

IN THE HIGH COURT OF SOLOMON ISLANDS

Civil Jurisdiction

Civil Case No. 526 of 2016

BETWEEN: CHRISTINE ANITA - Claimant
(Administratrix of the Estate of Dr. Baddley Anita)

AND: ATTORNEY GENERAL
(Representing the Ministry of Fisheries and Marine Resources
and Ministry of Environment, Climate Change,
Disaster Management & Meteorology) - First Defendant

AND: ATTORNEY GENERAL
(Representing the Royal Solomon Islands Police Force) - Second Defendant

Date of Hearing: 12th June 2025

Date of Judgment: 2nd September 2025

Mr. W. Rano for the Claimant

Mr. E. Waiwaki for the First and Second Defendants

JUDGMENT

AULANGA; PJ:

Introduction

1. This case concerns the legality of enforcement actions taken by public officers of the Solomon Islands Government against the Claimant's marine conservation and export business located at Bungana Island in Central Islands Province. Central to the dispute is whether the First and Second Defendants acted lawfully when they entered the Claimant's premises, dismantled

dolphin holding facilities, and released captive dolphins into the sea. The Defendants relied on a regulation, namely, the *Fisheries (Prohibition of Export of Dolphins) Regulation 2013* ("2013 Dolphin Ban Regulation") declared null and void by the High Court in 2018, and statutory defence of good faith. The Claimant contends that premised on the Court's ruling, the regulation was void at the time of the raid and that her operations were lawfully conducted under a valid CITES permit and in accordance with the Solomon Island's Government policy.

2. The Court is tasked with determining whether the Defendants' actions were legally justified, whether the defence of good faith is available, and whether the Claimant is entitled to damages and costs. The judgment addresses these issues in light of constitutional principles, statutory interpretations, and relevant case laws.

Background of the case

3. This case reflects an unreasonable and futile litigation advanced by the First and Second Defendants. Their defence, at best, hinges on a void regulation, the 2013 Dolphin Ban Regulation, which was declared null and void by the High Court in 2018 in *R v Anita* [2018] SBHC 79. The Defendants argue that the raid they carried out on the Claimant's Solomon Islands Marine Breeding Centre ("SMBC") facility on Bungana Island, in Central Islands Province, on 29th October 2016 was lawful. They jointly relied, inter alia, on a defence (in my view a misconceived defence) of good faith during the clandestine raid. This defence is implausible, as the defence of good faith under a legislation can only be considered lawful when the action is performed pursuant to a valid regulation. Here, the 2013 Dolphin Ban Regulation was void ab initio, meaning, it never legally existed at all, as declared by the High Court. Therefore, the Defendants' defence rests on tenuous grounds, and amounts to an attempt to legitimise unlawful actions with no basis in law.
4. The Defendants were granted ample opportunities, resulting in delays and vacating of the trial dates to resolve the matter without trial with a Consent Judgment. Unfortunately, they rejected the offer and chose to proceed to trial despite the frivolity of their defence. This conduct amounts to what I described as 'unreasonable litigation'.

5. The Claimant is suing the First and Second Defendants in her capacity as Administratrix of the estate of her late father Dr. Baddley Anita, seeking the following orders:
 1. That the First and Second Defendants breached the fundamental rights of the Claimant to be heard prior to the destruction and dismantling of her cages and holding facility at Bungana Island, in Central Islands Province;
 2. That, as a result of this breach, the Claimant suffered damages and loss of income;
 3. That the First and Second Defendants are liable to pay the Claimant the sum of \$31,819,591.03 as damages;
 4. Interest and costs; and
 5. Any further orders deemed fit by the Court.
6. The matter proceeded to trial, with oral evidence given by the Claimant in person and by Edward Honiwala, as Director of Fisheries and Marine Resources, for the Defendants. Both parties relied on the materials contained in the Agreed Bundle of Documents and the Bundle of Not Agreed Documents filed for this matter. All materials have been duly considered for the purpose of this judgment, including the Agreed Facts and Issues filed on 17th May 2024.

Relevant facts

7. The pertinent facts drawn from the uncontested and agreed facts show that this proceeding was commenced by late Dr. Baddley Anita on 1st December 2016. He pursued the case until his passing in 2023. Thereafter, Christine Anita, his biological daughter and the current Claimant and administrator of her father's estate, took over the proceedings. Her standing to replace her father is not disputed.
8. The First Defendant represents two government ministries, namely, the Ministry of Fisheries and the Ministry of Environment, Climate Change, Disaster Management and Meteorology. The

first-named First Defendant is responsible for administering the *Fisheries Act 1998* and, following its repeal, the *Fisheries Management Act 2015*. The second-named First Defendant administers the *Wildlife Protection and Management Act 1998* and its 2017 Amendment.

9. The Second Defendant is the Royal Solomon Islands Police Force, established under the Ministry of Police, National Security and Correctional Service.
10. Around 2007, overseas activists and animal groups had submitted a proposal to the Fisheries Advisory Council in Honiara to restrict dolphin exports from Solomon Islands. The proposal was rejected. In 2009, Dr. Baddley Anita established the SMBC on Bungana Island in Central Islands Province, involving significant financial investment estimated at SBD\$2,500,000.
11. The SMBC was established to breed marine mammals in captivity, conduct research, apply marine aquatic medicine, and train foreign veterinary graduates and animal handlers. Its operations commenced in 2009.
12. By 2011, with the SMBC fully operational, Tursiops Aduncus dolphins were captured and held in secure water cages at the Bungana facility. The scale of the operations led to the Solomon Islands Government passing the 2013 Dolphin Ban Regulation on 4th December 2013, a regulation that was hastily enacted without thorough consideration.
13. During its operation, the Claimant paid business licence fees to the Central Islands Province from 2009 to 2016 and, as agreed to by both parties, continues to do so. Additionally, the Claimant paid annual export fees of SBD\$50,000 to the Solomon Islands Government from 2014 to 2016.
14. On 8th January and 22nd March 2016, the Claimant was issued with CITES export permits from the Ministry of Environment, Climate Change, Disaster Management & Meteorology, authorising the export of a specified number of dolphins. These permits were renewed through to 2023. Following the issuance, the Claimant entered into agreements dated 30th March and 22nd October 2016 with foreign buyers for the sale of 28 captive-bred Tursiops Aduncus dolphins. These agreements were to be executed by the end of October 2016.

15. On 29th October 2016, the First and Second Defendants without giving notice to the Claimant stormed the Claimant's property at Bungana Island and dismantled the cages and holding facilities, and freed all the Tursiops Aduncus captive bred dolphins. The First and Second Defendants claimed that the dismantlement of the facilities and release of the dolphins at Bungana were done in good faith pursuant to the 2013 Dolphin Ban Regulation.
16. In 2016, the Director of the first-named First Defendant asserted that the permits issued to the Claimant were invalid under the 2013 Dolphin Ban Regulation and CITES, despite there being no formal quashing order from the Court.
17. On 11th January 2017, the *Fisheries Management Regulations 2017* came into force. Police then commenced investigations into the legality of the SMBC's operations, and on 18th August 2017, the Claimant was charged with unlawful capture and holding of dolphins under clause 3 of the 2013 Dolphin Ban Regulation. Late Dr. Anita (former Claimant) was prosecuted in the High Court in a criminal case cited as *R v Anita* [2018] SBHC 79. On 6th September 2018, he was acquitted, with the Court making the following declarations: "(1) *The Fisheries (Prohibition of Export of Dolphin) Regulation 2013 is null and void, and (2) The charge is dismissed and the Defendant is acquitted.*"
18. The prosecution appealed the High Court's decision, but leave to appeal was refused by the Court of Appeal. The High Court's decision remains valid and unaltered.
19. On 22nd September 2022, the Director of the first-named First Defendant again issued CITES export permits of dolphins to the Claimant. This followed by another CITES permit being granted to the Claimant for the exports of dolphins on 18th December 2023.
20. The matter was initially under the carriage of former Judge, Justice Lawry. Upon reallocation, on 15th December 2023, I listed the matter for trial to commence on 27th February 2024, with an interim mention scheduled for 19th February 2024. I noted that discussions for settlement of the matter had previously been raised before Justice Lawry. At the interim mention on 19th February 2024, both counsels informed the Court of the possibility of resolving the proceedings

without trial by way of a Consent Judgment, to be formally confirmed on 27th February 2024. On that date, the trial was vacated as counsel for the Defendants informed the Court that the parties required additional time to finalise negotiations aimed at resolving the entire proceedings with a Consent Judgment. Given the seriousness of the undertaking, the Court granted a 20-day adjournment for the parties to conclude negotiations and file the Consent Judgment before 18th March 2024, being the next returnable date.

21. On 18th March 2024, the matter was not resolved by a Consent Judgment, primarily due to the Defendants' refusal to accept the proposals made by the Claimant. The Court then issued a new set of directions for filing of relevant pretrial documents. The matter was then adjourned to 6th May 2024 to set new trial date. The matter was subsequently relisted to 21st May 2024, but with little progress, then it was further adjourned to 3rd June 2024. On that date, counsel for the Defendants sought a further adjournment to allow the parties to resume negotiations with a view to resolving the matter with a Consent Judgment. The Court granted a further 14-day adjournment to 17th June 2024 to facilitate another attempt at settlement.
22. On 17th June 2024, the parties had yet to finalise negotiations, primarily due to the need for all the Defendants to agree on the proposed settlement terms. The matter was then adjourned to 1st July 2024 as a final opportunity for the parties to settle the matter by Consent Judgment. At the mention on 1st July 2024, counsel Fitzreggie for the Claimant informed the Court that the Defendants had refused to accept the proposed settlement terms, and accordingly, the matter should proceed to trial.
23. From the above facts, it is evident that a period exceeding four months was afforded to the Defendants to resolve the matter without trial with a Consent Judgment. Despite the ample time provided, the Defendants declined to accept the settlement offer and chose instead to contest the matter at trial.

The Claimant's case

24. The Claimant's case is founded on two principal grounds.

25. First, the Claimant alleges a breach of her constitutionally protected rights, specifically the right to property. She contends that the demolition of her property at Bungana constitutes not only trespass but also an unjustifiable and unlawful interference with her proprietary interests. Under the *Constitution*, the right to property is a fundamental right, and any deprivation thereof must be sanctioned by law and must follow due process. The Claimant argues that the actions taken particularly the release of the dolphins were executed without lawful authority and in total disregard of procedural safeguards, resulting in substantial harm and loss to her business operations. The principle of legality, as averred, requires that all administrative actions affecting the rights of individuals must be grounded in valid legal authority and comply with procedural fairness.
26. Second, the Claimant challenges the legal basis of the Defendants' actions, asserting that they relied on the 2013 Dolphin Ban Regulation, which had already been declared null and void by the High Court. A regulation that has been invalidated by the High Court ceases to have legal effect, and any actions taken pursuant to such a regulation are rendered unlawful. The Claimant submits that the Defendants cannot invoke the defence of good faith under these circumstances, as good faith cannot cure any actions taken under a void legal instrument or regulation.
27. The doctrine of good faith generally protects officials acting within the bounds of lawful authority, but it does not extend to conduct that is manifestly unlawful or executed in defiance of a Court's ruling.
28. On these grounds, the Claimant urges the Court to find in her favour, asserting that the Defendants' conduct was both constitutionally and administratively indefensible.

The First and Second Defendants' case

29. In their opening submissions at trial, both the Defendants conceded that they conducted the raid on the Claimant's SMBC. However, they invoked the statutory defence of good faith under section 212(b) of the *Police Act 2013* and section 84(1) of the *Fisheries Management Act 2015*. These provisions generally shield officers of the First and Second Defendants from liability for

actions taken in the honest execution of their duties under the legislations, provided that such actions are not reckless, negligent or malicious.

30. The Defendants further argued that the Claimant's SMBC activities were in breach of the *Fisheries Management Act 2015*, thereby justifying their intervention. They maintained that the Claimant's operations contravened conservation and regulatory provisions intended to protect marine biodiversity, and that enforcement action was necessary to uphold the objectives of the Act.
31. On this basis, the Defendants submitted that it would be contrary to public policy for the Court to rule in favour of the Claimant. The principle of public policy, as applied in administrative and constitutional law in this jurisdiction, discourages judicial endorsement of conduct that undermines statutory objectives or regulatory compliance. The Defendants averred that granting the relief to the Claimant would effectively condone unlawful marine activities and weaken the enforcement framework established under the Act.
32. Nevertheless, it is my view that the availability of the good faith defence is contingent upon the legality of the underlying regulation, in this case, the 2013 Dolphin Ban Regulation, and the manner in which the enforcement was carried out by both Defendants. If the regulation relied upon was invalid, as the Claimant asserts, and the enforcement actions were executed without lawful authority or due process, then the defence under those legislation may not be sustainable. The Court must therefore assess whether the Defendants' conduct meets the threshold of lawful and bona fide execution of statutory duties.

Issues for trial

33. Both parties have agreed for the Court to consider these as the agreed issues for trial:

(1) Whether, in light of the High Court's judgment that the 2013 Dolphin Ban Regulation was null and void, the Defendants' actions on 29th October 2016 were unlawful;

(2) Whether the First and Second Defendants acted unlawfully, arbitrarily, and oppressively, intending to harm the Claimant's business;

(3) Whether the Defendants are liable for damages claimed by the Claimant;

(4) Whether the Claimant is entitled to damages with interest and costs; and

(5) Whether the Claimant is entitled to export dolphins under the continued issuance of permits by the Ministry.

The objections to the admissibility of Edward Honiwala's sworn statement

34. The Claimant has raised a comprehensive objection to the admissibility of the sworn statement of Edward Honiwala, the Director of Fisheries and Marine Resources. The grounds of objection include allegations of hearsay, absence of direct personal knowledge, speculative assertions, lack of specificity, vagueness, and the absence of corroborating documentary evidence to substantiate the claims made therein, particularly in relation to the operations allegedly conducted at the SMBC on the 29th October 2016.
35. In light of the fact that Mr. Honiwala was called as a witness and was subjected to cross-examination during the trial, I have determined that it is procedurally inappropriate to make a ruling on the admissibility of his written statement. Instead, I have directed that any objections to the reliability and admissibility of his evidence be addressed through cross-examination by counsel. This approach is consistent with the adversarial nature of our legal system which places emphasis on the testing of evidence through direct questioning by way of cross-examination in Court. Both counsels, in effect, acquiesced to this procedural course, acknowledging its suitability under the circumstances. This decision, in my view, aligns well with the principles of natural justice and procedural fairness, as enshrined in the *Constitution* and reflected in the common law tradition adopted in this jurisdiction. It ensures that the credibility and probative value of the witness's testimony are assessed during the trial, rather than through pre-emptive exclusion of the witness evidence on paper. Moreover, it upholds the

judicial discretion to admit evidence subject to challenge, thereby preserving the integrity of the fact-finding process of the Court.

Issue 1: Whether, in light of the High Court's judgment that the 2013 Dolphin Ban Regulation was null and void, the Defendants' actions on 29th October 2016 were unlawful

36. It is undisputed that the First and Second Defendants conducted a raid on the Claimant's SMBC at Bungana Island on 29th October 2016. It is also uncontested that after the raid, the High Court on 6th September 2018 had acquitted the Claimant in the criminal proceedings and, in doing so, declared the 2013 Dolphin Ban Regulation to be null and void. That declaration remains legally binding and effective, as the prosecution's appeal to the Court of Appeal was unsuccessful and the High Court's decision was not overturned.
37. In light of this, the legal effect of the High Court's declaration is that the 2013 Dolphin Ban Regulation ceased to have any force or validity. A regulation that is declared null and void is treated in law as if it never existed, a principle well established in administrative jurisprudence. It cannot retrospectively or prospectively confer any lawful authority for enforcement actions. Hence, any action taken under the said void Regulation is beyond the scope of lawful power and is therefore unlawful.
38. Accordingly, the Defendants' reliance on the 2013 Dolphin Ban Regulation as the legal basis for their raid is fundamentally flawed. At the time of the raid, as the effect of the Order made by the High Court, the regulation was never validly existed and could not serve as a lawful foundation for any administrative or enforcement activity. Based on those reasons, I therefore find that the First and Second Defendants acted without any valid legal authority when they entered and destroyed the Claimant's SMBC. Their conduct amounts to an unlawful exercise of power, and the raid must be therefore illegal.
39. As earlier alluded to, since the 2013 Dolphin Ban Regulation relied upon by the Defendants was invalid, their actions taken on the 29th October 2016 at the Claimant's SMBC at Bungana Island were clearly unlawful.

40. The Defendants have argued that the Claimant's operations at the SMBC have contravened not only the 2013 Dolphin Ban Regulation but also sections 27, 43, and 56 of the *Fisheries Management Act 2015*, which pertain to the prohibition of dolphin exports and the confinement of marine species for commercial purposes. However, these arguments are fundamentally flawed for several reasons.
41. First, the 2013 Dolphin Ban Regulation on which the Defendants primarily relied was declared null and void by the High Court. As a matter of law, a regulation that has been invalidated cannot serve as a lawful basis for subsequent enforcement. The principle of legal nullity dictates that such a regulation is treated as if it never existed and cannot be retroactively revived or validated by reference to general provisions of the *Fisheries Management Act 2015*. As rightly submitted by the Claimant's counsel, the Act does not contain any saving clause or retrospective validation mechanism that would legitimize actions taken under a void regulation.
42. Second, the Claimant's SMBC operations including the export of dolphins were conducted pursuant to a valid permit issued by the Director of the Ministry of Environment, Climate Change, Disaster Management and Metrology pursuant to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), to which Solomon Islands is a party. The CITES permits are internationally recognized permits that authorize trade in listed species under strict regulatory conditions. Once granted by the competent Government Authority, such permits confer legal rights that cannot be arbitrarily revoked or undermined without due process. The Claimant was therefore entitled to rely on her CITES permit, and any interference with those rights must be justified by lawful authority and procedural fairness.
43. As previously established, the 2013 Dolphin Ban Regulation was invalid at the time of the raid conducted by the Defendants on the 29th October 2016 at Bungana Island. Consequently, any actions taken pursuant to that regulation were devoid of legal authority. The Defendants' entry into the Claimant's SMBC and the subsequent destruction of property were carried out under a regulatory instrument that had no legal force. I therefore find that the Defendants' conduct was unlawful, constituting an unauthorized and unjustified interference with the Claimant's proprietary and operational rights.

Issue 2: Whether the First and Second Defendants acted unlawfully, arbitrarily, and oppressively, intending to harm the Claimant's business

44. As previously concluded under the first issue, the actions of the First and Second Defendants on 29th October 2016 were unlawful. The remaining question is whether those actions were also arbitrary and oppressive, and whether they were executed with the intent or effect of causing harm to the Claimant's business operations at the SMBC on Bungana Island.
45. The evidence presented by the Claimant, particularly at paragraph 18 of page 35 of the Bundle of Not Agreed Documents, demonstrates that no due process was followed by the Defendants during the raid. Specifically, the Defendants failed to notify or consult the Claimant prior to entering the SMBC premises, dismantling the dolphin holding facilities, and releasing the captive dolphins into the sea. The absence of prior notice or engagement with the Claimant is a critical procedural deficiency. The Defendants did not adduce any evidence to rebut this claim or show that they had taken steps to inform the Claimant before executing the raid.
46. The failure to provide notice or an opportunity to be heard before taking enforcement action constitutes a clear breach of the principles of natural justice. These principles are anchored in common law and constitutional jurisprudence that require the affected party to be given a fair warning and reasonable chance to present their case before any adverse administrative action is taken. The sudden and forceful dismantling of the SMBC facilities and the release of dolphins without consultation or procedural safeguards in these proceedings clearly renders the Defendants' conduct arbitrary and oppressive.
47. Even if the Defendants believed they were acting under the authority of the 2013 Dolphin Ban Regulation, the circumstances of this case demanded, at a minimum, that there should be compliance with procedural fairness. The duty to act fairly is not extinguished by the existence of a regulatory framework, especially one that had already been declared invalid. The Defendants' failure to observe this duty is deeply regrettable and legally indefensible.

48. Moreover, the actions taken were disproportionate to any alleged regulatory breach. The destruction of infrastructure and release of the captive dolphins without notice, hearing, or even under a Court Order, have caused significant and unwarranted harm to the Claimant's business. I therefore find that the Defendants' conduct was not only unlawful but also arbitrary, oppressive, and in violation of the Claimant's right to natural justice.

Issues 3 and 4: Whether the Defendants are liable for damages claimed by the Claimant and whether the Claimant is entitled to damages with interest and costs

49. It is crystal clear that the unlawful actions of the First and Second Defendants directly caused substantial property damage and financial loss to the Claimant. In their defence, the Defendants invoked statutory protections under section 212(b) of the *Police Act 2013* and section 84(1) of the *Fisheries Management Act 2015*, asserting that their actions were carried out in good faith, without malice or negligence. They contend that, having acted in the honest execution of their official duties, they should not be held personally liable for the resulting harm.
50. While both statutes do provide a defence for officers acting in good faith, such protection is not absolute and must be interpreted in light of the legality of the underlying authority. The peculiar circumstances of this case reveal that the Defendants' actions were premised entirely on the 2013 Dolphin Ban Regulation, a regulation that had already been declared null and void by the High Court in 2018. The legal consequence of such a declaration is that the regulation is treated as having no legal existence from the outset. It cannot confer any lawful authority, nor can it retrospectively validate enforcement actions taken under its guise.
51. The defence of good faith under both the *Police Act 2013* and the *Fisheries Management Act 2015* presupposes that the officer's conduct was carried out pursuant to a valid legislative framework. Where the legal basis for the action is void ab initio, the statutory defence in my view therefore collapses. In other words, the defence of good faith cannot be used to shield any conducts that was unlawful from the inception due to the absence of a valid legislative authority. As such, the Defendants' reliance on these statutory provisions is misplaced and

misconceived. Their actions, having been executed under a regulation that was legally ineffective, fall outside the scope of protected conduct under both Acts.

52. The Court of Appeal in *Attorney General v Aipia* [2022] SBCA 34 has provided authoritative guidance on the scope and limitations of the statutory defence of good faith. At paragraphs 92 to 95 of the judgment, the Court emphasized that while statutes such as the *Fisheries Act*, *Police Act*, and *Fisheries Management Act* do afford public officers a defence of good faith, this protection is not absolute and does not confer blanket immunity. The Court clarified that good faith must be understood in terms of lawfulness and reasonableness, that powers must be exercised properly, within the scope of the authority conferred, and not in contravention of the law in the following terms.

"92. While it is not disputed that the Fisheries Act, Palice Act and Fisheries Management Act afford the Appellants as servants of the Crown the defence of "good faith" that does not clothe them with complete immunity.

93. The references to good and bad faith are hardly ever used to mean more than that some action is found to have a lawful or unlawful purpose. When someone is accused of bad faith it is because they have acted unreasonably or on improper grounds. Over and over again it has been stated that powers must be exercised reasonably and in good faith or for legitimate reasons^[17]. In other words, they are to be exercised properly, within the ambit of the powers conferred and not contrary to the law.

94. As pointed out by Mr. Mathews in his submissions, this is a question of fact and the Court will either infer from the evidence or from actual happenings.

95. We are satisfied the judge was entitled to infer from the evidence before him the conclusion that the Appellants were not acting in good faith.

"In considering the question of whether the Police and Fisheries Officers were acting in good faith it is necessary to consider a number of factors including whether the Defendants carefully assess the reports received about the Claimant and consider if the reports were made in good faith. There is also a need to consider the facts associate with the harvesting of bech-de-mer on Ontong Java Atolls."

His Lordship continued at the second paragraph...

"The Attorney-General filed a defence on behalf of the Defendants but filed no sworn statement in support of the defence. The Attorney General, however, submits that the Defendants are not liable to the Claimant. He submits that the Defendants are public officers and were enforcing their statutory duties and as such cannot be held liable as claimed.

While the Police Officer and Fisheries Officers were protected from liability under the Police Act and the Fisheries Act, I do not think this is absolute there is an exception, based on whether the officers were acting in good faith. In that respect, despite the learned Solicitor General's submission, I think there are qualifications and the Defendants must show they were acting in good faith. No evidence was adduced by the Defendants to prove that they were acting in good faith."

53. It is important to note from the above judicial sentiments that the Court further held that determination of good faith is a question of fact, to be inferred from the evidence and the actual conduct of the officers. The Court then concluded that the officers had not acted in good faith, noting the absence of any sworn evidence to support the defence and the failure to demonstrate that the officers had reasonably assessed the information before acting.
54. Applying these principles to the present case, it is evident that the First and Second Defendants have similarly failed to establish the factual basis for their claim of good faith. No evidence was presented to show that they had properly assessed the legality of their actions or the validity of the regulation or any Act they relied upon at the time of carrying out the raid. Although the 2013 Dolphin Ban Regulation was declared null and void by the High Court only after the raid had taken place, the Defendants' failure to ascertain the regulation's legal validity or risk assessments prior to executing the raid demonstrates a serious lapse in due diligence on their part and undermines the principles of procedural fairness.
55. In accordance with the reasoning in *Aipia*, I find that the Defendants' actions were not carried out in good faith. The statutory defence is therefore unavailable to them. Their actions were not only unlawful but also unsupported by any valid legislative instrument, and they must therefore bear liability for the losses sustained by the Claimant.

56. In addition to the previously discussed issue of the Defendants relying on a regulation that had been judicially nullified, I also noted further critical omissions that undermine the Defendants' claim to the defence of good faith. Specifically, the Defendants failed to take into account two legally significant facts at the time of conducting the raid on the Claimant's SBMC at Bungana Island. These are: (i) the existence of a valid CITES permit issued to the Claimant, and (ii) the Solomon Islands Government Cabinet's formal decision in a Minute in 2014 to lift the dolphin export ban.
57. The CITES permit, granted by the Director of Environment, Climate Change, Disaster Management & Meteorology, pursuant to the framework of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, conferred lawful authority on the Claimant to engage in regulated dolphin export activities. This permit was issued by the competent Government Authority and remained valid at the time of the raid. The Cabinet's 2014 decision to remove the dolphin export ban further reinforced the legality of the Claimant's operations, effectively superseding any administrative restrictions.
58. The Defendants' failure to consider these legal instruments and the Solomon Islands Government policy decisions reflect a serious lapse in administrative diligence. Good faith, as a statutory defence, requires not only the absence of malice or negligence but also a reasonable and lawful basis for the actions taken. Where the officers disregard existing permits and binding government decision at the time of carrying out the raid, their conduct cannot be said to meet the threshold of good faith.
59. Accordingly, I find that these omissions, combined with the reliance on the void 2013 Dolphin Ban Regulation, render the Defendants' actions unlawful and unprotected by the statutory defence of good faith. The Defendants must therefore bear full liability for the destruction of the Claimant's SMBC facility and the consequential losses suffered.
60. The Claimant has adduced sufficient evidence to establish her entitlement to damages arising from the unlawful actions of the Defendants, which resulted in significant loss of income and destruction of property. The quantum of damages pleaded, totalling \$31,819,591.03

represents the full extent of the financial loss allegedly suffered. In my view, this figure is not unreasonable on its face and warrants further scrutiny through a formal assessment process. Such assessment will enable the Court to determine the precise extent of liability attributable to each Defendant, based on the evidence presented.

61. Furthermore, the Court is satisfied that the Claimant is entitled to interest on the assessed damages. Pursuant to Rule 17.65(a)(iii) of the *Solomon Islands Courts (Civil Procedure Rules) 2007*, the Court therefore awards interest at a rate of 5% per annum, calculated from the date the claim was filed. In this case, the claim was lodged on 1st December 2016, and the interest shall be backdated accordingly. This award of interest is intended to compensate the Claimant for the time value of money lost due to the delay in recovery and to reflect the prolonged impact of the Defendants' unlawful conduct.
62. In light of the Court's findings in favour of the Claimant, and having regard to the procedural history of this matter, it is evident that the Defendants were afforded ample opportunity, spanning over a period of four months and multiple adjournments, aimed at resolving the dispute through settlement. Despite the generous latitude extended by the Court and the reasonable offers made by the Claimant, the Defendants elected to proceed to trial, rejecting all avenues for amicable resolution.
63. This refusal to settle, in the face of clear judicial encouragement and substantive offers, has unnecessarily prolonged the proceedings and exacerbated the costs incurred by the Claimant. The Court views this conduct as unreasonable and lacking in merit, particularly given the weakness and frivolity of the Defendants' case as ultimately determined.
64. At common law, as adopted in this jurisdiction, the refusal by a party to engage in reasonable efforts to resolve a dispute outside of trial may result in adverse costs consequences. This principle was affirmed in *Dunnet v Railtrack plc* [2002] 2 All ER 850 and further developed in *Halsey v Milton Keynes General NHS Trust* [2004] 4 All ER 920. In *Dunnet*, the Court of Appeal held that a party who unreasonably refuses to consider alternative dispute resolution (ADR) may be penalized in costs, even if they ultimately succeed at trial. Similarly, in *Halsey*, the Court emphasized that the overriding objective of the civil justice system includes encouraging

settlement and minimizing unnecessary litigation. The Court stated that a refusal to mediate or settle, where it was reasonable to do so, could justify a departure from the usual costs rule.

65. Applying these principles to the present case, the Defendants' refusal to accept settlement despite repeated adjournments and generous time afforded by the Court constitutes unreasonable litigation conduct. Their unwillingness to resolve the matter outside of trial has unnecessarily prolonged the proceedings and increased the financial burden on the Claimant. In light of this, and consistent with the common law authorities, I find it appropriate to impose costs of all the proceedings on both the Defendants on an indemnity basis.
66. Accordingly, and pursuant to the Court's discretion under Rule 24.12(c) and (d) of the *Solomon Islands Courts (Civil Procedure Rules) 2007*, I order that the Defendants shall bear all the costs incurred by the Claimant as a result of these proceedings, to be paid to the Claimant on an indemnity basis. This order reflects not only the Claimant's success but also the Defendants' refusal to settle and failure to engage constructively in the litigation process, thereby imposing avoidable financial burdens on the Claimant.

Issue 5: Whether the Claimant is entitled to export dolphins under the continued issuance of permits by the Ministry

67. This issue in question was not addressed by either party in their submissions. Accordingly, the Court does not consider it necessary or appropriate to make a determination on this matter. In any event, it is well established that the Claimant, like any other citizen, retains the right to engage in such lawful business undertakings, provided that all statutory and regulatory requirements are duly fulfilled. The Court does not find any basis to interfere with or restrict that right in the absence of a specific legal challenge or controversy properly raised before it.

Other concerning matters

68. In addition to the primary issues already addressed, the written submissions of the Defendants' counsel raise several ancillary matters that warrant attention. These include the issuance of a Research Permit, the 2014 Cabinet decision lifting the ban on dolphin exports, the CITES permit,

and the question of stamp duties applicable to the agreements in question. Interestingly, these matters appear to have been admitted without controversy or were not specifically pleaded in the Defendants' statement of defence. This raises important procedural and substantive legal considerations.

69. The Research Permit, for instance, is an important document that typically authorizes activities otherwise restricted under environmental or wildlife protection laws. If the Defendants relied on such a permit to justify their conduct, it should have been explicitly pleaded as part of their defence. The same goes to the other matters aforementioned.
70. The importance of proper pleading has been firmly established in case laws in this jurisdiction. In *Kopu v Bonugo* [2024] SBHC 146, and reaffirmed in *Tovosia v Koli* [2025] SBCA 5, the Courts emphasized that parties are strictly bound by their pleadings. These decisions underscore the principle that a party cannot rely on facts or legal arguments that have not been properly pleaded, as doing so would prejudice the opposing party and undermine the integrity of the judicial process. The rationale is rooted in procedural fairness that each party must know the case it has to meet and be given a fair opportunity to respond. The failure to include the material facts or legal grounds may result in the Court disregarding those arguments entirely. The omission from the pleadings, in my view, therefore undermines the evidentiary weight and legal relevance of the matters raised. This is another regrettable aspect of the Defendants' case.

Conclusion

71. Having carefully considered the evidence, written submissions, and applicable legal principles, the Court finds that the actions of the First and Second Defendants were unlawful, arbitrary, and executed in breach of the Claimant's constitutional and procedural rights. The reliance on the void regulation, disregard for valid CITES permits, and failure to observe natural justice collectively render the Defendants' conduct indefensible. The Claimant is entitled to judgment, damages, interest, and costs as set out in the Orders of the Court.

72. This decision serves as a reaffirmation of the rule of law and the obligation of public officers to act within the bounds of lawful authority and procedural fairness in exercise of their public duties.

Orders of the Court

1. Judgment is granted in favour of the Claimant, on the grounds that the actions of the First and Second Defendants on 29th October 2016 were unlawful, arbitrary, oppressive, and in breach of the principles of natural justice.
2. The Defendants are jointly and severally liable to the Claimant for damages in the sum of \$31,819,591.03, subject to formal assessment by the Court to determine the precise quantum and apportionment of liability.
3. Interest on the assessed damages is awarded at the rate of 5% per annum, backdated to 1st December 2016, being the date on which the claim was filed, pursuant to Rule 17.65(a)(iii) of the *Solomon Islands Courts (Civil Procedure Rules) 2007*.
4. The Defendants shall bear the full costs of the proceedings, to be paid to the Claimant on an indemnity basis, in light of their refusal to settle despite repeated opportunities and the frivolous nature of their defence.

THE COURT

