

**HIGH COURT OF SOLOMON ISLANDS**

Civil Jurisdiction

*Civil Case No. 411 of 2007*

<u>BETWEEN:</u>	LESLIE NORRIS	Plaintiff
<u>AND:</u>	WILSON MINA, STANLEY KAEDOA, REGINALD KOKILI, JOHN KAPENTANA AND KILAIV	First Defendants
<u>AND:</u>	OMEX LIMITED	Second Defendant

**Date of Hearing:** 13 December 2007**Date of Judgment:** 18 December 2007*Mr. Nori for plaintiff**Mr. Tegavota for first defendants**Mr. Katahanas for second defendant***JUDGMENT ON STRIKING OUT APPLICATION****Cameron PJ**

1. This is an application to strike out the plaintiff's statement of claim on the principal ground that the plaintiff has no locus standi to bring the proceeding. It is also said to be frivolous and vexatious.
2. The plaintiff asserts that he is the head of a tribe which is the owner of customary land which is being logged by the second defendant without the tribe's consent.
3. On the basis of this assertion he applied for and was granted ex parte restraining orders by this Court on 15 November 2007, having the effect of preventing the second defendant from entering on and logging the land. The defendants, as well as asking the Court to strike out the statement of claim, seek the immediate discharge of those ex

parte restraining orders.

4. The land in question and over which the second defendant is the holder of a felling licence forms part of the island of Pavuvu, said to be the second largest island in the Russell Islands, Central Islands Province. All the land the subject of this felling licence is customary land.
5. In his affidavit filed in support of his application for ex parte interim orders, Mr. Norris asserts that his tribe, the Sevev tribe, is the owner in custom of the Ale customary land "which comprises all of the islands known as the Russell Islands in the Central Province." (para. 4)
6. He also asserts that the second defendant "unlawfully landed its machineries and logging equipment ...: set up its logging camp and log pond at Kiolen Point, causing extensive damage to marine life and the coastal environment generally." (para. 17).
7. The claim to ownership of the whole of the Russell Islands is patently untrue. The material filed on behalf of the defendants establishes that there are a number of portions of land on Pavuvu Island which are not customary land and in respect of which others hold registered titles.
8. Indeed, the material establishes that Kiolen Point, the landing area for the second defendant's equipment, is in the registered ownership of the government. The plaintiff's assertion of the landing being unlawful, by implication for the reason of the ownership rights claimed over that Point by the plaintiff, is also untrue, for the reason that the Point in question is government land.
9. Therefore, I am not satisfied that the plaintiff made full and proper disclosure to the Court, but for reasons which will become apparent it

will not be necessary to consider whether on this ground the interim injunction orders ought to be discharged.

10. The plaintiff annexed to his affidavit a judgment of the Central Islands Customary Land Appeal Court given in 1989, which he says confirms his tribe's ownership of all Pavuvu Island (although, as already demonstrated, that cannot apply to registered tracts of land).

11. The decision of the Appeal Court was as follows:

“.. this Court therefore reversed the local court decision and awarded the ownership of Ale land to Jason Kikolo and his Sevev tribe”.

12. While the plaintiff's asserts that Ale land has no boundaries (and therefore, at least by implication, covers all customary land on Pavuvu), when one considers the maps it is apparent that there is a peninsula known as Ale Point, that being the sole reference on the maps to Ale land.

13. To clarify the issue as to what the award of ownership of Ale land actually extended to, an affidavit from Moses Puloka dated 20 November 2007 was filed. He was the President of the very Appeal Court which heard the appeal as to the ownership of the land. He deposes:

“6. Also during the hearing we noted based on our knowledge about Russel group of Islands and including Pavuvu Island that it would be totally wrong in custom for one tribe or clan like the Sevev tribe to claim the sole and exclusive ownership of the whole Russel Islands.

7. Ale land which was the subject of the appeal, the CLAC heard in 1989 was not about the whole Pavuvu Island or all the islands within Russel Islands. The appeal was about the Peninsular sticking out of the mainland which ends at Ale Point. This was the area that the court partly surveyed during but did not complete it because of heavy rain downpour that time. We also did not carry about any survey on the inland area of Pavuvu as the appeal was not about the whole Pavuvu Island.”
  
14. In addition, the cross-examination of Mr. Manedika (the unsuccessful claimant for Ale land) at the local hearing, whose decision became the subject of that appeal, recognises that various customary lands fall outside the ambit of Ale land – see the reference to Saguaiu Hill falling outside the area of the land in dispute (exhibit BM of B. Manedika’s affidavit).“
  
15. It seems that the preponderance of evidence strongly points to the appeal decision being limited in fact to the area of the peninsular itself extending to Ale point, the precise boundary not having been established.
  
16. This is reinforced by the evidence filed on behalf of the first defendants, representatives of the Masi clan, which exhibited two local court decisions confirming ownership of various tracts of customary land on Pavuvu in persons other than the plaintiff’s tribe (exhibits FB1 and FB2 affidavit Frank Bollen). The fact that these decisions are the subject of appeals is irrelevant.
  
17. The plaintiff, then, on the evidence before me, has not established that his tribe has any rights to the lands the subject of the felling licence, with the exception of Ale peninsular. The evidence that the Sevev

tribe owns that peninsula appears strong. While that peninsular forms part of the felling licence lands, Mr. Katahanas on behalf of the second defendant has undertaken to this Court that such land will not be entered or logged without the plaintiff's consent. The precise boundary of that peninsular will no doubt need to be this subject of discussion between the parties.

18. As to the majority of the land the subject of the felling licence, the plaintiff has not established to any degree any rights to that land. Mere assertions are not enough to found relief. (See *Simbe v. East Choiseul Area Council and Others*, Court of Appeal, Solomon Islands 8/1997, 21 October 1998). Further, given almost the complete absence of evidence on this point, opportunity having been given for the plaintiff to file any further evidence by 11 December 2007, I conclude that the plaintiff has no locus standi to continue this proceeding in so far as it is based on ownership rights and lack of consent per se.
19. Mr. Nori for the plaintiff points to the pleadings and affidavits as to the assertions of non-compliance by the local government with the procedures surrounding the issue of a timber rights agreement giving rise to the felling licence to the second defendant.
20. When one reads the affidavit of the plaintiff, he arguably appears to assert by implication that following a timber rights hearing on 19 February 2007, the correct public notice and appeal procedures under the Forest Resources and Timber Utilisation Act 1970, designed to protect those persons aggrieved by determinations of the local government, was not followed. In other words, that the process which preceded the granting of a felling licence to the second defendant was flawed and that therefore this licence is unlawful and invalid.

21. If the plaintiff wishes to seriously challenge the process by which the second defendant obtained its rights then it will need to do so with sufficient particularity to fairly put both the decision maker and the holder of the licence on notice as to precisely what is being claimed. To insinuate that these basic procedures were not followed without any proper pleadings and any real evidence and in a proceeding to which the decision maker is not a party, and to seek interim relief against a licence holder on the basis of it, is an abuse of the process of the Court.
22. For these reasons the remaining portion of the statement of claim, dealing with alleged non-compliance, will also be struck out.
23. The result is that the defendants' application succeeds and the plaintiff's entire claim is struck out and the interim restraining orders discharged.
24. Because of the plaintiff's strong claim to Ale peninsular, which forms parts of the lands the subject of the felling licence, there was some justification for him bringing this claim. Therefore there will be no award of costs against any party and costs will lie where they fall.

**BY THE COURT**

**David Cameron  
Puisne Judge**