

**JOHN NENETE -V- ATTORNEY-GENERAL, COMMISSIONER OF FOREST RESOURCES AND MIGA INTERGRATED DEVELOPMENT COMPANY**

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

Civil Case No. 294 of 2001

Date of Hearing: 5<sup>th</sup> May 2003  
Date of Judgment: 13<sup>th</sup> May 2003

*Mr D. Tigulu for the Plaintiff*  
*Mrs A. Kingmele for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants*  
*Mr P. Tegavota for the 3<sup>rd</sup> Defendant*

**JUDGMENT**

**Kabui, J:** The Plaintiff by a Notice of Motion filed on 3<sup>rd</sup> March 2003 seeks the following orders-

1. That the Deed of Release signed by the parties on the 10<sup>th</sup> January 2002 and incorporated into the Consent Order filed herein on the 18<sup>th</sup> January 2002 and perfected on the 22<sup>nd</sup> January 2002 be struck out on the grounds that-
  - (a) the Deed of Release was a nullity on the ground of non est factum or mistake;
  - (b) the Consent Order consequently obtained was an abuse of the court process.
2. The Plaintiff's Originating Summons filed on the 15<sup>th</sup> November 2001 be re-listed for hearing on a date to be fixed by the Registrar of the High Court;
3. The Third Defendant pays the Plaintiff's costs of and connected with this application;
4. Such other orders or directions the Court deems necessary to make.

Service of the Notice of Hearing.

At the hearing on 5<sup>th</sup> May 2003, Counsel for the 3<sup>rd</sup> Defendant, Mr. Tegavota, was not present in Court. There was the question as to whether or not he had been served with the Notice of Hearing issued on 30<sup>th</sup> April 2003 by the Registrar of the High Court. Counsel for the Plaintiff, Mr. Tigulu and Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, Mrs. Kingmele, had each received a copy of the Notice of Hearing. Both Counsel were unable to tell me why Mr. Tegavota was absent. They both assumed that he had cleared his pigeon hole and was already in possession of his copy of the said Notice of Hearing. I then adjourned the hearing to 2pm to allow time to establish whether Mr. Tegavota had indeed received the Notice of Hearing. At 2:00pm when the hearing resumed, Mr. Feratalia of the High Court Registry gave oral evidence from the witness-box to say that he had placed a copy of the Notice of Hearing regarding this case in Mr. Tegavota's pigeon hole on 30<sup>th</sup> April 2003. He said that when he checked the pigeon hole the next day it was empty suggesting that Mr. Tegavota had cleared it. I cannot say whether this was proper service but certainly there was proof that Mr. Tegavota had in fact collected his copy of the Notice of Hearing regarding this case. On this basis, I allowed the Plaintiff to proceed with his case in the absence of the 3<sup>rd</sup> Defendant and its Counsel, Mr. Tegavota.

### **The Facts.**

The facts in this case were set out in my judgment delivered on 26<sup>th</sup> February 2003 in this same case. I need not repeat them.

### **The Issue.**

The issue here is whether or not the Plaintiff is bound by his signature to the Deed of Release in that the content of that Deed of Release did represent his agreement and understanding of the content thereof.

### **The Law.**

The law was also discussed in that same judgment. I also need not repeat it for the purpose of this judgment.

### **The Evidence.**

The Originating Summons filed on 5<sup>th</sup> November 2001, was on the instruction of the Plaintiff. The issues raised in that Originating Summons were to do with the conduct of the Western Provincial Executive in administering the wrong law to process the 3<sup>rd</sup> Defendant's application for timber rights which led to the 3<sup>rd</sup> Defendant entering into a Standard Logging Agreement with Miqa customary landowners followed by the issue of a Logging Licence. The Plaintiff was one of the persons who opposed the logging operation on Kaneporo land on behalf of the Kaneporo tribe. Opposition by the Plaintiff greatly worried the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. Officials of the 3<sup>rd</sup> Defendant

operation on Kaneporo land on behalf of the Kaneporo tribe. Opposition by the Plaintiff greatly worried the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. Officials of the 3<sup>rd</sup> Defendant had earlier approached the Plaintiff and attempted to persuade him to drop his attitude towards them. At one stage, one Alfred Vilaka, the Secretary to the Board of Management of the 3<sup>rd</sup> Defendant, promised \$10,000.00 to the Plaintiff after the Plaintiff had filed the Originating Summons in the High Court. One, Chan Chee Min, was a former employee of Sylvania Products (S.I.) Ltd. which was a candidate contractor for the logging operation. Subsequently, Orion Limited became the contractor without the knowledge of the Plaintiff. It began to operate on Kaneporo land. One, Chan Chee Min then became an employee of Orion Limited. Whilst in Honiara, the Plaintiff sought financial help from one Chan Chee Min in the sum of \$500.00 for the purpose of meeting the cost of returning home from Honiara. One, Chan Chee Min told the Plaintiff to contact him at the Honiara Hotel on 10<sup>th</sup> January 2002 for that purpose. On that day, one Chan Chee Min gave to the Plaintiff at the Honiara Hotel the sum of \$500.00. The Plaintiff signed for this sum on a cash voucher dated 10<sup>th</sup> January 2002. Whilst in conversation with one Chan Chee Min at the Honiara Hotel, he saw a man walking up towards them. On reaching them, one, Chan Chee Min gave that person a document which that person perused and then handed back to one Chan Chee Min. One, Chan Chee Min then asked the Plaintiff to sign that document and that other person also signed the same document. That other person then left. The Plaintiff then left the Honiara Hotel at some point in time. At this juncture, it is pertinent to quote the following paragraphs of the Plaintiff's affidavit filed on 16<sup>th</sup> October 2002 in support of this application-

**“...5. In signing the document I had thought it was something to do with the \$500.00 I had received from Mr. Chan. That document which I later learnt to be the Deed of Release was never explained to me. I was advised to sign the Deed of Release without really knowing its contents. No other person was present when I signed the Deed of Release in the presence of that unknown person and Mr. Chan. After signing the deed of release I was not given a copy of it. A copy of the Deed of Release is now produced and shown to me and exhibited hereto as “JN1”.**

**6.. Few days after I signed the Deed of Release I enquired about the promised \$10,000.00 with Mr. Chan. He instead advised me to see the Third Defendant for the money. In fact I was present with Mr. Chan at the Honiara Hotel when he contacted the Secretary by telephone in Gizo, Western Province. Mr. Chan then advised me to see the Third Defendant. I never followed up the advice as I realised that I was being fooled around by the Third Defendant and its contractor's officials like Mr. Chan. I then sought legal aid at the Public Solicitors Office to pursue my case again as Pacific Lawyers would not act for me any further.**

**Court on the 22<sup>nd</sup> January 2002 was therefore obtained without my consent and should be considered a fraud and abuse of the court process. A copy of the Consent Order is now produced and shown to me and exhibited hereto marked "JN2."**

The affidavit filed by one, Chan Chee Min, on 6<sup>th</sup> November 2002 is revealing on the facts. In fact, one, Chan Chee Min had an office at the Honiara Hotel at the relevant time. He had been instructed by the Board of Management of the 3<sup>rd</sup> Defendant to negotiate with the Plaintiff for the purpose of settling the Plaintiff court action out of court. In pursuance of his instruction, he instructed an unnamed Solicitor to draft a Deed of Release. After the draft was done, he called up the Solicitor for the 3<sup>rd</sup> Defendant from Gizo to come to Honiara. He showed the Solicitor the draft Deed of Release when the Solicitor got to Honiara. That Solicitor made some changes to the draft and then the final Deed of Release was done. That Solicitor then told him that any discussion of the terms of the Deed of Release would have to be done with the Plaintiff. That Solicitor suggested that a Magistrate be obtained to explain the terms of the Deed of Release to the Plaintiff. That Solicitor then arranged for Magistrate, Upwe, to explain the terms of the Deed of Release. Magistrate, Upwe, did explain the terms of the Deed of Release to the Plaintiff at the Honiara Hotel on 10<sup>th</sup> January 2002. One, Chan Chee Min also explained to the Plaintiff the purpose of the Deed of Release. The Plaintiff nodded his head and then signed the Deed of Release in the presence of Magistrate, Upwe. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants signed the Deed of Release at a later date also in the presence of a Magistrate. Magistrate, Upwe, did file an affidavit on 7<sup>th</sup> November 2002 in which he explained his role. He said it was Mr. Tegavota who persuaded him to go to the Honiara Hotel. He said that on his arrival at the Honiara Hotel, he saw the Plaintiff. One, Chan Chee Min then gave him a copy of the Deed of Release which he perused for a few minutes and then explained the content thereof to the Plaintiff. He said he had his doubt whether the Plaintiff did really understand the content of the Deed of Release. He also said he doubted that the Plaintiff's interest was well protected in the Deed of Release.

### **The determination of the issue.**

There are two aspects of the issue to be determined by the Court. They are the Deed of Release and the Consent Order based upon the terms of the Deed of Release.

#### **(a) The Deed of Release.**

There is no dispute that the Plaintiff did sign the Deed of Release on 10<sup>th</sup> January 2002 at the Honiara Hotel. The Plaintiff however did not say that Magistrate, Upwe, did explain the contents of the Deed of Release before he signed. I believe the evidence on this point is that he did explain the content of the Deed of Release before the Plaintiff signed it. However, the Plaintiff in his subsequent affidavit filed on 18<sup>th</sup> November 2002 did explain that Magistrate, Upwe, did not advise him as to his rights under the Deed of Release. The implication is that though Magistrate, Upwe, might have

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that time. The Deed of Release would obviously be fundamentally different from any document that says anything about the sum of \$500.00 the Plaintiff received from one, Chan Chee Min. I reproduce hereunder the Deed of Settlement, the effect of which was a Deed of Release-

**“DEED OF SETTLEMENT.**

**THIS DEED** is made this 10<sup>th</sup> day of JANUARY 2002.

**BETWEEN: JOHN NENETE** of Jamia Village, Vella La Vella, Western Province, Solomon Islands ( hereinafter called the ‘Releasor’) of the first part;

**AND: ATTORNEY-GENERAL** of P. O. Box 111, Honiara (hereinafter called the first Releasee) of the second part;

**AND: COMMISSIONER OF FORESTS** ( hereiafter called the second Releasee) of the third part;

**AND; MIQA INTEGRATED DEVELOPMENT**

**COMPANY LIMITED** of P. O. Box 95 Gizo Western Province, Solomon Islands( hereiafter called the third Releasee) of the fourth part;

All of whom are hereafter referred to as the “Parties.”

**WHEREAS:**

- A. By Writ of Summons and Statement of Claim filed in Civil Case No. 294 of 2001 the Releasor claimed against the First, Second and Third Releasor respectively certain relief as contained in the said Statement of Claim ( hereinafter called the ‘Claims’).
- B. Without any admission of liability in any manner whatsoever on the part of any of the first, second and third releasesees, the parties are desirous of resolving the claims in an amicable manner and upon the terms herein contained.

**NOW THIS DEED WITNESSETH** as follows:-

1. In consideration of the Third Releasee paying the sum of Ten Thousand Dollars (\$10,000.00) to the Releasor in the manner provided for in clause 2 (a) and (b) hereunder; and in further consideration of the Third Releasee complying with the terms and conditions specified in paragraph 2.1 hereunder, the Releasor **HEREBY RELEASES AND FOREVER DISCHARGES** the First, Second and Third Releasees and including all their servants, employees and agents from all actions, suits, causes of action,

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2. The Ten Thousand Solomon Islands Dollars (\$10,000.00) referred to in clause 1 above shall be paid to the Releasor as follows-
  - (a) Five Thousand Dollars (\$5,000.00) shall be paid immediately upon execution of this Deed and
  - (b) The remaining balance of Five Thousand Dollars (\$5,000.00) shall be paid to the Releasor as soon as practicable after the Releasor has served on the Third Releasee or its solicitor copies of any consent order and or any notice of discontinuance filed by the Releasor discontinuing the claims against the said First, Second and Third Releasees pursuant of this agreement.
  
3. In addition to the payment to be made under clause 1, the Third Releasee shall also:-
  - (a) Pay to the Releasor in each month a salary in the sum of one thousand Solomon Islands Dollars commencing one month after the action has been withdrawn. This payment shall continue until the end of the logging operation on Miqa Land.
  - (b) Ensure that the Releasor is one of the signatories to any bank account held or kept by the Keneporo tribe in trust for

I believe the Plaintiff when he said that he never understood the terms of this Deed of Release. He did however sign it because he thought it was a document about the \$500.00 he got from one, Chan Chee Min. The manner in which, one, Chan Chee Min went about getting the Deed of Release drafted without the knowledge of the Plaintiff and his Solicitors does lend weight to the Plaintiff's evidence as to its truth. How could the Plaintiff be expected to exercise care before signing the Deed of Release in the circumstances prevailing at that time? It would have been naïve to expect a sense of vigilance from the Plaintiff who stood to be out-smarted by one, Chan Chee Min, an Asian person who was sent to get him to join the 3<sup>rd</sup> Defendant's camp. The root of the matter is the withdrawal by the Plaintiff of his Originating Summons than anything to do with the receipt of the sum of \$500.00 from one, Chan Chee Min. That is the fundamental difference. I am therefore of the opinion that the Plaintiff had signed the Deed of Release, a document that was fundamentally different from the document he thought he was signing and so the terms of the Deed of Release did not stand for his intention and agreement. It was not his document. It cannot stand on that basis. Whilst, one Chan Chee Min said that the Plaintiff had received the monies or most of the monies promised under the terms of the Deed of Release, that fact was a direct result of one, Chan Chee Min's own action. It is no substitute for his cunning strategy to trap the Plaintiff by having the Plaintiff sign a Deed of Release to which the Plaintiff was not a genuine party. He was bound to reap the fruit of what he sows.

**(b) The consent order.**

The other document was the consent order signed and filed on 18<sup>th</sup> January 2002. It was however signed by the parties to it on 22<sup>nd</sup> January 2002. These dates do not match as the date 18<sup>th</sup> January 2002 appears to be back dated perhaps to coincide with the Notice of Change of Advocate file by A&H Lawyers on 18<sup>th</sup> January 2002. This Notice announced that A&H Lawyers had been appointed to act for the Plaintiff in place of Motis Pacific Lawyers. This was rather odd because Mr. Hapa of Motis Pacific Lawyers denied any knowledge of the Plaintiff withdrawing his instructions from his firm. He said so in his affidavit filed on 23<sup>rd</sup> January 2002. Who then caused A&H Lawyers to publish the Notice of Change of Advocate on 18<sup>th</sup> January 2002? The Plaintiff denied issuing fresh instructions to A&H Lawyers so as to cause them to publish the above Notice of Change of Advocate on 18<sup>th</sup> January 2002. The consent order therefore appears to be the work of one, Chan Chee Min giving unilateral instructions to A & H Lawyers to draft the consent order to file in the High Court to fulfill the terms of the Deed of Release and to satisfy the 3<sup>rd</sup> Defendant's objective in the first place. I am surprised that A & H Lawyers did not wish to find out why, one, Chan Chee Min treated the Plaintiff as though he was a minor or being of unsound mind for whom he must act. What then is the status of the consent order? The consent order was the implementation of the terms of the Deed of Release to give its terms the authority of the Court. If the Deed of Release was a result of a mistake made by the Plaintiff, then the consent order must also be a mistake and therefore an abuse of the Court process. There had been no valid agreement upon which the consent order could have been made and so the consent order must also go. It must be set



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**F.O. Kabui**  
Judge