

IN THE MAGISTRATE'S COURT AT LABASA

CIVIL JURISDICTION

Civil Action No. 165 of 2016

BETWEEN : **SOLOMONE CATAROGO**
PLAINTIFF

AND : **VALEBASOGA TROPIC BOARD**
DEFENDANT

Appearance : **Plaintiff** in person
Mr Ram. A for the Defendant

Judgment : **28 June 2019**

JUDGMENT

1. The Plaintiff is claiming for \$20,000.00 as liquidated damages for breach of contract and \$30,000.00 as costs.
2. The Defendant is denying the claim and filed its counter claim. The Defendant is claiming under the agreement for \$1,300.00 under clause 16, \$3,000.00 under clause 17, \$20,000.00 under clause 18, and \$20,000.00 under clause 19.
3. The matter was heard on 2 May 2018. The Plaintiff is the only witness for his case. The witnesses for the Defendant are Serupepeli Vueta (Vueta) as the first

witness and Shelly Mud Dean (Dean) as the second and final witness.

Analysis and determination

4. I will first deal with a preliminary issue raised by the Defendant that they are not the proper Defendant named in this proceeding. Vueta tendered the Pine Agreement signed by the Plaintiff and Valebasoga Tropic Board on 13 January 2012 (the agreement), as defendant exhibit 1. The Plaintiff's claim arised from that agreement. The Defendant counter claim arises from the same agreement. Apparently the name of the Defendant as appeared in this proceeding are the same as appeared in the agreement except the word Tropic. In this proceeding it was Tropic with the difference of the letter "K" and "C" at the end of the word Tropic.

5. In considering the issue, I find the error as a typo error and does not cause any prejudice to the Defendant. The Defendant is fully aware of the claim against them under the agreement. Accordingly, the pleading by the Defendant to be discharged from this proceeding is dismissed.

Plaintiff's claim

6. The Plaintiff is claiming under the agreement. He stated that the Defendant breached clause 10 of the said agreement.

7. Clause 10 of the agreement which I take it to be bullet points 3 in page 2 of the agreement provides;-

"That the contractor to buy a Kawasaki bush cutter as per quotation attach on the condition, that after the pine harvesting license is being approved by Forestry Department. All money owed to the contractor in regards to

the purchase of the brush cutter will be deducted from the pine premium first when pine harvesting starts.

8. It is apparent from the above clause that the contractor (the Defendant) is to buy a Kawasaki brush cutter when the Department of Forestry has approved the pine harvesting licence. The Plaintiff stated that the pine harvesting licence was from 1 March to 1 May. That means that the brush cutter should be purchased by the Defendant and delivered to the Plaintiff on 1 March or any date before that if the approval was made before 1 March. Vueta a support officer for the Defendant and a Dean the Logging Manager for the Defendant confirmed in their evidence that the brush cutter was not given to the Plaintiff. As such the Defendant has breached clause 10 of the agreement.
9. I refuse to accept the explanation offered by Vueta and Dean on the reason for the non purchase and delivery of the brush cutter as there was no documentary evidence tendered to support what they are saying.
10. As a result of that breach the Plaintiff is claiming for \$20,000.00 under clause 14 (last bullet point on page 2) of the agreement which state;-

"That the Contractor shall be liable for the sum of at least \$20,0000.00 (Twenty Thousand Dollars) as liquidated damages for any breach of part thereof this contract for any act that may be to the detriment of the Trustee."
11. The cost of purchasing the Kawasaki brush cutter is far less than the amount claimed by the Plaintiff. The above clause of the agreement is clear and it is a reflection of the parties intention when they signed the agreement. The Defendant is bound by the terms of

the agreement. I find that the Defendant's failure to give the brush cutter to the Plaintiff has caused detriment to the Trustee who I take it to be the Plaintiff as there is no third party to the proceeding, there is no definition of Trustee in the agreement. Accordingly, the Defendant is liable to pay \$20,000.00 to the Plaintiff.

Defendant Counter Claim

12. The Defendant is claiming under clause 16,17,18 and 19 of the agreement. In their evidence they fail to refer the court as to which paragraphs of the agreement they are referring to as the agreement is not numbered.

13. The Defendant is claiming for \$1,300.00 for the money given to the Plaintiff on their request for educational assistance. The Plaintiff has admitted that he had received that money and that money is to be recovered from the price of the log. This arrangement was outside the terms of the agreement as confirmed by the Defendant in their submission. The Plaintiff stated that 2 trucks loaded with logs have been taken by the Defendant and this was not disputed by the Defendant. With the uncertainties on this arrangement, I find that \$1300.00 should be recovered from the 2 trucks loads of logs stated by the Plaintiff.

14. The Defendant is claiming for \$3,000.00 for the earthworks done on the Plaintiff's land in constructing roads and skids. Page 2, bullet point 4 of the agreement, state that the Defendant shall construct all roads for skidding and extraction of pine logs. There is no mention of costs. I find this claim is without merit

and not justified as that was an obligation of the Defendant as they agreed upon in the agreement.

15. The Defendant is claiming for \$20,000.00 for the Plaintiff's breach of the agreement that caused disturbance to the logging operation. There were two disturbances. First is the dispute between the mataqali, and second is a dispute from a neighbouring mataqali. Page 2, bullet point 5 of the agreement state;-

"That the Licence undertakes that there should not be any disturbances and road stoppage at any one time during the logging operation. If any cases arise then the Licence shall take immediate action to resolve/remove the road block and the Licensee shall also be responsible for damages that may occur within that period and further liquidated sum of at least \$20.000.00."

16. There was no pleading on the damages arises during the time of disturbance. I am not considering or give any weight to the Defendant exhibit 2 which particularise the damages as it was not in the pleading. The Plaintiff had confirmed the disturbance to the logging operation from within his mataqali and from another mataqali that halted the logging operation. That is the Plaintiff's breach of the agreement. The wording of the above clause allows the Defendant to claim for \$20,000.00. In my view, the Defendant is entitle under the agreement to claim for \$20,000.00 and the Plaintiff is liable to pay.

17. The Defendant also claimed for \$20.000.00 when the Plaintiff allowed another contractor to log on the same area. Page 2, bullet point 6 of the agreement state;-

"That the licensee also agrees that they shall not allow any other contractor or any such third party other than the contractor to log within the subject area whilst this

agreement in force. The Licensee will give his personal understanding that his members of the mataqali will not allow any third person to log in the said area. However in the event of encroachment or a third person the Licensee shall be personally liable to the contractor for the sum of at least \$20,000.00 a liquidated damages."

18. The second bullet point in the first page of the agreement provided the term of the agreement which is from 13 February 2012, till the pine block is logged out. It is apparent from the evidence that the pine block has not been logged out when the Plaintiff engaged another contractor for the same area. The Plaintiff stated in his evidence that when the neighbouring mataqali made a claim on their land, he told the Defendant to continue log as the land belong to them. The Plaintiff said that not long the Forestry Department resolved the dispute. He informed the Defendant to resume log and waited for the Defendant for about one to two years and they did not come. The mataqali wanted the money so he engaged another contractor. These evidence of the Plaintiff was not disputed.

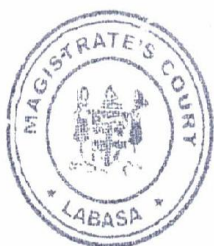
19. As such I find that it was unreasonable for the Plaintiff to wait for that long for the Defended. It was also unreasonable for the Defendant to drag the operation. The Plaintiff had informed the Defendant and the evidence confirmed that the Plaintiff had a meeting with the boss of the Defendant. In my assessment, I find that it would be unreasonable for the Defendant to claim for this damage as they are the one who delayed the operation after the dispute has been resolved. As such it cause frustration to the Plaintiff and led to the engage of another contractor.

20. In assessing the evidence and the case, I find both the parties have breached the agreement where the Plaintiff is liable to pay \$20,000.00 to the Defendant and so as the Defendant is liable to pay \$20,000.00 to the Plaintiff. I find that it is unrealistic to give order to that effect as it is more like an exchange of the same amount with no benefit and detriment to each party apart from the fact that their dispute is now settled by this judgment.

21. In this judgment, I find that each party is liable to pay \$20,000.00 to the other party and I order that no such payment to be made on reason stated in paragraph 20 above.

22. On the issue of costs, I dismiss the Plaintiff's claim of \$30,000.00 costs as it was not justified and I order that parties to bear their own costs.

30 days to appeal.



C. M. Tuberi
RESIDENT MAGISTRATE