

RODERICK TERRY KERA -v- ATTORNEY-GENERAL

HIGH COURT OF SOLOMON ISLANDS
(FRANK O. KABUI, J.)

Civil Case No. 15 of 1998

Date of Hearing: 30th April 2002
 Date of Judgment: 08th May 2002

Mr C. Ashley for the 1st Defendant
Mr F. Waleanisia for the 4th Defendant

RULING

(Kabui, J): By Summons filed on 19th April 2002, the 1st Defendant seeks the following orders-

1. **That unless the 4th Defendant, within 7 days file and serve full particulars of its Defence as requested by the 1st Defendant on 2nd April 2002, its Defence will be struck out and judgment entered for the Plaintiff as claimed in its Statement of Claim; and**
2. **That the costs of the application be borne by the Defendant; and**
3. **Any further order the Court deems fit.**

This Summons speaks for itself. The 4th Defendant filed defence on 22nd February 2002. In terms of Order 21, rule 8 of the High Court (Civil Procedure) Rules 1964 "**the High Court Rules**", particulars first ought to be applied for by letter. Failing that resort may be had to a Court order upon a Summons or Notice. This procedure is better explained by Bernard C. Cairns in Australian Civil Procedure, 1981. At page 119 the learned author says, **..."Pleadings which do not contain sufficient particulars may be supplemented by a separate statement of further and better particulars. Where a party is served with an inadequately particularized pleading, he should first apply by letter to his opponent, and specify the particulars he wishes to obtain. Present practice is to comply with a legitimate request for particulars, but it is not properly answered, the court has the jurisdiction to make an order for further and better particulars. Where it is necessary to apply to the court, it may order particulars of the claim or defence, or of any matter stated in a pleading, notice or written proceedings. The order is made on such terms as the court considers just"...** In this case, the 1st Defendant did not request particulars by letter but by a document titled "**request for further and better particulars of defence**" filed in the High Court on 2nd April 2002. The 4th Defendant had not responded and so the 1st Defendant by this Summons seeks the power of the Court to demand the 4th Defendant to produce such requested particulars within 7 days or else the defence be struck out and judgment entered for the 1st Defendant.

The further and better particulars

The particulars sought are these-

As to the 4th Defendant's Statement of Defence dated 20 and filed 22 February 2002, the 1st Defendant requests the following further and better particulars.

1. Under Paragraph 6 (a)

- (a) State the date on which the 4th Defendant reviewed and altered the 100% duty remission granted to the 1st Defendant; and
- (b) State the procedural steps taken by the 4th Defendant in its review and alteration; and
- (c) State whether or not the 1st Defendant was afforded an opportunity to show cause why its remission should not be revoked.

2. Under Paragraph 6 (b)

- (a) Provide further particulars of what is meant by the 4th Defendant denies revoking the duty remissions granted for the months of May, July and September 1996; and
- (b) State the difference between the 4th Defendant's alleged acts of review/alteration as opposed to revocation.

3. Under Paragraph 6 (c)

- (a) State what other factors the 4th Defendant alleges the operation of the 1st Defendant were dependant on; and
- (b) Provide details of the administration of duty remission such as:-
 - (i) the names of each person/entity that had a duty remission during the months May to September 1996; and
 - (ii) which of these persons/entities had its remission reviewed altered or revoked; and
 - (iii) the procedural steps taken to review, alter or revoke each person/entity's duty remission.
- (c) State the relevant provisions of the law relied on by the 4th Defendant to administer the incentives attached to duty remissions.

The nature of the requested particulars

My reading of paragraph 8 (a) and (b) of the 4th Defendant's to the 1st Defendant's counter-claim is that yes the 4th Defendant did review and alter the 100% duty remission but denies that it revoked duty remissions for May, July and September 1996. In (c) the 4th Defendant denies that the initial granting of such remissions was to enable the 1st Defendant to commence operation or to enable the 1st Defendant to enter into other contracts apart from such remissions being simply incentives under the relevant law. At the trial the 4th Defendant may call evidence to show that no remissions were revoked for May, July and September 1996 prior to the export of logs from Dorah Island. As regards the purpose of granting remissions as incentives the relevant law on that matter may be explained at the trial. I do not think there is anything else that needs explaining from the 4th Defendant on these issues. At page 120 Bernard C. Cairns again has this to say, ..."**Usually an order for particulars specifies what particulars are to be supplied. However, the court does not order particulars which it is satisfied that a party cannot give. Neither does it compel particulars to be given where it would be harsh and oppressive to do so, such as where they could be given only after great labour, expense or searching. If it is appropriate, an order for particulars may reserve leave for them to be supplemented after discovery; or the order may require the delivery of the best particulars the party can give, with leave to amend them before the trial**"... I am not satisfied that I should grant the orders sought by the 1st Defendant. I would dismiss this application with costs. I order accordingly.

F.O. Kabui
Judge