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STEPHEN TALUOMEA & OTHERS ~V~ LOLO/NGALULU
DEVELOPMENT CORPORATION LTD AND OTHERS.

High Court of Solomon Islands
(Palmer ACJ)

Civil Case No. 2 of 2002

Hearing: 13th June 2002
Judgment: 8th August 2002

A. Nori for the first and second Applicants/Defendants
J. Keniapisia for the Third Defendant
G. Suri for the Respondents/Plaintiffs

Palmer ACJ: The Respondents/Plaintiffs (hereinafter referred to as "the Plaintiffs") filed Writ of Summons and Statement of Claim on 18th January 2002. They also filed on same date, an ex parte summons for interim orders inter alia to restrain the first and second Applicants/Defendants (hereinafter referred to as "the 1st & 2nd Defendants") from continuing with any logging activities on Ngwalulu or Manaoba Island (hereinafter referred to as "Manaoba Island"). This court heard the ex parte application of the Plaintiffs in the afternoon of the same day and granted interim restraining orders.

On 13th February 2002 the 1st & 2nd Defendants filed Notice of Motion to have the interim orders set aside. This was supported by the affidavit of Gabriel Lamani Ramo filed on same date. This court heard the matter on 13th June 2002.

The question whether the interim orders should continue or be discharged is dependent primarily on the questions (1) whether there is a triable issue, (2) whether damages is an adequate remedy (3) where the balance of convenience lies and (4) whether there are any special factors.

Claims of the Plaintiffs

There are three Plaintiffs each claiming an interest in Manaoba Island. The first Plaintiff represents the *Agie* Tribe of North Malaita and claims it owns that part of the Island stretching from *Darikokola* to *Fouriridi* to *Ausi Point* and back to *Darikokola* (hereinafter referred to as "*the Pink Land*"). It is that part shaded pink in Exhibit "AW3" attached to the affidavit of Augustine Wanesara filed 18th January 2002. The first Plaintiff also claims ownership rights over that area stretching from *Darikokola* to *Malaili* to *Fonoa* and thence back to *Fouriridi* to *Darikokola*.

First Plaintiff relies on a decision of the Malaita Customary Land Appeal Court ("M/CLAC") in CLAC Land Case number 56/81 dated 17th August 1982 (see copy attached to the affidavit of Augustine Wanesara filed 18th January 2002 marked as Exhibit "AW2"). The M/CLAC had held that both the Appellant (Hedley Toata) and the Respondent (Stephen Taluomea) had ownership rights over those areas of land, which they had control over, that is, the pink area in Exhibit "AW3".

The 2nd and 3rd Plaintiffs

The 2nd and 3rd Plaintiffs claim rights over the other half of Manaoba Island stretching from *Darikokola* to *Koburu* to *Fouriridi* and thence back to *Darikokola* (hereinafter referred to as "*the Disputed Land*"). This is that part of the Island coloured green and yellow in Exhibit "AW3". They rely on the findings of the North Malaita Area Council made on 5th October 1994 (see Exhibit "GFK7" annexed to the affidavit of George Francis Kakai filed 18th January 2002). That timber rights

hearing was convened to consider the application of Walo Holdings for acquisition of timber rights over the Disputed Land. Objections were received from Alamoia Mimidi of Dikonara and Gabi Harry (this is the same person known as Gabriel Lamani Ramo, one of the Second Defendants). As a result of that objection the Area Council referred the matter to the Marodo Council of Chiefs for determination as to who were the rightful owners in custom over the said Disputed Area (see letter dated 5th October 1994 - Exhibit "GFK8" annexed to the same affidavit of George Francis Kakai, which contained the referral to the Chairman of the Marodo Council of Chiefs). Following that referral several attempts were made by the Marodo Council of Chiefs to convene hearings but without success (see Exhibit "GFK 9"). Mr. Ramo did not appear at the appointed times. The Marodo Council of Chiefs accordingly concluded that he did not have rights and directed that the matter be proceeded with on the basis that Malakai Tate and his group were the rightful persons to grant timber rights over the Disputed land. It appears Malakai Tate and his group was from the same group as the 2nd and 3rd Plaintiffs. As a result of the direction of the Marodo Council of Chiefs, the North Malaita Area Council issued its determination in favour of Walo Holdings (the third Plaintiff) (see Exhibit "GFK12"). On 8th May 1995, the Clerk to the Malaita CLAC issued a Certificate of No Appeal (Exhibit "GFK 11"). On 11th May 1995, the Commissioner of Forests issued a recommendation to the Malaita Provincial Government pursuant to section 5E (now section 11 of the 1996 Revised Edition) for approval of the timber rights agreement (Exhibit "GFK14"). The Malaita Provincial Government refused to grant approval and the application reached a stalemate. Subsequently the 3rd Plaintiff commenced proceedings in this court against the Premier of Malaita Province for orders inter alia to compel him to grant approval for the issue of a timber licence. That claim is yet to be heard in this court.

The claims of the 1st and 2nd Defendants

In contrast, the 1st and 2nd Defendants seek to rely on a decision of the Malaita Customary Land Appeal Court dated 3rd June 1997 in a land dispute case between **Gabriel Lamani Ramo v. Paul Maenu'u** in respect of the same land described as Su'uwalu/Lolo Land in Case Number LC 6/89 (see copy annexed to the affidavit of Gabriel Lamani Ramo filed 13th February 2002 and marked as Exhibit "GLR 1"). They also rely on the Consent Order filed 11 March 1999 (Exhibit "GLR 2") and the Notice of Discontinuance of Appeal filed 28th October 1999 (Exhibit "GLR 3"). The 1st and 2nd Defendants argue that in accordance with those orders they acquired land rights over the Disputed land which were capable of sustaining restraining orders as opposed to a mere decision of an Area Council regarding timber rights.

They also rely on a timber licence number A10041 issued on 23rd April 2001 (this is Exhibit "GLR 8" annexed to the affidavit of Gabriel Lamani Ramo filed 13th February 2002). The 1st and 2nd Defendants argue this conferred exclusive rights over the felling and removal of logs in Lolo Ngwalulu Customary Land Manaoba Island.

The CLAC Case Number 6/89 between Gabriel Lamani Ramo v. Paul Maenu'u

It is important to distinguish the effect of CLAC Case Number 6/89. Whilst the parties to that case are bound by that decision, the 1st, 2nd and 3rd Plaintiffs are not bound, not being parties to that land dispute case.

That case therefore did not confer final rights of ownership in Ramo or Maenu'u as opposed to the 2nd Plaintiffs.

The effect of the North Malaita Area Council determination dated 5th October 1994.

Whilst the determination of the North Malaita Area Council, in favour of the 2nd Plaintiffs did not confer final land rights over the Disputed Land, it was evidence of potential claims of ownership of timber rights as opposed to the claims of Alamoia Mimidi and Gaby Harry (one of the second

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Defendants in this case). Note Mimidi and Harry were present at the timber rights hearing and had their objections noted. It has added significance where no appeal was made to its determination. In such situation, such determination is capable of being construed as part of the larger rights of actual ownership over customary land, though there is no guarantee that they are indeed the true owners (*Fugui & Another v. Solmac Construction Company Limited and Others Civil (1982) SILR 100*).

In contrast, the 2nd Defendants have a similar but more recent determination from the North Malaita Area Council (26th April 1996) in which it had also been determined that Gaby Harry was the rightful representative of the land known as "Lolo". The only difference being that following this determination, the 2nd Defendants had been able to get approval from the Malaita Provincial Assembly for its timber rights agreement and thereby a licence over the Disputed land.

Sufficient Interest

Do the Plaintiffs have sufficient interest? The 1st Plaintiffs have shown that they are in possession of a decision of the Land Courts, a decision of the Malaita Customary Land Appeal Court ("M/CLAC") in CLAC Land Case number 56/81 dated 17th August 1982 (see copy attached to the same affidavit of Wanesara filed 18th January 2002 and marked as Exhibit "AW2") in which title of ownership over the First Plaintiff's land had been vested in him together with Hedley Toata. That is clearly evidence of sufficient interest that entitles him to come to court and challenge any timber rights agreement over the said Pink Land.

The 2nd Plaintiffs on the other hand do not point to any particular decision of the Land Courts, though they did point to a final determination of the North Malaita Area Council (see Exhibits "GFK7", "GFK8", "GFK9", and "GFK10") in which it was held that they had rights to dispose of the timber rights over Ngwalulu customary land on Manaoba Island. This is to be contrasted with the competing timber rights agreement, which the 2nd Defendants had executed with the 1st Defendant. It is my respectful view that the decision of the North Malaita Area Council relied on by the 2nd Plaintiffs granting them timber rights cannot be brushed aside as a mere assertion or worthless. It may be transient and can be overturned by a final decision of the land Courts, but it is still evidence of a finding of a tribunal, which seeks to confer timber rights on the 2nd Plaintiffs, and supports their claims for ownership of the timber rights over the Disputed land. When contrasted with the claims of the 2nd Defendants, it stands on equal footing in that both have in their favour a determination each of the North Malaita Area Council. Neither of the parties however have a decision of the land courts as against each other.

The Plaintiffs have in my respectful view demonstrated right from the beginning that they have an interest in the said Ngwalulu land and the Pink land. They had lodged earlier claims of timber rights and had been successful in obtaining a determination in their favour. There has been no delay. They had not sat back in coming to the courts to seek orders for interim relief. To that extent it cannot be said that the 2nd or 3rd Plaintiffs are mere busybodies. Their interests in the least are capable of being protected in law or equity (see *The Siskina [1979] A.C. 210 at 256*) and entitles them to come to court to challenge the timber rights agreement entered into by the 2nd Defendants and the licence issued in their favour.

Triable Issues

The triable issues include the question on the validity of the timber rights agreement entered into by the 2nd and 1st Defendants and thereby the validity of the timber licence issued in favour of the 1st Defendants. Secondly, there is also a triable issue on the question of validity of the Certificate of No Appeal purportedly issued by the Office Manager and not the Clerk to the CLAC (M). Thirdly there is a triable issue over the areas of land described as Ngwalulu as opposed to Lolo. Do they refer to the one and same area of land or do they refer to two different plots of land? There are two determinations of the North Malaita Area Council, one over Ngwalulu land and the other over Lolo

land. Both are valid determinations, which have not been appealed against. In the former it does impinge upon Gaby Harry as he was one of the persons who had made objections in the initial hearing. had not taken the matter further on appeal. In the latter, the 2nd Plaintiffs claim the provisions of the Forest Resources and Timber Utilisation Act had not been complied with.

Damages an adequate remedy?

I am satisfied damages in the form of monetary compensation alone will not suffice. It has been repeated many times over in this court that monetary compensation will not be able to repair any environmental damage that may be caused by any major logging operation and that it takes many years before any such damage can be recovered.

Balance of convenience

The balance of convenience must lie with the preservation of the status quo until all disputes over the timber right agreements and licence are sorted out. Ultimately it seems that the parties will have to consider taking up the dispute over timber rights as a dispute over customary land before the land courts. The problem both parties have in this case is that none of the parties have gone before the land courts against each other. They have other court decisions with other third parties but not against each other.

ORDERS OF THE COURT:

1. Dismiss Notice of Motion of the 1st and 2nd Defendants.
2. The interim orders issued on 18th January 2002 and as varied by Orders issued on 3rd April 2002 are to continue until trial or further orders of this court.
3. Costs in the cause.

THE COURT