KOLOLEANA DEVELOPMENT COMPANY LIMITED & MEGA CORPORATION LIMITED V. OLUPATI AMIKI AND OTHERS

High Court of Solomon Islands
(Palmer CJ.)

Civil Case Number 83-98

Date of Hearing: 8 March 2005
Date of Judgement: 28 October 2005

Ms M Bird for the 1st Plaintiff
C Hapa for the 2nd Plaintiff
C Ashley for the Defendants

Palmer CJ.: On 7 March 2003 this court delivered judgement in the above case and made orders inter alia, on the counter-claim of the defendants as follows:

> "...
> *2. Grant judgment to the Defendants on their Counter-Claim.*
>
> *3. Order that the timber rights agreement dated 13th September 1996 executed between Kololeana Development Company Limited and the representatives of the Eapa, Gaso, Igolo tribes (described in the Agreement as "the Landowners") is null and void.*
>
> *4. Consequentially order that the extension of the timber licence no. TIM 2/34 on 18th April 1997 to include West Kohinggo is null and void.*
>
> *5. Consequentially declare that the first and second Plaintiffs had trespassed onto the customary lands of the Defendants.*
>
> *6. Award damages for trespass to be assessed.*
>
> *7. Consequentially award damages for conversion of trees felled and exported over West Kohinggo to be assessed.*
>
> *8. Award interest at the rate of 5%.*
>
> *9. Costs of the Defendants in any event to be borne by the first and second Plaintiffs.*"

Since judgement, the parties had attempted several times to have the matter settled out of court but to no avail, hence this assessment.

At the hearing before me I made orders for the parties to file affidavits in support of their submissions for assessment of damages for trespass and conversion but only the defendants have filed affidavits in support of their claims. They rely on the affidavit of Olupati Amiki filed 22 March 2004, affidavit of Robertson Pekoto and Masolo Tia filed 9

November 2004 and the Field Assessment Report dated 5 November 2004 compiled by Robertson Pekoto, Forest Ranger, J. Riven, Forest Ranger and Masolo Tia Senior Environmental Officer. As well, learned Counsel Mr. Ashley had lodged written submissions for the court's consideration. The first and second plaintiffs on the other hand although at the hearing did ask for time to consider filing written submissions, did not lodge any documents other than the verbal submissions on 8 March 2005.

There are two heads of damages sought by the defendants; damages for trespass and damages for conversion. In their Summons for Assessment of Damages filed 9 November 2004, the defendants seek orders as follows:

> "*1. As against the Second Judgement Debtor (Mega Corporation Limited), the amount of $4,451,559.72 as moneys converted by the said Judgement Debtor together with interest at 5% per annum calculated from the date of commencement of the High Court proceedings; and*
>
> *2. As against the First and Second Judgement Debtors jointly and severally, the amounts of $1,749,703.93 for waste logs and $1,354,386.29 for off-cut, sawmill and rotten logs had to measure as assessed in the Forestry Field Assessment Report for West Kohiqo Land carried out in September 2004 together with 5% interest per annum calculated from the date of commencement of the High Court proceedings; and*
>
> *3. As against the First and Second Judgement Debtors jointly and severally, the amount of $15,111,299.88 (twice the amounts claimed in paragraphs 1 and 2 above) based on the Environmental Assessment Report carried in September 2004 together with 5% interest per annum calculated from the date of commencement of the High Court proceedings; and*
>
> *4. As against the First and Second Judgement Debtors jointly and severally, an order that they pay the Defendants costs on an indemnity basis; and*
>
> *5. Any other order the Court deems fit or just to make.*"

Damages for conversion

The normal measure of damages for conversion is the market value of the goods (trees) converted[1]. This is well settled in law, that the proper measure is the value of the goods at conversion. In **Hall v. Barclay**[2] Greer L.J. stated:

> "*where you are dealing with goods which can be readily bought in the market, a man whose rights have been interfered with is never entitled to more than what he would have to pay to buy a similar article in the market.*"

Damages for trespass

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[1] See McGregor on Damages 15th Edition paragraph 1298; Caxton Publishing Co. v. Sutherland Publishing Co. [1939] A.C. 178, 190, per Lord Macmillan.
[2] [1937] 3 All E.R. 620, 623 (C.A)

The second head of damages sought was for trespass. The rule is that the plaintiff recovers from the defendant the loss suffered as a result of the trespass[3]. Where actual damage has been caused a plaintiff is entitled to recover damages for any loss suffered by him. The value of damages claimed under this head is normally limited to the reduction in the value of the property; that is, depreciation in the value[4]. Where land is damaged, the measure is the loss in the value of the land[5]. It is possible to recover as well for the cost of repairing the property if it is repairable under this head.

Some assistance can be obtained from case authorities where unauthorised mining operations had occurred. In such instances, the main head of loss calculated was the value of the severed minerals removed, but there may also be recovery for damage to the land[6]. In **Morgan v. Powell** (1842) 3 Q. B. 278, compensation was given "*for all injury done to the soil by digging*". In **Jegon v. Vivian** (1871) L.R. 6 Ch. App. 742 and **Phillips v. Homfray** (1871) L.R. 6 Ch. App. 770, damage in working the mine was also made part of the inquiry.

In the case of trespass on customary land, the defendants in this case would be entitled to claim for all damages caused to the land as a result of the illegal logging activity of the first and second plaintiffs.

Assessment of Damages

I am satisfied having read the affidavit of Olupati Amiki filed 22 March 2004 and affidavit of Robertson Pekoto and Masolo Tia filed 9 November 2004 and the Field Assessment Report dated 5 November 2004 compiled by Robertson Pekoto, Forest Ranger, J. Riven, Forest Ranger and Masolo Tia Senior Environmental Officer, that the same principle for the measure of damages for conversion applies to the circumstances of this case for the logs converted. The measure of damages is the value of the logs converted. In this instance, that is easily identifiable. Not only has the Second Plaintiff admitted that a total of seven shipments were made between January and May 1998 (see paragraph 2(f) of the Amended Defence to the Counter-Claim filed 10 October 2000) but this has been confirmed by the Customs and Excise Division (see exhibit "OA6" annexed to the affidavit of Olupati Amiki filed 22 March 2004). According to that information, the total volume of logs exported was 14,901.97 m^3 with a value of SBD4,451,559.72. The plaintiffs have produced no evidence to contradict that figure. There has been suggestion that the correct figure should be less the amount of export duty paid, being $1,118,610.30. In my view that is only relevant where a valid licence had been obtained. This was an illegal operation from the outset. Had the Commissioner of Forests exercised diligence in vetting the logging agreement carefully, he would not have allowed it to be endorsed in the form it was signed. I am satisfied an order for damages for conversion in the sum of SBD4,451,559.72 plus interest at 5% from date of judgement (7 March 2003) should be made.

The second order sought was for damages for the value of waste logs and off-cuts sawmill and rotten logs, according to the Field Assessment Report ("**the Report**") for

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[3] Tort by C.D. Baker 4th Edition p.56

[4] Hole & Son v. Harrisons of Thurscore (1972) 116 S.J. 922; Taylor (Wholesale) v. Hepworths (1977) 1 W.L.R. 659.

[5] Law of Torts in the South Pacific by Stephen Offei 1997, para. 15.11.1

[6] See McGregor on Damages 15th Edition para. 1398

West Kohingo land carried out in September 2004. That was a comprehensive report in itself. The plaintiffs were given ample opportunity to be part of the field assessment/inspection team but failed to send a representative (see exhibit "OPA3" annexed to the affidavit of Olupati Presley Amiki filed 1st December 2004). The Report speaks for itself. Measurements were taken of the remaining waste logs and timbers left in the bush at Kohingo Customary Land by the first and second Plaintiffs. The inspection did identify three other timber milling contractors, John Pasard, Junior Sato, and Chacha Bule Amoi during the inspection but the report did make clear that the activities of those operators were severed from the Report. The Report only focused on the activities of the first and second Plaintiffs. No other suggestion to the contrary has been produced and I am satisfied I can safely rely on the contents of the Report as fairly accurate.

The Report recommended that the calculation for the value of damages in respect of those waste logs was to be calculated at 65% for landowners and 35% for the Province and a further 200% penalty for logs left in the bush for more than 3 months as per the Standard Logging Agreement at clause 17[7]. Clause 17 sets out as follows:

> *"Penalty for Waste*
>
> *All merchantable logs must be extracted from the bush within 3 months of felling.*
>
> *A penalty equal to 200 percent of the total of royalty to the landowners plus government duty payable to the Province and taxes that would have been payable shall be levied in respect of any saleable log that is felled and left in the bush for more than 3 months."*

The second part of the Report marked **"Table-A Meqa Operation"** contains specific details of the various species of logs, the length, diameter and volume calculated. Those logs were further divided up into two parts; Waste logs and Rotten logs. The Waste logs were calculated at the rate of 65% of the average market value for the various species of logs, being the portion for the landowners, on the basis that the operation was illegally conducted. I am satisfied the method used is reasonable and proper in the circumstances of this case; no alternative suggestion has been brought to my attention.

The total number of Waste logs identified was 734 pieces with a total volume of 2,283.347 m^3 and total value calculated (inclusive of the penalty rate) at SBD1,749,703.93. There being no other evidence or submission to the contrary, I am satisfied an award for damages for that amount be made as against the first and second Plaintiffs jointly and severally.

The total number of Rotten logs identified during the inspection were 531 pieces with a total volume of 1,666.063 m^3. The value of the damages claimed at SBD1,354,386.29 was also calculated at the rate of 65% and 200% penalty rate imposed for merchantable logs. Again no evidence to the contrary has been adduced before me and I am also satisfied the value of damages claimed should be awarded as damages.

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[7] see Form 4 of the Schedule to The Forest Resources and Timber (Prescribed Forms) Regulations (see page 1471 of Vol. III of the Revised Edition of the Laws of Solomon Islands).

The only issue for consideration is whether these awards should be made as part of the claim for damages for trespass or as statutory damages. In my respectful view, the more appropriate head under which those awards can be made would be as statutory damages in view of the fact that the rates and calculations made originate from statute law. The figures quoted however could easily be sustained also as damages for trespass to the land caused by the illegal logging operations of the first and second Plaintiffs. I award damages against the first and second Plaintiffs jointly and severally for SBD1,749,703.93 and SBD1,354,386.29; totaling SBD3,104,090.22.

The third order sought for $15,111,299.88 as being based on the Report did not state the head under which it was based. I can only presume it was for damages for trespass. In my respectful view, that has no basis in law. The statutory damages awarded of SBD1,749,703.93 and SBD1,354,386.29 are adequate compensation for the trespass of the plaintiffs on the customary land of the defendants arising from their illegal logging activities. I refuse that claim.

On the issue of costs, I am satisfied this should be taxed if not agreed. Finally it is my respectful view that the assessments made should have a time limit to them for purposes of payment, failing which the defendants shall be entitled to take enforcement action against the first and second Plaintiffs. I further direct that the award of damages is to be paid as follows. The sum of SBD4,451,559.72 to be payable within thirty days and the sum of SBD3,104,090.22 within sixty days.

It should also be noted that in the judgment of this court of 7 March 2003, this court awarded judgment to the Plaintiffs for the sum of SBD21,000.00 with interest at 5%. For the avoidance of doubt, that amount should be deducted from the award of damages made under these orders.

ORDERS OF THE COURT:

1. **Award damages against the second Plaintiff/Second Judgement Debtor for conversion of 14,901.97 m³ of logs for SBD4,451,559.72 plus interest at 5% with effect from date of judgment 7 March 2003, payable within 30 days.**

2. **Award statutory damages and damages for trespass against the first Plaintiff/first Judgement Debtor and second Plaintiff/second Judgment Debtor jointly and severally at SBD3,104,090.22 plus interest at 5% with effect from date of judgment 7 March 2003, payable within 60 days.**

3. **Refuse order sought in paragraph 3 of the Summons.**

4. **Refuse order for costs on indemnity basis.**

5. **Award costs to be taxed if not agreed.**

The Court.