

HUGO DIAMANA LALO (representing himself and the descendants of Veko and Ugara tribes) –V–. LEVI LOKOHO (representing himself and the descendants of Doko and Talise Land holding Group). M.S.L. IMPORT AND EXPORT COMPANY LIMITED AND THE ATTORNEY-GENERAL

HIGH COURT OF SOLOMON ISLANDS
(KABUI, J.).

Civil Case No. 225 of 2002

Date of Hearing: 23rd July 2003

Date of Ruling: 30th July 2003

Mr B. Upwe for the Applicant

Mr C. Hapa for the Respondent

RULING

Kabui, J. This is an application by the 1st Defendant filed on 26th May 2003 seeking leave for the release of royalties in the A & A Legal Services Trust Account to the 1st Defendant. The Applicant also applies for costs to be met by the Plaintiff.

The Background.

Certain royalty monies had been paid into the Trust Account of A & A Legal Services. The Isabel Local Court had determined on 16th January 2003 that the parties in the dispute were one. The Plaintiff filed Notices of Discontinuance on 21st March 2003 in accordance with the terms of the consent order filed on 3rd March 2003. The application was the follow-up to the notices of discontinuance filed by the Plaintiff.

The decision of the Court.

There is I think a misunderstanding of the terms of the consent order by the former Solicitor for the Plaintiff. Paragraph 3 of the consent order clearly states that the notices of discontinuance were to do with the 2nd and 3rd Defendants only and not to include the 1st Defendant. The Plaintiff's action would still stand in relation to the 1st Defendant. The letter dated 14th April 2003, addressed to the Registrar of the High Court in response to his letter dated 24th March 2003, querying the correctness of the Notice of Discontinuance filed on 21st March 2003 by the former Solicitor for the Plaintiff, had overstated the correct position. The correct position is that the Plaintiff has not withdrawn his action against the 1st Defendant. It is therefore rather premature to conclude that the action against the 1st Defendant has been withdrawn. That is not the case. This is why the Plaintiff has instructed a new Solicitor to oppose this application. Whilst it is not disputed that the Isabel Local Court had determined the parties to be one, that decision is being appealed and cross-appealed by both parties. The outcome of the two appeals is being awaited. It is therefore premature to release the royalties to the 1st Defendant whilst the dispute is awaiting the determination of the Isabel Customary Land Appeal Court. I will not grant the application being sought by the 1st Defendant. The application is refused. The parties will meet their own costs.

**F.O. Kabui
Judge**