

MARK OURUSU & ANOTHER -v- ATTORNEY GENERAL & OTHERS &
WILSON KATOVAI -v- ATTORNEY GENERAL & OTHERS

High Court of Solomon Islands

(Palmer J.)

Civil Case No. 4 & 5 of 1993

Hearing: 21 October 1994

Judgement: 25 October 1994

P. Lavery for Both Plaintiffs

P. Afeau for 1st, 2nd & 3rd Defendant

J. Sullivan & T. Kama on behalf of Fourth Defendant

PALMER J: By notice of motion filed on the 5th of September, 1994, the Fourth Defendant seeks certain orders on the following grounds:

1. Upon the Fourth Defendant by its counsel undertaking not to rely on any previous proceedings under Part IIA of the Forest Resources and Timber Utilisation Act (Cap 90) in respect of land claimed by the Plaintiff in these proceedings (including any decision of the Choiseul Area Council on 2 December 1992 in respect of such land) and further undertaking to recommence all procedures under the said Part IIA should it wish to acquire timber rights in respect of such land, the interim injunction granted by this Court on 7 day of January, 1993 as continued by order dated the 23 day of February 1993 be discharged.

2. In the alternative a declaration that the said injunction is to be construed as being limited in its application to the land claimed by the Plaintiff in this action.

The brief history of this case is as follows. By summons (ex-parte) filed on the 5th January, 1993, the Plaintiff sought leave from the Court for an order of cartiorari to quash the decision of Choiseul Area Council of the 2nd december 1992 to adjourn and proceed with a meeting of the Council to determine timber rights. In the Statement pursuant to Order 61 Rule 2(2) of the high Court Civil Procedure Rules, filed on the 5th of January 1993, the Plaintiff contended that such a meeting can only be held as part of the procedures set out in the Forest Resources and Timber Utilization act as amended and be legally valid only prior to the granting of a licence to fell and extract timber.

It was contended by the Plaintiff that since a licence had been issued, that no power rests with the Council to proceed with such a meeting. A statement of claim filed on 5th of January 1993 sets out in more detail the claim of the Plaintiff.

By order dated 7th January, 1993, inter alia,

(i) leave was granted to the Plaintiff to apply for an order of certiorari to quash the decision of the Choiseul Area Council dated the 2nd of December 1992 to proceed with a timber rights meeting;

(ii) the Choiseul Area Council was restrained from holding a meeting on the 12th January 1993 or any similar meeting pursuant to section 5 of the Forest Resources and Timber utilization Act 1990 until an inter partes hearing on the 22nd February 1993;

(iii) the Fourth Defendant was restrained from making any application for consent to negotiate for timber rights over the land edged red on the map exhibited to the affidavit of Wilson Katovae filed on the 5th of January 1993;

(iv) the Fourth and the Fifth Defendant were restrained from entering into any negotiations for the granting of Timber Rights over the said land.

By order dated the 23rd of February, 1993, the order of the 7th January, 1993 were extended until trial or further orders of the court.

On the 16th of March, 1993, a notice of motion was filed in which 3 preliminary questions of law were posed for the Court to determine.

These were: "Whether the Forest Resources and Timber Utilisation (Amendment) Act 1990 as amended by the Forest Resources and Timber Utilisation (Variation of the Date of Commencement) (Amendment) Act 1991 and in particular section 3(a) thereof is a law for the compulsory possession of property or the compulsory acquisition of an interest in or right over property, inconsistent with section 8 of the Constitution and therefore void to the extent of such inconsistency?

(2) Whether, on the assumption that Eagon's licence would otherwise have been invalid (denied), section 3(a) is effective to validate such licence?

(3) Whether Eagon is entitled to enter into further timber rights agreements pursuant to the present part IIA or is restricted by its licence to its present agreements?"

In the judgment of this Court dated the 4th of June 1993, the Court held in respect of question (3), that the Fourth Defendant was entitled to enter into timber rights agreements pursuant to the present Part IIA. If there is any dispute, to this ruling, then the proper course to take is by way of an appeal.

By the notice of motion filed on the 5th of September, 1994, the Plaintiff seeks to be given an opportunity to re-commence all procedures as set out under Part IIA of the Forest Resources and Timber Utilisation Act, by providing an undertaking to that effect in exchange for the discharge of the injunction affecting the said piece of land.

The Plaintiff objects strongly to the proposed application, claiming that they have a right to be heard in respect of their claim for certiorari to quash the proceedings of the Choiseul Area Council on the grounds that it had acted ultra vires its powers.

I can appreciate the actions of the Fourth Defendant in lodging the application as a practical way of solving the delay that has been engendered by the Plaintiff's claim. And when one considers this approach in some detail, there is a lot of common sense behind it, because even if the proceedings of the Choiseul Area Council should be quashed, it does appear that the Fourth Defendant will or may decide to re-commence the procedure under Part IIA of the Forest Resources and Timber Utilization Act afresh. That should give the Plaintiff opportunity to be heard before the Area Council.

On the other hand, I can appreciate the refusal of the Plaintiff to go along with the proposal of the Fourth Defendant. There are issues raised in the statement of claim, which unless they are addressed now, may re-surface in other court proceedings, and therefore it would be of benefit now to have those issues, which as I understand the submissions of Mr Lavery, are quite similar, in view of the fact that they emanate from the same provisions in the Forest Resources & Timber Utilization Act. Mr Lavery therefore contends strongly that the legal issues raised will never be addressed by the Court, although the Fourth Defendants actions is a alternative approach to be considered.

The proper order to make in these circumstances is to allow the Plaintiff's to pursue their claim to conclusion, however, it must be made very clear that the rights pursued are personal to the Plaintiffs and their respective tribes. The claims have been brought in their private capacities on behalf of their respective tribes and over their respective customary lands. Accordingly it would be improper to assert rights over and above those private rights.

The orders sought under paragraph (1) of the Notice of Motion is accordingly denied, however the order sought under paragraph (2) is allowed.

There is one final matter which needs to be pointed out. It is becoming more obvious that the real issue behind this case is simply that we have a possible land dispute in existence between the various customary land owners over the areas of land in which the company is interested in acquiring timber rights. The proper course of action then it would seem to do is to allow the customary land owners sort out their ownership rights over their lands first before allowing the company to commence procedures for acquisition of timber rights.

Costs in the cause.

ALBERT R. PALMER

(A.R. Palmer)

JUDGE