

**TAGAVELE COMPANY RESOURCES DEVELOPMENT
AND BULACAN INTERNATIONAL (SI) LIMITED -v-
CHIEF JIMSON RAUSU, TIMOTHY MAKIRE AND JACK
PICHACHA REPRESENTING THE ILUMU TRIBE)**

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

Civil Case No. 470 of 2005

Date of Hearing: 3rd October 2005.

Date of Ruling: 3rd October 2005.

P Tegarota for the Applicant

RULING

Kabui, J. Investing in Solomon Islands can be a risky business, especially in the logging and agriculture industries. Agreements are made between the investor and the resource owners for the exploitation of the resource. These agreements do take different forms and terms agreed do vary from case to case. One thing is however common about these agreements. Often internal disputes do arise between the resource owners themselves about royalties in the case of logging and rentals in the case of plantations such as oil palm plantations etc. Instead of such disputes being sorted out between the trustees themselves, the complaining elements take their anger out on the investor and try to disrupt the operation of the business and even sometimes seek the demise of the investor. This case is one such case where some of the resource owners take out their anger on the investor. Internal disputes often arise where some of the trustees have misused the trust money or rental money and the rest of the members of the tribe who miss out on those royalties or rentals. The ones who miss out are often the ones who take out their anger on the investor. Misinformation, ignorance and lies make matters worse. Like in this case, the Defendants have accused the Applicant of colluding with other persons to advance royalties without the consent of the Defendants who are themselves trustees. The Defendants wrote a letter to the Manager of the Applicant on 9th September 2005 setting out their complaint and the measures they would take if their complaint was not addressed but received no reply from the Applicant.

The Contractor's position.

The Applicant is a contractor contracted by the licence holder to extract logs and sell them for gain within Tagavele land, comprising Inere, Mamizi,

Pesabula, Maleo, Kitikite and Siri areas of land. The Defendants are members of the Ilumu tribe who, amongst others, constitute the licence holder. They are not happy about the manner in which the royalties have been paid to the tribe without their consent and knowledge. They have accused the Applicant for lack of transparency in not disclosing how the payments were paid out. They have asked the Applicant to stop all activities within Ilumu land, including loading and shipment of logs until their grievances have been resolved.

The Applicant have therefore come to this Court for restraining orders in the absence of the Defendants on the basis that it is urgent to do so because the loading of the logs onto an overseas vessel is due soon and any further delay would be financially detrimental to the Applicant. The main action against the Defendants was filed on 30th September 2005 seeking a declaration against the Defendants. This application is therefore an interlocutory one pending the resolution of the main action. This is the usual practice in this jurisdiction.

The court process misconceived by the Applicant.

In this case, the main action, in my view, has been misconceived. The Applicant is the agent of the licence holder by contract. It is entitled to log and export the logs extracted from the licensed area covered by the licence. In fact, the licence holder has agreed under clause 2 of the Agreement signed on 8th June 2004 to indemnify the Applicant for any losses incurred by the Applicant in the course of any challenge to the fulfillment of its obligations under the Agreement. The licence holder also agrees under clause 10 of the Agreement to sort out any disputes that may arise and to ensure that no road blockage, interference or stoppage of the Applicant's operation is allowed to disrupt the Applicant's operation. It is also the obligation of the licence holder under clause 13(e) to settle landowners' disputes and land disputes without the Applicant having to be involved.

There is no evidence to show that the licence holder has complied with its obligation to resolve the present dispute. It is therefore not unreasonable to conclude that the licence holder is in breach of the Agreement itself.

The correct relief.

That aside, it is not disputed that the Applicant has the right to load the logs onto the vessel. It does not require the Court to decide that issue. It has become an issue in this case because it would back up the Applicant's application for an interlocutory injunction. An issue must be a correct issue. It must not be trumped up to justify an interlocutory injunction. If there is a need for an injunction in this case, it should take the form of a "quia timet" injunction. (See *Kalena Timber Company v. Deleso Otto and Others*, Civil

Proved

Case No. 229 of 2005 and the cases cited therein). The Applicant is clearly apprehensive of the mild threats being carried out by the Defendants. In fact, Counsel for the Applicant indicated from the bar table that loading stopped yesterday. That is not evidence. Proper evidence has to be obtained for the Court. Exhibit "CP2" by itself cannot be sufficient evidence upon which a "quia timet" injunction can be granted. There needs to be something more to justify action by the Court.

Conclusion.

In any case, no "quia timet" injunction is being asked for in this case and so it cannot be granted on the evidence before this Court. The application is dismissed.

Frank O. Kabui
Puisne Judge