

ALAN AGASSI AND HARRINGTON LOGARA, JOHNSON POGHOSO AND RAEBOY LOGARA (REPRESENTING GETU TRIBE) V. ISAAC WATTS, DARCY TIMOTHY AND JOHN TIMOTHY (FIRST DEFENDANTS), HUGHO JAMAKOLO, KEVU SAM AND TONY JAMAKOLO (SECOND DEFENDANTS), BULO ENTERPRISES (THIRD DEFENDANT), PACIFIC METRO LIMITED (FOURTH DEFENDANT), COMMISSIONER OF FOREST (FIFTH DEFENDANT), AND WESTERN PROVINCIAL GOVERNMENT (SIXTH DEFENDANT).

High Court of Solomon Islands  
(Palmer CJ)

Civil Case No. 43 of 2004

Date of Hearing: 2<sup>nd</sup> April 2004  
Date of Judgment: 18<sup>th</sup> October 2004

*Ms. Riddock for the Plaintiff ✓*  
*Pacific Lawyers for the first, second and third Defendants*  
*G. Sani for the fourth Defendants*  
*G. Dewa for the fifth Defendants*  
*No appearance by the sixth Defendants*

Palmer CJ: The Plaintiffs seek restraining orders inter alia, against the first – fourth Defendants by themselves, their servants or agents from felling any trees and logs on Bili customary lands (inclusive of Japuana, Karujeu, Saneihulumu, and Mijanga lands) (hereinafter referred to as “the Bili Islands”).

In the Statement of Claim filed 9<sup>th</sup> February 2004 and Amended Statement of Claim filed 22<sup>nd</sup> March 2004, (“the Statement of Claim”) the Plaintiffs as members of the Getu Tribe, claim customary ownership rights over the Bili Islands on Gatokae Island, Marovo Lagoon, Western Province. They rely on uninterrupted use of the islands for many years and on two agreements; one in 1976 with Solomon Tavo Limited to harvest baitfish on the reefs around the islands and the other, on a decision of the Marovo Chiefs dated 13<sup>th</sup> November 1986<sup>1</sup> in which their rights over the baitfish grounds were also recognised. They were granted 60% rights on royalties received. The other 40% went to the first and second defendants. The Plaintiffs have also referred a customary land dispute to the Marovo Council of Chiefs for hearing over those islands<sup>2</sup>.

They also allege (i) procedural irregularities in the publication of the Notices of Hearing of the public meeting under sections 8 and 9 of the Forest Resources and Timber Utilisation Act, (“the Forestry Act”); (ii) that no public meeting was ever convened to determine questions of ownership of timber rights, (iii) that no notice of determination of the identity of the persons entitled to grant timber rights was ever issued by the sixth Defendant and accordingly the Plaintiffs were denied their rights of appeal. They seek declarations to have the timber rights agreement and the timber licence declared null and void on that basis. They also seek damages for trespass and conversion.

<sup>1</sup> See Exhibit “H13” annexed to the affidavit of Harrington Logara filed 9<sup>th</sup> February 2004.

<sup>2</sup> See Exhibit “H19” annexed to the affidavit of Harrington Logara filed 9<sup>th</sup> February 2004.

### Locus Standi

I am satisfied the Plaintiffs have established that they have locus standi to pursue a land dispute case with the first and second Defendants over customary ownership of the Bili Islands. They have demonstrated that they are not mere busybodies. Although the baitfish agreement of 1976 with Solomon Taiyo Limited and baitfish royalty agreement of 1986 over the Bili Islands dated 13<sup>th</sup> November 1986 relates to the baitfish grounds around the Bili Islands it is supportive of a claim of right which they may have over those islands. It is quite unusual to have rights over baitfish grounds around an island or the coastal areas without also having some form of rights connected to the island or coastal and inland areas. Although claims of rights of the Plaintiffs over the Bili Islands have been vehemently denied by the first and second Defendants, they have not provided satisfactory explanation as to how or why baitfish royalties were paid to the Plaintiffs. If they had no connections to land rights over the Bili Islands, why should they be given recognition as having rights over the baitfish grounds? I would have expected those who had rights over the islands to be the first in line for claims of baitfish royalties.

The question whether those baitfish ground rights are also capable of sustaining land rights over the Bili Islands are matters which can be agitated before the customary chiefs who have jurisdiction over the area, at the appropriate time. Also by referring a customary land dispute over those islands to the Marovo Council of Chiefs by letter dated 7<sup>th</sup> February 2004<sup>1</sup> acknowledged by the Secretary by letter of 11<sup>th</sup> February 2004, the jurisdiction of this court to issue interlocutory injunctions was activated. It is clear the Plaintiffs are serious about their customary claims of ownership or rights of usage over the Bili Islands.

### Intervention by the Court

Should the Court consider intervening in this case by way of restraining orders against the first and second Defendants? That the court has jurisdiction to aid the work of the local court or chiefs councils for that matter, by granting injunctions so as to enable them to determine issues of dispute over customary land, is without question<sup>2</sup>. Whether or not the court would grant an interlocutory injunction to restrain entry on, felling and removal of timber from the Bili Islands depends on the circumstances and an assessment of the plausibility of the Plaintiff's claims and prospects of succeeding.

### Triable Issues

Apart from raising triable issues in custom over claims of ownership over the Bili Islands, the Plaintiffs have also raised serious issues regarding the validity of the logging agreement and the timber licence issued. They allege no timber rights meeting had ever been conducted by the Western Provincial Executive in respect of an application by the third Defendant. See affidavit of Harrington Logara filed 9<sup>th</sup> February 2004 at paragraph 6 and Exhibit "HL6" annexed, in which the Deputy Provincial Secretary confirmed that he had no official records to confirm that any timber rights hearing meeting had ever been conducted. A timber rights application was lodged on or about 23<sup>rd</sup> August 2001 but there is no evidence of any hearing been ever conducted. In the absence of a timber rights hearing it is unexplicable how a Certificate of Customary Ownership ("Form II") was issued on or about 22<sup>nd</sup> April 2002. That this was so is confirmed by Mr. Presley Watts in his affidavit filed 30<sup>th</sup>

<sup>1</sup> See Exhibit "HL9" in same affidavit of Harrington Logara.

<sup>2</sup> See Gandy Simbe v. East Choiseul Area Council and Eagon Resources Development Company Limited and Steven Taki and Peter Madada CASI-CAC 8-97 9<sup>th</sup> February 1999.

March 2004 at paragraph 6(f). How such an irregularity could have been allowed to occur is tantamount to gross negligence, incompetence or fraud on the part of the Western Provincial Executive or the Provincial Secretary. That document (Form II) was signed by the Provincial Secretary and dated 22<sup>nd</sup> April 2002. The Provincial Secretary has obligation to explain how such a document ever came into existence in the absence of any public meeting. The requirements of section 8 of the Forestry Act couldn't be clearer. I am satisfied there is prima facie evidence of a fundamental defect in the process of acquisition of timber rights which if accepted by the court is capable of invalidating the timber rights executed and timber licence issued.

Section 9(2)(b) of the Forestry Act requires that a public notice be issued in respect of the determination of the Western Provincial Executive. There is no evidence to suggest that any such notice was ever published and thereby depriving the Plaintiffs of their rights to appeal under section 10. Again there is prima facie evidence of non-compliance with the requirements of the Act.

There is also something fishy about the timber rights agreement recommended by the Commissioner of Forests for approval and approved by the Western Provincial Executive for the issue of a timber licence (see "Exhibit HL4" annexed to the affidavit of Harrington Logara filed 9<sup>th</sup> February 2004). It has never been signed by JP Enterprises Company Limited. It was signed only by a group of landowners. It is defective therefore to that extent.

Further, how Bulo Enterprises (the third Defendant) and not JP Enterprises Company Limited was ever issued a timber licence is also irregular. Bulo Enterprises never featured in the application for timber rights. There is also no evidence of any transfer of rights and obligations of timber rights. To that extent the issue of a licence to Bulo Enterprises would appear to be defective as well.

I am satisfied the Plaintiffs have demonstrated the existence of customary rights over Bili Islands and which have been denied or ignored by virtue of non-compliance with procedural requirements of the Forestry Act and thereby depriving them of their rights recognized in law which they have not been able to exercise. In consequence they have not been heard, that is to present their claims of ownership to the Western Provincial Executive and have not been able to exercise their right to appeal against any determination of the said Executive by the failure to issue a public notice of their determination. There is prima facie evidence as well that the timber rights agreement and licence are defective. These are serious issues and give them right to come to court to impugn the timber rights agreement entered into with the first and second Defendants and to question the validity of the timber licence.

#### Delay

There has been suggestion that there had been delay in that the Plaintiffs have been slow in coming to court for relief. The evidence however reveals that their claims to the Bili Islands goes far back in years and even as recently as 1976 when their tribe granted rights to Solomon Taiyo to harvest baitfish on the reefs around those islands. In 1986 their rights were re-affirmed in the 60% royalty share awarded to them by the Chiefs presiding over their dispute. On 31<sup>st</sup> July 2002 Luten Hila and Raeboy Logara raised objections to the Form II application of JP Enterprises over the Bili Islands in a letter addressed to the Magistrate Western District (see Exhibit LH1 attached to the affidavit of Luten Hila filed 9<sup>th</sup> February 2004). They did not stop there. In or about November 2003, the Plaintiffs enquired with the Office of the Western Provincial Government regarding whether any timber rights

meetings were ever conducted by the Western Provincial Executive (see "Exhibit HL6" annexed to the affidavit of Harrington Logara). This was done by the Plaintiffs when there is prima facie evidence to suggest that there was no compliance with the requirements of the Forestry Act. In February 2004 they lodged application in this court to seek relief against the activities. I fail to see how this can be described as delay or inordinate delay. Not only that they have taken the liberty to report a dispute to the Marovo Council of Chiefs on 7<sup>th</sup> February 2004. Rather, the logging activities on the Bili Islands by the first to the fourth Defendants should be seen in the light that there is no guarantee that the correct landowners had been identified and that the procedures had not been complied with. Whilst the validity of the logging licence is best left for trial proper, in determining whether an interlocutory injunction should issue, this court can consider prospects of success of the Plaintiffs claim, as an aid to the exercise of its discretionary power. I consider the prospects of success to be real in the circumstances of this case and thus strengthening their argument for injunctive relief to be granted.

This raises the issue of an undertaking for damages. In normal circumstances, an undertaking would have been required, however in the circumstances of this case, it is only proper that it be waived, bearing in mind also the fact that there is very clear evidence before this court that the licence of the third Defendant no. A19911 had been suspended by the Commissioner of Forests by letter dated 30<sup>th</sup> March 2004.

On the issue of damages, it is obvious that monetary damages would not be adequate to repair any damage caused to the environment, forests, rivers, streams, plants and animal life.

The balance of convenience in the circumstances of this case must lie in favour of an injunction and I so order.

#### ORDERS OF THE COURT:

1. Grant restraining orders against the first, second, third and fourth Defendants by themselves, their servants or agents from felling, removing or exporting any trees and logs on Bili customary lands (inclusive of Japwana, Karujeu, Mijanga and Saneihulumu islands) pending determination of the issues in this case.
2. That the third and fourth Defendants within 21 days provide an account of all marketable trees felled on Bili customary lands whether removed and exported or not since commencement of operations to date hereof and to provide details by species, quantity, volume and prices of logs extracted and sold or exported to date hereof.
3. That the proceeds thereof are to be restrained and paid into a joint interest bearing account in the names of the solicitor's for the parties and to remain there until further orders of the court.
4. The costs of this application to be costs in the cause.

**ALBERT H. PALMER**

THE COURT.