

**KONGGUKOLO FOREST RESOURCES DEVELOPMENT COMPANY –
v- DENNIS LOKETE AND OTHERS.**

HIGH COUR OF SOLOMON ISLANDS
(F. O. KABUI, J.)

Civil Case No. 159 of 2002

Date of Hearing: 1st July 2002
Date of Ruling: 2nd July 2002

P. Tegavota for the Plaintiff/Applicant

RULING

(F. O. Kabui, J): This is an ex parte application by the Plaintiff for the following orders-

1. That an interim injunction be issued to restrain the first to the sixth defendants either themselves, their servants, agents, persons authorized by the defendants, members of their tribe and any person from villages where the defendants are currently residing, from entering the plaintiff's shipping camp at Orava, its production camp in the bush and any area within Kongugu kolo customary land that is covered by the plaintiff's logging licence for the purposes of:
 - (i) removing any of the plaintiff's properties and those of its contractor without due approval,
 - (ii) threatening any of their employees by any means whatsoever, including causing physical or bodily harm to them,
 - (iii) preventing any of their employees from carrying out their respective work either for the plaintiff or its contractor,
 - (iv) stopping the felling, extraction and the hauling of logs from the plaintiff's logging concession,
 - (v) causing damage to any machineries and logging equipment owned by the plaintiff or its contractor,
 - (vi) preventing or blocking any logging road whatsoever within the plaintiff's concession,
 - (vii) stopping or interfering with any of the plaintiff's log shipment and
 - (viii) carrying out any act whatsoever that will have the effect of stopping preventing or interfering with the plaintiff's logging operation within the plaintiff's logging concession within Konggukolo customary land either directly or indirectly.

2. **That the defendants, their servants, agents, members of their tribe and persons authorized by the defendant and including any person in whose possession or custody any of the said properties taken from the plaintiff's concession are kept, with effect from the date of an order issued by the court pursuant to this application return the following properties to the plaintiff or its contractor namely:**
 - (a) **Six chainsaws,**
 - (b) **Five Chainsaw bars**
 - (c) **Five chainsaw chains,**
 - (d) **Five litres of container oil and**
 - (e) **Chainsaw tools**
3. **Such other or further orders as the Court sees fit.**
4. **Costs.**

The Background

The Plaintiff is a holder of a logging licence No. TIM 2/126 issued by the Commissioner of Forest Resources on 18th August 1999. An Agreement had been signed on 29th April 1999 between the Plaintiff and the Customary landowners of Konggukolo on New Georgia in the Western Province. This was the Timber Rights Agreement under the logging licence. The landowners were represented in that Agreement by trustees. A Logging and Marketing Agreement was also signed on 5th June 1999 between the Plaintiff and Golden Springs International (S. I.) Company Limited as the contractor for the harvesting of the timber on that customary land. Harvesting commenced in May 2000 based at the Jahoro camp. Early this year 2002, harvesting is based at Orava camp within the same concession area. On or about 17th June 2002, about 30 persons including the Defendants went to the camp and threatened the contractors' employees. They were armed. They told the Plaintiffs' manager at the camp that they were not happy with the Plaintiffs' distribution of royalties. They then went to the felling area and removed 6 chainsaws, 5 chain bars, 5 chainsaw chains, 5 litres of oil and other chainsaw tools. They took away the items without the consent of the Plaintiff or the contractor.

The Plaintiffs' Claim

The Plaintiffs' claim in its Writ of Summons and Statement of Claim is for the grant of a permanent injunction and for the return of the properties of the Plaintiff or the contractor. Two issues arise for determination in this case. The first is the use of threats by the Defendants against the employees of the contractor. Mr. Regeo in his affidavit filed on 27th June 2002 made reference to threats being used but did not say what those threats were. He also said that the Defendants were armed but did not say with what. He did not say which persons issued or used threats against the employees. Paragraphs 6, 7 and 8 of his affidavit are hearsay. One of the employees could have sworn an affidavit to say exactly what happened. This is not the case here. I do not therefore think there is

enough evidence of threats to warrant the granting of an injunction. There must be evidence of the nature of the threats. See (**Wilson Sagevaka (representing the Sinagi Clan) and Bulecan Integrated Wood Industries (S. I.) Company Limited v. David Maure (representing the Makara/Rorongu Clan, Civil Case No. 274 of 2001)**). The other point is that if the employees do belong to the contractor, the contractor should have been added as one of the Plaintiffs in this action. The Plaintiff seems to be acting in a representative capacity here. I am not so sure that it has locus standi to seek relief on behalf of the contractor. There is yet a fundamental point. This is the second issue. There is no dispute about the validity of the logging licence nor about the validity of the Timber Rights Agreement. Ownership of land is not an issue. The Defendants and the trustees are one and the same people being members of the same landholding group. What then is the triable issue in this case? In the Statement of Claim, the Plaintiff claims a permanent injunction against the Defendants to restrain them from entering Orava camp, another camp in the bush and any area within Konggukolo customary land covered by the logging licence. Although trespass is not alleged, the relief claimed is based on trespass. The issue of trespass cannot be avoided if the Plaintiff wishes to maintain its claim for an injunction. In the Statement of Claim, the Plaintiff says the Defendants are members of the Nonoulu tribe. Counsel for the Plaintiff, Mr. Tegavota, from the bar table however said that the trustees and the Defendants were members of the same landholding group. He said the dispute was over the distribution of royalties and the dispute was an internal one. The true position is not very clear on the facts. What is however clear is that the Plaintiff has been licensed to enter and harvest timber inside Konngukolo land under its licence. I think there is a triable issue in this case. The triable issue is whether or not a licensee can sue for trespass at common law as well as in respect of customary land. Having identified a triable issue, the next step is to consider the need for an interim order as applied for by the Plaintiff.

The Relief Sought

As I have said above, the evidence in support of the claim for an interim injunction is not sufficient to warrant the granting of an injunction. The evidence is basically hearsay. The deponent is one of the trustees who signed the Timber Rights Agreement on 29th April 1999. He is not the Manager of the Orava camp or one of the employees who was directly threatened by the Defendants. I do not think I can grant the order sought by the Plaintiff on the strength of the evidence before me. I do not also think I can grant the order sought for the return of the items that had been removed from the camp by the Defendants. The items are the properties of the contractor and not that of the Plaintiff. The contractor is not a party in this application. The contractor has not claimed the return of these items so far. (See **Omex Limited v. Aleve and Others, Civil Case No. 008 of 2000**). Even if it does, the proper remedy lies in an action in detinue. The Plaintiff's application is therefore refused. It is dismissed.

F. O. Kabui
JUDGE