

GHEMU VAGHI MADA, ALLAN SOLOMON, CYRIL ELIJAH,
GERRY ZUTU (Representing the Voko Tribe) -v- VIURU FOREST
ENTERPRISES, DELTA LOGGING ENTERPRISES LTD, JAMES
RIZU AND COMMISSIONER OF FOREST

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

Civil Case No. 207 of 2004

Date of Hearing: 1st June, 2004.

Date of Judgment: 1st June, 2004.

Mathew Swainson for the Plaintiff
No appearance of the Defendants

JUDGMENT

F.O. Kabui, J: This is an application for interim orders by the Plaintiffs pending determination of their claim against the 1st to 4th Defendants contained in a Writ of Summons filed on 28th May 2004. The interim orders sought are contained in an interparte summons filed by the Plaintiffs on 28th May 2004. The orders being sought are as follow-

1. An order restraining the First, Second, Third and Fourth Defendants, by themselves, their servants or agents from felling any trees and logs on Voko customary lands.
2. An order prohibiting the 1st, 2nd Defendants from removing from Voko customary lands any trees or logs felled from the said land that are still within the said lands until the validity of the 1st and 2nd Defendants felling licence is decided.
3. That the Third and Fourth Defendants within 14 days account to the Court all marketable trees felled on Voko customary lands since the commencement of their operation to the date hereof and to provide details of:
 - (a) species, quantity and prices of logs extracted from Voko customary lands.
 - (b) the quantity of logs already sold and/or exported and the amount not yet sold and/or exported as at date hereof.

4. That all marketable logs already felled and removed from Voko customary lands to be exported or loaded onto vessel and their proceeds to be paid into joint account in the name of the parties' solicitors and to remain there until further orders of the Court.
5. Such further and other the court deems just.
6. Costs in the cause.

Although the Defendants except the 3rd Defendant had been served, none of them appeared in Court at the hearing. The hearing therefore proceeded in their absence.

The brief facts.

The full facts are set out in a number of affidavits filed on behalf of the Plaintiffs. Briefly, the Voko customary land's boundaries by names have been identified by the Vella Vella Local Court in 1979. It is separate from Viuru land which is adjacent to it. The Voko land is owned in custom by the Voko line. In 2003, the 2nd Defendant began work inside Voko land against the wishes of the Plaintiffs. This was disputed by the 2nd Defendant. Due to protest from the Plaintiffs, the operation on Voko land was suspended in April 2004. The suspension was soon lifted on 14th April 2004 but subject to the 2nd Defendant not being allowed to remain on Voko land. The 2nd Defendant however has continued operating on Voko land as alleged by the Plaintiffs.

The relief sought.

The dispute is obviously over a part of the boundary between Viuru land and Voko land. According to the representatives of the 2nd Defendant, its workers are within Block B which is within Gevala waste land covered by their licence. By this they mean that on the ground, the boundary of Voko land runs from Pepele river to Kolako which is half a mile inland according to the Valla Valla Local Court decision in 1979. This information was revealed by Mr. Maelimama, a forestry officer at Gizo, who had visited the operation and had spoken to representatives of the 2nd Defendant in his letter to the Chief Forestry Officer dated 6th May 2004. According to that letter, the 2nd Defendant will not stop its operation until the matter is sorted out by the Chiefs. This is clearly the reason why the 2nd Defendant has gone on with its operation and has no intention of stopping its activity. By letter dated 14th May 2004, the Chief Forest Officer, Operations, Mr. Ali, had advised the 2nd Defendant that his Ministry had advised the Plaintiffs to go to court to verify the disputed boundary between the two parties. That letter written and sent by Mr. Ali referred to above was copied to, amongst others, Mr. Bulehite, who, also filed an affidavit in support of the Plaintiffs application on 28th May 2004. Voko land being customary land, the disputed boundary ought to be decided by the Chiefs in the first place. According to the Vella Vella Local

Court decision in 1979, the land between Kolakori and Merusu is Voko land. In fact, Daly, CJ in **Lilo v. Panda and Lilo v. Ghotokera**, Customary Land Appeal Cases Nos. 10 and 11 of [1980, 1980/81] SILR 155 stated at page 157 that Kolakori to Pepele was Voko land. So there are two slightly different versions of one of the boundaries between Viuru land and Voko land. The Plaintiffs have retained a Solicitor from the Public Solicitor's Office who filed this application. The Plaintiffs did take action to protect their interest but this application is before the High Court the wrong forum to decide the disputed boundary and so I cannot make the orders sought. The Chiefs or the Local Court are not seized of the dispute so that the High Court may assist the Chiefs or the Local Court for that matter in granting injunctive orders pending the determination of the dispute. Although Gandy Simbe's case relates specifically to the Local Court and the Customary Land Appeal Court, the principle that the High Court could assist those forums pending the determination of a dispute over customary land, has been extended to the Chiefs as being a forum for the determination of customary disputes over customary land. (See **John Osiramo v. Mesech Aeounia**, Civil Case No. 020/ 2000, **Nathan Kere v. Paul Karana**, Civil Case No. 258/ 2000, **Joe Rodi Totorea, Roeroe & George Ahukeni v. Taiararta Integrated Forest Development Company Limited & Bulecan Integrated Wood International Pty Limited**, Civil Case No. 204/2000, **Harold Hilly v. Letipiko Balesi & Others and Attorney-General**, Civil Case No. 224/2001 and **Eddie Muna and Another v. Holland and Another and Attorney-General**, Civil Case No. 284/2001. Had the dispute been reported to the Chiefs and the dispute is pending before that forum and these orders are being sought to maintain the status quo between the parties in the meantime, I would have considered them for that purpose and probably grant them. There is nothing of that sort here. There is no evidence to show that the Plaintiffs have sought the assistance of the Chiefs to determine the disputed boundary. The High Court lacks the jurisdiction to determine the dispute over the custom boundary between Viuru land and Voko land; only the Chiefs, the Local Court or the Customary Land Appeal Court can do it under their respective jurisdiction. (See **Whitlyn & Others v. Tui Kavusu & Others** Civil Case No. 015 of 2002). My hands are tied in this case and so I must dismiss the application. There will be no order as to costs.

F.O. Kabui, J.
Puisne Judge