

SUCCESS COMPANY LIMITED -V- ISABEL PROVINCIAL GOVERNMENT

**HIGH COURT SOLOMON ISLANDS
(BROWN PJ)**

Civil Case No. 85 of 2004

Date of Hearing: 14 October 2005

Date of Judgment: 16 November 2005

G. Suri for the Plaintiff

S. Manetoali for the Defendant

Summons for declarations in relation to matters under the Forest Resources and Timber Utilisation Act.

Reasons for Decision

Brown PJ: By my earlier order of the 4th August the respondent, the Provincial Government, was directed to carry out the requirements of Section 8 of the Forestry Resources and Timber Utilization Act, organize a meeting and determine the willingness of land owners to negotiate timber rights agreements with the Success Company Limited.

In accordance with the Court Order the Provincial Executive heard the Timber Rights Application on the 15th June at Kia, Isabel Province. On the 17th June the Executive decided no agreement could be reached between the parties to log and consequently refused to approve any Timber Rights agreement. As a result no form 2 naming those able and willing to represent landowners seeking to grant timber rights envisaged by the Act was issued by the Provincial Government.

The applicant now comes to this court seeking further orders in terms of declarations seeking;

1. Whether the Isabel Provincial Government has satisfactorily performed its statutory duties under section 8 (3) (a) (b) in terms of the Order of Mandamus made by the court on the 4th August; and
2. If the answer to the said question (1) is in the negative an order that the Provincial Government by its Executive do produce a determination in the prescribed form 2.
3. If the answer to the said question 1 is in the affirmative a direction that the Isabel Customary Land Appeal Court proceed to hear and

determine, pursuant to section 10 (1) of the Forestry Resources and Timber Utilization Act, any appeal lodged within the statutory time limit.

The minutes of the Provincial Executives hearing stated, at its end; "I would therefore conclude that the Reerughu clan is disputing this timber right which is held today in Kia this Wednesday the 15th June 2005". There is clearly still disputation on reading the record of the timber rights hearing between clans claiming particular interest in land about Kia

The applicant claims there is sufficient evidence on the material before the court to show those persons entitled to ownership of the subject land (who are the persons proposing that Success Company log) so that consequently the Isabel Provincial Government was in a position, by its Executive, to assess the evidence and make a determination. But equally clearly Reerughu clan claims ownership rights to the subject land when one has regard to the Isabel Local Court Land Case 3/2001 judgment of 28th May 2001 under hand of the President Richard Haile and Secretary Flickson Samani.

On the 28th of November 2002 following hearing my brother judge Kabui PJ found the Isabel Local Court decision of the 28th May 2001 was a valid decision of the court unaffected by appeal; for that the applicant (Wilson Philip Sagevaka (representing the Sinagi tribe) (in the proceedings before my brother judge) had allowed the appeal period to expire without taking steps to dispute the findings. Consequently the judge accepted the validity and standing of the Isabel Local Court finding as it did, the Reerughu tribe was by custom entitled to the subject land.

Since the application before him sought findings in relation to recommendations of the Judge Philips land enquiry made in 1924, the judge went on to consider the effect of that land enquiry, which was not a judicial determination in so far as ownership of customary land was concerned. The judge's findings on the material before him was that "there may well be evidential value in the record of the enquiry but that is not conclusive evidence of ownership by the late Bako's clan of the area of land concerned. Recommendation 8 by Judge Philip is no bar against future claims by persons who believe they have better claims in custom. Levers Pacific Limited and the claimants were parties to the enquiry. This is the answer to the second question posed by counsel for the respondent. The findings of Judge Philip are therefore binding upon those parties only and do not bind others who were not parties to the enquiry".

His Honour is not saying the enquiry by Judge Phillips determined who were the customary owners, rather the enquiry was more particularly

directed to whether the disputed land was "native land" and therefore to be withdrawn from the Certificate of Occupation.

The local court order of the 28th May 2001 then is a finding in relation to customary owner of the land so described by the court. In that respect it is plain the provincial government was satisfied that the customary owners so found by the local court, the Rurughu tribe, were not willing to grant timber rights in terms of the Success Company Limited's application.

The flaw then in the applicant's case is that section 8 (3)(a) of the Act provides;

" S. 8(3) At the time and place referred to sub section (1) the area council (Provincial Executive) shall in [consultation with the appropriate Government] discuss and determine with the Customary Land owners and the applicant matters relating to:

- a) whether or not the land owners are willing to negotiate for the disposal of their timber rights to the applicant;"

It can be seen then that on the face of the minutes the Provincial Executive meeting found that the named landowners are not willing to negotiate for the disposal of their timber rights to this applicant. It would be contrary to the express terms of the legislation to expect the Provincial Executive in the circumstances, to issue a form 2.

There is in fact no willingness to negotiate apparent on the face of the minutes of the Provincial Executive's record of the timber rights hearing. There would appear to be disputation still in relation to the subject land but nevertheless at this point in time the local court order to which I had earlier referred stands and is a valid order of the court. The answers to the applicant's motion are:

1. Yes
2. Not applicable
3. This is a matter for the Customary Land Appeal Court
4. I order costs of the application be met by the applicant

BY THE COURT