JOHN HAVEA AND IVAN MAEKE -v- MUBU SAWMILLING (A FIRM) AND SIX OTHERS

High Court of Solomon Islands
(Awich, C.)
Civil Case No. 178 of 1995
Hearing: 15th August 1995
Judgment: 12th September 1995

P. Lavery for Plaintiffs
A.H. Nori for Defendant

AWICH, COMMISSIONER: According to affidavits filed for both sides, a company known as Island Construction Management Limited, under the management of one Delbert Lennea moved equipment to Mono Land in Shortland Islands in May 1995 and commenced timber operation as a business there. That operation was by arrangement with John Lotikeni (Second Defendant) and Obed Kikolo (Third Defendant) through their business partnership known as Mubu Sawmilling (First Defendant). It would appear that Esther Kinglesi (Fourth Defendant) and Ana Ruia (Fifth Defendant) agreed to the operatio. John Havea, Ivan Maeke and Lawrence Miriki of Mono do not approve of the business arrangement and the operation. John Havea is the Paramount Chief of Mono; he claims that for such business to do with land, he as paramount chief must be consulted and agree. He also claims personal beneficial right over the land in question. Ivan Maeke claims that he is a customary owner over the land in question on Stirling Island. Lawrence Mariki says that he is the elder brother of John Lotikeni and in addition he is the Lala'ahana of Baumanasoea Clan; he must be consulted and agree and in any case he is a customary owner of the land, on which Lotikeni has started operation. I must add here that Miriki was not originally plaintiff in the writ of summons but added by amendment granted on 15 September 1995.

As there were opposing claims by Havea, Maeke in the beginning, they filed a case by writ of summons on 26th June 1995. Following that writ, they applied to Court by notice of motion ex parte, asking for order of injunction, payment of the proceeds of the operation, interest and costs. The notice of motion did not state specifically that the order sought was only an interim order, but the Court regarded it as such. On 18 July 1995 His Lordship Muria CJ granted the order. The defendants reacted by filing memorandum of appearance and defence, and took out summons so as to oppose the granting of interlocutory injunction. That is the application I heard at Gizo on 15 September 1995.

That there are serious issues as to the rights of Havea, the Chief, Maeke, a tribesman and Miriki the brother of Lotikeni, on the one hand and those of Lotikeni Kikolo, Kinglesi, Ruia and Island Construction Management Limited on the other, cannot be doubted. The serious issue is whether Lotikeni and defendants 3, 4, and 5 own the land in question to the exclusion of Havea Maeke and Miriki, the plaintiffs. They have alleged ownership and right to be consulted as the basis for their claim. That basis is in custom just as that of the defendants. They do present serious questions that present real prospect of success if proved successfully by the plaintiffs. Whether that determining rule came from the case of *American Cyanamid v. Ethicon as learned Counsel Mr Lavery submitted or from the case of John Talasasa v. Attorney General, Solomon Taiyo & Others* as learned

Counsel Mr Nori submitted is immaterial. Both Counsels submissions are agreed on the rule. It is now the Law in Solomon Islands Courts because the rule has been accepted by our Courts in several other cases and in noted clarity in the John Talasasa's case. The reason for seeking interlocutory injunction is of course the need to preserve the state of things (status quo) in cases in which serious claims have been raised such as in this one. Losses must not be aggravated. In deciding whether to impose interlocutory injunction, the court must address the question as to whether the resulting losses to either party cannot simply be adequately compensated for by payment of money compensation.

In this case, it is clear from the affidavits that the plaintiffs do not have the kind of money the defendants say they have put down for their projects and associated expenditure. I have no difficulty in deciding that court order for money compensation will not repair their losses because the plaintiffs will not have the money. In short, pecuniary compensation will not be adequate compensation to the defendants. The plaintiffs on the other hand say that they are not simply claiming the money worth of timber taken or that will be taken from their land; they just do not want trees on the land to be felled. Again in that situation, money compensation will not be adequate compensation; it takes very long to grow trees. That takes me to the question of balance of convenience.

Balancing convenience is one of the rules in a serious issue case, by which the court is persuaded to order or not, interlocutory injunction. The court weighs and determines on which side, greater loss will be occasioned if,

(1) the plaintiff is refused interlocutory injunction during trial, but wins the case finally

or

(2) injunction is imposed during the trial, with the consequence that losses are occasioned, but defendant finally wins the case.

In this case, I find it an even balance of losses of the parties. Losses of the trees to be felled between now and the final determination of the case shall be great losses in that they cannot be replaced in a short time; possibly not in the lifetime of the plaintiffs.

On the other hand one of the losses of the defendants - $575 interest on loan accruing daily, is enormous loss. Fortunately cases as difficult as this have been occurring before. The test of last resort is the comparative strength of the two cases.

In comparing the strength of the two cases I remind myself by stating the two cases briefly; starting logically with the defendant's case. Their case is that they are not doing timber/logging business covered by s.5 of Forest and Timber Ordinance, for which a licence is to issue for felling of timber and removal of it from land for which timber rights grants agreement must be made and approved by the Minister. They say they are felling trees on Tingaleapu land which belongs to Lotikeni. In their affidavit, exhibit "DL1" they included Utipang and Maloaini lands. They state that they have licence under s.4 for milling and they are lawfully supplying trees from their own lands to their own mill, licenced for milling within the area of their own lands. The plaintiff's case is that they are owners of the same portions of land which are part of Mono land. In the case of Havea, he says he is the paramount chief and owner in custom. In the case of maeke, he claims rights/ownership in custom by

reason of tribal membership. In the case of Miriki he claims he is in fact the elder brother of Lotikeni and over and above, he is the clan chief, he is owner of all the lands of that clan.

I do not think it is appropriate at this stage, for me to reopen the point of law raised and decided upon by His Lordship Palmer J. in the case of *FOREST & ANOTHER v. MAHLON ALI & ATTORNEY GENERAL CC1/94* in which he decided that the holder of a milling licence still requires to comply with procedures under s.5 of Forest and Timber Ordinance requiring the grant of timber rights and approval by Minister. Learned Counsel Mr Nori may wish to argue that point at the substantive hearing. It is clear at this stage that even if they did not need more than a milling licence under s.4, the plaintiffs, one of them a brother of Lotikeni also claim the same right/ownership over the same 3 portions of land; Tingaleapu, Utipang and Maloaini. Their cases appear evenly balanced against Havea the chief who they say has only the right to be consulted and against maeke who they say does not state specifically the portions of land he owns. Even so, I must hasten to say that this is an area of local court jurisdiction about which my assessment cannot carry much weight. I can, however, say categorically that it is most unlikely that the rights of Lotikeni and of the other defendants who derive their rights through Lotikeni can be regarded as overinding the right of Miriki his elder brother and the chief of their clan. I accordingly find that on balance, the plaintiffs, at this stage (on affidavits) have made out a comparatively stronger case. That does not mean they will win the case, it is only a stronger case enough to sway the court to grant their application for interlocutory injunction. I must state here for clarity sake, that my task at this stage is not to resolve the issue of the rights of the two sides (which seems to be a question of ownership). It is only to determine whether it is just at this stage for the Court to impose interlocutory injunction while the case proceeds to determination of the questions of rights over the land. I grant the injunction prohibiting the defendants by themselves or by agents or representatives from felling more trees on Tingaleapu, Utipang and Maloaini or Mono land generally. They may remove and sell trees already felled and to pay the proceeds in court. They may, however, use part of the proceeds to pay for labour and other operation costs excluding costs of capital nature such as bank interest. They are to keep proper accounts. Parties are at liberty to apply for direction regarding expenses they have doubt about. It is directed that the injunction will remain in force for sixty (60) days from today's date. In view of the advance stage of pleading, parties must complete pleadings in forty (40) days from today and plaintiffs must apply for hearing date before sixty (60) days, that is before the day on which this injunction is to expire. Costs is reserved to be considered on determination of the case. I deem that the course of justice in this case, taking into account the nature of the expected losses, shall be defeated if the court were to insist on the plaintiffs providing undertaking as to damages. I make no order about that.

Delivered in Court this 12th day of September 1995. In the presence of:
Lavery for Plaintiffs
Nori for defendants

Mr. Lavery: I appreciate the need to order injunction for only 60 days.
But there are long procedures to bring the case to conclusion ie. because ownership has to be determined before Chiefs. Sometimes there are appeals and case may drag on for very long certainly for more than 60 days.

Nori: Defence has been filed. It is only a reply from plaintiffs.

I do not see whether referring the matter to chiefs cannot be done in just about a month.

Case of *MEKE v. SOLOMON* says High Court has jurisdiction to hear land cases. That can be used. High Court can use its assessment to determine the customary law about ownership and leadership on Stirling Island. The difficulty of the defendant is that if matters go to chiefs and

Local Court Appeal and High Court, defendant may win the case.

Lavery: Replies to submission on Meheke. Refers to Local Court Act and Land and Titles Act.

Court: Parties must act on the order as has been made by court, should it be necessary to apply for extension of time they may do so by application supported by proof of the action they would have taken.

Sam Awich

Commissioner of High Court