

ROLLAND PIKO AND JIMSURA SIMEON (*representing Kongu Ngaloso tribe and themselves*) -v- JERRY TEKOPO, WAYNE MAEPIO AND GORDON SHADRACK

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

Civil Case No. 586 of 2005.

Date of Hearing: 15th December 2005.

Date of Ruling: 16th December 2005.

J. Apariai for the Plaintiffs.

M. Pitakaka for the Defendants.

RULING

Kabui, J. Distribution of royalties for the harvesting of timber from customary land is a continuing problem for the landowners. Who is entitled to receive royalties and how much are internal matters between the trustees and the beneficiaries who are the members of the same tribe being the customary landowners. The misuse of royalties or accounting for them are however different matters.

The Plaintiffs have sued the Defendants for an account of royalties and duty remissions received by the Defendants over a number of years during logging operation on Kongu Ngaloso Land on Gatokai Island in the Western Province. This is the main action against the Defendants.

In the meantime, the Plaintiffs are fearful that further royalties and duty remissions may continue to be unaccounted for by the Defendants. For this reason, the Plaintiffs have asked the Court to make orders, directing that such royalties and duty remissions be paid into a joint trust account of the parties' solicitors until trial or further orders of the Court.

At the hearing, the Defendants opposed the application on two grounds, namely, that the Plaintiffs did not have standing and that there were not serious issues to be tried.

Standing/locus standi.

On the question of standing, the 2nd Plaintiff, Jimsura Simeon, is the uncle of one of the Defendants, Jerry Tepoko. They are both members of the Kongu Ngaloso Tribe. Jimsura Simeon clearly has standing. There is no doubt about that as a fact. He is a primary rights holder and is entitled to royalties.

The first Plaintiff, Rolland Piko, is a secondary rights holder in Kongu Ngaloso Land. He is a member of the Kongu Ngaloso Tribe and in fact had received royalties. This is accepted by the Defendants through Jerry Tepoko in his affidavit filed on 15th December 2005. Apart from these facts, forty-six persons of the Kongu Ngaloso Tribe have given their support to Rolland Piko and Jimsura Simeon to bring the action against the Defendants. Their action is therefore a representative action on behalf of themselves and other members of the Kongu Ngaloso Tribe.

I therefore reject the argument by the Defendants that the Plaintiffs lack standing to sue the Defendants. They do indeed have standing to sue the Defendants.

Serious issue to be tried.

There is evidence to show that between 19th March 2004 and 22nd August 2005, the Defendants received royalties of \$1,570, 831.37. The Defendants also received duty remissions of \$1,155,023.06 for the same period of time. The Plaintiffs would like the Defendants to account for the total sum of \$2,725,854.43 as trustees for the members of the Kongu Ngaloso tribe. An application for an account by a writ of summons is a cause of action under Order 16 of the High Court (Civil Procedure) Rules, 1964, "the High Court Rules." Calling for account under this Order of the High Court Rules is a serious issue to be tried.

Counsel for the Defendants argued that there was no cause of action in custom. I reject that argument because being in a position of trust creates a trust situation whereby the trustee, like the Defendants in this case, are obliged to account for the moneys they held in trust for the benefit of the members of the Kongu Ngaloso tribe. Entitlement to and the distribution of royalties are different matters. Those issues may well be governed by custom practice. In any case, Counsel's argument is well suited for the hearing of the main action on a date to be fixed. All I need to do is being satisfied that the main action does raise a serious issue to be tried. I am satisfied so that there is a serious to be tried in this case.

What needs to be done now is to find where the balance of convenient lies and to act accordingly. I am satisfied in this case that the balance of convenience lies in favour of the Plaintiffs. I therefore grant the orders sought by the Plaintiffs. I order accordingly.

Frank O. Kabui
Puisne Judge