

JOSEPH PA'ASI, STEPHEN TAHUNIMAKE, ROMEO TUISUTU, JOHN MAHANE AND FRANCIS HASI'AU (Representing the Hanuaraua Tribe) (Plaintiffs)-v-JOHN HERO'AU (First Defendant), MICHAEL ORITAIMAE, JOHN HERO'AU, JOHN KEREMA'I, 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
(Mwanasalua, J.)

Civil Case No. 479 of 2004

Hearing: 17 August 2006
Ruling: 23rd August 2006

J. Apaniai for the Plaintiffs

A. Nori for the First, Second and Third Defendants (Defendants)

RULING

Mwanasalua, J: By amended Summons (the Summons) filed on 8 August 2006, the Defendants sought the following orders:

1. The Orders of the Court dated 3rd July 2006 be varied as follows –
 - (a) the second and third Defendants be restrained from carrying out logging operations in Honuaraua customary land until trial or further orders;
 - (b) any logs felled and still remaining in the disputed land be hauled and sold by the Second and Third Defendants and the proceeds thereof be paid into an interest bearing trust account in the joint names of the parties' Solicitors;
 - (c) in the event that the Second and Third Defendants desire to use parts of the Hanuaraua Land as access road for its concession upland, they are to secure the agreement of the landowners by a majority decision and subject to such terms and conditions as the Landowners may agree.
2. Such other orders as this court may deem just and equitable in the circumstances.

The Second Defendants made a logging agreement with the tribal owners of Hanuapusu, Huro, Ohoraha, Surairu and Toraiohu Customary Lands. But their timber Licence covers these Lands plus Hanuaraua Land which was not covered by the Logging Agreement. The Second Defendants engaged the Third Defendant as their logging contractor to carry out logging on Lands covered by their timber Licence.

Hanuaraua Land is comprised of Ohano, Iramou, Naonihanua, Perahau and Wa'anamori Lands. Hanuaraua Land is owned by the Hanuaraua tribe of Waisi, West Are'Are, Malaita Province. The Second and Third Defendants constructed their logging road (the access road) through Ohano, Iramou, Perahau and Wa'anamori Lands. They also felled trees for sale on Ohano, Iramou and Wa'anamori Lands.

The Logging operations by the Second and Third Defendants had reached Lands beyond Hanuaraua Land. Those Lands include Hanuapusu, Hahurarumu, Ohoraha, Tariohu and Surairu. Felled logs are still to be hauled for export from four of those lands. Most of the Logging equipment used by the Third Defendant to carry out logging activities on Lands covered by the Second Defendant's timber Licence had been returned to Honiara. The only machines still at the logging camp consists of a bulldozer, a loader, a grader, a log truck, a damp truck and a Land Cruiser.

The logging activities which were carried out by the Second and Third Defendants on Ohano, Hanuapusu, Hahurarumu, Ohoraha, Tariohu and Surairu Lands had ceased. The Cessation of the logging activities was due to an interim order obtained by the Plaintiffs against the Defendants from this court on 3 July 2006, restraining the Second and the Third Defendants from entering and carrying out logging activities on Hanuaraua Land or any part of that land. The relevant orders of that order for the purposes of this application are in these terms:

3. *That, in respect of the summons filed herein by the Plaintiffs on 20th October 2004, the Second and Third Defendants, by themselves, their servants and agents, are restrained from entering and/or remaining on or within Hanuaraua Customary Land and/or constructing any roads within Hanuaraua Customary Land or any part thereof until trial or further order of the court.*
4. *That, in respect of the summons filed on 20th October 2004, the Second and Third Defendants, by themselves, their servants and agents, are restrained from felling, extracting and removing any trees, logs or timber from Hanuaraua Customary Land or any part thereof until trial or further orders of the court.*

5. *That penal notice be attached to orders 3 and 4 above."*

The Defendants now come to court to vary orders 3 and 4 of the court order so that they, their servants and agents could continue to use the access road through Hanuaraua Land to haul the logs they felled on Ohano, Hanupusu, Ohoraha, Tariohu and Surairu lands for sale; and for the court to authorize them by order, to enter into an agreement with the members Hanuaraua tribe to continue to use the access road for purposes of their logging operations on others lands beyond Hanuaraua Land up land.

The Plaintiffs and the Defendants have agreed at the hearing that the proposed order sought in paragraph 1(a) of the Summons, as unnecessary on the basis that the relief sought therein had been adequately covered by order 4 of the court order above. I would agree with Counsels on this view and would not grant this proposed order.

The proposed order sought in paragraph (b) of the Summons is not objected to by the Plaintiffs. However, Counsel for the Plaintiffs contended that money to be deposited into the joint interest – bearing trust account be comprised of the proceeds of the logs still remaining on Ohano land, and also proceeds of logs already sold which were extracted from other lands which form part of Hanuaraua Land. I would accept this view as the Second and Third Defendants had not paid any timber royalties to members of the Hanuaraua tribe since they carried out logging operations on Hanuaraua Land.

The Plaintiffs objected to the grant of the proposed order sought in paragraph 1(c) of the Summons. Counsel for the Plaintiffs submitted, among other things, that the agreement on the access road be left to the members of the Hanuaraua tribe and the members of the other tribes whose logs would be hauled through the access road. This seems to be a reasonable suggestion because I am inclined to think that it may be unfair to order the members of the Hanuaraua tribe to make an access agreement with the Second and Third Defendants, whilst questions regarding the validity of the logging agreement and the timber licence in relation to Hanuaraua land are yet to be determine. Second, it does not seem fair to order the members of the Hanuaraua tribe, and more so the Plaintiffs, to sign an access agreement with the Second and Third Defendants, when such an agreement was earlier proposed to the Second and Third Defendants, before the Second and Third Defendants unilaterally entered Hanuaraua Land and carried out logging activities there. In the circumstance of this case, I think the access agreement should be made between the Plaintiffs on behalf of the Hanuaraua tribe and the members of the tribes whose logs would be transported through access road after full consultations are held between them. I would refused to grant the proposed orders sought in paragraphs

1(a) and (c) of the Summons, and would grant an amended order of that sought in paragraph 1(b) of the Summons.

ORDERS OF THE COURT:

1. That the orders sought in paragraph 1(a) and (c) of the Amended Summons are refused.
2. That the remaining logs on Ohano land be hauled and sold and the proceeds thereof, together with the proceeds of all logs sold from other lands forming part of the Hanuaraua land, be paid into a joint trust account to be opened in the names of the solicitors for the Plaintiffs and the Solicitor for the First, Second and Third Defendants and to remain there until trial or further order of the court.
3. That any agreement for the use of the Hanuaraua land as access road for transporting of logs from lands owned by other tribes be discussed between the Plaintiffs, on behalf of the Hanuaraua tribe, and the members of the other tribes.
4. That the Defendants pay the costs of the Plaintiffs of this application.

THE COURT