

**KINA SAM AND GABRIEL KAIMAURI-v-THE SHIP "MEMORY", HAROLD BILLY,
KIDSTON BILLY PETER BILLY AND RONTOM BILLY AND ALL THOSE INTERESTED
IN THE SHIP "MEMORY"**

HIGH COURT OF SOLOMON ISLANDS
(Mwanosalua, J.)

Civil Case No. 580 of 2004

Hearing: 17th March 2005

Ruling: 6th December 2005

Mr. A Nori for the Plaintiff

Mr. A Ashley for the 2nd Defendants/Applicants

RULING

Mwanosalua, J: This is an application by the Applicants by Summons filed on the 17th February 2005 seeking the following orders -

1. That leave be granted to the Applicants to issue Third Party Notice to the following:
 - (a) Salo Cooperative Society Limited; and
 - (b) Administrators of the Estate of Billy Olomane.
2. That the Plaintiffs pay into court the monthly lease amount of \$15,000.00; and
3. That the costs of this application be in the cause, and
4. Any further order the court deems fit and just.

Facts

The Plaintiffs leased the M.V. Memory (the Vessel) from Salo Co-operative Society Limited. The Applicants took possession of the Vessel on 7th December 2004. The Plaintiffs filed action against the Applicants seeking damages for trespass, possession of the Vessel and restraining orders against the Applicants. The Applicants are now applying for leave to issue Third party Notice on Salo Corporate Society Limited and Administrators of the Estate of Billy Olomane.

Decision

The Vessel was built in 1983 of Vasa Wood. It is 50 feet long, 16 feet wide and 8 feet deep. It is being powered by a 170 HP Gardner engine. It is a coastal and inner island cargo and passenger vessel. The Vessel can carry 40 persons on coastal voyages and 35 persons on inner islands voyages.

The Plaintiffs leased the Vessel from Salo Co-operative Society Limited for an initial term of two years on 1st September 2002. The lease was re-newed on 1st September 2004. The Applicants took possession of the Vessel on 7th December 2004 claiming that the Vessel was owned by their late father, Billy Olomane. The Vessel was later released to the Plaintiffs under a court order. The Vessel went aground on Waibona Reef on 17th June 2005. It was towed away from the reef on the same day and remained in the custody of other interested persons at Tavuilo near Auki since then. The Plaintiff's action arose from the removal of the Vessel from the Plaintiffs by the Applicants. The issues to be decided in the action would include the ownership of the Vessel and validity of the lease granted by Salo Co-operative Limited to the Plaintiffs. This is because the evidence adduced by the Applicants seem to show that the Vessel was owned by late Billy Olomane before Salo Fishing and Shipping Services Co-operative Society Limited (SFSC) became registered owner of the Vessel on 18th June 2000. This was after Billy Olomane died on 3rd February 2000. It is noted, that one of the Applicants, Harold Billy Olomane, is in the process of obtaining letters of Administration to administer the Estate of Billy Olomane. It is also noted that M.V. Memory is being included in the Inventory of Billy Olomane's Estate.

It is necessary that the true owner of the Vessel be identified as the Plaintiffs are seeking damages for trespass from the Applicants. The validity of the lease held by the Plaintiffs would become an issue to be decided if the ownership of the Vessel still vests in Late Billy Olomane.

My view is that the issues on the ownership of the Vessel and the validity of the lease be considered not only between the Plaintiffs and the Applicants but between SFSC and the Administrators of Billy Olomane's Estate as well before the issue regarding trespass is determined. For these reasons, I would allow the applications' application but limited to the orders of the court.

Orders of the Court

1. Application to issue Third Party notice allowed.
2. Third party notice to be issued on SFSC and the Administrators of Billy Olomane's Estate.

3. Cost be in the cause.

The Court