

KINA SAM AND GABRIEL KAIMAURI-v-THE SHIP "MEMORY", HAROLD BILLY, KIDSON BILLY, PETER BILLY AND RONTOM BILLY AND FRED KAMADA, LALO BILLY, SAMONA BILLY, WALETILIA, OFESI AND GEORGE WALEBURI AND ALL THOSE INTERESTED IN THE SHIP "MEMORY"

HIGH COURT OF SOLOMON ISLANDS
(Mwanosalua, J.)

Civil Case No. 580 of 2004

Hearing: 3rd November 2005

Ruling: 7th November 2005

D. Nimepo for the Plaintiffs

C. Ashley for the First Defendant

F. Kamada in person

RULING

Mwanosalua, J: This is a summons filed by the Plaintiffs on 17th September 2005 against the First and Second Defendants for the following orders:-

1. **Leave to issue a Writ of Attachment for contempt of court;**
2. **Costs;**
3. **Such other orders as this court deems just and equitable in the circumstances.**

The orders being sought by the Plaintiffs arise from the orders of this court dated 10th December 2004, and also perfected, signed and sealed on 10th December 2004 in these terms –

1. The Ship "Memory" be arrested and be taken possession of by the Court and to delivered forthwith to the Plaintiffs;
2. Interim injunction to restrain the Defendants, their Agents, associates and family members from boarding, entering or taking possession of the Vessel herein described until trial or further orders.
3. All the documents filed in court by the Plaintiffs in this action be served on the Defendants within seven days who will be at liberty to make such applications to the court as they may desire to make;

4. Costs are reserved.

Application

The Plaintiffs apply to this court for leave to issue a Writ of attachment for contempt of court, under order 61, rule 2 of the High Court (Civil procedure) Rules 1964, (the High Court Rules).

Grounds for Application

The Plaintiffs claim that the First and the Second Defendants have willfully disobeyed the orders of the court dated 10th December 2004 by doing the following acts –

1. without the permission of the Plaintiffs, they have by themselves or their agents or associates entered and boarded the Vessel "M.V. Memory" and took possession thereof; and
2. they failed to release the said Vessel to the Plaintiffs despite demand to do so.

Evidence in Support of Application

The Plaintiffs rely upon the affidavit of Sam Taloiyasi filed on 6th July 2005 and his oral evidence. The facts derived from the affidavit are that the Plaintiffs have leased the M.V. Memory from Salo Fishing and Shipping Co-operative Society Limited from 1st September 2002 to 31st December 2005; on 17th June 2005 the M.V. Memory went aground on Waibana Reef in the Langalanga lagoon; at around 3pm. on 17th June 2005 Fred Kamada, Lalo Billy, Rontom Billy, Samona Billy, Waletelia, Ofesi and George Waleburi were part of a large group of people who re-floated the Vessel; Fred Kamada, Lalo Billy, Rontom Billy, Samona Billy, Waletelia, Ofesi and George Waleburi detained the Vessel at Tavuilo from 17th June 2005 to date; Fred Kamada is Harold Billy's cousin; Rontom Billy and Samona Billy are Harold Billy's brothers; Lalo Billy, Waletelia, Ofesi and George Waleburi are close relatives of Harold Billy; Fred Kamada and his group demanded \$500,000 from the Plaintiffs for the salvage of the Vessel before it can be released and that two hundred and forty bags of cocoa owned by Arania Enterprises valued at SBD\$150,000 were on board when the Vessel was seized and detained at Tavuilo on 17th June 2005.

Decision

I find that Samona Billy, Fred Kamada, Lalo Billy, Waletelia, Ofesi and George Waleburi are family members of the First Defendants. Paragraph 2 of the Order of this court dated 10th December 2004 applies to them as members of the First Defendants family although they were not parties in the action when the Order was made. They assisted in the salvage of the Vessel when it went aground on Waibana Reef on 17th June 2005. And according to the affidavit evidence of Fred Kamada

they now have safe custody of the Vessel and are awaiting compensation for the salvage of the Vessel. There is evidence to grant leave to issue a writ of attachment for contempt of court against the Second Defendants and Rontom Billy. There is no evidence to show that Harold Billy, Kidson Billy and Peter Billy were in breach of the court order.

ORDERS OF THE COURT:

1. **Grant Leave to issue a writ of attachment for contempt of court.**
2. **Write of attachment for contempt of court to be issued on Rontom Billy, Samona Billy, Fred Kamada, Lalo Billy, Waletelia, Ofesi and George Waleburi.**
3. **Plaintiffs' costs for this application is to be paid by the Second Defendants.**

THE COURT