

IN THE HIGH COURT OF SOLOMON ISLANDS

BULACAN INTEGRATED WOOD INDUSTRIES (S.I.) LIMITED -V- EASTERN DEVELOPMENT ENTERPRISES LIMITED 1st Defendant; The ATTORNEY-GENERAL (for the Commissioner of Forests) 2nd Defendant.

Civil Case 333 of 2003

Courts and Judges – Jurisdiction to grant the declaratory relief in a case where factual matters come for decision – wide jurisdiction allowing High Court discretion in conduct of the case – effect of res judicata

Forest Resources Utilisation Act (Cap. 40);

Land and Titles Act (Cap. 133).

Practice and Procedure – Proceedings commenced by Writ of Summons claiming declaratory relief supported by affidavit – whether pleadings appropriate when questions of fact need to be resolved – discretion of the Court to direct proper conduct of the action

High Rules, Orders 21, 32.

The plaintiff is a logging company which claimed rights to log under a standard logging agreement affecting land known as LR677 – Salona Land, Kia village- in Isabel Province. The first defendant also claimed a similar right to log pursuant to an earlier agreement and by virtue of a registered grant of profit given by the landowners of this registered land in respect of the timber on the land. The plaintiff claimed declarations confirming that the 2nd defendant's (Commissioner of Forests) felling license given the plaintiff was valid whereas the conflicting license of the first defendant was no license and void. Upon orders as aforesaid, the plaintiff also seeks an injunction stopping the 1st defendant from further logging.

By way of amended summons the plaintiff also sought to join the Registrar of Titles so as to facilitate rectification of the land register to remove the grant of profit, registered by fraud or mistake.

Held – (1) Registration of the 1st defendant's grant of profit affords that party priority of interest and protection of right given by the Land & Titles Act ss.110, 229.

(2) The Land & Titles Act is Torrens system land registration and is a system of Title by Registration. It does not permit of conflict in interest once registration has been achieved.

Abigail -v- Lapin (1929 – 1930) 44 CLR 166 applied

Templeton -v- Leviathen Pty Ltd (1921) 30 CLR 34 applied

Breskvar -v- Wall (1971) 126 CLR 376 followed

(3) The plaintiff has no license to log for that license A10245 was cancelled by the Commissioner of Forests.

(4) The powers of the Commissioner of Forests to cancel license A10245 was *intra vires* his powers on general principles as well.

Interpretation and General Provisions Act (Cap.85) s.30(1)(b)

(5) Assertions of criminal behavior cannot give the plaintiff "standing" in these proceedings sufficient to argue the merits or otherwise of the 1st defendant's license to log, when the plaintiff is not the appropriate authority with power to enforce the penal provisions in the Forest Act.

(6) There is no evidence of mistake in law relating to the registration of the 1st defendant's grant of profit.

(7) The wide discretion afforded by the rules of court permit this court to allow argument on the issues raised by the affidavits read, notwithstanding the obvious need to adjudicate on

factual matters which may have been the subject of pleadings, and which in most cases should proceed by way of pleadings.

HC Rules, Orders 21, 32.

White -v- Grogan (1972) 2 NSW LR347 applied

(8) No legal or equitable right has been shown in the plaintiff sufficient to upset the *res judicata* which favors the 1st defendant.

(9) There is a verdict for the first defendant on the evidence.

(10) The plaintiff's application for declaratory orders is dismissed.

The following additional case was cited:

In the judgment Y Sato and Co -v- Tiare (unreported decision of the High Court dated 1st August 1999).

Gabriel Suri for Applicant for 1st Defendant
Nathan Moshinsky, the Attorney-General
Andrew Nori for the Respondent/Plaintiff

Summons for Declarations and application to dismiss summons

Brown PJ

Date of Hearing: 6 April 2004

Date of Judgment: 2 July 2004

The nature of the Claim

The 1st Defendant satisfied me earlier that its application to dismiss the plaintiff's summons should be dealt with at this juncture and I gave reasons. To better understand this case, I should say that the plaintiff's originating summons sought orders by way of declarations that a timber felling license (with respect to land (known as LR677) in Isabel Province) of the plaintiff is valid and effectual so that the competing license of the 1st defendant is void and of no effect.

Both the plaintiff and the 1st defendant's licenses at first look would appear to be at odds with the exclusive nature of such licenses and with each other. In fact the Commissioner of Forests had taken steps to avoid this conflict by purporting to cancel the plaintiff's license to log.

The originating summons was supported by the affidavit of Cesar Paulo, the Company Manager of the Plaintiff Company. This affidavit of some 26 paragraphs deposed to facts surrounding a landowner agreement with the Company (Standard Logging Agreement) to log LR677; a grant of profit document; a license to fell trees and remove timber given by the Commissioner of Forests and in about June 2003, details disputation with the Commissioner of Forests over the apparent claim of the first defendant Company to a conflicting license to log over the area. The particular land the subject of the dispute is land registered under the Lands Act and is no longer customary land.

The 1st defendant took issue with the appropriate nature of the originating process for it said in the circumstances, where factual matters are alleged, the proceedings should be by way of pleadings and the plaintiff's cause should proceed by way of statement of claim.

The 1st defendants' conflicting claim to a right to log

These details of the conflicting claim by the respondent/1st defendant were disclosed by way of annexed correspondence between the plaintiff and the Commissioner of Forests, including copies of correspondence to the Commissioner from landowners and by the local Member of Parliament, the Hon. Nelson Kile relating to the change of decision to invite the 1st defendant on to LR677.

By paragraph 16 of the affidavit the plaintiff says *"during the period from June to September 2003 I have been made aware of attempt by the first defendant to enter into and carry out logging operations LR677, claiming that they also have a valid license of the area."*

There is no recital of any discussions between the deponent, Paulo and the supposed landowners or the 1st defendant to explain how the plaintiff "became aware", so that the plaintiff must be taken to rely on the various documents, touched on above, as evidencing its right to declarations in these terms. Landowners have not been joined in these proceedings.

The plaintiffs' claim.

1 A declaration that the timber felling license issued to the plaintiff with reference no. A10245 in respect of that area of land in Isabel Province known as LR 677 was so issued in compliance with the provisions of Part 11 of the Forest Resources and Timber Utilisation Act ("the Act") and is valid in all respects.

2. A declaration that the 1st defendant does not hold a license to fell trees within LR 677 and that any purported extension of its license to cover the said land is unlawful and void.

3. An order restraining the 1st defendant, its servants, contractors and agents from entering into LR 677 and from carrying on therein any timber felling activities, including the construction of wharves, jetties, log ponds and roads and the felling of trees.

Afterwards the plaintiff filed an application to amend the summons for relief. It included an application to join the Registrar of Titles as a party. The reason for this later joinder application is apparent when one has regard to the 1st defendant's claim to dismiss. The plaintiff seeks to join the Registrar of Titles so that if successful, this court may consequently direct the correction of the Land Registry by ordering the cancellation of the 1st defendant's grant of profit from which stems the 1st defendant's principle argument to dismiss, based as it is on the 1st defendant's registered interest in terms of section 110 of the Land & Titles Act.

The plaintiffs' amended application.

Particulars of the amendments sought to the originating process are as follows:

2. *"A declaration that the registration of the grant of profit in favor of the first defendant dated the 22nd September 2003 was so registered in consequence of mistake or fraud and for an order that the Registrar rectify the Land Register in respect of Parcel 071-004-4 of LR677 in Ysabel Province by removing the grant of profit registered in favor of the first defendant.*
5. *Such other consequential orders"*

The 1st defendant's application to dismiss the claim.

The application to dismiss was in these terms –

1. *That the plaintiff's application be dismissed on the following grounds –*

- (a) *the first defendant's grant of profit is a registered interest protected by s.110 of the Land and Titles Act.*
- (b) *the cause of action involves contentious facts which must be properly pleaded and not to be determined on originating summons.*
- (c) *that the question of whether the plaintiff licenses is issued in compliance with the provisions of the Forest Act requires full pleading of facts,*
- (d) *the question whether the extension of the first defendant's license was unlawful is time barred.*
- (e) *injunctive relief is available only in process commenced by writ of summons.*

2. *Further or other orders as the court deems meet.*

The material in support of the application to dismiss.

In support of the applicant/1st defendant's application to dismiss, Mr Suri read two affidavits of Philip Kaukui and that of Lau Seng sworn on the 19 December 2003. That affidavit of Lau Seng seeks to rebut the right in the plaintiff to seek orders in these terms for in fact the first defendant had earlier in time, a logging license in relation to LR677 dating from the 26 March 1996 (which was extended in time on the loggers application to the 6 August 2005) but that the first defendant had not commenced operations until now "because of a dispute caused by one Nelson Kile". The landowners were advised of this by letter dated 13 September 1997.

The material parts of this letter are reproduced together with the hand written endorsement on it for I believe this letter and the endorsement goes some way to show how this conflict has come about.

EASTERN DEVELOPMENT ENTERPRISES LTD

P.O. Box 201
HONIARA
Solomon Islands

30th September 1997

Ernest Panisi
C/- Kia Village
Isabel Province

Dear Sir

RE: LR 677 – SALONA LAND

As you are aware that due to the dispute by Nelson Kile's family, we cannot proceed any logging activity on this land.

Have you tried to resolve the differences between your trustees and Kile's families.

?
= *

Awaiting your early settlement of this matter.

Thank you.

Yours faithfully
EASTERN DEVELOPMENT ENTERPRISES LIMITED

Mr Michael Lam
Land Co-ordinator

13th May 2002

I have resolved this problem with my Baebai clan owners in Baolo and Panisi at Kia and I have agreed that the Eastern Development Company (EDE) go ahead and log there.

Nelson Kile, Paramount Chief Baebai Clan

I will come back to this apparent conflict in my reasons. Customary dealings may here, clash with adopted law.

Philip Kaukui is an office assistant of the 1st defendant lawyer. He deposed to the result of various searches and enquiries made at the Registrar of Titles Office in relation to the plaintiff's and defendant's grant of profit instruments and provided copies of the relevant perpetual estate register. I shall touch on the material parts of those affidavits which primarily relate to documentary evidence of public records which are not in issue, in my reasons.

In reply to Lau Seng's assertion of right to the earlier logging license, the plaintiff filed a second affidavit of the 17 February 2004 in which Cesar Paulo reiterated that in the course of "*negotiations and applications for the license over LR677 ... I caused inquiries with the Commissioner of Forests. Based on information obtaining the cause of those inquiries the first defendant had no license to carry out logging on the land*".

This assertion of the plaintiff is not definitive of the fact or otherwise of the license. Later he said "*the plaintiff was only advised of the first defendant's recorded license by such letter from the Commissioner of Forests dated the 30 October 2003. After that date I was repeatedly advised that there were no records of the license having been issued to the first defendant.*"

The argument of the 1st defendant.

The 1st defendants' argument was that the registration of the Landowners grant of profit to the company afforded it the protection against conflicting interest, whether legal or equitable, by virtue of the fact of first registration in terms of s.110 of the Land & Titles Act (cap 133) ("the Land Act"). For this parcel of land is not customary land but registered land in terms of the Land Act so that priority is afforded those registered interests according to the date of first registration. On the accepted authorities of cases decided in other jurisdiction where land law legislation is similar, the 1st defendant's registered interest is immune from challenge.

Mr Suri goes on to say that since the plaintiff's instrument was never registered on the perpetual estate register, the plaintiff has no *locus standi* to challenge the grant of profit registered in the 1st defendant's name. I take him to mean that "standing" in circumstances of this case would not include a stranger to the grant of profit in the 1st defendant's favor. In other words, the landowners would have standing to argue the validity of the grant, but "standing" would not extend to a "stranger" to the dealing.

The material matters giving rise to the 1st defendants' indefeasible title to the grant were, Mr. Suri says, as follows. Lau Seng deposed that on the 31 July 2003 the company executed a Supplementary Agreement with the registered trustees and landowners of the subject land. The Agreement was annexed to his affidavit. It was made in furtherance of the standard logging agreement originally made with the landowners on the 20 March 1996. After executing the Supplementary Agreement, the Trustees and the company executed the Grant of Profit instrument which was lodged for registration on the 29 March and finally, on the 19 August 2003 registered at the Titles office.

The plaintiff in all the circumstances cannot argue the validity of the 1st defendants' grant nor its right to fell trees so that its claim for relief should be dismissed.

The argument of the Attorney-General.

The Attorney-General supported Mr. Suri's argument. He said in the circumstances, the 1st defendant had an indefeasible title to the grant. He further said, in relation to the plaintiff's claim to rectification on the grounds of fraud or mistake, there is insufficient evidence of any such fraud or mistake as properly understood in law.

Section 229 of the Land Act clearly affords the 1st defendant priority and protection on registration of its interest.

In *Y Sato & Co v Tiare* (unreported decision of the High Court by Kabui J, given 31 August 1999) the nature of "mistake" for the purposes of rectification was discussed and on those tests, there is no evidence in the plaintiff's affidavits of any such fraud or mistake. The Attorney says, neither the 1st defendant company nor the landowners intended something different to the grant of profit, despite the suggestion by the plaintiff company that the landowners may have changed their mind. (This has echoes in the notation by the Hon. Member, reproduced above). He says there is no evidence of mistake. There is no evidence of fraud by anyone.

The argument of the respondent/plaintiff.

Mr. Nori for the plaintiff, argued strongly that the grant of profit relied upon by the 1st defendant cannot be enjoyed without a valid timber felling license issued by the Commissioner of Forests. Purported exercise of rights to profit by timber felling and sale will constitute a criminal act for the Forest Act, s 4 makes it a criminal offence to fell timber in the absence of a valid license, which the 1st defendant did not have.

In so far as the nature of the originating process is concerned, he says the declarations sought do not require pleadings. The facts are in the affidavits read and adequate for this court to determine the issues.

On the issue of the plaintiffs' license to log, he pointed to the copy of the license annexed to Paulo's first affidavit and the agreement with the landowners. He said a grant of profit is consequent upon the issue of a license and will be registered in due course, but that it does not have to be registered before its terms can be enjoyed.

On the question whether the 1st defendant holds a valid license, Mr. Nori says the 1st defendant failed to produce a license, rather relies on a letter of extension dated 26 March 1996. The company has failed to satisfy s. 5(2)(a) of the Act. Time limitations in which to complain cannot have the effect of validating an expired license of the 1st defendant, even where the 1st defendant purports to rely on a letter of extension. Such letter, he says, is beyond powers of the Commissioner and cannot constitute a license to log.

Consequently the grant of the profit to the 1st defendant to log was entered into by error of law and the registration of the grant was thus a mistake and should be set aside.

Factual matters forming basis of reasons.

On the 19th March 1996 the Commissioner of Forestry Resources wrote to the Chairman of Salona Board of Trustees, Kia village, Isabel Province.

The material parts of the letter are as follows:-

Following the conclusion of the arbitration on LR677 and your request please be advised you may now proceed with discussion and the signing of the Standing Logging Agreement.

This letter related to permission to negotiate a Standard Logging Agreement (SLA) with Eastern Development Enterprises Ltd. On the 20th March 1996 five named trustees, representatives or landowners executed an agreement with Eastern Development Enterprises Ltd allowing the company the right to "fell harvest and extract timber for from registered perpetual lands in Salona known LR677 of Isabel Province – parcel no. 071-004-4". This agreement had been stamped on the 29th March 1996 and duty of \$15.00 paid. As a consequence presumably, the company applied for and was granted consolidation of an existing felling license no. TIM2/17 to cover LR677. That approval was given by letter under hand of the Deputy Commissioner of Forests dated 26th March 1996. The consolidation would appear to evidence the Commissioner of Forests Resources satisfaction, in accordance with s. 5(2)(a)(c) for that the logging agreement with the trustees and representatives particularizes those compliances, provisions, undertakings, and measures, described in that subsection. By virtue of s. 5(2)(d), on the 14th November 1996 Eastern Development Enterprises Ltd went to the Commissioner of Forests seeking an extension of the logging licenses to S/17 for that logging in the concession would not be finished by the date of expiry of the license, on the 6th August 2000. As a consequence by letter under hand of the Commissioner of Forests dated the 5th December 1996 TIM2/17 was extended to the 6th August 2005.

By virtue of s. 5(2), the Commissioner's powers to grant a logging license is in sufficiently wide terms to include a power to vary such grant during the currency of the license. This power found in Part V – Powers and Duties- of the Interpretation and General Provisions Act (Cap. 85) must be read in accordance with the power of the Commissioner of Forests to grant to the company a logging license "on such terms and conditions as may be specified therein" and includes by virtue s.30(1)(b) of the Interpretation Act, a power to vary or amend the license. That latter Act must also be read as affording the Commissioner power to correct that which he describes as "administrative error" in the mistaken issue of a license to the plaintiff, and on general principles as well was *intra vires* his powers.

On the 30th September 1997 Eastern Development Enterprises wrote to Enerst Panisi as shown by the letter reproduced above. Enerst Panisi was one of the trustees and representatives of the registered perpetual lands in Salona, who executed the logging agreement with the company on the 20th March 1996. From reading that letter written by Michael Lam, (the Land Coordinator of Eastern Development Enterprises Ltd) there was a problem between the trustees of the landowning group and the Hon. Nelson Kile's family. It is clear from the letter that the company had not relinquished its rights under the logging agreement; rather it acknowledged that it cannot proceed with logging in the circumstances of the dispute between those two groups.

On the 13th May 2003 as a result of the appearance of a logging license to Bulacan International, Mr. Lao Seng the General Manager of Eastern Development Enterprises Ltd wrote to the Commissioner of Forests pointing out the fact of his company's earlier license TIM/17 over the subject parcel of

land, LR677 at Isabel Province. Then followed another letter of the 15th May 2003 by Mr. Lau Seng to the Commissioner of Forests explaining why the company held a valid license TIM2/17 over the subject land.

On the 31st July 2003 Eastern Development Enterprises Ltd and the trustees or representatives of the land described as LR677 entered into a supplementary agreement relating to this land. The agreement recited the fact that the company is a company incorporated in the Solomon Islands carrying on the business of logging, and 'the trustees are and do represent the rightful owners of the subject land as determine by the Isabel Provincial Executive on the 3rd September 2002, assure warrant and guarantee that they are the true customary owners of the land described as LR677 known as Salona Customary on Isabel" and acknowledge that the parties executed a standard logging agreement pursuant to the provisions of the Forestry Resources Timber Utilization Act (cap 40)(herein after called "the Forest Act") and that the purpose of the supplementary agreement is to make further provision in relation to that earlier logging agreement. The supplementary agreement then reiterated matters appropriate for such logging agreement.

By paragraph 13 the parties agreed 'this agreement may be pleaded by any party as a bar in any legal proceedings.' . The supplementary agreement is clearly intended to satisfy the requirement in the Forest Act to provide detail in terms of s.5(2)(c) to facilitate better understanding of the earlier standard logging agreement which must be deemed to have predicated the 1st defendant's original license by the Commissioner of Forests

So far as the provision relating to the legal bar in that supplementary agreement is concerned, it is clear since the trustees or representatives of the landowners of the subject land are not party to these proceedings such a bar cannot avail the first defendant in the circumstances of this case, but the term in the agreement does throw into highlight the 1st defendants argument over the standing of the plaintiff to bring these proceedings. In other words, the landowners have not been joined for the bar to proceedings in the supplementary agreement would preclude any expectation of the landowners support for the present proceedings of the plaintiff.

The supplementary agreement appears to have arisen from the Commissioner of Forests' response to the company's earlier letter suggesting that the Commissioner had improperly issued a further logging license over the subject land to Bulacan International. By what appears to be an undated letter (received 31st July 2003) the Commissioner wrote to General Manager, Earth Movers, P.O. Box Honiara (apparently a trading company of the 1st defendant) and stated that extension for LR677 had been approved by the former Principle Forest Officer, Timber Control Unit) Mr. Eddie Dolaian. The Commissioner goes on to say that a search of the files found no supportive documents for the extension. The Commissioner asserted that under the conditions of a standing logging agreement, in the event that a license holder cannot operate within six months, the agreement shall be null and void and would result in the cancellation of the license.

As a consequence the Commissioner relied on that apparent breach condition in the standard logging agreement as justifying the issue of a license to Bulacan International. Later, in his letter to Bulacan, the Commissioner resiled from that position, conceding that his records were deficient and admitting the fact of the earlier license to the 1st defendant.

On the 5th August 2003 a grant of profit burdening parcel no. 071-004-4 was executed in favor of Eastern Development Enterprises Ltd. The grantors were described as Ernest Panisi, Kia village, Chief of Kia, Patteson Tapa, Kia village, Member of House Chief, Kia, Jassece Zulumu, Kia village, Peasant. The profit to the grantee, Eastern Development Enterprises Ltd, was described in the first schedule as -

1. "the right of grantee is to extract and sell timber trees only from parcel land registered on LR677 parcel no. 071-004-4. The profit shared from the timber resource will be calculated on percentage hereby agreed as: grantor: 15% of FOB price and SI\$2.00 per cubic on block completion;
2. the entry on land by E D E will be subjected to SIG Forestry and Timber Utilisation Act pertaining to sustainable harvesting of timber resources from the area;
3. any parties to this arrangement, breach any Forestry Act or grantee failed to honour any payment, a legal advise will be sort." *
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That grant of profit was executed by the grantors (named above) and witnessed by the Hon. Nelson Kile. It appears from the document that the grant was lodged for and registered at the Honiara Land Registry later on 22 September 2003 at 11.25 am. It appears from the copy that the Registrar of Titles seal was affixed to that document.

The perpetual estate register relating to Parcel No. 071-004-4 Part A – Property Section-shows the previous Land Department reference as LR677. Part B – Ownership shows that the Entry No.1 – Commissioner of Lands – has been scored through and Entry No. 2 shows John Sike Peasant Farmer of Bailolo, Enerst Panisi, Peasant Farmer of Kia, Jossece Zulumu, Peasant Farmer of Kia, Patteson Tapa, School Teacher of Kia and Susan Leni widow of Kia as joint owners. The registered proprietors of that perpetual estate were so registered by transfer application No.30/77 dated 31st January 1977. The presumption that some of these original registered proprietors are those who executed the grant of profit has not been displaced.

On the 30th October 2003 the Commissioner of Forests wrote to the Managing Director Bulacan Integrated Development Company Ltd. The letter was headed, "Re: notice of cancellation of license A 10245". I re-produce the material part of the letter;

I have sought legal advice from Attorney General Chambers on the issue of license A 10245 and the following advise was received –

1. *that the process for LR677 is not through timber right hearing but on the grant of profit since LR677 is registered land. There was an administrative oversight on the process of license A 10245 following timber rights process which is contrary to procedure.*
2. *At the time of the issue of license A 10245 there were no records or files of an existing license TIM2/17. Over the past, the license files were open to anyone resulting in loss of valuable files.*
3. *On record there was no file but Eastern Development Enterprises Ltd has had theirs. The halt of operation was due to a dispute by Nelson Kile. That problem has been solved and that the Eastern Development Enterprises Ltd operation can now proceed.*
4. *Based on the above I am issuing this notice to you to respond as soon as possible. I also understand that to forgo such an undertaking is something to consider. I advise that you communicate with Earth Movers to resolve any issues. Your cooperation has been appreciated in the past on this issue and we will be looking forward to assist you in facilitating a smooth change.*

Yours faithfully

*Gideon Bouro
Commissioner of Forests "*

From a perusal of the searches carried out by Philip Kaukui Boe the grant of profit which Eastern Development Enterprises Ltd lodged on the 19th August 2003 was registered on the 22nd September

2003. The grant has been given application No.236/03 and from a photocopy of the perpetual estate register certified to be a true copy, I am satisfied that there are no other encumbrances earlier in time to that grant registered on the title.

It is interesting to see from the document annexed to the affidavit of Cesar Paulo originally filed in this proceedings that a document, a purported grant of profit (undated) had been drawn up naming the grantors as those registered proprietors set out in the perpetual estate register. Of those five named proprietors three appeared to have executed the undated document, witnessed by one Hopkins Uziah, Kia village, Isabel Province. The witnesses signature does not appear to have been affixed if I find, as I do, that the signature appearing on the witness line appears to be that of Jossece Zulumu for that signature is very similar to that signature on the earlier grant of profit to Eastern Development Enterprises Ltd. In any event the purported grant of profit to Bulacan Integrated Wood Industries (SI) Co. Ltd has not been registered at the Titles office. Very curiously on the fourth page of the purported grant to Bulacan is an unsigned endorsement for the Registrar of Titles which has been dated, 28 September 1994 at 14.30 o'clock.

By paragraph 13 of his affidavit, Cesar Paulo stated that the grant of profit instrument was submitted to the offices of the Registrar of Titles for registration at about the end of March 2003, duly executed by the surviving joint owners. When I have regard to the form (touched on above) it is apparent that the purported grant of profit to Bulacan cannot be accepted on its face, as asserted by Mr. Paulo. It would appear to be an attempt by Bulacan to pre-date that grant of profit given to Eastern Development Enterprises Ltd.

Findings and reasons.

Failing registration of the document, there is no basis in law or equity for Mr Nori's argument that this undated document of the plaintiff somehow should be accepted as valid and consequently precludes the 1st defendant from relying on its grant registered on the title. This document sought to be used by Mr. Paulo in this fashion does illustrate the difficulties faced by this court when it would seem these particular trustees or representatives have executed "agreements" and "grants" to separate entities. It is this apparent willingness to sign conflicting documents that aptly illustrates the dichotomy between a customary approach to business relationships, (on the one hand allowing a fluid progression changing with time) and a western commercial approach which relies to an extent, on an expectation of reliability and certainty.

In these circumstances where Eastern Development Enterprises Ltd have registered their grant of profit, that interest is safe from challenge (see *Abigail v- Lapin* (1929-1930) 44 CLR 166; and *Templeton -v- Leviathen Pty Ltd* (1921) 30 CLR 34). Mr. Suri relied on Barwick CJ's rationale in *Breskvar Anor -v- Wall Anor* 1971) 126 CLR 376 @ 385 where the Chief Justice held "*the current system of registered title of which the Act (Real Property Act 1877 Queensland) is a form, is not a system of registration of title but a system of title by registration. That which the certificate of title describes is not the title which the registered proprietor formally had or which but for registration would have had. The title it certifies is not historical or derivative. It is the title which registration itself has vested in the proprietor.*"

Our Land Act is based on the Torrens system of Land Registration. That statement of principle by Barwick CJ is apposite in this jurisdiction so far as registered land interests are concerned. The plaintiff can claim no equity in that undated supposed grant of profit document. It is not in registerable form and was never registered. The protection afforded by the Land Act attaches to the registered interest of the 1st defendant. The title of the 1st defendant to the timber rights of the landowners is not derivative of the grant but by virtue of the fact of registration of the document. On a proper understanding of the law, there can be no equity in the plaintiff's purported grant of profit

document which in any way affords the plaintiff the right to question the 1st defendant's interest in the landowners assigned timber.

I have dealt with the issue of the Logging License. The Attorney General does not take issue with the fact that Logging License TIM2/17 extended on the 26 March 1996 covers LR677. As I have said earlier extension in this fashion based as it was on the Logging Agreement by the landowners is within the power of the Licensing Authority.

The notice of cancellation of License A10245 to Bulacan by letter of the 30 October 2003 under hand of the Commissioner of Forests acknowledges that the license had been issued on a misapprehension of the true nature of the subject land for that it was not and is not customary land. The license in favor of Bulacan then, was void for it had issued under a mistake in law. It had also issued in ignorance of the fact of the 1st defendant's earlier license, effectively acknowledged by the Commissioner of Forests by his act of revocation of the plaintiff's license given by administrative error. This administrative mistake was corrected by the Commissioner's executive act by his letter of the 30 October, 2003. (The terms of the 1st defendant's license are not in issue, and need not be pleaded.) No error in the exercise of such executive powers has been shown when I look at his reasons given in the letter. There is, then, no valid timber felling license with the plaintiff.

The plaintiff is not the appropriate body tasked with prosecuting offences under the Forest Act, and in the absence of any evidence of conviction of the 1st defendant, of logging without a license on this subject land, cannot use its assertions of any such offence as affording it "standing" to launch its own claim to log. The Commissioner is the appropriate regulatory authority and may enforce the penal provisions in the Act. The evidence advanced by the plaintiff to support its assertions about regulatory breach by the 1st defendant, in any event is to the contrary, for the Commissioner's letter of the 30 October 2003 expressly acknowledges the right in the 1st defendant to log. This court cannot in these proceedings purport to usurp the statutory function of the Commissioner of Forests and make findings in a matter where criminal standards of proof must apply, and notwithstanding the absence of any formal charge.

There is no right to equitable relief in the light of my findings about the grant of profit registered in favor of the 1st defendant. Eastern Enterprises was first in time and is consequently afforded the protection of the Land Act. If the plaintiff supposes the error in law relates to registration of a grant by mistake of the grantors, there is no evidence to support such proposition. The landowners, the interested parties in such a claim, are not joined.

There shall be a verdict for the first defendant; it is appropriate for the proceedings have been argued on the basis of these affidavits and I accept that sufficient factual matters have been brought before the court to allow the affidavits to stand as pleadings and I have made findings of fact. I do so in this court's wide discretion to be found in Orders 21 and 32 of the High Court Rules. Where proceedings are commenced by summons seeking declarations in this fashion, it is open to the court for the proper conduct of the action to order pleadings on the application of the respondent if the court in its discretion considers it appropriate. I adopt the expression of principle by the NSW Court of Appeal in *White v. Grogan* ((1972) 2 NSWLR 347 at 350;

"It is also to be observed that the directions are to be such as will be "convenient for the just quick and cheap disposal of the proceedings." It is also to be observed that directions may be given for defining the issues by pleadings or otherwise. There may thus be directions for pleadings in part with the bearing of that part on oral evidence and for affidavit evidence in part and for general directions as to the conduct of the proceedings. The purpose of the Supreme Court Act is to shear away from proceedings the formalities which have to a degree enshrouded them in the past.

The orders made by Taylor J. was made by him in exercise of the wide powers conferred by the Supreme Court Act and it must be recognized that a very wide discretion is given to the court."

The NSW Supreme Court Act 1970, very closely follows our High Court Rules, both having been based on the English High Court Rules to be found in the earlier White Books. Our Rules show, in the margin the associated English Rule. There is no doubt the court has a wide discretion when managing the process and practice of the court as described in *Whites' case*. Having allowed argument of the cause on the basis of the affidavits filed, I am satisfied that the issues have been sufficiently raised so as to afford the respondent/plaintiff opportunity to answer them. There is no purpose to be served to order pleadings when all parties were happy to proceed on the basis of those affidavits read in this cause. In most cases of this type, pleadings would be ordered.

The effect of my findings must be that existing legal relations are given the status of a *res judicata*. I have found those existing legal relations do not include any legal or equitable right in the plaintiff to upset these existing rights which favour the 1st defendant.

The plaintiff's claim for declaratory relief consequently fails. . . I need make no findings in relation to the plaintiff's claim for an injunction.

I order the plaintiff pay all defendant's costs.

Orders:

- 1. Verdict for the 1st defendant**
- 2. The plaintiffs' claim for declaratory relief and consequential orders is dismissed.**
- 3. The plaintiff shall pay the costs of all the defendants.**