

**OSUPITU TINGOLO REPRESENTING HIS FAMILY AS OWNERS OF  
KANITAVELE CUSTOMARY LAND .V. SILAS MILIKADA TRADING AS JP  
ENTERPRISES AND OCEANIA TRADING COMPANY.**

**High Court of Solomon Islands  
(Palmer CJ.)**

**Civil Case Number 190 of 2004**

**Date of Hearing: 21<sup>st</sup> November 2006**

**Date of Judgement: 18<sup>th</sup> May 2007**

*Mr. P. Tegavota for the Applicant/First Defendant*

*Mr. J. Apaniai for the Respondent/Plaintiff*

**Palmer CJ.:**

This Court issued an order dated 20<sup>th</sup> September 2006 in favour of the Plaintiff, Osupitu Tingolo ("Osupitu") for the payment of the sum of SBD372,395.20 less \$5,000.00 and 25% export duty, against the first Defendant, Silas Milikada ("Silas"), for conversion of 178 logs extracted from Kanitavele land. It is not in dispute that Kanitavele land is owned by Osupitu and his family.

Silas now comes to court for orders to stay the orders of the court pending determination of a third party notice issued in respect of payment for the 178 logs removed and exported.

Silas says that payment for those logs should be made by the third party comprising of Elma Koryar, John Rarava, Piobule Glyn, Shen Osu, Rigley Barora, Kelvin Bryan, Victor Laban, Pulepio Chaku, Mathias Pulingi and Livingstone Simbe (hereinafter referred to as "the third party"). The third party comprised a committee set up to receive payments of royalty for distribution to members of the Lio tribe. Silas says that royalty for those logs had been received by the third party therefore they should be responsible for payment of the logs.

Osupitu's claim however is not for royalty but for trespass and conversion of logs from his customary land on the grounds that no consent was granted to Silas to enter and remove logs from his land. Whilst Kanitavele land is within Lio Customary land it did not necessarily follow that Silas was entitled to enter without the permission or consent of Osupitu. When entry was made into Kanitavele land in March 2003 and 178 pieces of logs removed, Osupitu had lodged a complaint to the Manager of Oceania Trading Company and the Chief Simon Chachabule of Lio tribe, who conceded that the logs removed belonged to Osupitu. Silas was also informed it seems so much so that a payment of \$5,000.00 was made towards this claim in July 2004 (sic). In August 2003 a further payment for the balance was requested by Osupitu but never paid.

I am satisfied Silas knew that Osupitu had a claim for 178 logs removed from Kanitavele land. I am satisfied that apart from the payment of \$5,000.00 towards settlement of his claim, no other payment was made. I am satisfied accordingly that liability for the trespass and conversion had been established, in fact not

disputed by Silas. He is therefore obliged to make good that payment. The fact he had made payments to the third party for royalty is a matter between him and the third party to resolve. Whether he is entitled to be indemnified by the third party is a matter he can pursue in this third party proceeding but that should not be a bar to Osupitu enjoying the fruits of his judgment in this case. He should appreciate however that the royalty payments made are insufficient to recover the award of damages for trespass and conversion made by this court on 20<sup>th</sup> September 2006.

In so far as the question of challenges to ownership of Osupitu over Kanitavele land is concerned, that is a matter he can pursue in the appropriate forum. The evidence before this court for purposes of this application however is clear regarding ownership and therefore the challenge to ownership should not be a basis for any stay to the enforcement of the judgment in favour of Osupitu.

I am not satisfied accordingly that the enforcement of the court order dated 20<sup>th</sup> September 2006 against the first defendant should be stayed pending determination of the third party proceeding.

**Orders of the Court:**

- 1. Refuse application for stay of execution or enforcement of the orders of the court dated 20<sup>th</sup> September 2006.**
- 2. The first Defendant to pay the costs of the Plaintiff.**

**The Court.**