DANIEL DAUTAHA & THOMPSON HODARA, *representing the Atawu of Bwauai-Aro*, DAVID GARIA AND JOHN MORANI, *representing the Bora tribe of Horobaewa*, SOLOMON GARIMARAU, *representing the Amaeo tribe of Tawaraha*, APPOLOS RONGOANI, *representing the Atawu tribe of Orata*, FREDERICK WAIR'A, *representing the Atawu tribe of Oneibia*, TAHIGERA, *representing the Atawamasi tribe of Tawaraha*, STANLEY NAO'ORIASI, *representing the Tom Mwaga and Mwaraharutariu tribe of Tawarahi AND RUBY HA'AORIORIHA'A*, SAM WAWOTA & AGRIPPA MONO, *representing the Aoba tribe of Goto* -v- AROSI VISION LINK SERVICES LTD AND BULACAN INTEGRATED WOOD INDUSTRIES (SI) CO. LTD

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

Civil Case No. 327 of 2003.

Date of Hearing: 27th July 2004
Date of Ruling: 28th July 2004

R. Ziza for the Plaintiffs.
P. Tegavota for the 1st-8th Defendants.

RULING

Kabui, J. This application was filed by the Defendants on 18th April 2004 seeking the following orders-

1. That the first and the second plaintiffs, their servants, agents, members of their tribe and including their supporters be restrained from carrying out all or any of the following acts which will interfere with the logging operation of the seventh and the eight defendants within lands covered under its logging licence No. A10224 and its extension licence particularly Block 7 which is Maborae land, Block 8 which Taraitete land and Block 10 which is Hererau land and they are:
   (a) Erecting and or maintaining any road block on any logging roads going into or constructed within these land,
   (b) Preventing the felling and extraction of logs, construction of logging roads and or the carrying out of any logging activities within Blocks 7, 8 and 10,
   (c) Stopping the hauling of logs from these land,
   (d) Causing any damage to any of the logging equipment and machineries and other equipment used in any logging related activities by the seventh and the eight defendants and including removal of such machineries and equipment without their express consent and,
   (e) The carrying out of any acts whatsoever which will interfere with the logging operation of the seventh and the eight defendants within Blocks 7, 8 and 10 any other land covered under its logging licence and extension licence.
2. That the first and the second plaintiffs and or their supporters and members of their tribes immediately remove the road block they have erected on Block 10 or Hererau land to enable the seventh defendant to extract logs that they were already and to continue carrying out logging within the said land.
3. That the Court to grant such other or further orders as it sees fit.

This application was set down for hearing on 2nd July, 2004. By letter dated 1st July, 2004, Mr. Tegavota, Solicitor and Counsel for the Defendants informed the Registrar that he was unable to attend that hearing and sought an adjournment. He asked the Registrar to pass on his message to the trial judge. There is no record in the file of what transpired on the trial date. Whether the Registrar had passed on the letter to or verbally informed the trial judge is not known. The substantive case was however listed before me on 26th July 2004 and the hearing was to continue on 27th July 2004, the following day. On the trial date, Counsel for the Plaintiffs, Mr. Ziza, told me he was ready to proceed. However, Counsel for the Defendants, Mr. Tegavota, said he was not ready because the Notice of Hearing had been served on him only the Friday the previous week and was not in a position to secure his witnesses. He also said that he thought his application that had not been dealt with on 2nd July 2004 was to be heard first. Counsel for the Plaintiffs, Mr. Ziza, then told me that he was in attendance before Brown, J. on the hearing on 2nd July 2004 but nothing was said about the adjournment of the Defendants' application. Instead, he said, the judge directed that the main case be listed preferably before another judge. Unfortunately, I could not find any record of the proceeding on 2nd July 2004 in the file to say whether the Defendants' application had been dismissed or adjourned. So I was unable to know whether the Defendants' application had in fact been disposed of and dismissed or stood over for another date. In the meantime, I adjourned the hearing of the trial of issues to a date to be fixed. It appeared to me that the Defendants' application was more or less floating and so I decided to deal with it. I adjourned it to the next day to see whether the parties could reach a settlement on the issues raised in the Defendants' application. The Plaintiffs had indicated in open Court that they were willing to remove the road block to allow the logs in the bush to be moved to the log pond and be sold as intended by the Defendants provided the proceeds of the sale were deposited in a joint bank trust account. On resumption of hearing on 27th July 2004, the Defendants maintained their objection to the proceeds of any sale being placed in any joint bank account as suggested by the Plaintiffs. The Defendants' application was then heard on that basis of not being willing to negotiate.

The brief facts.

In 1982, the Makira/Ulawa Customary Land Appeal Court, (the CLAC), decided that the Atawa, Bora, Mwara, Amaea and Aoba tribes did have customary rights over the land between the Mwata and Tabwaranga streams. The land between Waiwego and Hauni's plantation did not belong to Ashirano except the food gardens pre-existing the court decision. The Court also decided that any new developments taking place in areas of land over which the Atawa, Bora, Mwara, Amaea and Aoba tribes possessed customary rights must receive prior approval from Hodaro and Ashirano. As regards Rumahui land, the Bauro Local Court found that the parties did have equal rights over the land between the Maetawa and Tabwaranga streams and that the areas of land already cultivated by the parties prior to the decision would remain the properties of those who cultivated them. The Court also advised the parties to live harmoniously as did their ancestors before them. That decision has been appealed to the CLAC. Blocks 7 and 8 in Ward 5 are the areas of land known as Rumahui. Block 10 is in Ward 6. Licence No.A10224 was issued on 13th August 2002 by the Commissioner of Forests to Arosi Vision Link Services covering a number of areas of customary land in Wards 5 and 6 in Arosi 2 in the Makira/Ulawa Province. The 8th Defendant is the contractor which carries out the extraction work and the selling of the logs, the terms of its work having been set out in a Management Agreement signed between Arosi Vision Link Services, the licence holder, and the 8th Defendant, the contractor. Licence No. A10224 covers sixteen pockets of customary land in Wards 5 and 6.

The Plaintiffs' case.

The Plaintiffs' case is that they did not agree to logging taking place on their land in the first place. According to Mr. Dautaha's affidavit filed on 5th December 2003, he did attend the timber

rights hearing but made no objection because his land was not mentioned in that hearing. He said he did not appeal because for that same reason that his land was not included at that timber rights hearing. The Plaintiffs also allege that Hererau is part of Bwaui-Aro land being Block 10 which was not included in Licence No. A10224. As regards, Rumahui land, the 1st and 2nd Defendants had not consulted the Plaintiffs about the logging taking place in that land. Block 7 (Maborae) and block 8 (Taraitete) are part of Rumahui land in respect of which no prior consultation had taken place with the Plaintiffs. The 2nd Plaintiff also alleges that his tribe owns Horobaewa which is not Harerau land which land was not included in the Licence cited above.

The Defendants' case.

The Defendants' case is that Blocks 7, 8 and 10 are covered by the timber rights agreement and Licence cited above with the approval of the Plaintiffs.

Why the Defendants are not successful.

Although Block 9 appears in the statement of claim and the defence filed by the Defendants, the affidavits filed by both sides made on reference to it. Iam therefore not sure that Block 9 is in issue and included by mistake. Harerau land, according to the Plaintiffs is Bwaui-Aro, which is their land not included in the Licence. Harerau is in fact, Horobaewa land, allegedly owned by the Plaintiffs. Logging has already been completed in Taraitete and Maborae areas of land but partly completed in Harerau. Harerau is in Block 10. About 200 logs are still lying in the bush following the road block imposed by the Plaintiffs. The Defendants are asking the Court to order the Plaintiffs to refrain from doing anything which interferes with the operation being carried out by the Defendants, particularly, continuing to maintain road block and to remove the current road block to allow the Defendants to continue operating as they are doing at the moment. The Defendants are also asking the Court to order the Plaintiffs to refrain from doing anything to damage the machinery and equipment on site or remove them without their consent. The Defendants' application appears to be an interlocutory one pending the resolution of the main dispute between the parties. Other than that they did not base their case on any principle of law than to say that the Plaintiffs had no standing in law to complain against the Defendants. The Plaintiffs had earlier failed to secure interlocutory injunctive orders brought in the usual manner. The Defendants have done the same for their own benefit. Both parties are not willing to negotiate. They want the Court to decide for them. This is not a case of breaching the terms of a negative undertaking made by one party and then that party breaching that undertaking as was the case in the case of **Arosi Vision Link Services and Another v. George Mae and Shidangi,** Civil Case No.171 of 2003. There is no evidence that the Plaintiffs had breached a negative undertaking they made not to set up road block and did not keep their words like the case cited above. There is not much I can do but to dismiss the application with costs. If the Plaintiffs do not remove the road block, then they may suffer the consequence that the logs already felled will not reach the market and so the possibility of receiving any royalty is a foregone conclusion. The same consequence will ensue if the Defendants will not agree to the Plaintiffs' suggestion that they will remove the road block provided when the logs are sold the proceeds will be placed in a joint trust bank account, (less costs of operation and custom duty etc) pending the resolution of the current dispute between the parties. All the parties stand to lose much if they cannot agree amongst themselves. It is a matter for them to sort out. In the meantime, the order of the Court is that-

1. **The application is dismissed.**
2. **The Defendants are to pay the costs.**

F.O. Kabui
Puisne Judge