

ARNOLD MICAH MOVENI AND OTHERS -V- ALLARDYCE LUMBER COMPANY LIMITED

HIGH COURT OF SOLOMON ISLANDS
(KABUI, J.)

Civil Case No. 304 of 2002

Date of Hearing: 29th January 2003
Date of Judgment: 06th February 2003

Mr. A. M. Moveni the Plaintiff in person
Mr J. Sullivan for the Defendant

Kabui, J. A Summons was filed by John Still Dorah on 29th November 2002 as a spokesman for the Plaintiffs who in persons were Arnold Micah Moveni and Others. The claim indorsed on the Summons was for the sum of \$17,238.18 plus 8% interest as from 22nd February 1994. This was stated in the form of a general indorsement. The Summons was obviously a Writ of Summons though described in the heading as a Summons. A statement of claim was also filed on the 29th November 2002. The claim was for the sum of \$17,238.18 being royalty money due and payable to the Plaintiffs plus interest and cost. The relief sought was stated as specific performance. An amended Writ of Summons was filed on 7th January 2003 followed by an amended statement of claim filed on that same day. Also filed on 7th January 2003 was a summons fixing the date of the hearing of the claim being 29th January 2003 at 2:30 pm. Both the amended Writ of Summons and statement of claim were signed by Arnold Micah Moveni. The claim was specially indorsed for the sum of \$29,394.18 being the sum of \$17,238.18 plus \$11,856.00 interest and \$300.00 cost. The relief sought was again specific performance.

The position of the Defendant

Counsel for the Defendant, Mr Sullivan, argued that the Amended Writ of Summons was irregular because it had not been sanctioned by the leave of the Court under rule 1 of Order 30 of the High Court (Civil Procedure) Rules 1964 "the High Court Rules".

I do recognize that the Amended Writ of Summons and statement of claim filed on 7th January 2003 have effectively replaced the first Writ of Summons and statement of claim. (See **Warner v. Sampson** [1959] 1 A. E. R. 120). However, rule 1 of Order 30 of the High Court Rules clearly requires the leave of the Court for any amendment of indorsement or pleading to be effected by either party to the proceeding. As argued by Mr. Sullivan, the Plaintiff had not fulfilled this requirement in this case and so the Amended Writ of Summons was irregular and must be set aside. I think the amended statement of claim is not affected because rule 2 of Order 30 cited above does allow amendment without leave although the amended statement of claim in this case was based upon the Amended Writ of Summons under attack by the Defendant. If I set the Amended Writ of Summons aside, the first Writ of Summons remains the Writ of Summons upon which the Plaintiff's claim is based. However, this Writ of Summons too was under attack by the Defendant for the reasons set out in the Defendant's Summons. The problem with Mr. Moveni is that he is a layman and so he does not know the rules of procedure in this Court. Most likely, he was not aware of the requirement for leave under rule 1 of Order 30 of the High Court Rules. He did not apply for leave to amend the first Writ of Summons before the hearing or at the hearing. He had missed the opportunity to do that for the benefit of his case. I will have to set aside the Amended Writ of Summons for non-compliance with rule 1 of Order 30 of the High Court Rules. In fact, the Amended Writ of Summons was, in substance, a repeat of the first Writ of Summons except that it had been filed by Mr. Moveni himself. He does

not therefore seem to miss a lot but for Mr. Sullivan's argument that the first Writ of Summons was irregular for contravening section 14 (i) of the Legal Practitioners Act and rule 4 of Order 3 of the High Court Rules. These two arguments are contained in the Summons filed by the Defendant on 14th January 2003. The Defendant's wish is to set aside both the first Summons and the Amended Writ of Summons upon which the Plaintiff's claim was based. I will consider the alleged non-compliance with rule 4 of Order 3 of the High Court Rules first as argued by Mr. Sullivan. Rule 4 states-

"...If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, the indorsement shall show, in manner appearing by such of the forms in Appendix A, Part 111, as shall be applicable to the case, or by any other statement to the like effect, in what capacity the plaintiff or defendant sues or is sued..." This rule governs actions instituted by or against executors, trustees in bankruptcy and trustees under settlement upon marriage. I do not think it applies to actions brought by tribes to enforce rights over customary land or to establish rights of membership of a tribe. Any action commenced in the Court by a member of a tribe or some members of the tribe is representative action more than being a trustee. The reason is that in the ownership of customary land, each member of the tribe has a blood-connection (genealogy), which entitles that member to the common ownership of land owned by the tribe. Likewise, the blood-connection (genealogy) entitles the person to be a legitimate member of the tribe thus entitling that person to claim rights to the land. So it is more accurate to speak of a representative of the tribe than imputing a fiduciary relationship and calling the representative, a trustee. I discussed these concepts in some length in the case of **Marlon Kuve v. Herrick Rago and Others and Bava Island Development Limited and Happy Islet Logging Company Limited**, Civil Case No. 232 of 1999. I think the correct procedure to adopt is found in rule 8 of Order 17 of the High Court Rules. Paragraph 3 of that rule states-

"...Any person entitled in accordance with custom, to represent any community, line or group of natives, may sue and be sued, on behalf of or as representing such community, line or group..." I went further and said in Marlon Kuve's case above that any spokesman appointed by the members of the tribe to speak on the tribe's behalf would have standing in any action in any court of law. The first Writ of Summons filed on 29th November 2002 had been signed by John Still Dorah describing himself as the spokesman for the Plaintiff. The Plaintiff in that Summons was Mr. Arnold Micah Moveni on behalf of others. John Still Dorah is clearly the representative spokesman for the Plaintiff and others of his tribe. I do not think Mr. Sullivan's argument on this point holds any water. I think the Plaintiff's spokesman in the person of John Still Dorah did have standing on being appointed as such and was entitled to file the Summons on 29th November 2002 in this action. This brings me to Mr. Sullivan's next point. Did the Summons contravene section 14(1) of the Legal Practitioners Act? Subsection 1 states-

"...No unqualified person shall act as a legal practitioner or as such sue out any writ or process or commence, carry on or defend any action, suit or other proceeding, in the name of any other person, in any court of civil or criminal jurisdiction or act as a legal practitioner in any cause or matter, civil or criminal, to be heard or determined before any court..." In this regard, Mr. Sullivan cited the case of **National Bank of Solomon Islands Limited and Others v. Central Bank of Solomon Islands**, Civil Case No. 286 of 2002 as the case on point in this case. In that case, Sol-Law a firm of solicitors and barristers in Honiara acted as town agents for Freehills Solicitors, a firm of Solicitors based in Brisbane, Australia, and issued a Writ of Summons on behalf of the Brisbane firm of Solicitors in anticipation of Counsel from Australia being admitted in Solomon Islands. In that case, the firm of Solicitors in Brisbane described themselves as advocates for the plaintiff. They were foreign lawyers and could not act for a litigant in Solomon Islands until admission was obtained to practice in Solomon Islands. They were therefore unqualified persons until their position was regularized by formal admission in Solomon Islands. This is not the case here. John Still Dorah described himself as a spokesman for the Plaintiff. There is no evidence to suggest that he earns his living by pretending to be a lawyer. Even a local lawyer who is not admitted to practice law can be a duly appointed spokesman for his tribe so long as he or she does not hold himself or herself out as a practicing lawyer

for gain. I do not think the first Writ of Summons had been issued in contravention of section 14(1) of the Legal Practitioners Act. I reject that argument. I also reject the argument that the same Writ of Summons had been issued in contravention of rule 4 of Order 3 of the High Court Rules. This means that the first Writ of Summons remains intact as it is. There is however a problem. The order sought in the Statement of Claim and the Summons filed by the Plaintiff is specific performance under rule 1 of Order 15 of the High Court Rules. This is obviously a mistake. I cannot make the order the Plaintiff wants because there is no agreement to be performed. As I understand it, the Plaintiff wants to recover monies being held by the Defendant as royalties pending the resolution of the issue of ownership of land between the Plaintiff and his tribe and another tribe during logging operation by the Defendant on North Vella La Vella in 1994. The other tribe may well claim the same monies as well. The proper procedure for this sort of case seems to be that prescribed in Order 59 of the High Court Rules. That is, relief by way of interpleaded may be granted on application. I will not make the order sought by the Plaintiff in his Summons. The application is refused. There will be no order as to costs. I would suggest that Mr. Moveni further consults a Solicitor as to the rights of his tribe.

F. O. Kabui
Judge