

GUADALCANAL RESOURCES DEVELOPMENT CO. LTD -v- LAWRENCE TANGISI, LAWRENCE POGO, and SAM OFOU

High Court of Solomon Islands

(Awich, Commissioner)

Civil case No. 338 of 1995

Hearing: 7 November 1995

Judgment: 7 November 1995

P. Tegavota for Plaintiff

C. Ashley for Defendant

Awich, Commissioner: The plaintiff, Guadalcanal Resources Development Company Limited, who is also the applicant, commenced action against Lawrence Tangisi and two others seeking order restraining them from blocking a road through Haimelu(1) land to the sea that the plaintiff constructed and uses in the course of exporting logs it extracts from the interland. It further seeks order restraining them from interfering with its employees in the course of transporting its logs to the sea. The plaintiff alleges that it has obtained consent of certain owners of interland and of John Afu and Peter Tohoro owners of Haimelu land through which road has been constructed. Based on that consent it has obtained timber right licence.

The plaintiff seeks temporary injunction which has become necessary because the defendants are now blocking the road. To support its application, the plaintiff has filed affidavit outlining efforts on its behalf, to get the defendants to stop interfering. It has annexed signatures of land owners and the licence. In all, the plaintiff has made a sustainable case, with good prospect for success.

On the other hand the defendants who have appeared, did not file affidavit because of urgency, has had it stated in court that the first defendant and not John Afu or Peter Tohoro, is the owner of Haimelu land and that the first defendant has not consented to the plaintiff constructing a road through that land. They contend that by determination of chiefs in 1988, the first defendant is the owner. The second and third Defendants were simply acting on instruction of the first defendant.

During argument today, parties have agreed that consent order be made, the defendants consenting to opening the road and not interfering with employees of the plaintiff, and upon that, the plaintiff consents to selling logs and keeping the money in trust account until the determination of the case or by agreed settlement of parties. One point remains unsettled. The plaintiff would like reasonable expenses of the operation paid out of the proceeds, but

the defendants do not agree to that; they would like all the proceeds banked and every payment of expenses sanctioned by court.

Expenses of operation involve payment of wages and for commitments to third persons. I think it reasonable that those third persons should not be made to suffer because of dispute between the plaintiff and defendants.

It is accordingly ordered as follows:

1. By consent the defendants will immediately stop further acts of blocking the road in question and will desist from interfering with the defendant's operation in transporting timber through the road transgressing Haimelu Land.
2. The plaintiff will sell the logs in question and bank the money into a joint account of the solicitors for both parties, the bank account being an interest bearing one.
3. Reasonable expenses of the operation will be paid for out of the proceeds, upon the plaintiff having presented a list and computation of the expenses to the solicitor for the defendants seeking consent of the defendants. If consent is refused such list shall be filed in Court, and the defendants will be required to file their reasons for so refusing. The court will then sanction or not, the expenses or may call parties for hearing on the point.
4. The proceeds so banked shall be released upon further order of the court.
5. Costs of this application shall be in the cause.
6. Unless parties will have concluded pleadings and sought direction from court earlier, the case will be listed for direction 60 days from today. The plaintiff to seek that listing.

Dated at Honiara this 7th day of November 1995.

(Sam Awich)
COMMISSIONER