

JUDAH SAKIRI & OTHERS V. GOLDEN SPRINGS INTERNATIONAL (S.I.) LIMITED & NORTH NEW GEORGIA TIMBER CORPORATION & JESSE KANATITI AND OTHERS & WARREN PAIA

High Court of Solomon Islands
(Palmer ACJ)

Civil Case No. 198 of 1997

Hearing: 23rd January 2002

Judgment: 25th January 2002

A. Radclyffe for the Plaintiffs

Sol-Law for the First Defendant

A & H Lawyers for the Second Defendant

PT Legal Services for the Third Defendants

A & A Legal Service for the Fourth Defendant

Palmer ACJ: This is an application by the Plaintiffs to have the third Defendants dismissed from the case on the grounds that no statement of defence had been filed and that the third Defendants were not interested in defending the action. Learned Counsel Mr. Tegavota for the third Defendants however has deposed in an affidavit filed 21st January 2002 that the third Defendants were interested in defending this case and that reasons for non-action on their part were due to matters beyond their control.

I have listened carefully to submissions of all Counsels present today with the exception of Mr. Ashley for the fourth Defendant and formed the following conclusions. First the summons to have the third Defendants dismissed from this action should be dismissed. The third Defendants play crucial part in the proceedings as they were the persons that claimed timber rights over the land in dispute and had purported to grant them to the first Defendant. First Defendant in turn relies on that authority to protect them from any claims of trespass or conversion. If the rights relied on by the third Defendants fail, the first Defendants case also fails.

Apart from that, the Summons of the Plaintiffs seek other orders as well, primarily for purposes of seeking further directions from this Court as to progress of this case. Learned Counsels have made submissions as to what they think are the crucial issues in this case and the possible line of action this court might take. I am grateful for those suggestions.

The rights in essence which the Plaintiffs rely on appear to be that they are not only the timber rights owners of the trees in Kazukuru Right Hand Land ("KRHL") but that they are also the customary landowners. In opposition to those claims of ownership are the claims of the third and fourth Defendants. The claims of ownership of the third Defendants are summed up in the affidavit of Jesse Kana Titi and Jacob Gasi filed 23rd January 1998 whilst the claims of ownership of the fourth Defendant are summed up in the affidavit of Warren Paia filed 16th July 1997 in Civil Case No. 149 of 1997. It seems to me that all three parties (Plaintiffs, third Defendant and fourth Defendant) rely on some past court decisions or proceedings as supporting their claims of ownership. For instance, the Plaintiffs claim of ownership of timber rights over KRHL is based primarily on the decision in the Western CLAC No.

1/84. I have not read that judgement but it is an appeal from the decision of the Roviana Area Council in respect of persons entitled to grant timber rights over said land.

The third Defendants on the other hand rely on an earlier decision of an acquisition officer John Roscoe in December 11 and 12 1972 which touch on the same land. The fourth Defendants also rely on other earlier court decisions; CLAC No. 6 of 1979, High Court LA Case No. 2 of 1980 and Court of Appeal Decision in AC Case No. 5 of 1992.

It seems to me that the proper course to take is to proceed with this case in respect of those claims in law. In the meantime there is nothing to prevent the parties from commencing customary land dispute in respect of KRHL if they so wish under the Local Courts Act (Cap. 19). The only directions that need to be made thus would be to require that defences be filed within 14 days herewith and matter to proceed in the normal way thereafter to discovery and interrogatories. In the meantime, there is nothing to prevent parties from coming back to court to seek further orders or directions.

As to the question of jurisdiction on customary land disputes, exclusive jurisdiction vests in the Local Court subject to a hearing by the Chiefs. Any referrals mentioned in section 254(2) of the Land and Titles Act pertains to matters arising from the Land and Titles Act. I thank learned Counsel Katahanas for his professionalism in drawing to my attention the case of *Teteha and Others v. The Registrar of Titles* [1981] SILR 209 at 216 that is consistent with that conclusion.

As to the question of multiplicity of actions before the Local Courts, I see no problem with that where separate actions are commenced and consolidated for purposes of having them heard together. So for instance, the Plaintiff can take out separate cases against the third and fourth Defendants whilst the third Defendant takes out a separate case with the fourth Defendant and all three cases are then consolidated together for purposes of hearing before the Chiefs etc. Any decision made accordingly would have the effect of being binding on the losing parties.

ORDERS OF THE COURT:

- 1. Dismiss application to have the third Defendant removed as third Defendant.**
- 2. Direct that Defendants file Defences within 14 days hereafter. Matter to proceed in the normal way thereafter to discovery and further directions to be sought by the Plaintiff.**
- 3. Costs to be in the cause.**

THE COURT.