

DAVID MAURE -V- WILSON SAGEVAKA & BULACAN INTEGRATED WOOD INDUSTRIES (SI) LTD

High Court of Solomon Islands
(Palmer J.)

Civil Case No. 196 of 2002

Hearing: 9th October 2002
Judgment: 16th October 2002

I. Kako (Jnr) for the Applicant/Plaintiff
G. Suri for the First Respondent/ First Defendant
No appearance by the Second Respondent/ Second Defendant

Palmer J.: The Applicant/Plaintiff ("Plaintiff") filed Writ of Summons and Statement of Claim on 7th August 2002. He claims ownership in custom over the whole island of Barora Ite, which includes East Barora Ite (paragraph 1 of the Statement of Claim). He claims accordingly declarations for restraining orders to be made against the first and second Respondents/Defendants ("Defendants") from carrying out any logging operations and for a percentage of the proceeds of the sale of logs from East Barora Ite to be paid into a joint solicitor trust account.

The Plaintiff also has filed an *ex parte* summons seeking interim restraining orders. This however has been converted to an *inter partes* hearing which was heard on 9th October 2002. On 9th September 2002 the first Defendant filed Notice of Motion seeking orders *inter alia* to have the Writ and Statement of Claim of the Plaintiff struck out as being frivolous and vexatious and or without reasonable cause. This was also heard on 9th October 2002.

Before any injunctive orders can be granted, there must be a reasonable cause of action established in the Writ and Statement of Claim. For without a reasonable cause of action, no proceedings can be taken out against the Defendants. The Plaintiff is required to establish that there is a pre-existing cause of action against the Defendants arising out of an invasion, actual or threatened by him of a legal or equitable right of the Plaintiff for the enforcement of which the Defendants are amenable to the jurisdiction of the court (see **The Siskina**¹).

Triable Issues

Are there triable or serious issues for determination by this court at trial? In his submissions before this court, Mr. Kako (Jnr.) submits that there are two triable issues. The first one relates to the Notice of Appeal filed by the Plaintiff to the High Court challenging the decision of the Ysabel Customary Land Appeal Court ("the Ysabel CLAC") in **David Maure -v- Wilson Sagevaka**², judgment delivered 14th November 2001, in which Mr. Kako seeks to submit contains serious allegations of impropriety against the Clerk to the Ysabel CLAC as to how the decision was arrived at (see affidavit of David Maure filed 7th August 2002 at paragraphs 4 – 6).

¹ [1979] A.C. 210 at 256.

² LAC No. 5 of 2001.

The second triable issue relates to the time it took for the decision of the Ysabel CLAC to be released. He says the decision was made on 15th November 2001 but not released until 21st March 2002.

Respectfully, the issues raised by Mr. Kako do not amount to serious issues, which can be investigated at trial by this court. The decision of the Ysabel CLAC in LAC No. 5 of 2001 is not in issue before this court. The Notice of Appeal filed against that decision is a completely separate issue and which this court will deal with at the appropriate time.

In order for the Plaintiff to overcome the first hurdle, he has to show that he has a reasonable cause of action against the Defendants arising from the Writ of Summons and Statement of Claim filed.

Reasonable Cause of Action

The only matter pleaded which reveals to some extent the possible cause on which the Plaintiff stands is contained in paragraph 1 of his Statement of Claim in which he claims ownership in custom over the whole island of Barora Ite including East Barora Ite. Unfortunately he stops short of identifying the legal issues which arise from his claim and on which his relief is based on. At paragraph 15 of his Statement of Claim he expresses concern that substantial damage is being caused to his land by the logging activities of the Defendants. At paragraph 16 he expresses his belief that compensation will not be sufficient to compensate him for the damages he will suffer from the logging activities of the Defendants. Unfortunately, he fails to identify the base on which he says damage is being caused and on which he expresses his opinion compensation will not be adequate. Is it trespass on customary land and or conversion? If he alleges that the Defendants have intruded into his customary land then, most likely his claim may be in trespass and if he alleges that his trees have been felled and removed, then it may also include conversion. If he seeks to challenge the validity of the Timber Licence and the timber rights agreement of the second Defendant, then he must identify the legal issues he wishes to rely on. If he alleges irregularity in the procedures adopted in awarding the timber rights and timber licence then these should be specified so that the Defendants know what action is being taken out against them. He has not done that in this case.

Secondly, Mr. Suri submits that according to the matters pleaded in the Statement of Claim, the Plaintiff relies on his claim in custom that he is the owner over Barora Ite Island. Learned Counsel points out that according to the clear case authority in **Gandly Simbe -v- East Choiseul Area Council, Eagon Resources Development Company Ltd, Steven Taki and Peter Madada**³, the High Court has no authority to deal with issues of customary dispute over land. The only jurisdiction it can exercise in terms of granting relief by injunction is in aiding the local courts or the customary land appeal courts in their jurisdiction to decide such disputes. To the extent, the Plaintiff has come to this court raising issues of ownership over customary land, this court has no jurisdiction and accordingly even if triable issues may be raised, this court still cannot deal with them. The Writ and Statement of Claim of the Plaintiff therefore should be dismissed.

Insofar as the Plaintiff's claim is based on his rights of ownership over customary land, Mr. Suri is correct in his submissions that this court does not have jurisdiction to deal with those issues. Whilst this court recognizes that such claim in custom does raise triable issues between the parties, the appropriate forum is before the Chiefs, Local Courts and Customary Land Appeal Courts.

The court however may grant injunctions for purposes of enabling the dispute in the local court or the customary land appeal court to be determined whilst issues pertaining to an approved agreement are

³ Civil Appeal No. 8/97.

pending before this court. One of the matters, which the court may consider before deciding whether to grant injunction in such circumstances is to consider the likely prospects of success in the local court or the customary land appeal court of such claims. In the circumstances of this case, the first Defendant has not only succeeded in the local court but also in the customary land appeal court. The scale to that extent for purposes of exercising any discretion of the court tips in favour of the Defendants.

The other factor, which this court must necessarily take into account lies in the fact that the Plaintiff is required to establish that he has sufficient interest to challenge or impugn the validity of the timber rights agreement entered into by the second Respondent apart from his claim of ownership in custom. Unfortunately, there is nothing in the Statement of Claim or in the affidavit filed in support, which shows that he has sufficient interest to impugn the timber rights agreement and which justifies an order for a stay in any event whilst the issues in custom are being determined and for injunctive orders to issue.

Another important factor which weighs against the granting of injunctive orders even if there may be serious issues is the issue of delay: "*vigilantibus non dormientibus jura subveniunt*" – a plaintiff should not sleep on his rights (see **Societe Francaise -v- Electronic Concepts Ltd.**⁴; and **Radley Gowns Ltd -v- Costos Spyrou**⁵; per Oliver J). Where there is delay, especially a delay of some eleven months, as has happened in this case, it must be clearly accounted for. There must be satisfactory explanation provided for such a delay. According to the pleadings in the Statement of Claim (paragraph 7), logging activities commenced on East Barora Ite Island on 18th September 2001. The Plaintiff did not commence action in this court until on or about 7th August 2002. No satisfactory explanation for that delay has been provided by way of affidavit evidence. The Defendants have expended much in terms of capital, money and manpower in the logging activities and it would be unfair to now require that an injunction be slapped on their operations after such lengthy delay. I accept submissions of learned Counsel Suri that the Plaintiff is not unfamiliar with court proceedings and should have run to court at the first sign of logging activity on his land instead of strolling into court. For that reason as well, the injunctive orders sought ought not to be granted. That is however not necessary as I am not satisfied there is a reasonable cause of action in which the Writ and Statement of Claim of the Plaintiff is grounded in any event and therefore ought to be struck out with costs. I so order.

THE COURT

⁴ [1976] 1 W.L.R. 51 at 56 D-H.

⁵ [1975] F.S.R. 445.