

**KALENA TIMBER COMPANY LIMITED AND DONALD ODIKANA LEZUTUNI (Representing himself and the Majority of his Veala Reresare Tribe)-v-EDDIE MAENA KIDOE, MARVIN LEZUTUNI AND GWEN ABANA (Trading or holding themselves out as Reresare (Veala) Development, or Veala Reresare Development Association or Reresare (Veala) Development Company) and COMMISSIONER OF FOREST RESOURCES**

HIGH COURT OF SOLOMON ISLANDS  
(Mwanosalua, J.)

Civil Case No. 018 of 2005

**Hearing:** 18<sup>th</sup> February 2005  
**Ruling:** 3<sup>rd</sup> October 2005

G. Suri for the Plaintiff  
N. Tongarutu for the 1<sup>st</sup> Defendant  
F. Walenisia for the 2<sup>nd</sup> Defendant  
R. Kingmele for the Applicants

### **RULING**

**Manesalua, J:** Reresare Development Company Limited (1<sup>st</sup> Applicant) is a local company registered under Solomon Islands Law. It holds a Timber Rights Agreement and a Felling Licence over Reresare Customary Land Stage 1, on Vella La Vella Island, Western Province.

Jack Lagobe, Dalcy Tozaka, Teddy Pavo, Eddie Kiria, Allan Gilai and Pakiva Okavaki (2<sup>nd</sup> Applicants) represent the Reresare Tribe which owns Reresare Customary Land. The 2<sup>nd</sup> Applicants granted timber rights and signed the Timber Rights Agreement over Reresare Customary Land Stage I with the 1<sup>st</sup> Applicant.

The 1<sup>st</sup> Plaintiff is a Logging Company registered under Solomon Islands Law. It applied to negotiate timber rights over Veala Reresare Customary Land under the Forest Resources and Timber Utilization Act (the Act). The Western Province Executive (the Province) heard the application on 17<sup>th</sup> June 2004 and made its determination on it on 18<sup>th</sup> June 2004.

The 1<sup>st</sup> Defendants are members of the Veala Reresare Tribe. They hold the Timber Rights Agreement over Veala Reresare Customary Land through a body called "Reresare (Vela) Development Company" and the holders of the Felling Licence over the same Land through another body called the "Veala Reresare Development Association."

Reresare Customary Land and Veala Reresare Customary Land share a common boundary and are situated on Vella La Vella Island. There is dispute between the

Plaintiffs and the Defendants over the validity of the Timber Rights Agreement and the Felling Licence held by the 1<sup>st</sup> Defendants over Veala Reresare Customary Land. That dispute gave rise to the Plaintiffs' action before this court.

The 1<sup>st</sup> Applicant and the 2<sup>nd</sup> Applicants lodge their application to the court to be added as 3<sup>rd</sup> and 4<sup>th</sup> defendants respectively in the action. Their application is made on the basis that their interests over Reresare Customary Land have been directly affected by the proceedings in the action.

### **1<sup>st</sup> Defendants Opposed the Application**

The 1<sup>st</sup> Defendants opposed the application and urged the court to dismiss it on the grounds that -

- (a) the Plaintiffs cannot be compelled to proceed against the Applicants whom they have no desire to sue when they initially filed their action.**
- (b) it is an abuse of the process of the court to add the Applicants to the action as they did not appeal the timber rights determination by the Province over Veala Reresare Customary Land.**
- (c) it is an abuse of the process of the court to add the Applicants to the action as it does not deal with issues regarding ownership of customary land, but merely concerns with issues regarding the Timber Rights and the Felling Licence held by the 1<sup>st</sup> Defendants over Veala Reresare Customary Land.**
- (d) the Applicants wrongly applied to be added as defendants to the action as they should have done so to be added as Plaintiffs in view of the nature of their case against the 1<sup>st</sup> Defendants.**

### **The Plaintiffs compelled to sue the Applicants**

There is evidence that the Plaintiffs did not oppose the application by the Applicants for joinder in the action. They have allowed the Applicants through their Counsel to proceed with the application, and that they would make necessary defence to any counter claim by the Applicants at the appropriate stage of the proceedings.

While the general rule may be that plaintiffs cannot be compelled to proceed against other persons other than the defendants of their own choice, there are three exceptions to the general rule. The exception to the general rule are -

- (a) in a representative action where the person seeking to intervene is one of a class whom the plaintiff claims to represent and the intervener is unwilling that the plaintiff should represent him.**

- (b) where the proprietary rights of the intervener are directly affected by the proceedings.
- (c) Actions for specific performance of contracts where third parties have an interest in the question of the manner in which the contract should be performed.

**(See *Dullfus Meig et Companie S-A.-v-Bank of England [1950] 2 All ER605 at 509 and the Annual Practice, 1955 p.232, referred to in *Amon-v-Raphael Tuck & Sons Ltd [1956] 1 All ER 273 at.276.*)***

***Abuse of the process of the court.***

The 1<sup>st</sup> Defendants contend that it is an abuse of the process of the court to add the Applicants to the action because they failed to lodge an appeal against the timber rights determination by the Western Province Executive ("the Province") over Veala Reresare Customary Land on 18<sup>th</sup> June 2004.

But the Applicants contend that they were prevented from lodging an appeal on two grounds: First, that the determination was never published and second, that no public notice of the determination was ever displayed within the locality of Veala Reresare Customary Land or at any village close to that land.

The Province considered the application by the 1<sup>st</sup> Plaintiff to negotiate the acquisition of timber rights over Veala Reresare customary land with the Veala Reresare Tribe on 17<sup>th</sup> June 2004, and made its determination on it on 18<sup>th</sup> June 2004.

The Province issued its certificate in Form 2 (Exhibit "DOL I") setting out its determination on 20<sup>th</sup> July 2004. The Province also produced a public notice of the determination on 20<sup>th</sup> July 2004.

The evidence from the 1<sup>st</sup> Defendants is that the determination and the public notice were both displayed at Paramatta village. The public notice was also displayed at Tiberius village. Paramatta village is situated on Veala Reresare Land itself, and Tiberius village on the other hand is situated close to that land. I do not accept the assertion by the Applicants that the determination and the public notice were not published. I find that they were duly published according to the Act.

The applicants conceded that they did not lodge any appeal against the determination. They are now seeking leave to be added as defendants to the action under Order 17, rule 11 of the High Court (Civil Procedure) Rules 1964 (the High Court Rules). They are not doing that so that they can assert that they are the proper persons to grant timbers over the Veala Reresare Customary Land. They seek joinder to the action in order to protect their proprietary interests on Reresare

Customary Land as the decision on the action directly affects those proprietary interests. I do not consider that injustice would be done to the 1<sup>st</sup> Defendants if the applicants invoke the procedure under the High Court Rules to protect their rights after they lodged no appeal against the determination. My view is that the applicants would not abuse the process of the court.

It is clear from authorities in this jurisdiction that the court does not have power to determine issues relating to the ownership of customary land. However, the materials filed by the Applicants in support of their application show that they also have issues regarding the timbers rights and the Felling Licence issued to the 1<sup>st</sup> Defendants. That is to say, that there is an overlap of the concession area covered by the 1<sup>st</sup> Defendants' Felling Licence onto the concession area covered by the Applicants' Felling Licence. (compare Exhibit "MK4" – area shaded yellow with Exhibit "RM3" area shaded purple and Exhibit "RM4").

The subject matter of the action in this case concern the validity of the Standard Logging Agreement and the Felling Licence issued to the 1<sup>st</sup> Defendants over the Veala Reresare Customary Land. The Plaintiffs seek a number of declaratory orders against the 1<sup>st</sup> Defendants. In addition, they also seek a permanent injunction to restrain the 1<sup>st</sup> Defendants from carrying on any logging activities under the Standard Logging Agreement and Felling Licence held by the 1<sup>st</sup> Defendants over Veala Reresare Customary Land.

#### **Joinder of the Applicants to the action**

A person who is not already a party to an action may apply to the court under Order 17, rule 11 of the High Court Rules to be joined either as a plaintiff or defendant. The issue to be decided in this application is whether the proprietary rights of the Applicants may be affected by the decision on the action. The answer to this issue can be settled by looking at the test applied in decided cases: ***in Dollfus Meig et compagnie S.A.-v-Bank of England (1950) 2 ALL ER 605, Wynn – Perry, J. Said at p. 611:***

***"It seems to me that the true test lies not so much in the analysis of what are the Constituents of the applicants' rights, but rather in what would be the result on the subject-matter of the action if those rights could be established."***

***Devlin J agreed with this test. In Amon-v-Raphael Tuck & Sons, Ltd (1956] 1 All ER 273, his Lordships said at p.290:***

***"I respectfully agree with that. I think that test is: 'May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights.'"***

Having regard to the evidence adduced so far by the Applicants, I think the test is satisfied in this case. That is to say, that the contractual rights of the 1<sup>st</sup> Applicant plus the Land rights and the timber rights of the 2<sup>nd</sup> Applicants, in the shaded areas of land which I have pointed out above, are directly affected by the orders which the Plaintiffs seek in the action. For these reasons, I have decided to exercise my discretion under Order 17, rule 11 of the High Court Rules, and grant the application.

I therefore make the following order:

1. **Reresare Development Company Limited be joined as Third Defendant.**
2. **Jack Lagobe, Dalcy Tozaka, Teddy Pavo, Eddie Kiria, Allan Gilai and Makiva Okavaki be joined as Fourth Defendants.**
3. **Amended Writ and Statement of Claim to be filed and served within 14 days.**
4. **the Applicants to file and serve their defence, counterclaim and/or, cross claim against other Defendants within 14 days thereafter.**
5. **Costs be in the cause.**

**Francis Mwanosalua  
Puisne Judge**