

MOSES VELOMAMA AND ISAAC KORAMAKOLO (Representing the Tarekacho Tribe of North West Choiseul) -v- JABO LATO AND EGON VELOKAEQU (Chiefs and representatives of Pokaligo Tribe) **AND ROSE GALITIQA, JAYBEL POLOSO, ELAE VADAKI, NORMAN BOSEGOLOMO AND JOHN WICKLY (Members of Pokaligo Tribe)**

HIGH COURT OF SOLOMON ISLANDS
(Mwanosalua, J.)

Civil Case No. 165 of 2004

Date of Hearing: 24th February 2005

Date of Judgment: 19th October 2005

G.K. Suri for the Plaintiff

Unice Kiko, Lay representative for the Defendants

JUDGMENT

Mwanosalua, J: This is an application by the Plaintiffs filed on 3rd February 2005 by way of a motion for judgment under Order 29, rule 8 of the High Court (Civil Procedure) Rules 1964. "The High Court Rules." Rule 8 of Order 29 above states -

"In all other actions than those in the preceding Rules of this Order mentioned, and to those which Rule 14 of this Order applies, if the defendant makes default in delivering defence, the plaintiff may set down the action for judgment and such judgment shall be given as upon the Statement of Claim the court shall consider the plaintiff is entitled."

Judgment in Default of Defence

The Plaintiffs filed their Writ of Summons and Statement of Claim on 29th April 2004. They were served on the Solicitor for the Defendants on 14th June 2004. The Solicitor for the Defendants entered appearance on 14th June 2004. In terms of Order 23, rule 6 of the High Court Rules, the Defendants should have filed their defence within 14 days from 14th June 2004. That is to say, that the Defendants should have filed their defence by 27th June 2004. As at the date of the hearing of this motion, no defence has been filed by the Defendants.

The Plaintiffs' Statement of Claim

The Plaintiffs are members of the Tarekacho tribe which owns Tarekacho Land. Karakonelavata Land is part and parcel of Tarekacho Land. The members of the Tarekacho tribe were adjudged

owners of the Karakonelavata Land by a court constituted by Alex Davidson, District Commissioner, Western, on 23rd October, 1954. The members of the Pokaliqo tribe were party to that case. The 1st Defendants are Chiefs of the Pokaliqo tribe and the 2nd Defendants are members of the Pokaliqo tribe.

The Plaintiffs granted their timber rights over Tarekacho Land under the Forest Resources and Timber Utilisation Act (Cap. 40) to Eagon Resources Development company (SI) Limited (the company). The company commenced its logging operation on that land in 2003. However, the Logging operation ceased in February 2004 when members of the Pokaliqo tribe asserted ownership of Karakonelavata Land and threatened to burn the company's logging machines if the logging operation on Karakonelavata Land continued. The company withdrew its machines from Karakonelavata land because of that threat and the Plaintiff filed their action seeking remedies against the defendants.

The Remedies sought by the Plaintiffs

The first remedy sought by the Plaintiffs in their Statement of Claim is a declaration that the Plaintiffs are the owners of the Tarekacho Land inclusive of the portion called Karakonelavata Land. The second remedy sought is a declaration that the 1st and 2nd Defendants do not have any rights in custom and in law to interfere with the logging operation on Tarekacho Land inclusive of Karakonelavata Land. The third remedy sought is a permanent injunction order restraining the Defendants, their agents, associates, friends and their tribal members from trespassing upon Tarekacho Land or any part thereof and interfering with the logging operation on Tarekacho land inclusive of Karakonelavata land without the lawful authority of the Plaintiffs.

Decision

The court constituted by Alex Davidson, District Commissioner, Western, decided on 23rd October 1954 that Thomas Simagolomo and the members of his Tarekacho tribe were the owners of the Karakonelavata Land in custom. The members of the Pokaliqo tribe who lost the case made no appeal against the decision. On 14th November 1977, a Custom Area Committee made a decision that the reef along the sea coast of Karakonelavata land from Kisakisa River to Paramata Passage is owned by Thomas Simagolomo and the members of his Tarekacho tribe. On 16th November 1980, the Choiseul Local Court convicted and fined Jacob Lato and nine members of his Pokaliqo tribe for criminal trespass upon Tarekacho Land. And on 28th October 1978, the Choiseul Local Court again convicted and fined six members of the Pokaliqo tribe for criminal trespass upon Tarekacho

Land. The decisions of the Custom Area Committee and the Choiseul Local Court were all based upon the court decision by DC. Alex Davidson on 23rd October 1954. My view is that this is a case where the court can look to the Statement of Claim and exercise its discretion to enter judgment for the Plaintiffs. I grant leave to enter judgment against the defendants in terms of the Statement of Claim. The Defendants are to pay the costs of this application.

ORDERS OF THE COURT:

- 1. Declare that the Plaintiffs and the members of the Tarekacho tribe are the Owners of Tarekacho Land inclusive of its portion called Karakonelavata Land and that the 1st and 2nd Defendants are bound by court decision of 23rd October 1954.**
- 2. Declare that the 1st and 2nd Defendants have no rights in custom and law to interfere with the logging operation on Tarekacho Land inclusive of Karakonelavata land by the Plaintiffs and the company to cut, fell and take away timber.**
- 3. The 1st and 2nd Defendants by themselves, their agents, friends and members of their tribe are permanently restrained from trespassing into Tarekecho land or any part thereof and interfering with the logging operation on that land without the lawful authority of the Plaintiffs.**
- 4. Costs in this application to be paid by the Defendants.**

THE COURT