

JACK LAGOBE  
DULCIE TOZAKA

v.

FRANK LEZUTUNI  
VR & JS LUMBER CO ASSOCIATES  
MEGA CORPORATION LTD  
ATTORNEY GENERAL

High Court of Solomon Islands

(Palmer J.)

Civil Case No. 102 of 1994

Hearing: 7/4/95

Judgment: 26/4/95

*P. Lavery* for Plaintiff

*C. Ashley* for Defendant

**PALMER J:** The Fourth Defendant applies by summons filed on the 13th of December, 1994, to have the amount of \$254,635.35, being the customs duty payable for the logs exported from the disputed land called Reresare Land, to be released and paid to the Comptroller of Customs.

The total amount deposited with the High Court was SBD795,609.83. A conditional payment of SBD399,003.46 has been released to the Third Defendant. The sum of SBD396,606.37 therefore is currently held on deposit under the Court's order.

Mr Ashley, of Counsel for the Fourth Defendant, submits that export duty is payable under section 7 of the Customs and Excise Act.

Mr Lavery, of Counsel for the Plaintiff, submits on the other hand, that the sale proceeds should be treated as a fund where damages could be readily available.

He argues therefore that no further funds should be released pending determination of the Plaintiff's claim.

To a certain extent that is correct, but the fact must not be lost sight of that the sale proceeds did not arise in vacuo. It arose from the toil and sweat of persons and from the use of expensive heavy logging machinery and equipment. But for these, no sale proceeds would

have been obtained. It is only proper in the circumstances therefore for reasonable expenses to be deducted and paid out.

The long arm of the law should also not be lost sight of in these operations. The claim for export duty to be paid arises from statute law; section 7 of the Customs and Excise Act. There is no dispute or challenge to the fact that an export of logs had taken place. In fact the export was done with the sanction of the Court. There is also no submission made as to how or why those logs that had been exported should be exempted from export duty. Only the Minister responsible for the administration of the Customs and Excise Act can grant exemptions. None has been cited here. The Court cannot grant exemptions. It has no power to do that.

Further, the export duty is calculated on the total volume of round logs exported per shipment. In this case the total volume exported was 1,755.533 cubic metres. The export duty chargeable in that respect is an expense directly related to the export of the logs.

Mr Lavery has sought to argue that the release of funds towards payment of the export duty would be prejudicial to the hearing. He submits that if the issue of the Mill License was subsequently found to be illegal, then the export of those logs would have been done illegally. In that respect, the export of those logs had been tarnished with illegality, and the Fourth Defendant he argues, should not be allowed to profit from such a wrong.

There is some logic to this argument. However, there is in my view a fine distinction which can be drawn.

The Mill License was issued by the Commissioner of Forests. The question of legality or illegality of the issue of that License therefore is to be directed at the Commissioner of Forest's actions.

The payment of the export duty on the other hand, is a requirement imposed by statute. It is directed at the export of goods. Where there has been an export of goods, then unless there is an exemption, export duty is payable. There is no issue or question arising about the validity or legality of that export.

The only issue for determination is as to the question of legality of the License. If and when that question should be determined in favour of the Plaintiff, then an award for damages would be the appropriate order. In that case, the quantum of damages would have to be assessed. The question of assessment however, may not necessarily relate directly to the quantum of the export duty calculated. The reason for such a difference has already been addressed earlier in this judgment.

One can appreciate the concerns raised by Mr Lavery, but the distinction is fairly clear in my view, that any award of damages made against the Fourth Defendant is no less recoverable in law. Also, the likelihood of the Fourth Defendant defaulting in payment is quite remote.

Taking all the above factors into account, I am satisfied that the export calculated should be released forthwith, and I so order.

No costs ordered.

**ALBERT R. PALMER**

A R PALMER

JUDGE