

**HIGH COURT OF SOLOMON ISLANDS**

Civil Case No.354 of 2007

**AARON TUFUNGASIRIA KOROA & ANITA TUFUNGADIRIA KOROA**  
**CLAIMANTS**

**-V-**

**JOHN EKE DEFENDANT**

Date of Hearing: November 18, 2008  
ate of Ruling: December 12, 2008

*Applicant/Defendant's counsel: P. Tegavota esq.*

*Respondent/Claimant's counsel: D. Hou esq. (Public Solicitor)*

**RULING**

**Izuako, J:** This action was commenced by a writ of summons filed on 17 October 2007. The crux of the summons was that the defendant had entered and erected temporary structures on the piece of land with parcel no: 191-024-230 and occupied them. The claimants hold a fixed term estate for fifty years in the said parcel of land. They sought orders of court for the defendant to vacate the property in issue and give them vacant possession and in addition restrain the defendant and his family, servants and agents from further entering the land. The defendant was served and a memorandum of appearance was entered on his behalf by A. Nori Esq. of counsel on November 01 2007.

No statement of case was filed by the defendant thereafter and on November 26 2007 the claimants filed an application for judgment to be entered against the defendant for failure to file a defense within time allowed by the High Court Civil Procedure Rules or in default of a defense.

On 21 February 2008, the application was heard. Counsel for the claimant D. Hou esq. was in court to move the applicant while A. Nori esq. appeared for the defendant. With no defense before the court, Mr. Nori told the court that he had no instructions from the defendant. Judgment was therefore entered as sought with costs against the defendant. A notice of eviction dated 10 June 2008 was thereafter served on the defendant. On 11 July 2008 the defendant filed an application to set aside the judgment obtained by default of defense including the enforcement and eviction orders.

On 18 November the application to set aside the judgment was heard by the court. The application was supported by two sworn statements filed on 11 July 2008 and 30 September 2008 both deposed to by the applicant. P. Tegavota esq. for the applicant argued that the applicant having been in actual occupation of the property in issue before 2007, he was protected from eviction or removal under S. 114(g) of the Land and Titles Act.

In his sworn statement the applicant on the issue of not filing a defense deposed that he remembered going to the offices of A. Nori esq. on two occasions but does not remember whether he went because of this action or on some other matters. He did not instruct Mr. Nori on this matter. He does not remember being served any writ of summons in this action until he received an enforcement order, eviction notice and the default judgment.

As to whether he has a reasonable defense, the applicant admitted that the claimant had a fixed term estate in the property but deposed that he had been on the land before the claimant acquired title and had made improvements on the land. He submitted that he was protected under S.114(g).

D. Hou esq. for the claimants/respondents objected to the application to set aside the earlier judgment of the court given in default of defense. He argued that the applicant was fully aware of the action brought against him. He referred to the sworn statements of the 1<sup>st</sup> claimant/respondent and of one Reinhard Alalo of the Central Police Station on the issue of service and submitted that the applicant/defendant was served with all relevant court processes.

As to the legal status of the parties in respect of the land in dispute, learned counsel argued that the claimants/respondents have legal title which is conclusive and cannot be defeated. The applicant/defendant, he submitted, went onto the land as trespassers. As to the interpretation of S114(g) of the Land and Titles act, he referred to the case of **Williams and Glyns bank Ltd V Boland & Anor** (1980) 3 WLR 138. He submitted that the occupier as envisioned in S. 114(g) must have rights and moving into property belonging to another does not invest applicant with any rights. Such rights must be founded in Law or Equity. He also cited **Fraser v Walker** a New Zealand case (1967) IAC 569. The applicant went onto the property as a trespasser and therefore the defense raised is not a viable one.

Let me start my review of this application by examining the circumstances under which judgment in default was given. The applicant had a memorandum of appearance entered for him in this case by A. Nori esq. on November 01 2007 exactly two weeks after the action was filed. This is enough to show that the court processes were duly served on the applicant. In his sworn statement filed on 11 July 2008, the applicant said he went to Mr. Nori's offices on two occasions but cannot remember whether it was on this action or for some other matters. I find that the applicant has not only lied on oath but has exhibited a totally irresponsible attitude when he knew he had a matter against him in court.

As to the applicant's chances of success, reliance is placed on S 114(g) of the Land and Titles Act. I am of the firm view that the provisions of the law cannot avail the applicant as it is clear that he is a trespasser on the land ab initio. He is not an occupier as envisaged by the provisions of S 114(g). In view of this, I see no likelihood of success in the case of the applicant. The application to set aside the judgment of the court entered in default of defense on 21 February 2008 is hereby refused. The said judgment stands. The applicant shall pay the costs of this application assessed and fixed at *five hundred dollars*.

  
Hon. Justice Nkemdilim A. Izuako  
Puisne Judge