

**IN THE HIGH COURT OF SOLOMON ISLANDS**  
**(Faukona PJ)**

Civil Case No: 222 of 2013

BETWEEN:

**JOHN LEE, JOHN RASI AND KEVIN HITU**

*(Representing themselves as the customary  
owners of vilavila/dikadika portion of barihi  
customary land in Roviana, Western Province.*

Claimant

AND:

**EARTHMOVERS SOLOMONS LIMITED**

First Defendant

AND:

**KALENA TIMBER COMPANY LIMITED**

Second Defendant

**Date of Hearing:** 18th August 2014

**Date of Decision:** 8th September 2014.

*Ms L. Ramo for the Claimants*

*Mr G. Suri for the first and second Defendants*

**RULING**

**Faukona PJ:** This application is for dismissal or stay of proceedings pursuant to Rule 9.75.

2. The Claimants claim they own vilavila portion of customary land within tagosage customary land. Because of spill over oil from the two abandoned boats in their land therefor caused environmental damages to costal and sea areas within the vicinity of the boats.

3. The defendants argue that the claim is frivolous and vexatious and discloses no reasonable cause of action. Therefore, the application seeks dismissal of the proceedings on the grounds that this Court lacks jurisdiction to determine customary landownership and that the claim is statute bar.

4. The grounds supporting the application are three fold but reduced to two. The third ground seem to be abandoned as it contain issue which can be rectified under R 2.14 C which provide unlimited and exhaustive list as to the type and or nature of claim in Category C proceedings should constitute. However, the Court has the power under R.2.15 which vested upon it discretion on application by a party or on its own motion change the category of claim to which a claim is assigned. Thus even if the claim is defective in form there being no basis to strike out because the rules provide room for correcting such defect.

5. The materials show there was a Local Court case No.4/75 heard by Roviana Local Court which adjudged that Nathan Kera (understood to be chief of Saikile) and his people rule over the land from bulelavata river back to koquruga river in the east. The land is known

by Roviana dialect as tagosage customary land. Vilavila land is a portion of tagosage land. It was that customary land which the Roviana Local Court had decided its ownership. Siuta kuri is referred to as a clan and comes under Saikile Chieftaincy. The Chieftaincy is headed by a Paramount Chief and supported or assisted by the Saikile chief's committee.

6. What could have been the basis upon which the Claimants based their claim is that they believe Saikile Chieftaincy has the overall custodian rights over tagosage land but there are rights of ownership by individual families or clans over various portions of lands. Whether that is the customary land tenure system adopted in Saikile area or not, is an issue ought to be ascertained by a judicial determination and recognition.

7. On 28th March 1998, there was a land use agreement signed between representatives of Saikile Chiefs Committee and the second Defendant. The agreement was a consensus that the Saikile Chiefs Committee representative to lease to the second Defendant an area comprised of approximately 30 hectares and 200 meters wide. That area covers logging camp and log pond at vilavila portion of land. The rental amount was \$18,000.00 to be paid annually to representatives of Saikile Chiefs Committee. The agreement also entrenched a provision that second Defendant had exclusive right to use the log pond and adjacent lagoon water for transportation and exportation of logs.

8. On 27th March 2002, there was an agreement to acquire timber rights between the same parties concerning the same tagosage customary land. The trustees or landowners who signed the agreement on behalf of their people were Chief Nathan Kera, Ronald Kitu, Nelson Huti, Nepia Oka and James Riakevu.

9. From the submissions and the evidence, it is apparent that the issue of landownership over vilavila area is at stake. If vilavila land is part of tagosage customary land adjudged to Saikile Chiefs, then the question is whether a clan or individuals within Saikile Chieftaincy authority can claim ownership of a portion of land by themselves or their clan or family. This issue must be resolved before any assessment of damages can be made.

10. I have stated clearly in the case of *Thabatia V Capital Construction* that

*"Where the issue of trespass to customary land arise in litigation, the significant notion that comes to mind is the right of ownership to that land. As it had been recognised as a settled law, trespass to land gives rise to damages."*

11. In this case, the Defendants had entered the land lawfully under two agreements. However, the issue is that the two boats which had been abandoned had caused oil spillage in the nearby environment causing environmental damages. Without considering the element of trespass, who actually has the right to sue and litigate for any such statutory negligent? There can be no doubt the Saikile Chieftaincy had invited the Defendants under the agreements and they have the sole right to litigate any negligent behaviour by the Defendants, unless the authority to litigate or file a civil proceedings is delegated to a clan or family who directly been affected and by common knowledge of the Chiefs has power to deal with the rising issue which concern their portion of customary land.

12. In this case, there was no evidence of delegation of powers, or recognizing the Claimants as rightful persons to file civil proceedings, and claim environmental damages to the coastal areas and surroundings, including marine life resources at vilavila area of land.

13. However, it is noted that before the Claimants have filed this proceedings on 2nd July 2013, a number of individual Chiefs of Saikile had supported the claim and the figure issued in the assessment report dated 2nd January 2013. One of them is Mr. Nelson Huti who chaired the Saikile Chieftaincy Meeting held at Agnes Lodge, Munda, on 15th July 2013. He specifically mentioned in paragraph 4 that Siuta Kuri and his off springs had customary right of use over vilavila block of land. Again by Mr. Ronald Kitu the Paramount Chief of Saikile by his letter dated 18th February 2013. The paramount Chief advanced further by affirming

that there was a Chiefs decision in 1972, which granted customary right of ownership to Kuri, and especially where vilavila area was located? He further stated in paragraph 4 that the Defendants had no proper consultation and agreement with Siuta family or Kuri after use of their area.

14. The third person to support the Claimants is the Chief's Secretary Mr. Roderick Terry Kera. He affirmed by his letter to the second Defendant dated 26th March 2013, that Siuta Kuri had the right of use to vilavila log pond land block. There was no mention of block ownership.

15. Those three persons used Saikile Chieftaincy letter head that simply indicate that what they said was on behalf of Saikile Chieftaincy.

16. What may appear the case be, is that, two recognized persons of Saikile Chieftaincy affirmed that the Claimants have right of use to vilavila land block. Whilst that may so, the third person, the paramount chief himself affirmed the Claimants have right of ownership to vilavila block of land.

17. The views expressed by highly respected members of Saikile Chieftaincy were finally diverted in their collective decision at their meeting on 15th July 2013. The resolution reached was to support the response by the Defendants Solicitor, and acclaim it as their view and the view of Siuta Kuri clan represented by Steven Alebama Kuri. It is quite difficult to resonate to such changing decision. The chiefs were in fact accepting a Counsel's view a person not of Saikile Chieftaincy. Counsels practising law uphold and advance the agendas of their client's views and non-other. The response refers to expresses the views of the Defendants, who are not people or part of Saikile area. The best the Chiefs could have done was to express their own knowledge and understanding of their customary land tenure rather than relying on outsiders.

18. The paramount chief Mr. Kitu was self-contradictory and inconsistent with his view about the Claimants and their rights as a clan that emerged from tagosage customary land. Two other predominant persons also contradict themselves. Their original approach was rather vesting powers and authority upon the Claimants to pursue a claim for damages, later retracted.

19. On the issue of lack of jurisdiction, I agree this Court has no jurisdiction to deal with ownership issue of a customary land. In the circumstance of this case, the Local Court has decided ownership of the land and the Claimants are part of the winning party that is Saikile Chieftaincy. The issue is whether the Claimants can stand by themselves and pursue the claim or should they be authorised by Saikile Chieftaincy before proceeding. As a predominant issue, it appears that the boundary of vilavila land block and its ownership is under dispute. In any event should the Claimants were granted authority they should proceed.

20. With the inconsistency in their stand and views regarding the Claimants I am of the view this point gains no strength and should not be relied on to dismiss the proceedings.

**Statute bar:**

21. The second ground upon which the Defendants rely on to dismiss or stay proceedings is that the claim is statute bar. Section 5 of the Limitation Act prohibits or bar pursuing a civil action in Court after expiration of six (6) years from the date on which the cause of action accrue. Section 17 of the same Act states the date of accrue shall be the date on which right to relief sought by an action first arise. In spite of the general position of the law there is an exception provided for in section 17 which states where the cause of action is founded on a continuing wrong a fresh cause of action shall be deemed to accrue on each day the wrong continues.

22. There is evidence from Mr Abdul in his sworn statement filed on 25th October 2013

that the barge MV Venture and the vessel MV Kalena were abandoned in 2006. The engine of the MV Kalena was removed at that time; MV venture had no engine but a barge normally towed by MV Kalena. What were left on the boats were empty bodies or shell. Mr. Abdul further confirmed that the two boats had holes and they had to bail sea water or rain every day. If some oil were spilled over it would have been washed and pumped out long ago.

23. Apparently, Mr. Abdul had in mind to conclude that there was no spill over of any oil. What could have been suspected seeing was thin film of corrosion oil, which was not substantial. With those state of affairs submissions finally affirmed that the two boats had been transferred to Saikile Chieftaincy.

24. The transfer activity could have drawn extreme conclusions. One is recognition of Saikile Chieftaincy authority over the area where the ships were; and secondly that it was probably an orchestrated transaction to divert ownership of the boats, hence vested responsibility for the mischiefs that were brought onto the land. And thirdly why Saikile Chieftaincy accepted empty shell boats with holes in them. What was the purpose of accepting possession of the ships? They were of no use at that time when the purported transfer was made. In this case, the Saikile Chieftaincy must be answerable to it by virtue as a joinder.

25. If there were no oil spill over or leak in 2006 on the occasion when the boats were abandoned because they had been pumped, then why an environment report dated 2nd January 2013 reflected otherwise. That report was originally supported by the Chairman N. Huti of Saikile Chieftaincy, though supported the defendant's Solicitor's response filed on 12th July 2013.

26. By letter dated 26th March 2013 addressed to second Defendant the Chiefs Secretary Mr R. Terry Kera confirmed that the two boats were sunk and remain where they were until the above date of his letter.

27. Clearly, what am able to adjudge is that there was indeed spill over of diesel oil that could have remained as debris at the bottom of the boats. The boats were still remain as they were until 12th July 2013 (date of Chiefs Secretary's letter) and on 2nd July 2013 when the claim in this case was filed.

28. There can be no doubt there is environmental pollution and damage and this continues even after 2006 when the boats were abandoned. The fact they remain firm in their position meant that any diesel oil could still be discharged from their holdings. This case clearly comes under the exception in Section 17 of the limitation act that the cause of action was bounded on a continuing wrong. Therefore, I find there is no statute bar when the claim was filed on 2nd July 2013.

29. From reasons I have imparted in respect of the two grounds upon which the Claimants rely to dismiss or stay this proceedings, I find they are not convincing and do not hold good legal bases for me to act accordingly.

### **Orders:**

1. Application for dismissal or stay of proceedings is dismissed.
2. The claim is in no way frivolous and vexatious and it does disclose a cause of action.
3. Saikile Chieftaincy be joinder as party.
4. Cost to be paid by the Defendants to the Claimants.

**The Court.**