EARTHMOVERS (SOLOMONS) LIMITED -V- SAMUEL THAO AND OTHERS

High Court of Solomon Islands
(LUNGOLE-AWICH, J)
Civil Case No. 65 of 1997

Judgment: 8th November 2000

T Kama for the plaintiff
C Ashley for the defendants

JUDGMENT

(LUNGOLE-AWICH, J): There are two applications before Court, one dated 6.4.1999 and filed on 7.4.1999 was by the defendants and the second dated 12.4.1999 and filed the same day was by the plaintiff. This is judgment in both applications.

It is necessary to give an outline of the case first. The plaintiff had a writ of summons issued on 13.3.1997 against two groups of defendants. The particulars of the claim averred that the plaintiff obtained licence to harvest trees on 3 customary land blocks in Ward 17 on Guadalcanal Island and it built a road through the land blocks for use in its logging operations. The customary rights to the land and trees belonged to the first defendants who had transferred the rights to the plaintiff for the purpose of obtaining the licence to harvest the trees. The claim further averred that the plaintiff entered further agreement with the first defendants by which the first defendants transferred timber rights on other adjoining customary land blocks in the same ward 17 to the plaintiff, then subsequently the first defendants wrongfully entered a similar agreement with the second defendants transferring timber rights on the same adjoining blocks of land to the second defendants who then commenced harvesting trees on the same land blocks and was wrongfully using the road built by the plaintiff. For relief the plaintiff prayed for permanent injunction, damages and costs.

While pursuing its case, the plaintiff applied for and obtained interlocutory injunction order on 27.3.1997, restraining the defendants from further logging while the case was pending. It was not happy though with one aspect of the injunction order relating to how money, the proceeds of timber logs already sold, should be kept; it appealed successfully against the one aspect.

The defendants then applied on 23.6.1998 for orders which may be summarised as an order to strike out the claim and dismiss the plaintiff's case on the grounds that the plaintiff's claim disclosed no cause of action, the claim was an abuse of process and that the plaintiff had failed to prosecute the claim in a reasonable time, and an order that default judgment be entered against the plaintiff on the grounds that the plaintiff failed to deliver defence to the counter-claim of the defendants or that the defence to the counter-claim was no defence at all. The application was dismissed in a judgement dated 30.6.1998 and direction orders aimed at speeding up the trial of the case were made as part of the judgment.

Then on 7.4.1999 the defendants filed the first of the two applications, the subject of this judgment. In the application they asked for the order that the plaintiff's claim be dismissed on the grounds that it was an abuse of process and that the plaintiff had failed to prosecute its claim within a reasonable time. The defendants in fact asked for an order the same as one of those they had asked for in their application of 23.6.1998 on the same grounds based on facts not so dissimilar.

The second application, the subject of this judgment, was that of the plaintiff filed on 12.4.1999, five days after the application of the defendants. In its application the plaintiff asked for an order granting leave to join as third defendant, one *"Robert Balo, trading as Timber Industries (SI) Limited,"* and as fourth defendants, Ron Emmett and Anita Emmett. I suppose Robert Balo cannot be described by using the name of another person, Timber Industries (SI) Limited. A limited company is a legal person in its own right; it has distinct legal personality separate from its shareholders - see ***section 16 of Companies Act, Chapter 175 of Statute Laws of Solomon Islands*** and ***Macaura -v- Northern Assurance Co. Ltd [1925] AC 619.*** The person to be joined as the third defendant has not been properly described.

Both the plaintiff and the defendants had not, at the time of filing their applications, complied with the direction orders made in the judgment of 30.6.1998 and to date they have not complied with the orders. They have not explained why they chose instead to make the two applications before Court now. One of the orders made on 30.6.1998 directed that the plaintiff was to proceed to set down the case for the Registrar's direction to advance the case towards hearing under O32 of the High Court (Civil Procedure) Rules and that if the plaintiff failed, the defendants were to do so. The Court must have considered pleading closed to direct so. Indeed to date nothing has been added to the pleading except an application to add parties and make amendment to the statement of claim consistent with the joinder. If the case was set down for direction orders the ground of the application of the defendants that the plaintiff had failed to prosecute the case would have been dealt with at the direction hearing by the Registrar. The application would most likely have been reduced to the defendants simply submitting to the Registrar that the plaintiff had failed to set down the case for the Registrar's direction order and so it should be put on terms or face the risk of its claim being dismissed. If that was successful the plaintiff might have been put on terms long ago with consequential progress towards trial of the case. There would be no need for more interlocutory application.

The application of the plaintiff for joinder cannot be used to evade compliance with the orders of this Court made on 30.6.1998. The parties should in the first place purge their default in complying with the orders of this Court before they make any new application. The applications they could properly make would be applications to vary the orders, discharge them or to compel compliance with the orders. If it was necessary to join the intended defendants, the question would be raised during the direction hearing before the Registrar who would decide whether he would not make that order forthwith together with other direction orders aimed at speeding up trial. If parties considered that the orders made by this Court on 30.6.1998 were erroneous, the course to take was to appeal, by leave of course, not simply to ignore the orders.

Both applications are dismissed. Parties are to bear their own costs.

This has been the third interlocutory judgment in which the same questions of law such as no cause of action or serious triable issue have been raised in different ways by the defendants and have been considered and dismissed. Persistent applications raising the same questions of law raises the question of abuse of process. I hope a fourth interlocutory judgment will not be asked for.

Pronounced this Wednesday the 8th day of November 2000
At the High Court
Honiara

Sam Lungole-Awich
Judge