

ALAMOIA MIMIDI (REPRESENTING HERSELF AND MEMBERS OF THE ULUFERA TRIBE) -V- LOLO/NGALULU DEVELOPMENT CORPORATION LIMITED AND GABRIEL LAMANI

**High Court of Solomon Islands
(Palmer C.J.)**

Civil Case Number 75 of 2004

Hearing: 29th April 2004

Judgement: 13th July 2004

D. Hou for the Plaintiff

A. Nori for the Defendants

Palmer CJ.: This is a claim by the first and second Defendants ("**the Defendants**") by Notice of Motion filed 31st March 2004 for the following orders:

1. That the Plaintiff's Writ and Statement of Claim be struck out on the following grounds:-
 - (a) The High Court has no jurisdiction to hear and determine the matters prayed for in the Statement of Claim, in as far as the determination of those issues hinge on final determinations of customary land boundaries and ownership issues;
 - (b) The Plaintiff has no locus standi to challenge the validity of the licence issued to the First Defendant in as far as the Plaintiff's right to raise such issue hinges on her establishing rights to the timber on Manaoba land – an issue which falls exclusively within the jurisdiction of the Customary Land Appeals Court under the provisions of the Forest Resources and Timber Utilisation Act.
 - (c) The Plaintiff has no locus standi to seek the orders therein prayed in that she has no final judicial decision establishing her right over Manaoba island, other than Buirakwaena land;
2. An order that the Plaintiff's claim for the invalidation of the timber felling licence issued to the First Defendant is time barred.
3. An order that the claim relating to the ownership of boundaries of Buirakwaena land on Manaoba Island is *res judicata*.
4. Such other orders as the Court deems just and equitable.

Plaintiffs Claim:

The claim of the Plaintiff is in two fronts. The first front is a claim based in custom over ownership rights in Manaoba/Ngwalulu Island (hereinafter referred to as "**the Land**"). She alleges that her tribe the ULUFERA TRIBE is the rightful owner of the Land (see Exhibit "AMI" in the affidavit of Alamoia Mimidi filed 2nd March 2004 which describes in detail the area of land in dispute).

She also claims primary ownership over an area of land called BUIRAKWAENA LAND which had been the subject of a land dispute between the second Defendant and the Plaintiff and which had been determined by the courts in CLAC 1 OF 1994 to be confined to 2 acres only.

She also relies on a decision of the Marodo Council of Chiefs in her favour, over the Land – see “Ex. AM4” in the same affidavit of Alamo Mimidi and paragraph 5 of her statement of claim. She says that the second Defendant had no rights to grant timber rights to the first Defendant. The second Defendant on the other hand also claims ownership rights in custom over the said land.

In the second front, she alleges that there was a failure to comply with section 8(3)(a) and (b) of the Forest Resources and Timber Utilisation Act (hereinafter referred to as “**the Forest Act**”) as to persons willing and able to grant timber rights over the Land. She says that when the Northern Malaita Area Council (“**the Council**”) convened to hear a Form 1 application for timber rights by the first Defendant on 26th April 1996, she objected resulting in a referral by the Council to the Marodo Council of Chiefs (“**the MCC**”) for assistance in clarifying the question of ownership over timber rights. Although no clarification had been received from the MCC the Council proceeded to make a determination in favour of the second Defendant in any event and had it published on 29th October 1996.

She alleges the Certificate of No Appeal issued on 20th November 2000 was defective in that the person who issued it, the Office Manager of the Malaita Magistrates Court had no jurisdiction for its issue. As a consequence the Certificate Approving Timber Rights Agreement Negotiation issued by the Premier of Malaita Province on 10th April 2001 was invalid and the licence subsequently invalid.

Relief sought:

A number of declarations have been sought by the Plaintiff:

1. A declaration that the felling licence issued to the First Defendant is null and void in so far as it purports to cover Manaoba/Ngwalulu Island.
2. A declaration that the form IV [Standard Logging Agreement] entered into between the First Defendant of the one part and the Second Defendants of the other part is null and void in so far as it purports to cover Manaoba/Ngwalulu Island.
3. A declaration that the Office Manager (Malaita) has no jurisdiction under section 10(3) of the Forest Resources and Timber Utilisation Act to issue a Notice of Appeal and that the Notice he issued on the 28th November 2000 is null and void.
4. A declaration that the Second Defendants are not the rightful persons under the Forest Resources and Timber Utilisation Act to grant timber rights over Manaoba/Ngwalulu Island.
5. An injunction restraining the first and second Defendants and their servants or agents from dissipating proceeds of logs extracted and exported from Manaoba/Ngwalulu Island currently enjoined in Civil Case Number 2 of 2002 until the Plaintiff's claim is decided.
6. The First and Second Defendants to be ordered to provide an account of the log proceeds and the number of logs felled within Manaoba/Ngwalulu Island.
7. The First Defendant to pay the Plaintiffs the full FOB value of all logs felled within Manaoba/Ngwalulu Island.
8. Further and other orders deemed fit by the Court.
9. Costs and interests.

1. Want of Jurisdiction:

The first ground relied on by the Defendants was that the High Court had no jurisdiction to hear and determine matters which hinge on final determinations of customary land boundaries and ownership issues (see **Allardyce Timber Company Limited & Another v. Nelson Anjo**¹).

¹ CASI-CAC 8 of 1996, 15th April 1997 at pages 10 and 15

The Plaintiff on the other hand argues that she has a decision of the Marodo Council of Chiefs dated 17th October 2002 in her favour. She relies on the decision in **Eddie Muna and Smiley Muna v. Holland Billy and Toben Muna and Others**² in which his Lordship Brown J. had correctly pointed out that in the case of a chief's decision that had not been referred by the aggrieved party to the Local Court having jurisdiction over the land, remains a final and binding decision recognized by law pursuant to Schedule 3 to the Constitution.

The affidavit evidence (see affidavit of Alamoia Mimidi filed 2nd March 2004) filed on behalf of the Plaintiff showed that she had a decision of the Marodo Council of Chiefs in her favour as against the second Defendant on behalf of the Lolo Tribe. She argues this distinguishes her case from the factual situation in **Gnaumi v. Kauke and Others**³ in which the Applicant/Plaintiff in that case had never instituted any proceedings under the Local Court Act and was not armed with any decision of the Chiefs. Where a plaintiff is armed with a chief's decision, he/she would have right to challenge the validity of the felling licence and timber rights agreement.

The issue of jurisdiction of this court over customary matters pertaining to land disputes is now a well worn path. It is trite law that this court does not have jurisdiction where there are final determinations over issues in custom pertaining to land disputes. It is for the person alleging such to prove on the balance of probability that that is the case. This brings me to the issue of *res judicata* which in essence encapsulates the submissions of the Defendants in this Notice of Motion:

Res Judicata

The claim of *res judicata* has been raised under two grounds. The first one relates to a decision made in 1970 by the Malaita Local Court in LC No. 8/70 in which it was determined between Mimidi and Lamani that ownership of the area of land known as Buirakwaena vested in Mimidi. It transpired however that the boundaries of the said customary land were never delineated. As a result of this omission, a further application was made to the Malaita Local Court to have the boundary delineated. This eventually occurred and the Malaita Local Court in LC No. 311/92 determined that the boundary of Buirakwaena land consisted of a small parcel of land within Lolo land. On appeal, the Customary Land Appeal Court confirmed that the area of Buirakwaena land consisted of approximately 2 acres of land only. The doctrine of *res judicata* applied to that land as finally determined between the parties.

The second ground related to litigation commenced before the Malaita Local Court in 1989 in Case Number 6 of 1989 (hereinafter referred to as "**LCC 6/89**") between Paul Maenu'u v. Gabriel Lamani Ramo. That dispute related to land described as "Lolo Land" or "Su'uwalulu Land". I understand this to be more or less the same area of land now referred to as the Land (that is, Manaoba/Ngwalulu Island) in dispute before this court. In that case Paul Maenu'u sought to present his claim based on the rights of the Ulufera Tribe; this is the same tribe which the present Plaintiff in this case seeks to rely on. At page 2 of the transcripts of the Malaita Local Court Records of Proceedings in LCC 6/89, it read: "*My claim this land is not theirs; belong to Ulufera tribe.*" At paragraph 1 of the affidavit of Alamoia Mimidi filed 2nd March 2004 she deposes that this action now before the High Court was commenced on behalf of the same Ulufera tribe.

The recorded evidence in the transcripts of LCC 6/89 expressly stated that Mr. Maenu'u's claim was based principally on Mimidi's claim. At page 3 I quote:

"Reason why I had to talk on this land is Mimidi deceased, came to me at Honiara on February 17th 1977 ... stay with me for two months told me to take over his WILL over this said land."

² HCSI-CC 284 of 2001, 11th December 2003

³ HCSI-CC 219 of 2003

At page 5:

"I have strong tie with Mimidi. He also award his right to me. That's why I claim this land today."

The geneology relied on by Mr. Maenu'u in LCC 6/89, was the same geneology relied on by the Plaintiff in this action. At page 2 of the record of proceedings Mr. Maenu'u referred to Futakukule and his son Fiuramo as the founders. In her submission to the Marodo Council of Chiefs on 16th – 17th October 2002 (see Exhibit "AM4" annexed to the same affidavit of Alamoia Mimidi filed 2nd March 2004) the Plaintiff also relies on the same rights derived from those two persons Fiukukule (a variation it seems of the same person described as "Futakukule") and Fiuramo. See also statement of Henry Karani at page 7 of the record of proceedings in LCC 6/89 in which he confirmed that the customary rights to deal with Su'uwalulu land were transferred to Mr. Maenu'u.

The Malaita Local Court in LCC 6/89 held that each party retained rights to the areas they claimed. On appeal by Gabriel Lamani Ramo to the Malaita Customary Land Appeal Court, decision published on 3rd June 1997, the Malaita Customary Land Appeal Court ("**MCLAC**") set aside the decision of the Local Court and substituted its own decision as follows:

"The Appellant and his line are the owners of the disputed land, which is to be known as LOLO, not SU'UWALULU.

The boundary to the west of the Manaoba Island is that which commences at Lofotomatasi to the south, cuts across the island and ends at Darikokola to the north.

....."

Mr. Maenu'u filed an appeal to the High Court but later withdrew following what appears to have been a customary settlement between the parties over rights of ownership and usage over the said island; that is over Lolo/Su'uwalulu land. To what extent that settlement has been successfully agreed upon and accepted is a matter the parties themselves and their respective tribes can answer. I do not however, have to address that matter before me.

Conclusion on the issue of res judicata.

In her second affidavit filed 14th April 2004 the Plaintiff deposed that the land now raised in litigation before the MCC was a different land called **Burianakwaena land**. The affidavit evidence however shows that the land the subject of the dispute or claim was basically the same land which had been walked over by the courts and that the new action or new name does not disguise that fact.

In the result, the inevitable conclusion of this court on the question of rights of ownership and usage over Lolo Land or Su'uwalulu land, is that these have been finally determined as between Gabriel Lamani Ramo and Paul Maenu'u representing the Ulufera Tribe. In so far as Paul Maenu'u's claim in LCC 6/89 was pitched on the same rights as that of Alamoia Mimidi, the decision of the MCLAC of 3rd June 1997 binds the Plaintiff in this case. And as far as the customary agreement entered into between Mr. Maenu'u and Mr. Ramo is concerned, that is a matter which the parties will have to address in custom, including any disputes that the Plaintiff might still have with Mr. Maenu'u about that agreement or settlement.

The question therefore as to whether the dispute now raised in this action with Ramo over the Land (that is Manaoba/Ngwalulu Island) is bound by the earlier decisions of the courts, must be answered in the affirmative. Those issues as between these same parties have been walked over by the courts and finally determined.

Timber Rights

On 26th April 1996 the Northern Malaita Area Council ("**the Council**") convened to hear an application for timber rights by the first Defendant, Lolo/Ngalulu Development Corporation Limited ("**the first Defendant**"). The Plaintiff was present at that timber rights hearing and raised objections. Despite her objections, the Council issued a Form II Certificate of Customary Ownership on 29th October 1996, in which it was determined that Mr. Ramo was the person lawfully entitled to grant timber rights over the said Land. The Plaintiff did not lodge any appeal within the required time period to the Malaita Customary Land Appeal Court. On 4th December 1996 the Clerk to the Malaita Customary Land Appeal Court issued a certificate of no appeal – see exhibit "GLR 6" annexed to the affidavit of Mr. Ramo filed 30th March 2004. The Forest Act does make provision for such contingency and sets out the effect of a final determination.

In section 10(1) of the Forest Act it provides:

"Any person aggrieved by the determination of the council made under section 8(3)(b) or (c) may, within one month from the date public notice was given in the manner set out in section 9(2)(b), appeal to the customary land appeal court having jurisdiction for the area in which the customary land concerned is situated and such court shall hear and determine the appeal."

Subsection 10(2) is significant to this case. It provides:

"Notwithstanding any provision to the contrary in any other law, the order or decision of a customary land appeal court on any appeal entertained by it under subsection (1) shall be final and conclusive and shall not be questioned in any proceedings whatsoever."

In failing to lodge an appeal to the MCLAC, the Plaintiff became bound by the determination of the Council. Also, by failing to challenge the determination of the Council published on 29th October 1996, within six years she is time barred. This action was not commenced until 2nd March 2004, some 7 years later. Section 5 of the Limitation Act prohibits her from challenging the validity of that determination, apart from the fact that she had also lost her rights of appeal under subsection 10(2) of the Forest Act.

The only other way such determination could be displaced was by commencing a land dispute case under the Local Courts Act. At the time of the timber rights hearing however, a land dispute case over the same area of land had already been initiated before the Malaita Local Court in LCC 6/89 with the Plaintiff's rights represented by Mr. Maenu'u. By virtue of the decision of the MCLAC of 3rd June 1997 and by virtue of the consent agreement entered into between Mr. Maenu'u and Mr. Ramo of 11th March 1999, issues concerning rights of ownership and usage over Lolo/Su'uwalulu land, were finally laid to rest as between the parties and their respective tribes, including the rights of the Ulufera tribe as represented by Mr. Maenu'u.

Conclusion

There is no live issue regarding timber rights or issues of ownership or usage rights over Lolo land as between the Plaintiff and the Defendants. Any rights that the Plaintiff and her tribe have are subsumed in any rights that Mr. Maenu'u had entered into with Mr. Ramo and his tribe in the agreement of 11th March 1999. The Plaintiffs have not lost out completely however. The way forward for her tribe is by open dialogue with Mr. Maenu'u and Mr. Ramo. The door for litigation under the Local Courts Act or the Forest Resources and Timber Utilisation Act however have been exhausted and now closed.

Insofar as the issue of time limitation is sought to be applied to the issue of a licence in 1996, the evidence adduced does not support any such submission. The only licence supported by the affidavit evidence was the licence number A10041 issued on 23rd April 2001. There may have been another licence issued in 1996 but in the absence of

evidence that submission must be ignored. But even with the licence issued on 23rd April 2001, the validity of that licence stands on the unchallenged determination of the Council of 29th October 1996 and the subsequent certificate of no appeal issued on 4th December 1996, which bind the Plaintiff. I note there is a document purporting to be a certificate of no appeal dated 28th November 2000, but the contents show that it is merely a certificate by an officer of the court indicating that no appeal had been lodged over the determination of the Council of 26th April 1996. I do not really see how it was necessary to have such certificate produced as there was already in existence a certificate of no appeal issued by the Clerk to the MCLAC of 4th December 1996 confirming that no appeal had been lodged. That certificate of 28th November 2000 seemed to refer to the same determination of the Council in 26th April 1996 which was published on 4th December 2000.

On the issue of locus standi that is also subsumed in the arguments raised under the ground of *res judicata*, that is, the Plaintiff would not have locus standi to re-open issues that have already been covered by the court. The issues raised are not new issues.

This action therefore must be dismissed in its entirety with costs.

Orders of the Court:

1. **Dismiss action on the grounds that the pleadings disclose no reasonable cause of action.**
2. **Costs awarded in favour of the Defendants.**

THE COURT.