

AMBROSE MOTUI IPUTU, LESLEY TANO, CHARLES BICE THEGNA,
HOPKINS PETER NOMI AND ISABEL DEVELOPMENT AUTHORITY AND
ROSEWOOD (SI) LIMITED -V- MAXIMUS INTERNATIONAL LIMITED AND
REUBENSON HAVI AND MARTIN MATAI (Trading as Pogu Enterprises
Company)

High Court of Solomon Islands
(Palmer CJ)

Civil Case Number 289 of 2001

Date of Hearing: 25th - 26th November 2003

Date of Judgment: 1st September 2004

J. Apaniai for all the Plaintiffs
C. Hapa for the First Defendant
P. Tegavota for the Second Defendants

Palmer CJ: The first Plaintiffs are the registered joint owners of the perpetual estate in parcel number 090-002-2 also known as LR 690 (hereinafter referred to as "LR 690"). The said land is also known locally as Banisokeo land and situated on Isabel Province.

On or about 23rd July 1996 they granted rights to Isabel Development Authority, the Second Plaintiffs ("IDA") to carry out logging operations within LR 690. On 24th July 1996, IDA entered into a technology agreement with Rosewood (SI) Limited, the third Plaintiffs ("Rosewood") to manage and supervise the logging operation.

One of the second Defendants, Robinson Havi is the registered owner of the perpetual estate in Parcel Number 090-002-1 also known as LR 691. On or about 12th February 2001, the second Defendants (hereinafter referred to as "Pogu Enterprises") executed a Technology and Management Agreement with the First Defendant whereby the logging operation in LR 691 was done by the First Defendant.

Claim of the Plaintiffs

The first, second and third Plaintiffs ("the Plaintiffs") allege that the first and second Defendants ("the Defendants") had trespassed onto LR 690, extracted logs and in the process caused much damage to the environment. The alleged trespass occurred between 5th June 2001 and April 2002. They allege a total of about 3,824.480 cubic metres of logs valued at USD325,080.80 had been removed from LR 690. They claim inter alia damages for trespass and conversion.

Defence of the First Defendants

The first Defendants deny any trespass into LR 690. It says that prior to 5th June 2001, it had entered into an arrangement with the second Defendants to hire out its logging machines and equipment. This was a verbal arrangement but later put into writing on or about 10th July 2001 for the hire of four units of bulldozer, one unit of log truck and one unit of loader. They deny any trespass throughout that period right through to October thereafter.

Defence of the second Defendants

The second Defendants do not deny carrying out logging activities commencing on or about 5th March 2001 but that these were confined to their side of the boundary of LR 691. They deny entering LR 690 on or about 5th June 2001 or constructing any logging roads, spur roads or felling and extraction of any logs. They however do not deny entering an area of disputed land called **Sosola land** on or about October 2001 for three weeks and felling and removing 250 logs or 828.300 cubic metres valued at SBD266,060.63. They say rather that the said land is in LR 691. Apart from that entry, they deny any trespass into LR 690 at any other time.

The issues for determination

The issues for determination are as follows:

- (i) whether trespass has been committed and if so, who, when and where?
- (ii) Whether any damages have been caused?
- (iii) Whether any logs had been extracted and if so how much?
- (iv) Quantum of damages for trespass and conversion?

The evidence

The plaintiffs called a total of 8 witnesses in support of their claims. The first witness called, Frazer Patty ("Patty") was a member of the landowning tribes over LR 690 as well as being employed with Rosewood from 1998 - 2000. He stated that the area where Sosola land was located between Ghoghofu stream and the common boundary of LR 690 and LR 691 was set aside as a reserve area and not to be logged. He said that Rosewood did not enter the reserve area during its time of operations. He told the court that the first reports of trespass into their land was received sometime in June 2001. On receipt of the report it was forwarded to Rosewood to deal with. He did not investigate the reports though. In cross-examination he denied any suggestions that there was any other company that was operating in LR 690 apart from Rosewood.

The second witness called for the Plaintiffs was **Albert Yee**, manager of Rosewood since 1997. He gave unchallenged evidence that up until September 2001, Rosewood operated as the logging sub-contractor in LR 690. He told the court that in 1997 before commencing logging operations he was told not to do any logging in the Ghoghofu stream area as it was marked as a reserve area. He gave uncontroverted evidence that during their time of operations on LR 690 they did not enter the said reserve area. He told the court that no road was ever constructed into the site; the nearest road was estimated to be about 3-4 kilometers away.

He received first reports of trespass into Sosola land in June 2001. This came from his camp manager. He then filed a complaint with the Commissioner of Forests ("the Commissioner") following which a report was carried out by a Forestry Officer Maeli Rinau dated 20th June 2001 (exhibit 4). Paragraph 1 of that report confirmed that a complaint had been lodged with the Commissioner on 7th June 2001. The Report also confirmed that a trespass had been committed and logs removed from LR 690.

This witness also confirmed that one of the second Defendants, Martin Matai was a former employee of Rosewood from 1996 - 1999 and that he was also aware of the reserve area as

he also accompanied the team that carried out the inspection of the site in 1997. This witness also told the court that sometime in October 2001 he received further reports of trespass into the area and included threats being made to his staff and landowners which resulted in him having to apply for restraining orders. In or around March 2002 he requested the boundaries to be surveyed by the Surveyor-General and for the Commissioner to assess the damage caused by the trespass if any. As a result of this two separate teams were sent to carry out the survey. The first one was led by Mosese Fuata Deputy Surveyor-General, the second by Simon Papua Principal Surveyor. As a result of those surveys two reports dated 1st March 2002 (Exhibit 5) and 17th May 2002 (Exhibit 6) were produced. A separate report by the Forest Officer who accompanied the survey team was also produced marked Exhibit 7.

The third witness, Fuata Mosese ("Mosese") was the surveyor that led the first team to survey the site on or about 31st January 2002. Their task was to identify the common boundary and whether any trespass had occurred. He told the court that the first point of trespass identified by his team was at a spot some 1.2 kms from the seaside peg marked "L691". He said that the first survey could not be completed due to confrontation by landowners of LR 691. This has been detailed in his report. He identified one of those landowners as Reubenson Havi, one of the second Defendants. A second survey team was sent later to complete the survey.

This witness also told the court that the field data collected from the surveys was later collated and superimposed upon a drawn map with the assistance of a senior surveyor from the Survey and Mapping Division - see Exhibit 9. They were then able to produce a coloured map of the area surveyed and to calculate an estimate of the area of trespass. The total area of the trespass calculated came to 422.5 hectares. The survey identified at least four log yards, numerous major skidding and skidding roads and spur roads. This witness also stated that at the time they carried out the survey they could hear noise of heavy equipment inside the bush but could not see where they were operating.

The fourth witness Simon Papua ("Papua") also confirmed details of the trespass into LR 690 in the second survey. This was much more comprehensive. They were able to survey the major skidding roads and to mark them in their report. He however pointed out that there were many other skidding tracks that were not picked up in their survey in particular those that went out into the northern part of the area trespassed.

Another witness who gave vital evidence of trespass was Robinson Pinson ("Pinson"). He was a former employee of Rosewood from 2000 to 2002. His job was to work as a crew or assistant to the surveyors. He would assist in clearing bush and assisting in holding measurement tape for the surveyors. His chief surveyor at that time was Derrick Havi.

In or about April or May 2001 he attended at a place where an alleged trespass was said to have occurred. When he arrived at that spot he saw a bulldozer and one chainsaw with their workmen in their boundary. He said that the red paints indicated where the boundary was and when Derrick Haro spoke with the men, they admitted having trespassed into the area. The men identified themselves as employees of the first Defendant ("Maximus"). This witness pointed out that in 1997 their surveyors had put red paint on trees to mark the common boundary line. He says they had built a road into LR 690 at that time. He marked the spot as at L62 (see map in Exhibit 9). The road went into LR690 for quite a long distance. When he spoke with the men they admitted that they had trespassed but that they had been instructed that the area belonged to the landowners of LR 691.

Later in about June of the same year, whilst hunting for wild pigs in the reserve area he was confronted by chief Maro from Goveo and five others who told them to keep away from the place because it belonged to them. He said that he could hear the sound of chainsaws and bulldozers operating in the vicinity from the Ghoghofu stream at that time.

The third time he went to the site was in October 2001 at the request of Reubenson Havi ("Havi"). This witness said that the meeting was tense; both Havi and Matai were present at that meeting. He said he Matai swore at them at that time. They were told by these two men that the area belonged to them.

This witness also accompanied the first survey trip led by Mosese and second survey trip led by Papua. He confirmed basically what had been said by Mosese and Papua in their evidence about the area of trespass and the skidding tracks. He also confirmed the points of entry as identified. The only discrepancy in his evidence was when he said that they came upon the two roads only in the second trip. I do not think however that difference is significant bearing in mind that length of time that had transpired and the possibility of memories fading as to exact time he saw the roads. What is clear nevertheless is that he confirmed the existence of two roads going across into LR 690.

Another witness called by the Plaintiffs who gave direct evidence of the trespass was Edward Tahimana ("Tahimana"). This witness confirmed accompanying Pinson to see Havi in October 2001 at the reserve area. This witness said that they walked to the meeting point at the reserve area using their bush hunting tracks. He denied the existence of any logging road from LR 690 that may have been constructed by Rosewood into that area. He confirmed that Havi and Matai were insistent that the said area belonged to them and not to the landowners of LR 690 even though the identity of the boundary line was clear to them.

This witness also attended the surveys conducted by Mosese and Papua and confirmed reaching the first trespass point, "LPT" in the first survey and the second entry point in the latter survey.

The eighth witness called was Mr. Chan Chee Min. He used to be the Operations Manager of Isabel Timber Company ("ITC") from 1994 to 2001. He finished working for ITC in March 2001. He confirmed that ITC commenced working in LR 691 from 1993 to 1994. During their operations they marked the common boundary with red paint. He says that after 1994 they moved operations to another place. He denied carrying out any operations in LR 690 in 2001-2002. This witness was asked to give an estimate as to how many cubic metres of logs could be retrieved in a month if all other matters were taken into account and he stated that around 800 cubic metres would not be unreasonable if a chainsaw and a bulldozer was used.

Was a trespass committed?

The answer to this question must be in the affirmative. The evidence adduced showed clearly that the first trespass into LR 690 occurred in or about June 2001. Patty said he received reports from other landowners of LR 690 of the intrusion. He then passed it onto Rosewood to investigate. Albert Yee confirmed receiving complaints of trespass in June 2001 and filed complaint with the Commissioner following which an inspection was ordered and undertaken by a Forestry Officer Maeli Rinau ("Rinau") - exhibit 4. In his report it was

alleged that the trespass occurred on or about 7th June 2001. At paragraph 3 of his report he states:

"The new established boundary line being cut by Maximus survey team and landowners was seen within the reserved forested area in LR 690. The bearing of the newly cutted boundary was 215° (FB), they try to make it as the original boundary bearing."

The report not only estimated the area of trespass as being about 100 metres long and 60 metres wide but it made clear observations of attempts by the survey team of Maximus and landowners of LR 691 of interfering with the original boundary. The report also noted two skidding tracks 174 metres and 64 metres long. The number of logs removed was 36 and volume estimated at 158,400 m³ using the average rate of 4.4 m³ for Isabel Province. The report concluded that the trespassers were Maximus and Pogu Enterprises. This report is entirely consistent with the claims of the Plaintiffs of a trespass having been committed into LR 690.

Pinson was one of the eye witnesses of the alleged trespass into LR 690. His evidence indicates that the acts of trespass commenced much earlier in or around April/May 2001. He personally witnessed a bulldozer and a chainsaw gang in LR 690 around that time when he was out on a hunting trip. When he spoke to the men, they admitted the trespass and identified themselves as employees of Maximus. Pinson also referred to a confrontation with Chief Maro and about five other men in June 2001 when he was out hunting for wild pigs and was told by them that the area belonged to them. This was confirmed and supported by Edward Tahimana ("Tahimana") who had accompanied Pinson in that trip. They both said that Matai swore at them and told that the said area did not belong to them.

The evidence of trespass in or around June 2001 is overwhelming. Both Maximus and Pogu Enterprises denied the trespass in their pleadings but the evidence just simply does not bear this out. The Defendants have simply produced no evidence to contradict the evidence of trespass.

Who committed the trespass?

As to the identity of the trespasser again the evidence is very clear. Pinson personally witnessed and spoke to the employees of Maximus when he met them in April/May 2001 in their area. Those four employees admitted to him that they were employees of Maximus. No evidence to the contrary has been adduced.

In his evidence Marvin Baekisapa, ("Baekisapa") Director of Maximus told the court that their machines were landed on LR 691 in March/April 2001. They commenced logging activities shortly after constructing the log pond and clearing old logging roads which had previously been used by ITC. From about April right through to August 2001, they were the only ones carrying out logging activities and therefore if any trespass were committed during that time it could only have been committed by them. He told the court that although the lease agreement for the equipments was signed in July 2001 they were not released until towards end of August 2001. Pogu Enterprises therefore did not commence any logging activities with those leased equipment until sometime in the later half of August 2001.

In his evidence this is what he says; I quote:

Question: "In June 2001?"

Answer: *"We operated in areas marked as green."*

Question: *"In June, you went over boundary and operated in 690?"*

Answer: *"Sometimes in early June - we operated on top area and bottom part - some of our dozers operated there and some landowners and workmen D. Haro came with some landowners and confronted our operators."*

When he was asked if the logging operation ever went beyond the common boundary he denied this. He then told the court that in August 2001, Pogu Enterprises acquired a sawmill for purposes of cutting logs for house building for the landowners. It was then that they decided to hire machines from Maximus to cut logs for export for their housing project.

The only company therefore that could have committed the trespass prior to August 2001 was Maximus and no one else. It has sought to be argued by Maximus in these proceedings that the trespass was committed by Pogu Enterprises alone and not them. The evidence however is against them on this and I find as clearly established on the balance of probabilities that the trespass committed in April/May and June 2001 was by Maximus.

That there was a lease arrangement between Maximus and Pogu Enterprises entered into in July 2001 is not in dispute. The evidence establishes clearly though that the lease arrangement was not implemented until in August 2001. Both Baekisapa and Matai expressly said so in their evidence. Pogu Enterprises' trespass therefore can only be confined to the entries or activities conducted commencing from the later part of August through to October 2001.

As to details concerning the trespass which occurred in October 2001, not only is the evidence unchallenged, it has been admitted by Pogu Enterprises. The defence pleaded initially was that the affected area was part of LR 691, however when it came down to evidentiary test, the uncontroverted evidence adduced revealed that the area of trespass could not have been part of LR 691. It is important to note that the evidence actually went beyond that to show clearly that the Defendants were fully aware all along of the details of the common boundary and the location of Sosola land. In an earlier operation in 1993 - 1994, see evidence of Chan Chee Min ("Min"), Isabel Timber Company ("ITC") had conducted operations in LR 691 and had identified the common boundary between LR 690 and 691 by painting red paint on trees along the boundary. He said this was done to ensure that no trespass into LR 690 occurred. In or about 1997 when Rosewood commenced logging operations on LR 690 Albert Yee ("Yee") confirmed that he personally attended at the reserve area to ensure that it was clearly identified and not logged. Pinson who went to the reserve area in or about April/May 2001 stated that the area where the trespass occurred when he arrived at the scene was clearly marked by red paint. He said in his evidence that the surveyors of Rosewood also marked out the boundary with red paint in 1997 when they surveyed the site. The second survey report done by Papua on 16th April - 19th April 2002 also confirmed that the boundary was clearly marked with red paint on the trees at the common boundary. In his report (exhibit 6), at page 2, paragraph 3 he says:

"While making my way uphill and southwards, I saw a tree that was painted red within LR 690, near to the opened survey line."

At page 3 he continued:

"On the next day Friday 19/04/02, I continued opening the common boundary line from L62 to Ghoghohu Stream. On this line, I again saw a painted red tree very near the opened survey line, but within LR691. This confirmed to me that the boundary line 691 to S/691 was well known to both parties, but a deliberate trespass into LR 690 was intentionally done."

That the Defendants were well aware of the boundary cannot be denied. Matai for instance was well aware of the location of the reserve area, being a former employee of Rosewood from 1997-1999 working as operations manager. In the evidence of Mr. Yee he states that Matai accompanied them to the reserve area when they went to see it. He stated that the common boundary where Sosola land was located was clearly marked by red paint. On several occasions they had had confrontations with the landowners of LR 690 who continued to assert that their area had been trespassed into but that the second Defendants continued to deny that. Even when a complaint was lodged by Rosewood to the Commissioner and an inspection carried out which confirmed trespass in June 2001, the Defendants continued to ignore those complaints. Even when a notice to terminate the lease agreement was issued in September 10th 2001 by Maximus to Pogu Enterprises about the trespass, this was blatantly ignored and logging activity continued throughout out October! The trespass therefore can only be described as deliberate and intentional and should be reflected in the award of costs.

The survey reports adduced by Mosese and Papua showed clearly that the extent of the trespass and damage was extensive and estimated at 422.5 hectares. I have listened carefully to the evidence of Mosese, Papua and Keniomea and come to the conclusion that the estimate figure of 422.5 hectares was a fairly modest estimate. In their evidence they clearly pointed out that there were many other skid tracks particularly in the northern part which they had simply not included. The area of damage therefore was much bigger than what was actually estimated from their survey. They had picked up on only the major roads, skid tracks and other accessible skid tracks but there were others which they had not included. I accept their estimate as reasonable and fairly accurate. In any event no alternative survey has been produced by the Defendants to contradict the report, conclusions and figures provided by the Plaintiffs.

Volume of logs extracted

Again only rough estimates can be made based on the number of stumps of trees that had been felled during the trespass. The evidence is again unchallenged. A total of 829 tree stumps were counted by Keniomea in his inspection of the site conducted together with the survey team which carried out a survey of the site on or about 16th April - 19th April 2002. He also counted 51 logs that were left behind; details by species are contained in the report at paragraph 11 page 6.

On the question of volume of logs removed, the first report of Forestry Officer Rinau in June 2001 counted a total of 36 pieces of logs. In the second Forestry Report done by Keniomea - Exhibit 7, a total of 829 tree stumps were counted. The evidence has been basically unchallenged despite denials by the Defendants that in the trespass in October 2001 only 250 logs had been removed. They have not provided any evidence however to support that claim. The evidence to the contrary on the other hand is clear. No one else entered the disputed area other than the Defendants and removed logs; Maximus from the period from April/May to August 2001 and Pogu Enterprises from August to October 2001. There is no evidence to suggest or implicate anyone else who could possibly have removed those logs in

that period. There had been suggestions that ITC may have also worked in the site and carried out logging activities but there is simply no evidence to support such suggestion.

I note that the figures used for calculating the volume of logs removed was based on the average of 4.346 m³ per log set out in the National Forest Inventory Report, Volume Five, for Isabel Province – see page 7 of the second Forestry Report. The total volume of logs estimated for 829 pieces came to 3,602.834 m³ (829 x 4.346 m³ = 3,602.834 m³).

In his evidence before this court, Matai accounts for only 250 pieces with a total volume of 828.300 m³ - see Exhibit 21 at page 2. He says these were the only trees removed from Sosola land. Of these, only 78 pieces were of export grade quality with a total volume of 289 m³ whilst 172 were of mixed or low grade quality with a total volume of 539.300 m³. He could provide no explanation for the remaining 579 logs that had also been felled and removed from Sosola land. Those logs however could not have vanished into thin air. The only persons who could have and were in position to remove them were the Defendants. I am satisfied they must account for them. I note from the affidavit of Matai filed in support of this case on 21st June 2002 at paragraph 13, of which I take judicial notice, that of the 250 pieces of logs referred to, only 205 were exported in two shipments on 22nd October 2001 and 23rd October 2001. The other 45 pieces were not exported, 30 were used for the sawmill and 15 for the log pond.

Details of the logs exported from Sosola land as provided by Matai are summarized below:

Date of Shipment.	Exporter	Carrier	Pieces	M ³	Export Grade (no. of pieces)	% of logs	Mixed/low Grade (no. of pieces)	% of logs	Price ex. grade	U/ price mixed Grade
22-Oct-01	Pogu Enterprises	MV Santa Amelia V 160	69	236.100	40	58	29	42	USD75 m ³	USD50 m ³
23-Oct-01	Pogu Enterprises	MV Seyang Ace V T-169N	136	421.200	38	28	98	72	USD75 m ³	USD50 m ³

It cannot be denied that logging activities continued throughout the period from April/ May 2001 through to April 2002. If Pogu Enterprises admits removing only 250 logs from LR 690 then the remaining 579 logs were either removed by Maximus or that there was more logs removed by Pogu Enterprises than it would care to admit. From April/May 2001 to August 2001, any trespass committed in that time must be attributed to Maximus. Any trespass committed thereafter through to November 2001 is to be attributed to Pogu Enterprises. Whether there was any trespass thereafter by either Maximus or Pogu Enterprises however cannot be verified by evidence. The trespass therefore can only be confined to the period from April/May to November 2001. The 36 logs that were removed from LR 690 referred to in the report of Maeli Rinau must be attributed to Maximus. Logging activities continued right through to August 2001. After the complaint of Rosewood and the inspection carried out by Maeli Rinau it is not clear whether Maximus then pulled out from LR 690 or simply continued with the logging activities in Sosola land. From August to October 2001, only Pogu Enterprises carried out logging activities in Sosola land despite knowing full well that the land belonged to LR 690. In the absence of any clear evidence as to the portion of liability to be attributed to Maximus or Pogu Enterprises for

the trespass, the remainder of the logs that is, 543 logs should be accounted for by Pogu Enterprises.

The method used by Keniomea for calculating the value of the logs was to multiply the number of logs by the average volume (4.346 m³) per log for Isabel Province as contained in the National Forest Inventory Report, Volume Five. This worked out as follows:

$$543 \text{ logs} \times 4.346 \text{ m}^3 = 2359.878 \text{ m}^3.$$

The price used for calculating the value of the logs was the price for Pometia Pinnata (regular grade) which at the time of the report was USD85.00/m³. The total value therefore would come to: 2359.878 m³ x USD85.00 = USD200,589.63.

It is my respectful view however that in view of the actual figures provided by the Defendants as to the volumes and grades of logs from Sosola land exported in two shipments in October 2001 it is possible to estimate the percentage rate of export grade logs and mixed/low grade logs for those 543 logs. The average percentage for logs of export grade was about 43 % and 57% for mixed/low grade logs. The prices quoted as well were USD75.00/m³ for export grade and USD50.00/m³ for mixed/low grade. Out of the 543 logs removed therefore it would not be unreasonable to expect that approximately 43% of that would be of export grade quality and 57% of mixed/low grade quality. The estimate value of those 543 logs can be obtained as follows:

$$(43\% \times 543 \times 4.346 \text{ m}^3 \times \text{USD}75.00) + (57\% \times 543 \times 4.346 \text{ m}^3 \times \text{USD}50.00) = \underline{\text{USD}143,362.58}.$$

When converted to Solomon Island dollars at the exchange rate of 0.1866, this comes to SBD768,288.20.

It is clear the 543 logs and 250 logs in LR 690 had been unlawfully and deliberately removed and converted by Pogu Enterprises. I am satisfied the Plaintiffs are entitled to damages for the conversion of those logs. I give judgment for the sum of SBD768,288.20 for damages for the 543 logs removed by Pogu Enterprises for export.

I also give judgment to the Plaintiffs for the sum of SBD266,060.83 for damages for the 250 logs illegally removed from LR 690 and which was admitted at the beginning of trial by Pogu Enterprises. I presume the sum of SBD266,060.83 had already been deposited into court pursuant to the orders of this court of 16th July 2002 and therefore should now be released and paid to the Plaintiffs.

The Plaintiffs seek interest to those judgment sums. I am satisfied interest should be included at 5% with effect from date of issue of writ, being 31st October 2001.

As for the 36 logs that had been unlawfully removed earlier on as stated in the report of Maeli Rinau and virtually unchallenged, Maximus must bear the claim for damages for their conversion as follows:

$$(43\% \times 36 \times 4.346 \text{ m}^3 \times \text{USD}75) + (57\% \times 36 \times 4.346 \text{ m}^3 \times \text{USD}50) = \text{USD}9,504.70. \text{ At the conversion rate of } 0.1866 \text{ this comes to SBD}50,936.20$$

I give judgment against Maximus for this sum plus interest to be calculated with effect from 31st October 2001.

The Plaintiffs also claims damages for trespass. I am satisfied trespass had been committed and extensive damage caused. I am satisfied the Plaintiffs are entitled to damages to be assessed in chambers if not agreed. The question of damages for trespass are to include the value of the 51 logs that had been felled but not removed as set out in the report of Keniomea.

In the orders of this court of 16th July 2002 it was ordered that a further sum of SBD100,000.00 be paid into court or adequately secured pending determination of the issues in this case. Depending on the outcome of any negotiations as to the possible quantum of damages for trespass this sum can be used to either offset the costs for damages under that head or to off-set the award of damages of SBD768,288.20.

On the question of costs I indicated that costs should be on a solicitor and own client basis in view of the highhanded manner in which the trespass into LR 690 had been conducted.

Orders of the Court:

1. Grant damages for trespass against Maximus and Pogu Enterprises to be assessed in chambers before the Registrar of High Court if not agreed.
2. Grant damages for conversion against Maximus for the sum of SBD50,936.20 being the value of the 36 logs illegally removed from LR 690, plus interest of 5% with effect from 31st October 2001 until payment.
3. Grant damages for conversion against Pogu Enterprises for the sum of SBD768,288.20 and SBD266,060.83 being the value of the 543 logs and 250 logs respectively, illegally removed from LR 690, plus interest of 5% with effect from 31st October 2001 until payment.
4. Direct that the sum of SBD266,060.83 and SBD100,000.00 currently restrained by order of this court be released and paid to the Plaintiffs to off-set the amount of damages awarded in the Plaintiffs favour.
5. Award costs to the plaintiffs on solicitor and own client basis.

The Court.