkers Licensing Ordinance which provides that business licence requirement shall not apply to:

"sales of handicrafts or foodstuffs, and activities such as dances, sporting or athletic events undertaken for charitable or community benefit purposes, or for any purpose which is not a purpose of private gain or commercial undertaking."

Ms Corrin submits that even if the Plaintiff were to be held to be carrying on a business, it is submitted that as its activities are not carried on for the purpose of private gain or commercial undertaking, the Plaintiff is exempted from requiring a licence by this sub-section. Unfortunately, I must disagree. The activities of the Plaintiff, in my view fall within the term 'commercial undertaking'.

THE MAKIRA ULAWA PROVINCE BUSINESS LICENCE ORDINANCE

By virtue of the Makira Ulawa Province Business Licence Regulations 1992, the list of prescribed businesses was amended to include the activities of the Plaintiff. The submission of the Plaintiff therefore that it did not come within the list as provided in the schedule no longer applies.

CENTRAL PROVINCE BUSINESS LICENCE ORDINANCE

Pursuant to The Central Province Business Licence (Amendment) Ordinance 1993, Schedule 1 was deleted and replaced with a new Schedule 1. The new Schedule 1

actually contains a list of businesses which includes the activities of the Plaintiff. The submissions of the Plaintiff regarding exemption under the old Schedule 1 therefore do not apply.

Costs to be borne by the Plaintiff.

(A.R. Palmer)
JUDGE