JOSEPH MANEUGU
(Representing the Kakau Nuhu Tribe

-v-

And SUCCESS COMPANY LIMITED
And RAYMOND JUAPI
(Representing the Kakau Valiqota Tribe)
And RUPINO TABA
(Representing the Simbo Tribe)
And BELASIO TAVARAU
(Representing the Kakau Ngengeni Tribe)
And VINCENT KURILAU AND ONESIMO TAQU
And ATTORNEY GENERAL

High Court of Solomon Islands
(Palmer J)

Civil Case No. 17 of 1996
Hearing: 10th April, 1996
Ruling: 11th April, 1996

Andrew Nori for the Applicant/Defendants
Thomas Kama for the Respondent/Plaintiff

PALMER J: The Plaintiff claims that his tribe, the Kakau Nuhu Tribe, which he represents, is the landowner of Vai Customary Land. He has instituted a land dispute claim against the Second Defendant through the Chief"s Committee as provided for under the Local Court (Amendment) Act, 1985, and through the Local Court. On both occasions he has lost his claim. He has appealed to the Customary Land Appeal Court and his appeal is currently pending. He still maintains that his tribe is the rightful owner of Vai Customary Land.

The Plaintiff also claims that the procedural requirements in Part IIA *(sections 5b, 5C and 5D)* of the Forest Resources and Timber Utilization Act (Cap.90), had not been complied with and that accordingly, the timber rights agreement dated 5th September, 1993 and the licence issued were invalid.

The first issue for consideration is whether there are serious or triable issues before this Court. Two major issues have been identified above; the claim of ownership and the claim that the timber rights agreement and licence held by the First Defendant are invalid. The latter claim, as pointed out by Counsel for the defendants, is dependent on the final outcome of the land dispute claim between the Plaintiff and the Second Defendants. If ownership is

finally determined against the Plaintiff, then it would seem that he would not have the locus to bring an action against the question of validity of the timber rights agreement and the licence of the Second Defendant.

The first question for consideration at this stage is whether the issue of ownership is a serious or triable issue? The approach taken by Counsel for the Defendants is that the Plaintiff having lost his claim of ownership in both the Chiefs' Committee and the Local Court no longer has any legal interest to be protected. On one hand that would be correct, that is, that the Second Defendant does have a valid judgment of a competent Court in his favour. However, the Plaintiff has exercised his right of appeal to a higher Court; the Customary Land Appeal Court. Counsel for the Plaintiff argues that this thraws a different light on the question of whether the issue of ownership is a serious issue or not. He argues that by virtue of the fact that an appeal is pending, the issue of ownership is still very much a *"live issue"*.

Defendants' Counsels response is that the Plaintiff cannot rely on the fact that an appeal is pending in the Customary Land Appeal Court as a basis for seeking interim injunction *(Monk -v- Bartram [1881] 1 QB 349).* He also pointed out that the rule in Monk -v- Bartram also applies to the prosecution of judgment. I agree.

No stay of proceedings under the judgment or decision appealed from, has been obtained. The Court therefore should not interfere by way of an interim injunction. On that basis alone I am satisfied that the interim orders issued by this Court on 28 February, 1996 should be discharged but subject to a number of conditions, which will be addressed later.

However, in the event that there are serious issues, I will go on to consider anyway, the next question, whether damages is an adequate remedy. In most logging cases, it has often been said by this Court that damages alone would not be sufficient to compensate the losses incurred by the Plaintiff if all his trees are removed and the surrounding environment damaged, in the event he wins his case but no injunction is imposed.

Normally, that would be a ground for the grant of an interim or interlocutory injunction. However, before that is granted, the Court is required also to consider whether, the Plaintiff is prepared to give an undertaking for damages in the event that the Defendant should win his case. and losses are incurred arising from the injunction imposed. The Court should consider whether the Plaintiff would be able to compensate the defendants adequately for losses incurred. If so. then normally an injunction may be imposed. In this case, however, it is clear that the Plaintiff would not be able to compensate the defendants. In those circumstances, where there is doubt as to the adequacy of the remedy of damages available to either party or to both, the Court should then go on to consider the next question, that of *"balance of convenience"*. In other words, where does the balance of justice lie?

In my view this is where the dividing line is drawn for this particular case. In the affidavit of Joseph Maneugu filed on 15/1/96, obviously in support of the ex parte summons filed on the same day for an interim injunction, at paragraph 10, he stated that in the month of August 1995 the First Defendant constructed a road into Vai Customary Land. I quote:

> *"While road construction was in process trees were also felled and removed from the land. I instructed Mr. Kama to write to the First Defendant and informed it that an appeal has been made on the land dispute with the Second Defendant and that it must stop the road construction. The company had failed to stop the road construction and began full scale logging which is still continuing until the present day."*

The Plaintiff was well aware of the invasion of his rights as early as August/September of 1995 and yet did not seek interim orders until well into the First Defendant's operations in the said land. The application for interim relief was not filed until some four to five months later, in January of 1996. In *Attorney-General -v- Super Entertainment Limited (Trading as Solomon Casino) Unreported, Civil Case no. 31 of 1996,* this Court pointed out that delay is a relevant factor in interlocutory proceedings for injunctive relief, and referred to the maxim *"Vigilantibus non dormientibus jura subvenient - a Plaintiff should not sleep on his rights".* If the matter had been so urgent, then an application for an interlocutory injunction would have been made earlier. The Plaintiff has waited too long here until the First Defendant had moved into the land and commenced logging operations before taking court action. In my respectful view, that delay is material to the question of where the balance of justice in this case lies.

The Plaintiff could have applied for a stay of proceedings under the judgment of the Local Court even as early as May/June 1995, or injunctive relief, in August/September of 1995, well before the logging operations by the First Defendant could have been commenced. He was well aware of the activities and intentions of the First Defendant by that time. Unfortunately, he has not acted promptly. That is a relevant factor. The First Defendants have obviously incurred substantial expenses in the logging operations and stand to lose much on a daily basis if the injunction is continued. Counsel for the Defendants also pointed out that there is nothing in the affidavit evidence filed to say that the Plaintiff is totally opposed to logging. On one hand, that is not necessarily relevant and may in fact be immaterial. On the other hand, it may be said *(and that seems to be the approach of the defendants)* that if he had been totally opposed to logging, then he would not have waited until the First Defendant had commenced logging operations in the said land.

In assessing where the balance of convenience lies, it is my respectful view that the injunction should be discharged subject to a number of conditions. First, that all proceeds of sale paid be attached and paid into a Solicitor's trust account in an Interest Bearing Deposit Account. Reasonable expenses may be paid out by consent of both parties and in the event of a failure to agree, the court's approval may be sought on notice to the other party. Secondly, that proper accounts be kept.

The criterias of preserving the *status quo* and assessing the relative strength of each party's case as revealed by the affidavit evidence on the hearing of the application do not need to be considered in the light of this Court's ruling on the third criteria of *"balance of convenience"*.

Counsel for the Defendants made the submission that this Court should proceed to weigh and compare the strength of the Plaintiff's land claim as against that of the Second Defendant, and referred to the case of *John Havea and Ivan Maeke -v- Mubu Sawmilling (a firm) and Six Others (High Court Civil Case 178/95).* As correctly pointed out in that case by the learned Commissioner of the High Court, S. Awich Cmr., the Court can consider that criteria as a matter of a last resort to assist it in doing justice to the parties, in the case, without having to rule on the merits of the case or embark on resolving conflicting affidavits. That is not necessary in this case in view of the Court's ruling on the question as to where the balance of convenience lies.

ORDERS OF THE COURT

1. Order that the Order of this Court dated 28 February, 1996 be discharged subject to the following conditions:

   (i) That all proceeds of sale be paid by the First Defendant into a Solicitor's Trust Account and interest bearing. Reasonable expenses may be deducted by consent, in default, the Court's approval may be sought on two days notice to the other party.

   (ii) Proper accounts to be kept including details of logs exported from Vai Customary Land by volume, species and price.

2. Costs in the cause.

ALBERT R. PALMER

A. R. PALMER
JUDGE