

# HIGH COURT OF SOLOMON ISLANDS

ROCKSON SENU, HAPPY CHRISTMAS, TERRY LIVA, RONALD LADA, JEFFREY SIMBE AND MISAKE NAGOTO (Suing as landowners and Representing the Nonoulu landowners or Tribe) -V- DENNIS LOKETE, ALEPITU OPA, BURNELEY KIMITORA, ENOCH LASI AND ROCKY JEPA (Members of the Nonoulu landowners or Tribe)

Civil Case Number 18 of 2003

Honiara: Brown PJ

*Summons – injunctive relief – discretionary – cause of action better heard in local customary forum – no grounds shown for ex parte orders –*

*[Forest Resources and Timber Utilisation Act (Cap 90)]*

On an ex parte summons to restrain the defendants from receiving royalty payments for logs, where both the Plaintiffs and Defendants are of the same tribe, it would seem that the defendants have not shared moneys paid them. There was no suggestion that a Ministers Certificate approving logging agreement had not issued:-

- Held:*
1. *A judge should be wary of exercising his discretion in such matters at all, because it can cause conflict of reasoning in the Court.*
  2. *Where there is no issue with the appropriateness of the certified agreement for logging, royalty moneys lose their character as such in the hands of the landowner's representatives to whom paid or due.*
  3. *The dispute is more appropriately categorised as one of custom.*
  4. *The High Court is not the appropriate forum in the first instance.*
  5. *Since the originating process fails to plead sufficient particulars to disclose a cause of action, in custom, justiciable by the Court, the action is stayed.*

6. *The ex parte summons for injunctive orders is struck out since no sufficient grounds have been shown to warrant the exercise of discretion.*

*Case Cited: Beti, Sili & Paia (Representatives of the Voramali Tribe) -v- Allardyce Lumber Co. Ltd and Others, Court of Appeal 5 of 1992, date of Judgment 16<sup>th</sup> September 1992.*

**Date of Hearing:** 13<sup>th</sup> February 2003

**Date of Judgement:** 19<sup>th</sup> February 2003

*Mr Tegavota for the Applicants/Plaintiffs  
No Appearance of the Respondents/Defendants*

### **SUMMONS**

This urgent ex parte application for injunctive orders come by way of summons seeking to restrain the defendants, from receiving any royalty payment from current log shipment or any future shipments, or making any advance of royalty moneys from J.P. Enterprises Limited.

The plaintiffs and defendants are both described as Nonoulu landowners or Tribe.

This is no case, under the Forest Resources and Timber Utilisation Act, (the Act) calling into questions the efficacy or otherwise of the regulatory grant of logging rights.

It must be presumed, therefore, that the defendants are the proper persons to whom moneys are paid under a certified logging contract. The Act codifies the laws relative to logging. There is a time limited to appeal steps in the process, but the time for appeal has long passed. (CAC 5-92. CA/Pg 5 - "Section 5 D (1) entitled any person

aggrieved by any act on determination of the area council under s. 5c to appeal to the Customary Land Appeal Court)".

This case, then, may be described as a customary dispute over the distribution of moneys received or to be received, from logging. The Statement of Claim recites that the plaintiffs "have been denied by the defendants the right to receive their shares of royalty from blocks of land allocated to their tribe"

The plaintiffs do not plead any contractual right to royalties – it is a customary claim, to a share.

"O53 r. 6(1) sets out the circumstances where this Court may entertain an application for injunctive relief".

*"The Court may grant a mandamus or an injunction or appoint a receiver by an interlocutory order in all cases in which it appears to the court to be just or convenient to do so".*

This Court has time and again considered the principles for granting interlocutory orders as to injunctions. The principles are set out in the White Book (The Annual Practice) of Supreme Court Rules UK, which, as act 1961, became our High Court Rules. Now there is a problem for these principles allows a judicial discretion, and Mr Suri, the President of the Bar Association, touched on the problem in his address on the Occasion of the Opening of the Law Year. Judges of this court do cause conflict in their manner of exercising such discretion. The Latin dictum *Optima est lex quae minimum relinquit arbitrio judicis, optimus judex qui minimum sibi* (the best system of law is that which leaves the least to the discretion of the judge; the best judge is he who leaves the least to his own discretion) is good guidance.

In this case members of the same tribe seek this courts interference in a matter of custom, the appropriate way to distribute moneys belonging to the group, after a statutory payment.

Once agreed, pursuant to s.5c (1) (b), (2) and (3), of the Act, and certified by the Minister, money paid to or to be paid to the persons lawfully entitled loose its character as "royalties". Any argument intra-clan, then, could be categorised as one for "damages" for breach of customary obligation but no legal cause can be maintained to independently treat the "money" or sum of money as a chose in action capable of further direction or division. There is consequently no discretion to be exercised, for the originating process fails to show a proper cause of action at all.

THE SUMMONS FOR EX PARTE ORDERS IS STRUCK OUT

The Statement of Claim, in para 4, alleges that the defendant have "used or converted the royalty funds for themselves and for their own use" instead of "distributing the said royalty to the plaintiffs and other members of the Nonoulu Tribe that are entitled to receive the payment".

This plea clearly raises the very issue of customary devolution in such circumstances. It is not a cause, which should by-pass customary forums.

The appropriate course is to stay further action in respect of the originating summons. Such stay shall remain in effect unless and until all parties satisfy the court on motion, there is a justiciable issue of law to be heard. Questions of fact such as who is entitled, and when he should benefit, should be resolved at the place by the customary forums.

Order:

1.

Originating summons stayed.

2.

Exparte Summons for interlocutory relief struck out.

J.R. Brown  
JUDGE