**IN THE SOLOMON ISLANDS COURT OF APPEAL**

<b>NATURE OF JURISDICTION:</b>	Appeal from Judgment of The High Court of Solomon Islands (Brown J)
<b>COURT FILE NUMBER:</b>	Civil Appeal Case No.31 of 2016 (On Appeal from High Court Civil Case No. CC 210 of 2016)
<b>DATE OF HEARING:</b>	7 May 2018
<b>DATE OF JUDGMENT:</b>	11 May 2018
<b>THE COURT:</b>	Goldsbrough P Hansen JA Young JA
<b>PARTIES:</b>	
APPELLANTS:	REX SOAIKA & AMOS TEIKAGEI
COUNTER APPELLANT:	ASIA PACIFIC INVESTMENT DEVELOPMENT LTD
RESPONDENTS::	AND
1 <sup>ST</sup> RESPNDENT:	ATTORNEY GENERAL
2 <sup>ND</sup> RESPONDENT:	INTER-PORT TRADING AND AGENCY
3 <sup>RD</sup> RESPONDENT:	OCEANIA TRADING COMPANY LIMITED
<b><u>ADVOCATES:</u></b>	
APPELLANT:	W. Rano
COUNTER APPELLANT:	G. Suri
RESPONDENT:	
1 <sup>ST</sup> RESPONDENT:	D. Damilea
2 <sup>ND</sup> RESPONDENT:]	J.K Zaria
3 <sup>RD</sup> RESPONDENT:]	
<b>KEY WORDS:</b>	
<b>EXTEMPORE/RESERVED:</b>	RESERVED
<b>ALLOWED/DISMISSED</b>	ALLOWED
<b>PAGES</b>	1- 5

**JUDGMENT OF THE COURT**

1. In this appeal all parties have agreed that the appeal should be allowed, the orders of the High Court set aside, and the case reheard with the involvement of Asia Pacific Investment Development Ltd as a party. The terms of the consent are attached to this judgment. We consider that it is appropriate for us to briefly set out the background to this case and express our tentative views regarding the Judge's conclusions in the High Court.
2. In the High Court this claim was concerned with the proper distribution of the proceeds of sales of timber harvested pursuant to a cancelled timber licence.
3. On 10 April 2015 Inter Port was granted felling licence A101176. It seems that in associated proceedings in early 2016, the High Court granted an ex parte injunction (subsequently confirmed on an inter partes basis) preventing the use of this felling licence. This was based on the conclusion by the Central Islands Customary Land Appeal Court that the claimed owners of the land were not the true owners. And so felling licence A101176 had never been validly granted.
4. In June 2016 the Commissioner of Forest Resources formally cancelled licence A101176. However in the meantime a significant volume of logs had been harvested by virtue of this licence. On the same day as the cancellation Inter Port applied for and obtained an export licence for the logs felled. The logs were sold producing, the appellants say, SBD\$7,784,503.33.
5. In these proceedings in the High Court the appellants essentially sought payment to them of that money and any money from the sale of logs harvested but unsold. The respondents case was that there was an agreement between the appellants and themselves as to the distribution of the proceeds which they sought to enforce. The appellants denied an enforceable agreement.
6. In the High Court the Judge found that the agreement was concluded and enforceable and gave judgment according to its terms. This Court granted an injunction staying the distribution of any money until the hearing of this appeal.

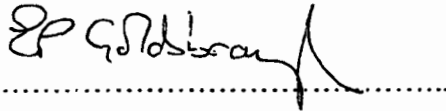
7. The appellants' case on appeal was that the felling licence was void ab initio and in those circumstances any agreement between the parties as to distribution of the proceeds of illegal logging was of no effect. The Judge was therefore wrong to conclude there was an enforceable agreement.
8. Shortly before this appeal was due to be heard Asia Pacific Investment Development Ltd applied to be joined as a party to the appeal. We heard the application on Friday 4 May. After discussion with all counsel, except the Attorney General, we granted the application, which was by then unopposed.
9. Asia Pacific have now filed their notice of appeal. Their case is that the area that was the subject of felling licence A11076 is part of a much larger area which is in registered land parcel no. 298-005-1. They say, and have provided evidence to support their claim, (currently untested) that; they hold a sub lease over 298-005-1; they hold a Grant of Profit over the land; felling licence A101698; and a mining licence over the land. It seems that Asia Pacific did not know of this appeal until recently. In the High Court they found out about the proceedings after the High Court's judgment. They applied to the High Court to be joined to the proceedings (not then knowing judgment had been given). The Registry gave no date for the application which seems to have sat unactioned on the court file.
10. The trial Judge did not know these facts. Unsurprisingly the parties have all now agreed the case will need to be retried with Asia Pacific's involvement.
11. We wish to make some comments on the Judge's conclusion that there was an enforceable agreement as to the distribution of funds from the logging under felling license A11076. Unfortunately the judgment does not identify all the relevant facts. It was common ground between the parties at trial that the logging licence had been granted on a wrong basis. This related to the customary ownership of the land. The logging on the land was therefore illegal, being without a lawfully granted felling license.
12. The purported agreement (there is doubt about whether all terms were agreed and therefore whether there was a concluded agreement) was between the appellants, Inter Port and Oceania.

It divided the proceeds of the illegal logging between the appellants, Inter Port, Oceania and the Government. Given the illegality of the logging there may be doubt about whether the parties to the illegality were able to divide up the proceeds amongst themselves. Asia Pacific claim the logs were theirs. We mention these matters to illustrate to the Judge who is to retry this case that the new case should be considered unaffected by the previous High Court judgment. In these circumstances the new trial should not be before the previous trial judge.

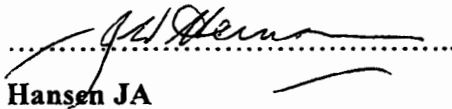
13. In terms of the agreement by counsel we make the following orders.

- (a) The Judgment and Order of Brown J in High Court Civil Case No. 210 of 2016 made on 19 October 2016 and perfected on 20 October 2016 is set aside.
- (b) APID is joined as party in High Court Civil Case No. 210 of 2016 and shall file and serve a Counter-Claim and/or Cross-Claim, with supporting Sworn Statement, by 31<sup>st</sup> May 2018 in relation to the following matters:
  - (i) the land Parcel No. 298-005-1 situated in West Rennell.
  - (ii) the Sub-lease over the Parcel No. 298-005-1 held by APID.
  - (iii) the Grant of Profit over Parcel Number 298-005-1 held by APID.
  - (iv) the Felling Licence No. A101693 issued by the Commissioner of Forest to APID.
  - (v) the Mining Lease over the Parcel No. 298-005-1 held by APID
- (c) The Messrs Soaika and Teikagei shall file and serve their answers to Cross-Claim by 22<sup>nd</sup> June 2018.
- (d) Inter-Port Trading and Agency and Oceania Trading Company shall file and serve their Answers to Cross-Claim by 22<sup>nd</sup> June 2018.

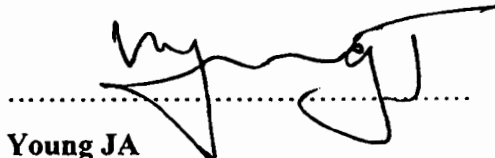
- (e) APID shall file its Reply To Counter-Claim and Reply To Cross-Claim by 13<sup>th</sup> July 2018.
- (f) This matter shall be listed for mention before a judge on a date to be fixed by the Registrar in consultation with Counsel for the parties.
- (g) The full proceeds of logs extracted from within Namalaga Concession and paid to Ocean Trading Co Ltd and Messrs Rex Soaika and Amos Teikagei by order perfected on 20 October 2016 be reimbursed and paid into a joint Solicitors' IBD Trust Account in the names of Solicitors for the parties forthwith.
- (h) That Penal Notice be attached to paragraph (g).
- (i) Costs be in the cause.



Goldsbrough P



Hansen JA



Young JA