

**ALLAN KASA AND ELMA KASA -V- REX BIKU AND COMMISSIONER OF LAND**

**High Court of Solomon Islands  
(Muria, CJ.)**

**Civil Case No.126 of 1999**

**Date of Hearing: 27<sup>th</sup> August 2002**

**Date of Judgment: 30<sup>th</sup> August 2002**

*Mrs M.B. Samuel for First Plaintiff*

*Mr G. Suri for Second Plaintiff*

*First Defendant not present and not represented*

*Mr S. Manetoali for Second Defendant*

**MURIA CJ:** By a summons filed on the 8<sup>th</sup> August 2002, the second plaintiff now comes to court seeking an order that the first plaintiff be struck out and replaced by one Litia Kasa who is the blood sister of the first plaintiff. The basis for seeking this order is that the first plaintiff's authority to represent the Gumi Tribe has been revoked by the said tribe because he has become inactive, ineffective, controversial, unco-operative and has prejudiced the interests of his tribe. In the alternative, the second plaintiff seeks an order that the said Litia Kasa be made an additional plaintiff in the action. Counsel for the first plaintiff and second defendant do not support the application.

This case has been going on for more than three years now and the need for it to be resolved as soon as possible is in everybody's interest, especially the parties. The case arose following three acquisition proceedings over Ziata Land which is part of a larger piece of land often referred to as Kazukuru Left Hand Land in North New Georgia, Western Province. Consequently an agreement to lease the land for hydro scheme was signed between the second defendant and three representatives, one of whom was the first defendant, representing the landowning tribes in the area. As a result of allegations of misuse by the first defendant of funds paid to his tribe, the first and second plaintiffs issued a writ in April 1999 against the first and second defendants. Principally, the claims against the first defendant were that he was not the lawfully appointed representative or trustee of his tribe to enter into agreement with the second defendant on behalf of his tribe (Gumi Tribe) and to receive money thereby under his own name; secondly if he was duly appointed as such, then he was in breach of trust for using the money to his tribe for his own benefit; and thirdly he should account for all the money due to the tribe, received and used for his own benefit. A number of interlocutory orders had been made in this action and the case is now about ready for trial.

Following what appears to be an internal squabbling among the members of plaintiffs' families a change of stance has now been suggested by the second plaintiff. This will entail removing the first plaintiff and replacing him with his sister, Litia Kasa or that the said Litia Kasa be added as another plaintiff. The question therefore in the present case is whether the first plaintiff should be struck out and replaced by the said Litia Kasa or should she be added as plaintiff in this case.

The relevant provisions of the law governing the court's power to add or remove parties in an action are contained in Order 17 of the *High Court (Civil Procedure) Rules 1964*. Rule 11 of that Order provides for the discretionary power of the court to strike out the names of any

parties, whether plaintiff or defendants, where it appears to the court to be just to do so, and to add the names of the parties, whether plaintiffs or defendants, where necessary "to enable the court to effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter" between the parties. The application seeking the exercise by the court of its discretionary power may be made under rule 12 of the Order. It would seem that the court's power under this rule 11 could still be exercised in favour of adding a plaintiff, without striking out the original plaintiff, even in the face of objection by the original first plaintiff, where it is proper to do so and in the interest of effectual adjudication of all the matters in dispute: *Emden v Carte* (1881) 17 Ch D 169. Where however a plaintiff is sought to be struck out and to be replaced then the discretionary power of the court in this regard may be exercised on "terms" as may appear to the court or a judge to be just. As a matter of practice, one such term or condition is the need for special leave before a plaintiff is struck out, as this will necessarily involve the amendment of the writ. See *Practice Masters Rules (13), Pt III, The Annual Practice 1961*, Vol. 1, page 2153. Thus in so far as striking out the first plaintiff is concerned, the rule appears not to allow such a course of action without leave of the court. As such the court would not be inclined to make such an order in this case.

On the evidence before the court, there appears to be some rift among the plaintiff's family as to the representative of the tribe in these proceedings. But what seems to be the underlining cause of this rift is the distribution of the funds that are due to the tribe from the government. The plaintiff's application to remove the first plaintiff from being a party in these proceedings is further fueled by the consent order which the first plaintiff had agreed to with the defendant. That consent order agrees to discontinue all proceedings against the first defendant over this matter.

The question as to whether or not Latia kasa should be added as a co-plaintiff also requires certain considerations, one of which is that her presence is necessary to enable the court to "effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter." Is the inclusion of Latia Kasa necessary to effectually and completely determine the questions raised by the plaintiffs in the Statement of Claim against the defendants in this case, namely, whether the second defendant is the duly authorized representative of the Gumi Tribe, and secondly whether he was in breach of trust when dealing with the tribe's money for his own benefit? Speaking of rule 11 of Order 16, Buckley J., said in *McCheane v Gyles (No.2)* [1902] 1 Ch 911 at 917:

Looking at the rule you must, in order to say that a person who is not a party ought to be added, find either that he "ought to have been joined," or that his "presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter"

Like Buckley J., I too cannot see how the inclusion of the proposed additional plaintiff is necessary to enable the court to effectually and completely determine the questions raised against the defendants in this case.

Secondly the writ in this case was issued in April 1999 together with the Statement of Claim, the second defendant filed his defence in May 1999 while the first defendant filed his defence in July 1999. An amended defence was filed by the first defendant in November 2000. There had been no challenge to the parties ever since with the matter now about to go to trial. In such circumstances it would not be in the interest of effective and just resolution of the matter to add a further party to the action. See *McCheane v Gyles (No.2)*; also see *Re Harrison* [1891] 2 Ch 349. Allied to this consideration is the obligation of the court to ensure and secure finality to all

disputes in the action without delay. The discretionary power of the court under rule 11 is beneficial and it ensures that the rights of the parties before the court are determined justly, and to refuse to add a party to the action where the case has proceeded to trial without objection as to the parties.

There is a further reason which the court should also bear in mind in this case. The second plaintiff confirmed that there has been a rift among the members of the plaintiffs' families, in particular against the first defendant. To add the proposed plaintiff in this case while the rift continues is encourage 'quarrelling in the face of the enemy,' a very undesirable course of action to adopt. Again in the interest of effectual and complete settlement of the issues in the action, the suggested inclusion of Litia Kasa as plaintiff would not be the proper thing to do in this case.

For the reasons mentioned, it would not be proper to grant the orders sought in the summons. The second plaintiff's application is refused with cost.

(Sir John Muria)  
Chief Justice