

MARK LAMBERE
KALENA TIMBER COMPANY LIMITED

v.

JOHN S. ALEPITU
JOHN K. ALEPITU
NATHAN ALEPITU

High Court of Solomon Islands

(Palmer J.)

Civil Case No : 227 of 1994 and 180 of 1994

Hearing: 31/3/95

Judgment: 6/4/95

P. Tegavota for Plaintiff

P. Lavery for

T. Kama for

PALMER J: It should be made clear right from the beginning that there are two separate claims before this Court, which have been consolidated because of the way in which the issues raised are inter-linked.

In Civil Case 180 of 1994, the Plaintiffs, Nathan Alepitu and John Kana Alepitu allege inter alia, in their Statement of Claim that they are members of the NONE BERU TEBULANA clan of the Tebulana Tribe which owns the customary land known as LUMONARA LAND, located within HAPORAI Customary Land.

In paragraphs 4 and 5 of the Statement of Claim, it is alleged that the First and Second Defendants had trespassed on the Plaintiff's land and unlawfully converted the timber felled and extracted from the said land and thereby caused loss and damage to the Plaintiffs.

Further, in paragraph 5 of the Statement of Claim, it is alleged that the Rendova Area Council did not make any determination in respect of that land, and accordingly the timber rights agreement entered into by the First Defendant did not include Lumonara land.

In the alternative, it is alleged at para. 6, that the Agreement entered into by the First Defendant did not include Lumonara land, because the First Defendant and the Plaintiffs were not ad idem as to its terms, in particular its extent.

The crucial issue raised in the above civil action is the question of customary ownership over Lumonara Land. This is a matter to be determined properly between the Plaintiffs and the Second and Third Defendants under the Local Court Act.

The claim in civil action 227 of 1994, by contrast seeks under an originating summons filed on the 12th August 1994, a number of declarations pertaining to the timber rights agreement executed between the First and Second Applicant (Mark Labere on behalf of the Hapurai tribe, and Kalena Timber Company Limited) on the 10th of January 1990.

In essence what is sought is a declaration to the effect that the said Agreement was validly executed in respect of Hapurai land, which land includes Lumonara land, the area of land now disputed by the three Respondents, John S. Alepitu, John Kana Alepitu and Nathan Alepitu, and, that the Second Applicant is entitled to fell and extract logs from the Hapurai Land.

The difficulty that this Court sees in granting the declarations sought by the Applicants or even in considering in detail the merits of the Applicant's submissions at this point of time is that there is a serious underlying issue of dispute⁴ which is yet to be determined between the First Applicant and the Respondents.

That underlying issue, which is the question of ownership in custom of Lumonara Land, is material to the issue of the validity of the timber rights agreement of the 10th January, 1990.

This is the distinction to be made with the submission of Mr Tegavota that the issue of validity of the timber rights agreement is only one of the issues to be determined by the Court. Unfortunately, that issue cannot be severed from the underlying issue. They are closely linked together. If at the end of the day, it is determined that the Respondents are the lawful customary owners over Lumonara land, then the Agreement of the 10th of January, 1990 will have no effect over Lumonara Land, unless other rights in equity may be asserted by the Applicants.

There is no evidence to prove that the question of ownership over Lumonara Land had already been determined in a Court of Law as between the First Applicant and the Respondents. The Respondents are entitled therefore to institute an action through the appropriate forum, on the question of ownership over Lumonara Land. The Applicants recognise this and concede this point in the affidavit in support of Timothy Zama Hebala filed on the 12th of August, 1994, at paragraph 10.

Mr. Hebala has also deposed at paragraph 10, that the question of ownership has already been commenced under the Local Courts' Amendment Act of 1985. In those circumstances, the proper course of action in my view is to defer hearing of the originating summons in civil case 227 of 1994, pending the final outcome of the questions of ownership now proceeding before the Local Court, subject to the rights of appeal to the higher courts.

Accordingly, the declarations sought in the originating summons at this point of time are denied, and direct that those proceedings be stayed pending the determinations on the question of customary ownership over Lumonara Land.

Costs to be in the cause.

ALBERT R. PALMER

A.R. PALMER

JUDGE