

**SOMMA LIMITED -v- GOODWILL INDUSTRIES LIMITED**

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

Civil Case No. 178 of 2000

Date of Hearing: 1<sup>st</sup> October 2002

Date of Ruling: 4<sup>th</sup> October 2002

*Mrs. Tongarutu for the Applicant*

*Mr D. McGuire for the Respondent*

**RULING**

**Kabui, J.** This is an application by the Applicant filed on 23<sup>rd</sup> August 2002 seeking the following orders-

1. the Respondents Summons application for Stay of Proceedings filed on 6<sup>th</sup> July 2000 be dismissed for want of prosecution and;
2. the Applicant's Originating Summons filed on 7<sup>th</sup> June 2000 and Amended Originating Summons filed on 23<sup>rd</sup> August 2000 proceed to trial or;
3. an Order for directions in the conduct of resolving the dispute by arbitration between the parties as the Court sees fit to make;
4. an Order restraining the Respondent from removing the machineries from the logging operation site on Makira;
5. the Solicitors for the Respondent be dismissed from acting for the Respondent;
6. any further order the Court deems fit to make.

**Brief Background**

The Applicant filed on 7<sup>th</sup> June 2000 an Originating Summons seeking certain declarations/orders. The Summons was heard on 12<sup>th</sup> July 2000 and was adjourned and thereafter to be re-listed for hearing. The Applicant later filed on 23<sup>rd</sup> August 2000 an Amended Originating Summons seeking the same declarations/orders with variations. The Amended Originating Summons was never listed for hearing. The Summons filed by the Respondent on 6<sup>th</sup> July 2000 was heard on 18<sup>th</sup> August 2000 but was adjourned for 40

days and thereafter to be re-listed for hearing. The matter was never re-listed until ordered by this Court in its ruling on 14<sup>th</sup> August 2002. This application is the re-listing of the matter for hearing.

### **Orders sought in the Application**

Order 1 above of this Summons seeks to dismiss the Summons filed on 6<sup>th</sup> July 2000 for want of prosecution. The Respondent did not oppose this and so I grant it accordingly. This then clears the way for me to consider the rest of the orders sought in this application. The rest of the orders are not considered in the order of appearance in the Summons but according to the issues they raise. So I start with order 3 and conclude with order 4.

As correctly pointed out by Mr. McGuire, order 3 in the Summons could not stand against the dismissal of the Summons filed on 6<sup>th</sup> July 2000 that took away the need for arbitration. Arbitration would no longer be an issue for the parties in this case. I would not grant order 3 in this Summons for that reason. I refuse it. Order 5 seeks the removal of Sol-Law as Solicitors for the Respondent on the ground that Sol-Law were also the Solicitors for Pan Pacific Parts Ltd., a party in Civil Case No. 219 of 2000. Sol-Law became Solicitors for the Respondent on 29<sup>th</sup> August 2001. There is no evidence to prove this allegation by the applicant. No details were provided in the affidavit of Audy Mamaloni on this point on the existence of any conflict of interest on the part of Sol-Law. I also dismiss order 5 in this Summons. Order 2 is unnecessary. Awich, J. in adjourning the hearing of the Originating Summons on 12<sup>th</sup> July 2000 directed that the Registrar re-list the case as soon as possible. This was never done. The Applicant having filed an Amended Originating Summons on 23<sup>rd</sup> August 2000 never requested a hearing date from the Registrar. There is nothing to stop the Applicant from seeking a hearing date from the Registrar for the hearing of the Amended Originating Summons. This application should really be to remove the Respondent's Summons filed on 6<sup>th</sup> July 2000 to clear the way for the Originating Summons to proceed. I would not grant order 5 in this Summons. I do the same for order 4. There is no evidence to persuade me to grant this order 4. Apart from granting order 1 above this Application is dismissed with costs. In order to move the case forward, I direct that the Applicant re-list the Amended Originating Summons for hearing within 14 days from today in default of which the Applicant's Amended Originating Summons be automatically struck out. I order accordingly.

**F. O. Kabui**  
**Judge**