

JOSEPH PA'ASI, STEPHEN TAHUNIMAKE, ROMEO TOISUTA, JOHN MAHANE, AND FRANCIS HASI'AU (Plaintiffs)-v-JOHN HERO'AU (First Defendant), MICHAEL ORITAIMAE, JOHN HERO'AU, JOHN KEREHAI, MORAMAI PAINA, KO'UAROSI, JOACHIM RAROISU'U, SOLOMON NAOTORO AND FRANCIS ANIRATANA (Trading as Arasihaua Land Trust Incorporated) (Second Defendants), JOY ITAIA (Trading as Oceania Trading Company) (Third Defendant) AND COMMISSIONER OF FOREST RESOURCES (Fourth Defendant).

**HIGH COURT OF SOLOMON ISLANDS
(Mwanosalua, J.)**

Civil Case No: 479 of 2004

Hearing: 24th May 2005
Ruling: 30th June 2006

*James Apaniai for Plaintiffs
Andrew Nori for the First, Second and Third Defendants*

RULING

Mwanosalua, J: By summons filed on 12th May 2005, the Plaintiffs seek the following reliefs:

1. That leave be granted for the Plaintiffs to amend the Writ of Summons herein by deleting the name of Willie Poiraro as a Plaintiff in this action.
2. That leave be granted to the Plaintiffs to amend the Statement of Claim herein in the manner specified in the draft "*Further Amended Statement of Claim annexed to this Summons.*"
3. Such further or other orders as the court thinks fit.
4. Costs in the cause.

The further amended Statement of Claim referred to in paragraph 2 of the above Summons is in the following terms –

"FURTHER AMENDED STATEMENT OF CLAIM

1. The Plaintiffs are members of the Hanuaraua tribe of West Are'Are, Malaita Province. The Hanuaraua Tribe owns the Hanuaraua Customary Land.
- 1A. At a meeting of the Hanuaraua tribe held on 14th February 2005, the Hanuaraua tribe unanimously agreed and confirmed that the Plaintiffs are members of the Hanuaraua tribe.
- 1B. In a letter written by the Solicitor for the Defendants dated 22nd September 2004, the Defendants admitted that the Plaintiffs in particular Joseph Pa'asi and Stephen Tahunimake and their families, are members of the Hanuaraua tribe and have rights within the Hanuaraua Customary Land.
- 1C. The Hanuaraua Customary Land is a very large parcel of land consisting of smaller parcels of land known in Are'Are language as "te'ete'es". The te'ete'es comprising the Hanuaraua Customary Land are Iramou te'ete'e, Wa'anamori te'ete'e, Perahau te'ete'e and the Ohano te'ete'e.
- 1D. Each of the te'ete'es referred to in paragraph 1A is headed by a Chief who is regarded in custom as the authority in matters affecting his te'ete'e.
- 1E. The Chief of Iramou te'ete'e is Romeo Toisuta who is one of the Plaintiffs herein. The Chief of Wa'anamori te'ete'es is John Mahane who is also one of the Plaintiffs herein. The Chief of Perahau te'ete'e is Francis Hasi'au who is also one of the Plaintiffs herein. The Chief of Ohano te'ete'e is John Hero'au who is the First Defendant herein.
2. The First Defendant is a member and the person appointed by the Hanuaraua tribe as Head Chief, of the Hanuaraua tribe. The functions of the First Defendant as Head Chief is to act as Chairman of the Hanuaraua tribe but has no authority to deal with any of the te'ete'es or any matter relating to those te'ete'es within the Hanuaraua tribe (except his Ohano te'ete'e) without the approval or consent of the Chiefs of those te'ete'es.
3. The Second Defendants are trustees of the Arasihanua Land Trust Incorporated which is an unincorporated body formed by a Deed of Trust made the 8th day of August 2003 ("the Deed"). The settlers of the Deed are alleged to be the respective Arata members within the Arasihanua Iroa territory, purportedly acting through their Head Chiefs.
- 3A. Under the Deed, the First Defendant had signed as Settler on behalf of the Hanuaraua tribe. The First Defendant had no right or power to include Hanuaraua tribe as a member of the trust created by the Deed without the

consent of the members of the Hanuaraua tribe as no such consent had been obtained by the First Defendant from the Hanuaraua tribe.

- 3B. The Second Defendants are the holders of *timber licence* No. TIM A10307 purportedly issued by the Fourth Defendant on 11th December 2003 ("*the timber Licence*").
4. The Third Defendant is the logging contractor engaged by the Second Defendants to carry out logging operations within the Waisisi area under the authority of the timber licence.
5. The Fourth Defendant is the authority responsible for granting timber licences.
6. On or about the 3rd February 2003, the Second Defendants made an application to the Fourth Defendant seeking approval to hold negotiations with owners of Customary Land areas situated between Siua river and Waisisi river in West Are'Are, Malaita Province ("*the Concession area*"). Hanuaraua Customary Land is located within the concession area.
7. In the application referred to in paragraph 6, the Second Defendants named the First Defendant as the only person entitled to represent the Hanuaraua tribe in the negotiations for timber rights within the concession area.
8. The Plaintiffs objected to Hanuaraua Customary Land being included as an area to be logged by the Second and Third Defendants, but had agreed that road access through the Hanuaraua Land may be granted to the Second Defendants subject to a road access agreement being entered into between the Plaintiffs and the Second Defendants and the Plaintiffs now refuse to allow the Second and Third Defendants to construct any access road within the Hanuaraua Customary Land.
9. On or about 24th July 2003, the Malaita Provincial Executive ("*the Executive*") conducted a hearing ("*timber rights hearing*") at Waisisi to determine the persons entitled to grant timber rights within the Concession area. At the hearing, the Plaintiffs again objected to Hanuaraua Customary Land being included as an area for logging by the Second Defendants.
- 9A. As a result of the objections by the Plaintiffs to the inclusion of Hanuaraua Customary Land as an area for logging by the Second Defendants, the Said Hanuaraua Customary Land was excluded from the timber rights hearing held on or about 24th July 2003 by the Executive.
10. On 11th December 2003, the Fourth Defendant issued the timber Licence to the Second Defendant. The timber licence also covered Hanuaraua

Customary Land. The Said Licence is invalid in respect of Hanuaraua Customary Land in that:-

- (a) No, or no proper, timber rights hearing has been conducted in respect of Hanuaraua Customary Land prior to the granting of the Licence; and
 - (b) the licence was issued without any proper, or any proper, timber rights agreement in existence between the Customary Owners of the Hanuaraua Customary Land, or the te'ete'es within the Hanuaraua Customary Land, and the Second Defendants.
11. On or about 9th July 2003, the First Defendant purportedly executed a timber rights agreement with the Second Defendants purporting to grant timber rights to the Second Defendants to carry out logging within Hanuaraua Customary Land. The timber rights agreement is invalid in respect of Hanuaraua Customary Land in that:-
 - (a) at all material times, the First Defendant had no right, both in law and in custom, to grant timber rights to any person or body for the purpose of carrying out logging operations within Hanuaraua Customary Land, in particular the te'ete'es within the Hanuaraua Customary Land, without the approval of those Plaintiffs and the members of the Hanuaraua tribe;
 - (b) the timber rights agreement was executed at Waisisi on 9th July 2003 which is a date prior to the date of the timber rights hearing on 24th July 2003;
 - (c) No, or no proper, timber rights hearing has been conducted in respect of Hanuaraua Customary Land, or in respect of the te'ete'es within the Hanuaraua Customary Land, prior to the execution of the timber rights agreement.
12. On or about 5th August 2004, the Second and Third Defendants landed logging machines at Haro Customary Land, an area located within the Concession Area, and commenced construction of roads towards Hanuaraua Customary Land. Red paints have been marked on trees within Hanuaraua Customary Land without the approval of the Plaintiffs indicating the path of the logging roads to be constructed within Hanuaraua Customary Land.
13. On 3rd September 2004, the Malaita Provincial Executive purportedly made a determination whereby the Plaintiffs and the First Defendant were the persons entitled to grant timber rights within Hanuaraua Customary Land. The Said determination is invalid in that no, or no proper timber rights hearing has been conducted in respect of Hanuaraua Customary Land, or in respect of the

te'ete'es within the Hanuaraua Customary Land, prior to the making of the Said determination by the Executive.

14. The Plaintiffs have not, at any time now or in the past, executed any timber rights agreement with the Second Defendants permitting logging operations within the Hanuaraua Customary Land, or within the te'ete'es within the Hanuaraua Customary Land, nor have the Plaintiffs signed any road access agreement with the Second Defendants permitting any roads to be constructed within Hanuaraua Customary Land for the purposes of the Second and Third Defendants' logging operations within the Concession Area.
15. Despite objections from the Plaintiffs, the Second and Third Defendants have insisted, and are insisting, that access roads will be constructed within the Hanuaraua Customary Land including the Iramou, Wa'anamori and Perahau te'ete'es.
16. On or about 15th February 2005, the First, Second and Third Defendants without the approval of the Plaintiffs and without any lawful justification and without any valid timber rights agreement/or valid timber licence, entered the Iramou te'ete'e, Wa'amori te'ete'e, Perahau te'ete'e and Ohano te'ete'e in Hanuaraua Customary Land and constructed roads and carried out, and are continuing to carry out, logging activities within the said te'ete'es, and are continuing to construct roads and carried out logging activities within the said te'ete'es.
- 17. **AND** the Plaintiffs claim against the Defendants:
 - (1) A declaration that the purported inclusion of Hanuaraua tribe as a member of the Arasihana Land Trust Incorporated through the execution of the Deed by the First Defendant is null and void.
 - (1A) A declaration that no valid timber rights agreement exists in respect of Hanuaraua Customary Land in particular the Iramou te'ete'e, Wa'anamori te'ete'e, Perahau te'ete'e and Ohano te'ete'e.
 - (2) If declaration 1A is granted, a further declaration that the Second Defendants' *timber licence* No. A10307 issued on 11th December 2003 is invalid and null and void in respect of Hanuaraua Customary Land;
 - (3) Permanent injunction restraining the Second and Third Defendants, their servants and agents, from entering and/or remaining in Hanuaraua Customary Land, in particular in Iramou te'ete'e, Wa'anamori te'ete'e, Perahau te'ete'e and Ohano te'ete'e within Hanuaraua Customary Land, and/or constructing any roads therein and/or felling or removing any trees from, or carrying out any logging activities within the

Hanuaraua Customary Land, in particular the Iramou te'ete'e, Wa'anamori te'ete'e, Perahau te'ete'e and Ohano te'ete'e in Hanuaraua Customary Land.

- (4) Damages for trespass in Hanuaraua Customary Land, in particular Iramou te'ete'e, Wa'anamori te'ete'e and Perahau te'ete'e.
- (5) Damages for conversion of trees within Hanuaraua Customary Land, in particular the Iramou te'ete'e, Wa'anamori te'ete'e and Perahau in Hanuaraua Customary Land; and
- (6) That the First, Second and Third Defendants pay the Plaintiffs' costs on Solicitor Client basis.

Dated at Honiara this 11th Day of May 2005.

James Apaniai
Advocate for the Plaintiffs."

Counsel for the Defendants does not oppose reliefs sought by the Plaintiffs in this application. They are accordingly granted in terms of paragraphs 1, 2 and 4 of the Plaintiffs' summons above.

F. Mwanosalua
Puisne Judge