WIUTLYN VIULU, RAEVIN REVO, BROWN LAMU, ISSAC NAPATA AND SETH PIRUKU -v- TUI KAVUSU, MOLTON LUMA, SAMSON SAGA, PESETI KUITI, HAMI LAVI, GORDON YOUNG, PAUL KUVUSU, OPHIU VENDI, STEPHEN VENO, ISAAC NOGA AND ABRAHAM KUMITI (*Trading as Nama Development Company*), TUI KAVUSU *(representing the Ojanga Kiki landholding Group)*, STEVEN VENO *(representing the Hibiow landholding Group)*, SAMSON SAGA *(representing the Kolobangara landholding Group)*, PESETI KUITI *(representing the Gulagulasa landholding Group)*, ISAAC NAGA *(representing the Malemale landholding Group)*, OMEX LIMITED and the ATTORNEY-GENERAL *(representing the Commissioner of Forests Resources)*

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

Civil Case No. 015 of 2002

Date of Hearing: 23rd October 2003
Date of Ruling: 24th October 2003

Mr P. Tegavota for the Plaintiffs

RULING

Kabui, J. This is an exparte application filed on 22nd October 2003 for an interlocutory order to restrain the 7th Defendant from loading round logs from the Nama log pond onto the MV Yayasan Satu and to export the said logs for gain. The other interlocutory orders sought are in the alternative to the above order, restraining the same 7th Defendant from releasing or paying out to themselves or other Defendants or to any persons the gross sale proceeds derived from the shipment of the said logs being loaded by the 7th Defendant onto the said MV Yayasan Satu from the Nama log pond and to be paid into an interest bearing account in the names of the Solicitors for the parties until further orders. The exparte Summons had been duly amended at the hearing by deleting paragraph 2 (b) and renumbering paragraph 4 as 3 and renumbering paragraph 5 as 4.

The Background.

On 22nd July 2003, the Marovo Chiefs determined that Seth Piruku was the customary owner of Ozanga Lavata land, Baraoni Lamu and Seth Piruku were the customary owners of Susuvirana land, Wuitlyn Viulu was the customary owner of Lalajiri land, Iula was the customary owner of Rihiti land, Yalu Revo was the customary owner of Ojanga Kiki land, and Kuvotu land was owned by the Plaintiffs represented by Wiutlyn and Seth Piruku. The 1st to the 6th Defendants did not attend the hearings at which these determinations were made by the Marovo Chiefs. At the relevant hearing, the true boundaries of Kuvotu land were also determined by the Marovo Chiefs. The licence held by the 1st Defendant had been cancelled by the Commissioner of Forests Resources by a letter dated 27th August 2003, addressed to the 1st Defendant. This cancellation was later superceded by the reinstatement of the Licence by the Minister of Natural Resources in a letter dated 4th September 2003, addressed to the 1st Defendant following an appeal to the said Minister by the 1st Defendant. By letter dated 15th September 2003, the Commissioner of Forests Resources purported to reinstate his earlier cancellation and ordered the 1st Defendant to halt operation and to ground all machines on site under the threat of seizure of the said machines. On 30th September 2003, the Commissioner of Forests Resources recommended that the CBSI was free to authorize the export of a consignment of 6,000 m3 logs on the said MV Yaysan Satu. By

letter dated 8th October 2003, the Commissioner of Forests Resources withdrew his earlier recommendation to the CBSI to allow the export of 6,000m3 of logs and reminded the 1st Defendant that its licence had been cancelled. In the meantime, the said logs are understood to be about to be or being loaded on board the MV Yayasan Satu for export to overseas market.

Are the Plaintiffs entitled to the injunctive orders being sought?

Counsel for the Plaintiffs, Mr. Tegavota, relied on the Writ of Summons and Statement of Claim filed on 30th January 2002 amended on 31st July 2002 as raising serious triable issues so as to legitimize this application as being a proper one for interlocutory injunctive relief. The issues raised are alleged statutory non-compliance with the procedure set out in section 8(2) of the Forests and Timber Utilization Act (Cap. 40) and the validity of the 1st Defendant's licence. These are said to be the triable issues to be tried at a later date to be fixed. The Plaintiffs have not given any undertaking as to damages in the event that the Plaintiffs lose their action at the end of the day after they have had the benefit of the orders sought if I should grant them. Clearly, the Plaintiffs lack the financial base to offer any undertaking that may be necessary for the granting of the orders sought. Where then the does the balance of convenience lie? Clearly, the logs had been felled and probably are already loaded on the MV Yayasan Satu. It would be most costly to unload them if they are already on board. The Plaintiffs were unable to prove that the logs had not yet been loaded but the most likely case is that the logs were in the process of being loaded or were already loaded on board the MV Yayasan Satu ready to sail to Noro and then to an overseas port. The practical effect of granting a restraining order to stop loading is highly uncertain in that either loading has been completed or is in the process of being done and to rewind the loading process can be very inconvenient indeed, let alone its unnecessary cost to the 1st and 7th Defendants. I will not grant order 1 being sought in the Plaintiffs' summons.

Orders in the alternative in lieu of the above order being refused.

Order 2(a) of the Plaintiffs' summons was clearly premised on the argument that the shipment of the 6,000m3 of logs was unlawful following the cancellation of the 1st Defendant's licence by the Commissioner of Forests Resources, on 27th August 2003 and reconfirmed by him on 8th October 2003, reversing the Minister's decision on 4th September 2003. In my view, this argument is not relevant at this stage because it addresses the validity of the Commissioner of Forests Resources' action and thus the status of the 1st Defendant's licence, a matter best left to the interpate hearing on a date to be fixed. The essence of order 2(a) above is that the sale proceeds should not be allowed to fall into the hands of the 7th Defendant and the 1st to the 6th Defendants but should all be paid under order 2(c) into a joint interest bearing account of the Solicitors for the parties until the Court orders otherwise. Of course, customs duty must be paid on the export of the logs in the first place. What is left will be disposed of under the terms of the Logging and Marketing Agreement signed by the 1st Defendant and the 7th Defendant. This is the way the Plaintiffs have envisaged their case to run in this application. However, there is a hitch of fundamental importance. The alleged reconfirmed cancellation of the 1st Defendant's licence by the Commissioner of Forests Resources on 8th October 2003 which prompted the Plaintiffs to bring this application is the serious triable issue to be determined which the Plaintiffs have not pleaded in their Statement of Claim. Although Messrs Jino and Murray in their joint affidavit filed on 22nd October 2003 did say that the Plaintiffs had filed an application to amend the statement of claim to include new facts to challenge the ownership issue and the validity of the 1st Defendant's licence, I have not seen that application still pending hearing as confirmed by Counsel at the hearing of this application. The Plaintiffs have simply taken that issue of the reconfirmation of the cancellation of the 1st Defendant's licence as the basis for this application based on the assumption that the 1st to

7th Defendants are trespassers on their land and therefore are entitled to the orders sought as the owners of the land from which the logs had been extracted. If this were the case, they should be seeking a permanent injunction rather than interlocutory ones as they are currently doing. What they are doing is not quite right. They are seeking injunctive orders based on an issue that they have not put before the Court for determination at an interparte hearing unlike what the 7th Defendant did in **Omex Limited and Nama Development Company v. Attorney-General,** [1] Civil Case No.253 of 2003 yet to be heard on a date to be fixed. In that case, the Plaintiffs have challenged the validity of the action taken by the Commissioner of Forests Resources in canceling the 1st Defendant's licence as being without any legal basis and in the meantime applied for injunctive orders which I granted in a ruling I made on 8th October 2003. The basis of the Plaintiffs application is already a triable issue under challenge by the 7th Defendant in Civil Case No. 253 of 2003 cited above. I do not think it is right for the Plaintiffs to base their application for injunctive orders on a triable issue raised in an action brought by another party in another case though related somewhat. The Plaintiffs may well ask why they cannot do it. I think the answer is that one party cannot ask for injunctive relief based on an issue that that party has not put before the Court for determination. To do so would smack at the root of the objective of the long standing practice of granting interlocutory injunctions to maintain the status quo pending the resolution of the issue or issues raised for the determination of the Court. In this case, the relevant triable issue has not been pleaded and sufficiently shown in the joint affidavit filed by Messrs Jino and Murray cited above and that being so, this application cannot truly be an interlocutory one. As stated by Lord Diplock in **American Cyanamid v. Ethicon Ltd.**[2] [1975] 2 WLR 316, at 320, an interlocutory order is a remedy that is both temporary and discretionary. There is no basis for it being temporary in this case and in exercising my discretion, I refuse to grant it. This application is dismissed.

F.O. Kabui
Judge

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[1] *Civil Case No. 253 of 2003*
[2] *[1975] 2 WLR 316, at 320*