

IN THE HIGH COURT
OF SOLOMON ISLANDS
(Civil Jurisdiction)

Civil Case No. 258 of 2011

SMM SOLOMON LTD	1st Claimant
AND	
ALFRED JOLO (Representing the trustees and members of the ANIKA THAI Clan)	2nd Claimant
AND	
MARTIN TANGO (Representing the trustees and members of the THAVIA Clan)	3rd Claimant
AND	
JAMES UGURA (Representing the trustees and members of the VIHUVUNAGI tribe)	4th Claimant
AND	
BEN SALUSU (Representing the trustees and members of the Vihuvunagi tribe in respect of the CHOGEA and the BEAJONG land areas within Takata)	5th Claimant
AND	
MAFA PAGU (representing the trustees and members of the Thogokama tribe)	6th Claimant
AND	
PAUL FOTAMANA (representing the trustees and members of the Veronica Lona Clan)	7th Claimant
-V-	
THE ATTORNEY GENERAL (representing the Minerals Board)	1st Defendant
AND	
THE ATTORNEY-GENERAL (representing the Minister for Mines, Energy and Rural Electrification)	2nd Defendant
AND	
THE COMMISSIONER OF LANDS	3rd Defendant
AND	
THE REGISTRAR OF TITLES	4th Defendant
AND	
PACIFIC INVESTMENT AND DEVELOPMENT LIMITED	5th Defendant
AND	
AXIOM KB LIMITED	6th Defendant
AND	

**ROBERT MALO, FRANCIS SELO, LEONARD BAVA, REV.
WILSON MAPURU AND ELLIOT CORTEZ**

7th Defendant

AND

THE ATTORNEY-GENERAL

8th Defendant

BY ORIGINAL ACTION

AND

BUGOTU MINERALS LIMITED

Cross Claimant

AND

THE ATTORNEY-GENERAL (representing the Director of Mines)

**First Cross
Claimant**

AND

THE ATTORNEY-GENERAL (representing Minerals Board)

**Second Cross
Claimant**

AND

THE ATTORNEY-GENERAL

**Third Cross
Claimant**

BY CROSS CLAIM

Date of Hearing:

12th June 2013

Date of Judgement:

1st July 2013

Ian Molloy and Nicolas Doucas for:

The Applicants, Willie Denimana, Hugo Bugoro, Henry Vasula Raoga seeking to be joined as third claimants in cc 258 of 2011.

Gary Fa'aitoa (Kingdom Lawyers) for:

The 3rd and 4th Claimants / Applicants of removal in cc 258 of 2011.

Nicholas M. Bender and P. Kaunitz and M. Pitakaka (MP Law Chambers) on behalf of:

The 6th Defendant, Axiom KB Ltd and also for the 4th Defendant in CC 296 of 2011

D. Nimepo (Light Lawyers) for:

The 7th defendant in 258/11 and 3rd defendant in 296 of 2011.

S. Banuve (Attorney-General's Chambers) for:

The 1st- 4th Defendants and 8th Defendant in CC 258 of 2011;
And the 1st – 3rd Cross Defendants in Cross Claim by Bugotu Minerals Ltd;
And in CC 296 of 2011 appear for the 1st and 2nd Defendants in that case.

Palmer CJ.:

1. This is an application for withdrawal or removal of the third and fourth Claimants as described in the Statement of Claim by the representatives, Martin Tango ("Tango") and James Ugura ("Ugura"). Both Tango and Ugura claim to be the exclusive representatives in custom for the Thavia Clan and the Vihuvunaghi Clan respectively. They assert the two clans they represent accordingly should be removed as the third and fourth Claimants.

2. They say their presence is not necessary in the proceedings, although conceding an interest in the outcome of the litigation.
3. It is not in dispute part of the registered land in this case being challenged included portions of the Thavia and Vihuvunaghi land.
4. A cross application by Willie Denimana ("Denimana"), Hugo Bugoro ("Bugoro") and Henry Vasula Raoga ("Vasula") on the other hand say, that while they may withdraw their representation, they cannot also withdraw the names of the clans they represent for they have an interest in the application before the Court for, *inter alia*, rectification of the register in parcel number 130-004-1. They take issue with the registration of the seventh Defendants as the title holders of the Perpetual Estate in parcel 130-004-1. They say it is important that the clans are represented in this litigation.
5. The application for withdrawal is based on rule 3.7 of the Solomon Islands Courts (Civil Procedure) Rules 2007, which provides:

"The court may order that a party to a proceeding is no longer a party if:

(a) The person's presence is not necessary to enable the court to make a decision fairly and effectively in the proceeding; or
...."

6. Rule 3.5 on the other hand provides that the qualification for adding a party is "*...if the person's presence as a party is necessary to enable the court to make a decision fairly and effectively in the proceeding.*"
7. It is not in dispute that both clans claim to be owners of the Thavia and Vihuvunaghi lands. The evidence confirms that both clans have an interest in the outcome of the substantive application in this case, for if the application is ultimately successful they will reap the benefit of having their land reverted back to what they claim is theirs and not as reflected in the registration of the seventh defendants as the holders of the perpetual estate in parcel 130-004-1, though it would appear that the stance by Tango and Ugura appears to have undergone a shift in favour of acceptance of the registration of the seventh defendants.
8. I am satisfied in the circumstances that as persons with interest it is necessary they are joined and remain joined in these proceedings so that they can be given opportunity to be heard and their interests protected. This will avoid duplicity of proceedings, unnecessary costs and time where similar issues and virtually the same parties will be involved.
9. Apart from distinct material pertaining to matters peculiar to their land and ownership rights in custom, issues relating to the process of acquisition are similar. The interest of justice thus requires that the two clans at least should be represented.
10. The issue in this application is whether Tango and Ugura possess exclusive rights of representation and therefore any decision taken by them binds the two clans or whether that is subject to the general consensus of the clans and their interests. The applicants for joinder have filed supporting material in which they contend that in the event the two representatives decide to withdraw their representation, they may do so in their personal capacity. They say that that being their position they have been removed as representing their clans and replaced by them. They say they have the support and mandate of their clans.
11. I note that while there is evidence, which supports Tango's assertions, that in the past he had acted for the clans as their representative, this had been by consensus. But even if it had been acquired by custom, he is obliged to act in the interest of the tribe.
12. The background facts in respect of the Thavia land show that ownership vests in custom in three brothers, and that Tango is the representative only of one of the brothers, Silas Tango; Bugoro and

Denimana are the representatives of the other two brothers respectively, Dennis Haghatano and Paul Fota.

13. Bugoro and Denimana contend that Tango cannot take the Thavia tribe out without their consent and authority, which they deny had been given to him. If he wishes to do so it is in his personal capacity.
14. I am satisfied on the material before me that the Thavia clan has an interest in the proceedings and their continuing presence necessary in the interests of justice and for the effective and fair deliberation of the matters in dispute.
15. Accordingly, in the event that the original representative, Tango decides to withdraw his representation, he may do so but in his personal capacity for I am satisfied on the evidence before me that it is necessary the clan remains as a claimant and therefore it is equally necessary that some other member of their clan should replace him for the purposes of this case. I am satisfied on the evidence before me that Bugoro and Denimana should be substituted as the representatives of the Thavia clan.

16. Rule 3.38 provides that:

"At any stage of the proceeding the court may appoint one or more parties named in the proceeding, or another person, to represent, for the proceeding, the persons having the same interest."

The withdrawal of Tango as the representative of the Thavia clan is granted and Bugoro and Denimana should be substituted.

17. As to the on-going issue of who should be the rightful representatives in custom over the Thavia clan, to be more specific, representatives of the three brothers, *Silas Tango, Dennis Haghatano and Paul Fota*, are matters which the clan members can and should try and resolve among themselves whether before their chiefs or the Local Court.
18. On the issue of representation of the Vihuvunaghi clan and issues on rights and interest in the substantive case, these are similar to those of the Thavia clan. The material adduced also shows that the clan not only has an interest in the matters in dispute but that their presence is necessary in the interest of justice and the effective and fair determination of the issues in this case.
19. Their claims of ownership can be traced according to their tribal genealogy to two sisters, *Clera Kathethona* ("Kathethona") and *Agnes Kwajo* ("Kwajo") who form the tribal chain from which Ugura and Vasula derive their rights of representation, membership and ownership. This genealogy is referred to collectively as the "*Virigau Family Group*" ("VFG").
20. I am satisfied on the balance of probabilities that the VFG does have an interest in the outcome of the proceedings in the substantive case by virtue of their assertions as holding ownership rights over *Kigora* land, which forms part of the affected land in Parcel 130-004-1.
21. It is pertinent to note that Ugura and Vasula are brothers from the same family and would seem to have similar rights and interest in custom.
22. On the issue of representation of VFG, that is obviously an internal matter, which Ugura and Vasula will have to resolve amongst their family members. While that may be contentious, I am not satisfied it necessarily follows that any purported withdrawal by Ugura of his representation also includes the withdrawal of his tribe. The two are distinct groups. If for any reason he wishes to take the tribe out of the case but the tribe declines, he either may continue and comply with the bidding of his tribe, or to consider having his right to represent the tribe substituted. That is what this application boils down to. I am satisfied on the balance of probabilities that it is in the interest of the clan that it is represented in this proceedings for the fair and effective determination of the issues in the substantive case.

23. I grant orders as follows:

- (i) Grant leave to Tango and Ugura for withdrawal and their names to be removed as the representatives of the Thavia and Vihuvunaghi Clans respectively;
- (ii) Grant order for the names of Tango and Ugura to be removed as the third and fourth Claimants in their personal capacities;
- (iii) Grant application for substitution of Denimana and Bugoro as the representatives of the Thavia Clan, and Vasula as the representative of the Vihuvunaghi Clan;
- (iv) Grant order for Denimana and Bugoro to be joined as the third Claimants in their capacities as representing the trustees and members of the Thavia Clan;
- (v) Grant order for Vasula to be joined as the fourth Claimant as representing the trustees and members of the Vihuvunaghi Clan;
- (vi) Award costs in favour of the applicants for substitution and joinder.

SIR ALBERT R. PALMER CBE

The Court.