

LUXTON JOVERE

Plaintiff

-v-

NIRA VIGA

1st Defendant

JACOB MAKOTO

2nd Defendant

SIMON KOBA

3rd Defendant

NAGITA

4th Defendant

High Court of Solomon Islands

(Palmer J.)

Civil Case No. 138 of 1994

Hearing: 3/2/95

Judgment: 15/2/95

P. Tegavota for Plaintiff

T. Kama for Defendant

PALMER J:

The Plaintiff in this action is a member of the Board of Directors of North New Georgia Timber Corporation; a statutory body set up under the North New Georgia Timber Corporation Act to "promote the utilisation of the timber resources of North New Georgia for the benefit of the customary land owners of New Georgia land for the public benefit", (see section 3(1) of the Act). Under the Second Schedule to the Act, it provides for the appointment by the Minister of Natural Resources, a number of Tribal Chiefs or their representatives from five customary land areas identified under the First Schedule to the Act. These are the New Georgia lands.

Those five customary land areas are:

Dekurana, Gerasi, Koroga, Lupa and Rodana

The particular land area of interest here is Lupa.

In 1984, the North New Georgia Timber Corporation Act 1979, was amended. One of the changes introduced was to divide the Lupa customary land area into two parts, from Mase to Hepa, and from Hepa to Barora.

In the appointments made of members of the Board of Directors for the Hepa to Barora customary land area, the Plaintiff was appointed as one of the directors together with another six. The first, third and fourth Defendants were members of the Board of Directors for the customary land area for Mase to Hepa.

The claim of the Plaintiff in essence is that despite the division of the Lupa land area into two parts, that would not make any difference to his rights to entitlement on behalf of his tribe for distribution of royalty moneys. So even though the royalty money obtained was from the Mase to Hepa area, that is still within the Lupa land area of which he is a director for and therefore should be paid royalty money. The fact that he is a director in a separate land area from Hepa to Barora in Lupa should not make any difference.

This claim is not altogether without substance. Unfortunately, it has been misdirected to some extent. If one studies the relevant provisions on the distribution of royalty payments, (*in the Act it is described as 'distribution of profits' - see Third Schedule*), it will be seen that it is the Corporation that is responsible for the payment of royalty moneys to the tribal chiefs on behalf of the members of their tribes. (*see para. 1(1) and 3 of the Third Schedule*). It seems that the recognised 'tribal chiefs' or their representatives, are also the directors for a particular customary land area.

The payment therefore of any profits for distribution in the Lupa area is a matter between the North New Georgia Timber Corporation and the Tribal Chiefs of Lupa customary land area (see para. 3 of the Third Schedule). The question of whether only the tribal chiefs for the Mase to Hepa area in Lupa would be entitled for distribution of profits for the logs felled and extracted in that area, is also a matter between the Corporation and the Directors of Lupa area.

The claim of the Plaintiff therefore should have been directed against the North new Georgia Timber Corporation as well, because under the Act, the Corporation is required to pay the money for distribution to the Tribal Chiefs. It seems to me that in reality this is the claim of the Plaintiff.

The claim against the four fellow directors would seem to be restricted to the question of whether he (the Plaintiff) is entitled to distribution of the profits in his capacity as a member of the customary landowning group for Mase to Hepa. In other words, the question would boil down to whether he is a member of the landowning group in Mase to Hepa. If he is, then he would be entitled to royalty payment in his *individual capacity* as a member. The appropriate forum to deal with such a question in my view would be the Local Court.

I am not convinced that the claims of the Plaintiff are frivolous or vexatious. They raise issues which would need to be properly addressed in a trial to clarify the confusion that has arisen in respect of royalty payments over the two land areas in Lupa. No affidavit evidence has been filed by the North New Georgia Timber Corporation to clarify what the position is in respect of those two areas.

The Notice of Motion filed on the 1st of September 1994 therefore should be dismissed with costs.

I will exercise my discretion and allow the Plaintiff to amend the Writ of Summons and join the North New Georgia Timber Corporation as one of the Defendants. Any other consequential amendments should also be done within 14 days.

ALBERT R. PALMER

A.R. PALMER
PUISNE JUDGE