HIGH COURT OF SOLOMON ISLANDS

Civil Case No. 245 of 2002

ALEX LOKOPIO and **JAMES KAMASI** (Representing the Buti Podokana Lio Tribe) -v- **J P ENTERPRISES LIMITED** (1st Defendant) **LETIPIKO BALESI** (Representing the Nono Tribe) (2nd Defendant) and **OCEAN TRADING COMPANY** (3rd Defendant)

Interlocutory Proceedings — *interim injunction – previous order wrong in law – power in court to correct discretionary order – circumstances giving rise to power – application for leave to issue contempt*

Forestry — *dispute amongst tribal owners – logging and timber rights agreement – time limited for appeal expired – attempted disruption of work by aggrieved tribe member – statute in form of code – no cause of action post facto agreement. (Forest Resources and Timber utilization Act Cap 40)*

The plaintiffs claim to represent aggrieved landowners the subject of a timber rights agreement and logging licence under the Act. In earlier proceedings, by consent, part of the land became subject to an interim injunction preventing further logging. The plaintiffs sought and obtained an order extending the ambit of the injunction to include other land named in the timber rights agreement. The plaintiffs sought leave to commence contempt proceedings.

Held: 1. The various interlocutory orders were disrupting the due process and inhibiting a proper trial of the issues.

2. where an error of law is apparent, the Court has power to reconsider its earlier discretionary interlocutory injunctive orders, and may dissolve them.

Obiter: The Act is by nature, a code and inter-tribal disputes which arise after the expiration of the appeal period prescribed by the Act do not amount to a cause of action against the logging contractor justiciable in the High Court.

Case cited: Fenner –v- Wilson (1893) 2 Ch 656
Rakson Senu anors -v- Dennis Lokete anors (unreported, Feb '03 cc18/2003)
Regent Oil Co. Ltd. -v- J.T.Levesley (Inchfield) Ltd (1966) 1 WLR 1210

Summons for leave to issue contempt

Andrew Nori for the applicant/plaintiffs
Philip Tegavota for the respondent/defendants

Honiara: Brown PJ

Date of Hearing: 16 June 2003
Date of Judgment: 19 June 2003

Reasons for Decision

By their statement the two plaintiffs claim, as representatives of the Buti, Podokana and Lio Tribes, to customary land (called by the tribes name) in New Georgia. They dispute the right of the defendant, (which hold a felling licence given in July 2001 under a Forestry Agreement) to enter upon Buti, Podokana and Lio land for the purposes of timber getting. The felling licence describes Dono Lio and Podokana lands as lands within the Forestry Agreement, and consequently available for logging. The statement of claim alleges that Letipiko Balesi and his Nono Tribe supported the defendant in its application for the logging licence. It further says that the felling licence for "Nono" land incorrectly included land belonging to the Buti tribe and that as a consequence, the defendants have extracted timber belonging to the Buti tribe unlawfully and seeks compensatory orders. The plaintiffs seek to negative any honest mistake on the part of the logging company by pleading that the logging was carried out over the objections of the plaintiff.

At the same time as the Statement of Claim was filed by Summons, the plaintiffs sought interlocutory orders restraining the defendant from further logging on Buti land which was delineated in a map forming part of the affidavit of the plaintiff, Alex Lokopio Ringi filed in support.

On the 28th October 2002, by consent, restraining orders were made by my brother Judge Kabui PJ, with respect to the Buti land and an account ordered of timber taken from that area.

On the 24th January 2003, the plaintiffs filed a fresh summons seeking to extend the restraining orders to include Lio and Podokana lands.

On the 29th January, Mr. Philip Tegavota filed a summons on behalf of Letipiko Balesi of the Nono Tribe and Oceania Trading Company, seeking to be let in to defend the proceedings and joined as defendants.

On the 14th February, the Court ordered that the two additional defendants be joined in the action, Mr. Tegavota then representing all three defendants, while Mr. Radclyffe represented the plaintiffs.

On the 6th March, the three defendants by summons, sought to prevent the plaintiffs from interfering with the logging operation of the defendants about the Motutu Log Pond, Lio and Podokana land and that the interlocutory order of the 20th October 2002 (more correctly the 28th October) be set aside (or that felling and extraction of logs proceed on Buti land) for reasons set forth in the various affidavits in support.

On the 1st May 2003, the defendants filed a defence and counterclaim. The defendants took issue with the right alleged in the plaintiffs to represent the Buti, Lio and Podokana tribes, and denied their membership of such tribes. They further denied the allegation that the Nono land boundaries should exclude Buti land for Buti land falls within Nono land. The defendants plead the existence of a valid logging agreement and licence to log over the three land blocks.

Other allegations in the statement of claim were denied. In the Cross Claim, the defendants recited and pleaded the Forestry Timber Rights Agreement and logging licence No. A10102, recited the steps which preceded the granting of the respective Agreement and licence in accordance with the terms of the Act. The defendants claim the plaintiffs' actions in interfering with and stopping the operations of the defendants have caused loss. They seek consequential orders permanently from further interference with the lawful activities of the defendants and declarations that the logging agreement signed by the representatives of Nono, Lio and Podokana tribes on the 10th May 2001, and the felling licence issued on the 2nd July 2001 covering Nono, Buti, Lio and Podokana land are valid, with a further declaration that the first and third defendants (the logging authority and contractor) are entitled to carry out work on Nono, Buti, Lio and Podokana lands.

On the same day that the defence and cross claim were filed, the plaintiffs' summons to extend the injunctive orders was heard by me. I granted the injunction, after argument on both sides, being satisfied that the plaintiff had raised an arguable case for exclusion of these two other blocks of land, Lio and Podokana from logging, and that the balance of convenience required this Courts order to prevent logging pending the hearing of the action, which, with the filing of the defence, appeared ready to set down.

Since then, the plaintiffs have brought two further summons, the first seeking an account of logging carried out on Lio and Podokana lands, and on the 6th June, a Summons for leave to issue attachment for contempt of my earlier order in relation to Lio and Podokana lands. The plaintiffs' evidence in support showed service of the orders and the fact that logging was in throes on the land in question.

This action, then, is beginning to be litigated by interlocutory application. Such applications are supposedly incidental to the principal object, a final judgment or order, but from a perusal of the nature of the applications by the plaintiff, they clearly seek to achieve the principle object without trial on the merits.

Since such orders are interlocutory, they, in a historical sense, seek (as one end,) for the interim preservation of property. In this case the plaintiffs have pointed to the growing trees and have obtained interlocutory orders staying their felling. They have gone on however with a series ot other orders which if granted in the manner of interlocutory motion, would effectively circumvent the fair hearing of the action.

To seek an account of moneys received from the sale of the timber, the control of moneys and an assessment of damages are matters which would not normally be countenanced in interlocutory proceedings before hearing of suit. So with these applications on foot, I took pause to reconsider my earlier injunction, for the process of the court may appear to be abused, if used for purposes over and beyond those countenanced.

In this case, there has been no undertaking as to damages, neither sought nor offered. To my mind, where the plaintiff can effectively stop operations of a type involving tens of thousands of dollars worth of export sales, which are necessary for the income of the landowners and by duties, the country as a whole, then an undertaking as to damages is appropriate. To allow plaintiffs to disrupt timber rights agreements without fear of consequences to them is not only bad judicial practice but also wrong in law. An undertaking by the plaintiff as to damages ought to be given on every interlocutory injunction, though not where the order is in the nature of a final order – *Fenner -v- Wilson* (1893) 2Ch656). The law is well settled in English jurisprudence.

The earlier order of Kabui PJ was by consent. There is then, no consideration of the merits of the earlier application in respect of the Buti land. The fact of that earlier order had weighed on my mind at the time of my hearing on the 1st May. It affected my consideration of the "balance of convenience".

In retrospect I was misled for the earlier order, though by consent, did not necessarily reflect the merits of the plaintiff's case for an injunction, but may have been for reasons quite unrelated, and to extend, as I did, the scope of the injunction by analogous reasoning by virtue of the fact of the first order, was wrong. Again, I erred by ignoring the very terms of the logging licence which named Lio and Podokana lands as lands specifically included in the timber rights agreement, in favour of the plaintiffs' assertion that they had an arguable case that the blocks had been included, either unbeknown to the plaintiffs or by mistake.

Where the licence has issued, and time for appeal against the grant long expired, I must presume that the proper formalities for the grant of the timber rights and the felling licence have been complied with, yet I chose not to do so. This, without an appeal against the grant of the agreement and licence is contrary to the legal maxim, *omnia praesumuntur rite et sollenniter esse acta*

I have commented on the nature of these timber rights agreement under the Forest Resources and Timber Utilisation Act 40, before (Rockson Senu anors –v- Dennis Lokete anors (unreported decision, CC18/2003) as in effect, codification of the law dealing with forestry logging on customary land. Where, after the licences have issued, there is disagreement amongst the tribe over logging, that disagreement cannot ground a cause of action to impugne the agreement and licence issued under the Act, once the time for appeal has expired. It is a disagreement amongst the tribe and should be resolved in the proper place, the Local Court. These proceedings clearly reflect a disagreement amongst the tribal members.

The injunctive orders, which I granted, then on the 1st May were granted on my erroneous view of the law. The application was opposed at the time by Mr. Tegavota and he appeared again on the 16th June when he again made plain his opposition to the continuation of these orders. His client's defence also raised the issue and sought their discharge. In all the circumstances, for the reasons that I have given, and because the orders are discretionary in nature, (the Court has power, in the application of the defendant by motion or summons, to dissolve or discharge an injunction which the plaintiff has obtained eg if it subsequently becomes apparent that the injunction was founded on a decision which was wrong in law *Regent Oil Co Ltd –v- J.T. Levesley (Inchfield) Ltd* (1966) 1 W.L.R.1210) it is inappropriate to allow the orders of the 1 May to stand and I herewith dissolve them. Since they are by nature, void, both the later summons of the plaintiff are dismissed. I make no order as to costs. Since the earlier injunctive orders of my brother Judge Kabui PJ are still in force, I shall refer this decision to him.

As I have previously said the matter appears ready for trial and that should be expedited.

BROWN PJ