

DALSOL LIMITED -v- THE ATTORNEY GENERAL

High Court of Solomon Islands

(Ward C.J.)

Civil Case No. 259 of 1991

Hearing: 23 January 1992

Judgment: 30 January 1992

J. Corrin for the Plaintiff

C. Ashley for the Defendant

WARD CJ: The plaintiff applies by originating summons for declarations as follows:-

1. *That the Plaintiff is entitled to a Notice of Completion of a Certificate of Approval to carry out logging in Satona and Tabalevu in Ward 3, West Guadalcanal, pursuant to the grant of approval of its application under the Forest Resources and Timber Utilisation Act (Cap. 90) (as amended) under Section 5G(2) thereof.*
2. *That the Plaintiff is not the owner of the Felling License No. TIM 2/9.*
3. *That the Notice referred to in paragraph 1 should not be restricted to or referred to as an extension of Felling License No. TIM 2/9.*
4. *That the restrictions and undertakings set out in Felling License no. TIM 2/89 should not be applied to the Plaintiff's Felling License or Notice of Completion.*
5. *That the Plaintiff is entitled to an independent quota of logs which may be felled within Ward 3, separate from any quota granted under Felling License TIM 2/9."*

The events that give rise to this case may be briefly stated.

On 2 September 1982 the Minister approved an agreement between a company, B.K. Maurice and Sons Ltd, and the customary landowners of certain parts of the Savulei Ward to log this land. A licence, number TIM 2/9, was granted to B.K. Maurice and Sons Ltd on 6th October 1982.

On 17th November 1983 B.K. Maurice and Sons Ltd and the plaintiffs entered into an agreement whereby the plaintiffs would carry out the logging operation for B.K. Maurice.

In 1984 it would appear that B.K. Maurice was in some trouble so the plaintiff wrote to the Conservator of Forests asking for an assurance that, if B.K. Maurice failed, the licence would be transferred to the plaintiff. The Conservator replied pointing out that the licence was not transferable and if B.K. Maurice lost the licence it would have to be re-applied for afresh.

In 1984 the plaintiff acquired 68% of the shares in B.K. Maurice.

In 1988 the plaintiff started to go through the procedures under the Forest Resources and Timber Utilisation Act for the grant of a licence in relation to the adjacent ward. It is agreed by the Attorney-General that all the necessary procedures have been satisfactorily complied with.

On 12th July 1991 the Conservator wrote to the plaintiff saying:-

"Extension of Felling Licence No. TIM 2/9

We are pleased to inform you that the necessary approval has been granted for the extension of your current felling licence as stated above.

By virtue of the approval being provided for in S.5Fyour above stated licence is hereby extended to cover SATONA and TABALEVU WARD in Ward 3 of Guadalcanal Province."

Following a meeting between the Financial Controller of the plaintiff and the Principal Forestry Officer, the plaintiff understood the suggestion this was an extension of an existing licence would be changed but, in September, a further letter was received referring again to an extension and pointing out that the licence would be subject to the same restrictions and undertakings as TIM 2/9 and the quota would be part of B.K. Maurice's quota under the earlier licence.

It is clear from the evidence that B.K. Maurice and Sons Ltd and the plaintiff company are two separate entities. Mr Ashley argues that the licence was transferred from B.K. Maurice and Sons Ltd to the plaintiff but there is no evidence of this whatsoever. The Dalsol application was a separate application by a separate company and was for a separate licence.

All the procedures have been carried out on that basis and it is agreed that the requirements of section 5F have been completed. The letter of 12th July 1991 clearly shows that the approval referred to in that section and section 5G(1) has been obtained.

By section 5G(2) the Conservator has no discretion left. He must in those circumstances notify the parties to the agreement of the completion of a certificate of approval of the agreement under section 5G(1).

I make the declaration sought in paragraphs 1, 2, 3, and 5 of the summons.

As far as paragraph 4 is concerned, I declare that any licence granted to the plaintiff company for Ward 3 is not subject to the restrictions and undertakings in Felling Licence No. TIM 2/9.

Costs to the plaintiff.

(F.G.R. Ward)
CHIEF JUSTICE