

**STEPHEN BILLY -V- ISABEL TIMBER COMPANY LIMITED
AND CLEMENT FELO AND OTHERS**

High Court of Solomon Islands
(Palmer ACJ)

Civil Case No. 46 of 2001

Hearing: 24th June 2002
Ruling: 25th June 2002

A. Radcliffe for the Plaintiff
J. Apaniai for the 1st Defendant

Palmer ACJ: This is an application by summons filed 3rd May 2002 for the proceedings in this action to be stayed pending final determination of the customary boundary between Korighole customary land and Bagaho customary land. Korighole land is claimed by the Belama Clan represented in this action by the Plaintiff, whilst Bagaho land is claimed by the 2nd Defendants.

The first Defendant relies on the affidavit of Roger Tauariki filed 6th May 2002 and the affidavit of James Apaniai filed 21st June 2002 to support his application for stay of proceedings. The main reason given for the order sought is that the issue between the parties in this case, which is the question of determination of the boundary between the two customary lands is a question to be determined in accordance with the respective customs, traditions and genealogies of the two competing tribes and therefore the appropriate venue for determination of such issue is before the custom or land courts which have jurisdiction to deal with such question.

Counsel for the Plaintiff on the other hand submits that whilst the boundary between those two customary lands is in issue, the question is not a question in custom but one of geographical determination. Learned Counsel submits that it appears that both parties do not dispute that the boundary lies at Sabotona. However what is in dispute is the location of Sabotona.

I have had opportunity to consider the claims of the parties. I agree the issue between the parties is the boundary between the two customary lands. I do not agree with the submission that that is a geographical question, rather it is a question in custom to be determined by the appropriate bodies under the Local Courts Act. This court does not have jurisdiction to deal with it. It would have been different if

it had already been finally determined by the land courts and that it was a question of interpreting what those other land courts had said in their decisions. That is not the case here. There is no final decision on the boundary. The issue of the determination of the boundary between those two customary lands is a matter or proceeding of a civil nature affecting or arising in connection with customary land (see section 254(1) of the Land and Titles Act [Cap. 133]). Secondly, by virtue of that boundary dispute, there is actually an area of land that is in dispute between the parties which has given rise to the claims inter alia of trespass of the Plaintiff in this case (see Exhibit "SB 5" annexed to the affidavit of Stephen Billy filed 3rd April 2001). Exhibit "SB 5" is a sketch map which shows quite clearly the competing boundary claims of the parties and the area of land subsequently in dispute. It is the area between the boundary lines marked 1 and 5 (see also Exhibit "RM 4" annexed to the affidavit of Reeves Moveni filed 2nd May 2001, which also showed quite clearly the area of land in dispute). That surely must give rise to issues in custom to be determined by the appropriate land courts.

I am aware that that process has been commenced with the Chiefs and is now before the Local Courts.

In the affidavit of Stephen Billy filed 24th June 2002, a Memorandum of Understanding ("MOU") was filed as evidence of agreement between the competing parties that the issue of the boundary had since been settled between the parties by consent. If that MOU is to be relied on then the pleadings will have to be amended. Whilst I am satisfied therefore that the proceedings should be stayed pending determination of the issues in custom, provision should also be made for the possibility that the MOU may be raised as an alternative issue. To that extent the order for stay should be suspended for 7 days.

ORDERS OF THE COURT:

1. Grant order for stay but suspended for 7 days.
2. If the Statement of Claim is amended within 7 days, then the suspension order shall remain in force until final determination of the status of the MOU.
3. Costs in the cause.