



whom the First Defendant had had negotiations with in respect of Hoto land was John Albert Sunaoni, the First Defendant.

3. The Claimant asserts that the land referred to as Hoto land by the First Defendant is in fact, Fagani customary land. He further asserts that Hoto land is a portion of land within the boundary of Fagani customary land.
4. Subsequent to the timber rights hearing, the MUPE made a determination whereby the First Defendant was identified to be the person lawfully able and entitled to grant timber rights over Hoto land. Against that determination, one John Takarepo, the Claimant's grandfather lodged an appeal to the MUPE. As a consequence of the appeal, the subject land was excluded from the Form 3 certificate. Notwithstanding it was included in the Form 4 Agreement. That had led to logging being carried out on the subject land. I have noted that the appeal was withdrawn by the Claimant on the 27<sup>th</sup> November 2014.

#### The application

5. After stating the background to the dispute, the crux of the 4<sup>th</sup> Defendant's application is in relation to the process in commencing this proceeding. They say that the declaratory orders sought by the Claimant in his amended claim filed on the 2<sup>nd</sup> September 2016 amounts to an abuse of the process of the court.
6. They say that the declaratory orders sought should rightfully be made by way of the filing of a claim for judicial review. The orders sought are in effect challenging the decision of the MUPE whereby the First Defendant was identified as the person lawfully able and entitled to grant timber rights on Hoto land. The Claimant claims to be the owner of the land. He was aggrieved by the decision and lodged his appeal.
7. The MUPE is empowered by law to hear and determine timber right applications. It is a public body and deals with the administrative functions required of it by the Forest Resources and Timber Utilisation Act (Cap 40). It follows then that the decision of a provincial executive can only be challenged through a claim for judicial review. The Claimant did not take out that option.
8. It is the case for the 4<sup>th</sup> Defendant that the Claimant might have opted to file a Category A Claim because of time lapse. The law requires a person aggrieved by a decision of a public authority within 6 months of the date of decision. The Claimant has gone way past the time limitation. They are time barred and he would be caught under rule 15.3.18 (c) of the CPR. The filing of a Category A Claim is a clear abuse of the courts process.

9. Coincidentally, the claim of the Claimant is an abuse of the court's process and should be struck out pursuant to rule 9.75 of the Solomon Islands Courts (Civil Procedure) Rules 2007(CPR).
10. The argument of the 4<sup>th</sup> Defendant is a technical one on procedures and court processes pursuant to the CPR. I have read the Claimant's filed submissions. The submission does not address the technical issue raised by the 4<sup>th</sup> Defendant. Upon my reading of the application and submissions in support, the application is primarily centred upon rule 9.75 (c).
11. The position of the Claimant is generally centred on the entire provision of rule 9.75. It is therefore argued that there are triable issues to be determined by this court. The application of the 4<sup>th</sup> Defendant is misconceived and must be refused.

### Analyses

12. The subject timber right hearing was conducted by the MUPE on the 9<sup>th</sup> January 2003. The Claimant's original claim was filed on the 19<sup>th</sup> May 2016. That is a time lapse of about 13 years and 4 months. Ordinarily if a claim for judicial review was to be filed by the Claimant, it should have been done so by the 9<sup>th</sup> July 2003. By that time, the remedy available under a claim for judicial review has lapsed.
13. In his amended claim, the Claimant is seeking 3 declaratory orders. In respect of paragraph 1, he seeks a declaration that his tribe is the true and original landowners of Fagani customary land. In that regard, I must reiterate my comments on paragraph 15 of my previous ruling dated 1<sup>st</sup> August 2023. I was of the view that the ownership and boundary issue of Fagani customary land has not been determined by any court. With that position in mind, I will not be able to make a declaration sought in that paragraph.
14. The second declaration sought relates to the decision of the MUPE. The Claimant says that Fagani customary land was never granted in the initial timber acquisition application by the Second Defendant. The consequential orders in paragraph 3 also relate to the decision of the provincial executive.
15. The MUPE is not a party to this proceeding. They are the authority that is vested with powers conferred by law. They make decisions on timber right applications and their decisions are carried out, facilitated and finalised by the 4<sup>th</sup> Defendant.
16. It is therefore my view that the MUPE should have been joined as a party to this proceeding by way of the filing of a Category C Claim to enable this court to judicially review the decision on the Second Defendant's application for timber rights. In this proceeding, I am of the view that the Claimant has filed a wrong process to commence it. The MUPE is not a party to this proceeding and I am unable to make any order that

would directly affect a non-party. I hereby allow the application of the 3<sup>rd</sup> Defendant and strike out this proceeding under rule 9.75 of the rules.

17. If my view as discussed above is incorrect, I am also entitled on my own initiative to strike out the proceeding under rule 9.75. The basis by which the Claimant had commenced this proceeding is his tribe's ownership over Fagani customary land. That is asserted in paragraph 1 of his amended statement of case. Further to that, he also asserts that his tribe's ownership is protected by virtue of a CLAC decision in 1981.
18. The minutes of the MUPE dated the 9<sup>th</sup> January 2003 stated on page 1 that the trustee for Fagani customary land was Richard Firi. The First Defendant was trustee for Hoto land. The Claimant's grandfather one John Takarepo was present during the hearing. He was trustee over Wiwinau land. From the record, Mr Takarepo did not raise any objection on the grant of timber rights over Fagani and Hoto land. During the hearing, he insisted that timber rights be granted.
19. I now refer again to paragraph 15 of my ruling dated the 1<sup>st</sup> August 2023. In that paragraph, I discussed the decision by the Makira CLAC in Civil Case No. 4/81. That was the case relied upon by the Claimant in paragraph 1 of his amended statement of case. I held that the said CLAC decision was not in relation to the ownership and boundary of Fagani customary land. There were no other court decisions between the Claimant and the First Defendant over the ownership of Fagani customary land.
20. I have further noted that the Claimant's appeal against the Form II determination on timber rights over Fagani and Hoto lands was withdrawn on the 27<sup>th</sup> November 2014. The double effect of the withdrawal of the appeal as well as the outstanding issue of ownership and boundary over Fagani and Hoto land is the issue of locus standi.
21. The question that I am entitled to ask at this stage, is whether or not the Claimant has locus to commence this proceeding at all. Before a party is entitled to commence proceeding in this court, he/she must have legal standing. This proceeding involves issue of customary land and ownership.
22. In paragraph 4 of the orders sought in the Claimant's amended claim, he seeks a declaratory order that the logging operation of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in Fagani land is unlawful and amount to trespass. If the Claimant is alleging trespass, he must have proof of ownership over the subject land. He must also show sufficient interest over the land.
23. I have concluded in my ruling of the 1<sup>st</sup> August 2023, that the subject land has never been litigated between the parties. The ownership and boundary of the land has never been determined in favour of either party. The original claim was filed on the 19<sup>th</sup> May 2016. At that time, the Claimant has no decision in his favour on ownership as well as

boundary over the land. If he was to have any sufficient interest, that could have been obtained in the appeal that he withdrew in 2014.

24. It will therefore be obvious that on the 19<sup>th</sup> May 2016 when the original claim was filed, the Claimant lacks locus standi to commence the proceeding. The amended claim filed on the 2<sup>nd</sup> September 2016 is unable to be sustained. To this day and after my ruling of the 1<sup>st</sup> August 2023, nothing was done by the Claimant to bring the issue of ownership and boundary of the subject land to the appropriate land courts.

25. From the above discussion, I am of the view that the Claimant lacks locus standi to commence this proceeding. I am further of the view that the claim can not continue to be maintained. Upon my own initiative, I am also entitled to strike out the proceeding pursuant to rule 9.75 (a) of the CPR. The orders therefore are as follows:

- i) The amended claim of the Claimant filed on the 2<sup>nd</sup> September 2016 is hereby struck out pursuant to rule 9.75 of the CPR.
- ii) Cost is against the Claimant.



Justice Maelyn Bird

**Puisne Judge**