HIGH COURT OF SOLOMON ISLANDS

Civil Case No. 211 of 2000

JOHN LABERE AND AGNES VOTAIA

V

KALENA TIMBER COMPANY LIMITED

High Court of Solomon Islands
(F.O. KABUI), J)

Hearing: 22nd September 2000
Ruling: 25th September 2000

Mrs M. Samuel for the Plaintiffs
Defendant not in Court

RULING

(Kabui, J): The Plaintiffs as cited in a Writ of Summons filed on 15th September, 2000 against Kalena Timber Company, the Defendant, are John Labere and Agnes Votaia. The Plaintiffs are representing the Harero Tribe who are said to be the owners of the Harero Land situated on the Island of Rendova in the Western Province. By an ex parte Summons filed on 15th September, 2000 together with the said Writ of Summons, the Plaintiffs are asking this Court in the meantime to make the following Orders –

1. ***That the Defendants be restrained from conducting any further logging operation on the Harero land.***

1. ***That the proceeds of any logging activities on the land be made payable to an interest bearing deposit in any of the commercial banks in Honiara.***

1. ***Any further orders that this court deems to make.***

1. ***Costs.***

The Facts

The Defendant is a Company engaged in logging activities in the Western Province. In May, 1989, it negotiated a timber rights agreement with the owners of Haforai, Irureqo, Osileqo Qai, Tive, Teborana, and Oreasi Lands, situated also on the Island of Rendova in the Western Province. Harero Land was not one of these areas of land and the Plaintiffs were not, as a tribe, a party to that agreement. That is to say, Harero Land was not included in Form 2 so as to fall within the terms of the standard Logging Agreement between the parties to that Agreement. In spite of this fact, the Defendant is said to have entered Harero Land and fell trees therein without the consent of the Plaintiffs and without fulfilling the timber rights acquisition procedure set out in the provisions of the Forest Resources and Timber Utilization Act (Cap. 40).

The basis of this application

This application is based upon the premise that Harero Land was not included in Form 2 as completed and signed by Mr. Hite, the Secretary to the Rendova Area Council on 25th May, 1989 (See Annexure "AV1" to Agnes Votaia's affidavit filed on 18th September, 2000). This Form 2 sets out the areas to be logged and the names of the persons lawfully entitled to grant timber rights to the Defendant. Harero Land was not one of the areas listed in Form 2 and so the Plaintiffs were not to be affected by the activities of the Defendant. The issue therefore is whether or not the Defendant has obtained a valid licence under the provisions of the Forests Resources and Timber Utilization Act for it to enter upon Harero Land and fell trees etc under the terms of a Standard Logging Agreement. In logging cases such as this case, the ownership of customary land is a different issue, if not already and conclusively determined by the Local Court, under the provisions of the Local Court Act (Cap. 19). It is not the function of the Area Council under the provisions of the Forest Resources and Timber Utilization Act to determine ownership of customary land. (See ***Gandly Simbe v East Choiseul Area Council & others***, Civil Appeal No. 33 of 1997). The case being a logging case, the issue here is whether or not the Defendant had complied with the timber rights acquisition procedure as stated above so as to enable entry and felling of trees on Harero Land lawful according to law.

What are the rules to be applied in this case?

The rules of play regarding the granting or refusing of interim injunctions in this jurisdiction are well known. The position in this jurisdiction is as stated by Commissioner, Crome, in ***Nelson Meke v Solmac Construction Company Limited*** (Civil Case No. 45 of 1982). In reviewing the English authorities and applying the principles enunciated therein, Commissioner, Crome, at pages 4 and 5 said –

> ***"The principles now to be applied are as follows, summarising Sir John Pennycuick's own analysis of the American Cyanamid rules laid down by Lord Diplock.***
>
> ***1. There must be shown to be a serious issue to be tried. This means a triable issue beyond a vexatious or frivolous matter.***
>
> ***1. Once satisfied there is a triable issue, the Judge should apply his mind to the question of the balance of convenience. This falls into three parts.***
>
> ***a. Could the Plaintiff, if denied an interim injunction and supposing he wins his case, be adequately compensated in damages for his loss?***
>
> ***If he would, usually no interim injunction will be granted, if he would not, then,***
>
> ***a. If the interim injunction issues, carrying, as it would, an undertaking that the Plaintiff will abide by any order for damages the Court may make, will the Defendant thus be adequately compensated for any loss he may suffer?***
>
> ***If he would, then the interim injunction should be granted.***
>
> ***a. If doubt remains, all the other factors should be taken into account, the Court bearing in mind all the time the 'heart' of the matter, that is the desirability of preserving intact the state of affairs which existed at the time***

when the Defendant embarked upon the activity complained of in the substantive action.

1. ***If, after all these steps have been taken, the question remains in doubt, then the relative strength of the parties cases, as put in evidence orally or, as is the usual case if not the invariable rule, upon affidavit, should be enquired into and, upon consideration of the merits, a decision taken."***

These rules of play have been applied in this jurisdiction regularly and I need not cite the cases in which they were applied by the High Court as well as by the Solomon Islands Court of Appeal. However, as is always the case in all cases of this sort, the decision of the Court is largely dependant upon the facts of each case. An injunctive order being an equitable remedy depends upon the discretion of the Court based upon the evidence before it. In this case, Mrs Samuel Counsel for the Plaintiffs, argued that there was a triable issue before this Court that being whether or not the Defendant was in possession of a valid licence to enter upon Harero Land for the purpose of felling trees etc thereon in view of the fact that Harero Land was not included in Form 2. She argued that that being the case, and taking into account the facts, the balance of convenience was obviously in favour of the Plaintiffs. She pointed out that if I refused to grant the injunctive order asked for, the Plaintiffs would suffer irreparable loss in that the trees would be gone forever and the land would be damaged including pollution of the rivers in the area. In this regard, if I refuse the injunctive order asked for and the Plaintiffs win their case, would the Plaintiffs be adequately compensated for their loss? There is no evidence before me to confirm that monetary compensation would be adequate compensation in the event that I refuse the injunctive order asked for and the Plaintiffs win their case. This evidence is lacking because the Defendant had not been served with the ex parte Summons. Ideally and as a matter of good practice the Defendants should have been served unless this application is an urgent one. However, in view of the compelling evidence that Harero Land had never been intended to be logged and thus clearly excluded from Form 2, any attempt by the Defendant to enter Harero Land and remove trees therein without being in possession of a licence would be total disregard of the wish of the Plaintiffs to conserve their trees and land. No amount of money would replace the forest that is unlawfully removed plus other environmental damage to the land in whatever form the damage may be. I am of the view that if I refuse the injunctive order asked for and the Plaintiffs win their case, they would not be adequately compensated for their loss. On the other hand, the Plaintiffs have not made any undertaking to compensate the Defendant for their loss if I refuse the injunctive order against the Defendant and it wins its case. There is also the need to maintain the status quo because not to do so may result in the disappearance of the trees still standing and further damage to the land and the river s in that area of land. Taking all these factors into account and weighing them against each other, I would, in the result, exercise my discretion in favour of the Plaintiffs and grant the injunction sought. The Plaintiffs also ask for a supplementary order in that the proceeds of any logging activities on Harero Land be paid into an interest bearing deposit in any commercial banks in Honiara. This request is rather general and open-ended in nature. It does not say in whose name or names the deposit account is to be opened. I suppose in the end, the parties would agree that such monies be paid into an interest bearing account to be held in a Joint account to be opened by the Solicitors acting for the parties. Until that time, I would suggest that such monies be paid into Court until further order of the Court. Cost be in the cause. I therefore order accordingly that –

1. The Defendant be restrained from conducting any further logging activity on Harero Land until further order of the Court.

1. The proceeds of the sale of trees felled within the boundaries of Harero Land be paid

into Court until further order of the Court.

1. Cost be in the cause.

F.O. Kabui
Judge