

HAROLD HILLIE AND JONAH HITI (representing the dissenting members of the Nono tribe) -v- LETIPIKO BALESII, ALICK NGIRA, JONATHAN KEKEVU, MILIKADA SILAS (trading as J. P. Enterprise Limited), ATTORNEY-GENERAL AND JOY ITAIA Trading as Oceania Trading Company.

HIGH COURT OF SOLOMON ISLANDS
(F. O. KABUI, J.)

Civil Case No. 224 of 2001

Date of Hearing: 27th May 2002

Date of Ruling: 29th May 2002

Mr D. Hou for the Plaintiffs

Mr J. Apaniai for the 1st-4th Defendants

Mr G. Deve for the 5th Defendant

Mr P. Tegavota for the 6th Defendant

RULING

(Kabui, J.) By Originating Summons filed on 16th November 2001 and Amended on 8th May 2002, the Plaintiffs seek the following -

1. **A Declaration that the Form IV logging agreement dated 10th May 2001 and Licence No. A10102 issued to the 4th Defendant are null and void ab-initio insofar as they purport to cover Nono land, Ose land and the registered land described as parcel No. 143-008-1 on the basis that the procedure laid out under sections 8 and 9 of the Act was not followed in that:-**
 - (i) **The notice of the meeting was not given upon the receipt of form 1 application by the Western Provincial Government from the Commissioner of Forest within the time frame allowed;**
 - (ii) **The said notice was not given at all or;**
 - (iii) **The said notice was not given in a manner in which the Western Provincial Government could have considered most adequate and effective to the Public within the area the customary land is situated and, in particular to persons who reside within such area and appear to have an interest in the land, trees or timber in question;**

- (iv) **No meeting with the Landowners was ever held within the area of the customary land in question;**
 - (v) **If such a meeting was ever held at all (which is denied), it was not fixed within the time frame allowed;**
 - (v) **The Western Provincial Government did not give notice of its determination (Form II) in the manner specified by the Act as within sub-para (iii) hereof, and therefore the plaintiffs and other interested persons who were never consulted and who did not agree to the grant of timber rights were never consulted and who did not agree to the grant of timber rights were denied of their opportunity to appeal to the C.L.A.C.**
2. **Consequential to the grant of Order (1) above that it be further ordered that the operations of the defendants in the area be ceased forth with.**
 3. **That the 1st, 2nd, 3rd, 4th and 6th Defendants pay the Plaintiffs costs.**

Objection

At the hearing Counsel for the 1st-4th Defendants, Mr Apaniai, objected to the application by Originating Summons as being unprocedural in the first place. In the second place, he argued that the Plaintiffs lacked locus standi in bringing the action into Court in the first place. Counsel for the 6th Defendant, Mr. Tegavota, supported the Mr Apaniai in his objection. Counsel for the 1st-4th Defendants and for the 6th Defendant urged me to strike out the Plaintiffs' application on the basis of these points of objection.

The Background

The Plaintiffs commenced their action by a Writ of Summons and a Statement of Claim both of which were filed on 15th August 2001. The relief sought were declarations and a consequential injunction to restrain the 4th and 6th Defendants from entering Nono land or Ose land and felling/extracting timber from the said lands. The 5th Defendant entered appearance on 25th September 2001. The 1st-4th Defendants and the 5th

Defendant filed conditional appearances on 29th November 2001. The Plaintiffs filed an Amended Writ of Summons and an Amended Statement of Claim on 25th October 2001. Apart from the relief sought in the first place, the Plaintiffs claimed damages for trespass and conversion plus costs and interests. The Plaintiffs then filed an Originating Summons on 16th November 2001 seeking the determination of the matters set out in the Statement of Claim. The 1st-4th Defendants filed their defence on 21st November 2001. The 6th Defendant filed its appearance on 10th December 2001. The Writ of Summons and Statement of Claim were further amended and filed on 31st January 2002. The 1st -4th Defendants filed appearance to the Originating Summons on 20th February 2002. They then filed their amended defence on 6th May 2002. The Plaintiffs filed an Amended Originating Summons on 8th May 2002. The relief sought therein is a declaration plus an order to cease operation on the part of the Defendants.

The Plaintiffs' Case

Counsel for the Plaintiffs, Mr. Hou, argued that the 1st-4th Defendants and the 5th Defendant had abandoned their conditional appearances and therefore had submitted to the jurisdiction of the Court. He said it was too late for the 1st-4th Defendants to raise procedural points. He argued that the effect of Order 69 of the High Court (Civil Procedure) Rules 1964 "**the High Court Rules**" was that non-compliance with the High Court Rules would not render the Court proceedings void. He then invoked Order 28 of the High Court Rules by filing the notice of discontinuance in open Court. Counsel then went on to say that as regards the question of locus standi, the Plaintiffs clearly had locus standi. He argued that the Plaintiffs were not busy bodies meddling in other people's business but were persons who had genuine interest in Nono and Ose lands.

The decision of the Court

The allegation by the Plaintiffs is that sections 8 and 9 of the Forest Resources and Timber Utilization Act Cap. (40) had not been complied with by the Defendants. The particulars of the allegation are set out in the Plaintiffs' Statement of Claim. However, the Plaintiffs did not appeal the determination of the Western Provincial Executive made on 4th April 2000. This is confirmed by Mr. Maina the Clerk to the Western Customary Land Appeal Court by letter dated 19th June 2001, addressed to the Commissioner of Forest Resources. This fact shows that the Plaintiffs' case must necessarily be one that assumes the Plaintiffs to be members of the Nono tribe, which owns Nono land. It has to be fought on that basis. This assumption of membership of the Nono tribe is being disputed by the Defendants. The Defendants are saying that the Plaintiffs are not members of the Nono tribe and therefore cannot challenge the validity of the Timber Rights Agreement signed by the 1st -3rd Defendants on behalf of the Nono tribe. In other words, the Plaintiffs would have no locus standi so that they can be heard in a Court of law. I do not think the point here is one of locus standi as alleged by the Defendants. Rather, the point is one of jurisdiction of the High Court to arbitrate over a customary land dispute. The position in custom is that being members of a tribe, which owns customary land, confers upon the members of that tribe rights over that land. The position of the Plaintiffs in this regard is important to them but as I have said is under dispute. A dispute of this nature falls within the jurisdiction of the Chiefs and the Local Court than within the jurisdiction of the High Court. **(See Gandley Simbe's case and John Osiramo v. Mezach Aeonina Civil Case No.020 of 2000)**. As a matter of fact the dispute has already been through the Chiefs' forum. The determination by the Chiefs is being appealed by the Plaintiffs. There is nothing the High Court can do for the moment but to await the outcome of the dispute. If the Plaintiffs do win their case in the Local Court, they will obviously proceed with their action. If not, they may quit. The Plaintiffs cannot force this Court to hear them on a matter that this Court has no power to deal with. Lack of jurisdiction means this Court is not the correct forum to hear the Plaintiffs' action at this stage pending the resolution in the Local Court of the dispute over the Plaintiffs' claim that they

are also members of the Nono tribe which owns Nono land. This being the case, the Plaintiffs should not have requested a hearing for their Originating Summons in the first place. Having done so in this case has wasted a lot of time for the Court and Counsel for both parties. In my view Counsel for the 1st-4th Defendants acted too early when he raised objection to the Plaintiffs' application. He should have waited for his turn and then attack the Plaintiffs' application. In this way Counsel for the Plaintiffs would have had the time to state his case in full. Whereas in this case, Counsel for the Plaintiffs was forced to state his case in the reverse. He may feel that the point raised was only a preliminary point without realizing that locus standi which was a substantive point in the Plaintiffs' case was also raised. The locus standi point alone was determinative of the Plaintiffs' application. I have in this ruling put aside locus standi as not being relevant in this case. With this also goes the objection on procedure. This case is decided simply on the basis that this Court has no jurisdiction to entertain the Plaintiffs' application at this stage. I do not think any injustice has been done to the Plaintiffs by arguing their case in the reverse. I do not also need to rule on Counsel for the Plaintiffs' application under Order 28 of the High Court Rules. The effect of this ruling is that the Plaintiffs would have to hold on for a while pending the outcome of the Local Court proceedings. I think in that regard the Plaintiffs action has to be stayed for this reason. I so order accordingly under Order 63 rule 5 of the High Court Rules. In the result, the Plaintiffs' application is dismissed with costs.

F. O. Kabui

Judge