

**VALAHOANA COMPANY INTEGRATED DEVELOPMENT -V-
LEEROY JOSHUA AND OTHERS**

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

Civil Case No. 160 of 2002

Date of Hearing: 1st July 2002
Date of Ruling: 2nd July 2002

Mr P. Tegavota for the Plaintiff/Applicant

RULING

(F.O. Kabui, J): This is an exparte application by the Plaintiff for the following orders-

1. That an interim injunction be issued against the first to the eight defendants restraining the defendants themselves, their servants, agents persons authorized by the defendants, members of their tribe and any person from villages where the defendants are currently residing from carrying out all or any of the following acts:
 - (a) blocking any logging road within the land covered by the plaintiff's logging agreement and licence,
 - (b) preventing the felling, extraction and the hauling of logs from the plaintiff's logging concession,
 - (c) threatening the plaintiff's employees and those of its contractor by any means whatsoever including physical violence to such employees whether while carrying out their work or not,
 - (d) causing damage to any machineries and logging equipment within the plaintiff's concession including the removal of such machineries and equipment without the permission of the plaintiff and or its contractor,
 - (e) preventing the plaintiff and or its contractor from carrying out any of their work whatsoever relating to the plaintiff's logging operation within its concession,
 - (f) entering the plaintiff logging concession or felling areas including its logging camp at Geppae for the purpose of carrying out any act of whatsoever nature which will interfere with the plaintiff's logging operation within the area, and

- (g) **the carrying out of any act whatsoever that will have the effect of interfering with the plaintiffs' logging operation in the area either directly or indirectly.**
- 2. **Such other or further orders as the Court sees fit.**
- 3. **Costs.**

The Background

The Plaintiff was issue actor is Maximus International Limited. The present contractor came in under a Technology and Management Agreement signed on 27th September 2001. Harvesting of timber commenced on 25th May 2002. Logging equipment and machinery had been landed at the Gepai camp to enable logging operation to commence and continue thereafter. On 3rd June 2002, a roadblock was set up on the head road towards Valahoana and Patukae lands. The 6th, 7th and 8th Defendants on the instructions of the 1st to 5th Defendants set up the roadblock. They were armed with knives and threatened to harm any workers who went beyond the roadblock. They also threatened to burn the logging equipment and machines etc. if logging operation continued. The conduct of the Defendants has caused fear to the contractors employees. The contractor is also losing SBD100,000.00 a day as a direct result of the Defendants' conduct.

The Relief Sought

In the Statement of Claim, the Plaintiff claims that it is entitled to a permanent injunction against the Defendants. There is no dispute about the validity of the logging licence or the validity of the Timber Rights Agreement. Ownership of land is not an issue. What then is the issue? The Plaintiff is obviously basing its claim on the lawfulness of its licence and the Timber Rights Agreement. The Plaintiff is a licensee in the areas of land covered by its licence and the Timber Rights Agreement. There is therefore a triable issue to be determined in the main dispute between the parties although the Defendants have not so far identified their claim. The triable issue here is whether or not the Plaintiff as a licensee can sue for trespass at common law as well as in respect of customary land. The contractor should also be a party to this application because its employees and logging equipment and machinery are directly affected by the conduct of the Defendants. Having said that, can it be said that the Plaintiff is entitled to be granted the orders sought?

The Evidence Adduced

The evidence so far is by Mr. Hape and Mr. Aleve. They are both directors of the Plaintiff. The affidavit sworn and filed by Mr. Hape says nothing about the reasons for making this application other than providing useful background information. Paragraph 5 of the affidavit sworn and filed by Mr. Aleve is hearsay although I can accept it because he reveals the source of his information. However, the source of his information is vague and general in substance. He

does not reveal by name the employee(s) who told him what had happened. Affidavit evidence by some of the contractor's employees would have been useful evidence on the point in issue. There is a tendency in these cases that the words of the big or important men in the Company that holds the logging licence are produced in Court as evidence to convince the Court. The Court is only concerned with relevant and direct evidence produced in the correct manner from any person who was a witness to the facts. Company directors should not reproduce direct evidence from others in an attempt to convince the Court. In these cases, the contractor is often shielded away from litigation perhaps to avoid paying costs. I am of course mindful of the fact that this is only an interlocutory application wherein hearsay evidence can be allowed under Order 40, rule 3 of the High Court (Civil Procedure) Rules 1964 "**the High Court Rules**". Rule 3 is however not open-ended; the sources and grounds for believing the hearsay information must be stated. To gloss over this rule for the sake of convenience cannot be accepted. The Plaintiff has failed to make out a case for an interim injunction against the Defendants. I therefore dismiss this application.

F. O. Kabui
Judge