

SHEM HA'ADIDIRI (Representing Mwara Auhenua and Atawa Tribes)-v-MSL AND COMMISSIONER OF FOREST RESOURCES

HIGH COURT OF SOLOMON ISLANDS
(Mwanosalua, J.)

Civil Case No. 73 of 2005

Hearing: 25th April 2005
Ruling: 28th November 2005

P. Watts for the Plaintiff
J. Apaniai for the 1st Defendant

RULING

Mwanosalua, J: This is an application by the First Defendant by way of Notice of Motion filed on the 11th March 2005 seeking the following orders -

1. That the action be struck out on the ground that it discloses no reasonable cause of action or is otherwise frivolous and vexatious;
2. If order 1 is refused, an alternative order that the ex parte order herein dated on 14th February 2005 ("the ex parte order") be set aside;
3. If orders 1 and 2 are refused, then an order that the ex parte order dated 14th February 2005 be set aside and the following alternative orders be made instead:-
 - (a) That the First Defendant and/or its contractor, servants and agents be permitted to have all the logs now lying in the bush and sell those logs, including all the logs now lying in the log pond, and to pay the royalties into a trust account to be in the names of the Plaintiff and the First Defendant or their Solicitors and to remain there until trial or further order of the court;
 - (b) That the First Defendant give an account of all trees felled, extracted and exported from the land under dispute showing details of the number of pieces, the species, the volume and fob value of the logs;
 - (c) The First Defendant pay into an interest bearing trust account referred to in paragraph (a) above all royalties payable in respect of logs extracted from the land under dispute which royalties shall remain there until trial or further order of the court;

(d) That the First Defendant and/or its contractor, servants and agents be permitted to continue with their logging operations within the Land under dispute on the condition that they pay into the interest bearing trust account referred to in order (3)(a) the royalties payable in respect of logs to be extracted from the land under dispute;

4. Such further or other orders the court thinks fit;
5. Costs in the Cause.

The ex parte Order of this court dated 14th February 2005 is in these terms –

1. That the First Defendant and her Sub-contractor, Sam Ling Sun (SI) Ltd, be restrained from making any payments and/or cash advances out of or against what Royalties or Duty Remissions (if any) that may be due in respect of the shipment currently being loaded onto to M.V. Ulswater at Marou Bay, Makira Province.
2. That all such monies be paid into an interest bearing Trust Account to be jointly administered by the Counsels for the Plaintiff and the First Defendant and that the same be restrained therein until further orders of the court.
3. That the First Defendant and her Sub-contractors, Sam Ling Sun (SI) Ltd, are restrained from furthering their logging operation within Rohu Lands, Makira Province, until further orders of the court.
4. That the First Defendant and their Sub-contractor, Sam Ling Sun (SI) Ltd, by themselves, their employees, agents and associates, be restrained from entering into Rohu Lands for any reason whatsoever without the written consent of the Plaintiff.
5. That the First Defendant files with the court the sale contract upon which the M.V. Ulswater consignment was sold within seven (7) days upon completion of the loading of the said consignment.

Statement of Claim

The Plaintiff claims that the Rohu Land is owned by the Mwara Auhenua and the Atawa Tribes, that the persons who held themselves out as owners of Rohu Land have no rights over that land and that there were omissions in steps to the acquisition of timber rights which would render the Standard Logging Agreement invalid.

Application to Strike Out

The First Defendant seeks to strike out the Plaintiff's action on the grounds that it discloses no reasonable cause of action or otherwise that it is frivolous and vexatious.

No reasonable Cause of Action

The Plaintiff raised claims of ownership by the Mwara Auhenua and Atawa Tribes over Rohu Land for the First time in this court. But this court lacks jurisdiction to determine ownership of customary Land in custom (see *Gandly Simbe-v-East Choiseuld Council, Egon Resources Dev. Company Ltd, Steven Taki and Peter Mada, Civil Appeal No. 8 of 1997*). It follows that the court does not have power to hear and decide questions regarding the ownership of Rohu Land by the Mwara Auhenua and Tawa Tribes in custom.

Validity of Standard Logging Agreement

The Plaintiff claims that the Standard Logging Agreement which the First Defendant signed with the persons granting timber rights over Rohu Land is invalid. This claim involves question of law. This claim is based upon alleged omissions in steps essential to the acquisition of timbers rights over Rohu Land under Part III of the Forest Resources and Timber Utilisation Act (the Act). There is support to this allegation. An instance would be failing to complete Form 2 in accordance with the provisions of the Form.

Action frivolous and Vexatious

It does not seem to me that the action is frivolous and vexatious, it appears that there are omissions and irregularities in the process of acquiring timber rights. For instance, the names of the Provincial Executive members who sat to determine the timber rights granted to the First Defendant were not listed in Form 2. Second, a non Province Executive member participated in the determination of timber rights contrary to the terms of Form 2.

Shem Ha'adidiri-v-Dodogeni – Arosi Local Court Case No. 1/1977.

There are only two parties to this case. They are Shem Ha'adidiri (the Plaintiff in this present proceedings) and Dodogeni. They are members of the Mwara Auhenua Tribe. Their dispute was over the ownership of a parcel of land near their village called Bwae Land. The decision in that case only binds the parties to it and no other tribes and persons.

Decision

The Mwaru Auhenua and the Atawa Tribes have raised their claims over the ownership of Rohu Land plateau and Rohu Land for the first time in this court. The court does not have power to decide those claims. They would have to take them to the Chiefs for determination. There are indications of non compliance with the procedure for the acquisition of timber rights. The Form 2 was not completed as required. The names of the Provincial Executive members who sat to determine timber rights were not listed in the Form. Further, Alfred Herie, a non member of the Provincial Executive sat with the Provincial Executive to determine timber rights. I do not consider that the action is entirely frivolous and vexatious.

I set aside the order of this court dated 14th February 2005 as it was granted on the basis of the decision in Shem Ha'adidiri cited above, a decision on Bwae Land and not on the entirety of Rohu Land.

ORDERS OF THE COURT

1. Application to strike out the action refused.
2. Order of the court dated 14th February 2005 discharged.
3. Costs be in the Cause.
4. Order the action to be stayed.
5. Parties at liberty to give seven days notice to re-instate the case with Leave of the court.

The Court