

DONALD BATO, VICTOR PAULSEN, JAMES BARLEY AND BARNEY PAULSEN
(Plaintiffs) -v- **RICHARD BOSO AND HOPEFUL PIOSASA** *(First Defendants)*,
JETTY NIVAH AND HEDISON NIVAH *(Trading as NIVAH INTEGRATED DEVELOPMENT COMPANY (Second Defendants) AND COMMISSIONER OF FORESTS (Third Defendant)*

HIGH COURT OF SOLOMON ISLANDS
(Mwanosalua, J.)

Civil Case No: 619 of 2005

Hearing: 24th February 2006

Ruling: 7th March 2006

P. Watts for the Plaintiffs

A. Nori for the Second Defendant

R. Ziza for the Third Defendant

RULING

Mwanosalua, J: This is an application by the Plaintiffs filed on 16th December 2005 seeking an order that all the funds injunctioned by the Court Order of 25th October 2005, or any part of it may not be drawn or disbursed by the parties in High Court Civil Case No. 391 of 2005.

Brief Background

The Central Parara Land, on Parara Island, is owned by the Aqo/Saema, Gumi, Gemu, Lamupeza and Voda tribes. In this case, the Plaintiffs are members of the Lamupeza tribe. The First Defendants are members of the Gumi and Gemu tribes. The Second Defendants hold felling Licence No. A10503, issued to them by the Third Defendant on 23rd July 2005. This Licence covers "**Momou**" Customary Land, in particular, Ngahi, Momou, Vilore, Pitikole Point and Nepia Momou Land blocks on Parara Island.

The Parties in High Court Civil Case No. 391 of 2005, were Richard Boso and Hopeful Piosasa (Representing Gumi and Gemu Tribes) (Plaintiffs), Commissioner of Forests (First Defendant), Jetty Nivah and Hedison Nivah (Trading as Nivah Integrated Development Company (Second Defendants) and Pacific Crest Enterprises Limited (Third Defendant). The Plaintiffs sought declaratory and restraining orders against the Defendants in that case. On 25th October 2005, the court made an order that the proceeds of logs felled by the Second Defendants, their servants, or contractors on Central Parara Land be deposited into an interest bearing account in the joint

names of the Plaintiffs' and the Second Defendants' Solicitors. On 15th February 2006, the Plaintiffs filed Notice in Court to discontinue the action against the First, the Second and Third Defendants.

On 16th December 2005, the Plaintiffs in this case filed their action against the Defendants alleging that the Second Defendants entered and logged blocks 1, 2, 5 and 6 within Central Parara Land without the knowledge and agreement of the landowners. They alleged that blocks 5 and 6, known as Mandekoloko Land belonged to their Lamupeza tribe. They therefore claim, inter alia, orders to restrain the First Defendants from disbursing the royalties in respect all logs extracted from blocks 5 and 6, and the adjoining Kakarumu, Pari and Paravoe Lands, Central Parara, without the Plaintiffs' consent, and an order that the Second Defendants pay to the Plaintiffs the FoB Value of the all logs extracted from blocks 5 and 6, Kakarumu, Pari and Paravoe Lands.

The Case for the Plaintiffs

That as their tribe also have ownership rights over Central Parara Land. They have locus standi to come court and ask for the order sought in their application.

Case for the Defendants

Counsel for the Second Defendants, Mr. Nori submitted that, while he supports the application, *High Court Civil Case No. 391/05 had been discontinued on 15/2/06*. That meant that the injunction order of 25th October 2005, had been extinguished.

Decision

There is evidence that the Lumapeza tribe also have ownership rights over Central Parara Land (see Exh. "DB3" annexed to Donald Bato's affidavit, filed 16/12/05). The First and Second Defendants conducted logging on blocks 1,3,5 and 6, which are not covered by felling Licence No. A10503. (See affidavit of Mahlon Ali filed 25/10/05). Whilst the action in *High Court Civil Case No. 391/05* had been discontinued, the parties to it still remained on record and are parties to this case, except the Third Defendant – Pacific Cresh Enterprises Limited. There is no evidence to show that the court order of 25th October 2005 had been discharged. The Plaintiffs have rights to timber royalties from logs extracted and exported by the First and Second Defendants from blocks 5 and 6, known as Mandekoloko. I allow the application by the Plaintiffs and grant order 1 of the Plaintiffs Notice of Motion filed on 16/12/05.

Costs to be in the cause.

Francis Mwanalua
Puisne Judge