HIGH COURT OF SOLOMON ISLANDS

Civil Case No. 255 of 2005

HAVEA MAJORIA
(Representing KADIKI TRIBE OF VANGUNU ISLAND, MAROVO(WP)

-v-

OLIVER BIKOMORO JINO
(Representing BAEREKE TRIBE OF VANGUNU ISLAND)
AND CLERK TO THE CUSTOMARY LAND APPEAL COURT (WESTERN)
(Representing CLAC WESTERN PROVINCE)

Date of Hearing: 22nd September 2006
Date of Ruling: 22nd November 2006

J. Apaniai for the 1st Plaintiff
A. Hou for the 2nd defendant
M. Bird for the 1st Defendant R. Firigeni for Attorney-General (to abide by order)

RULING

REASONS

Brown, J: Havea Majoria claims to represent the Kadiki Tribe of Vangunu Island, Marovo, in the Western Province. Hup Lee (SI) Company Ltd is a logging contractor by agreement with Rodo Development Company which is the holder of a felling licence No. A10202 within Rodo customary land. That land is situated between Nama River and Punutu River and is marked on a map which seems common to various parties. But the bounds of Rodo and Havahava Customary land or their boundaries are not accepted by the plaintiff. For Havahava is described by the plaintiffs as the *"disputed area"* and distinct from Rodo land to the extent that the plaintiff claims the timber rights to Havahava land also if that land is a distinct entity. This is clearly wrong for the reasons I give in this decision.

The plaintiff is seeking by summons today, injunctive orders stopping the 1st defendant, Oliver Jino (representing the Bareke Tribe) from logging within the *"disputed area"* and a claim to logs extracted from the *"disputed area"* including timber held at Mr. Andrew Lada Murray's yard at Ranadi, Honiara, Guadalcanal.

This summons for discretionary injunctive orders relies upon the provisions of O. 53 r. 7 of the High Court Rules.

Before dealing with the summons for injunctions, I will touch on the plaintiff's originating summons.

The plaintiffs originating summons was in these terms-

A. *The plaintiff sought a declaration that the Customary Land Appeal Court (Western) had no jurisdiction to determine/particular appeal grounds set out in Oliver Bikomaro Jino's notice of appeal dated 4 October 2002 against a finding in favour of the plaintiff, Havea Majoria, by the Western Provincial Executive on the 18th September 2002.*

B. *A further declaration that the issue of ownership of Rodo customary land is res judicature (sic) (a matter which has been adjudicated upon) as between the plaintiff and the 1st defendant for that issue was decided by Chief Ishmael Ngatu in 1914.*

C. *A further declaration that the issue of the boundary of Rodo Customary Land is again res judicature (sic) for that issue has been decided in a decision of the Marovo Council of Chiefs dated 7 August 2003.*

D. *A consequent declaration that the claim in the Notice of appeal dated 4 October (See A above) that Oliver Bikomoro Jino is the rightful person able to grant timber rights to the Rodo land, (contrary to the finding of the Western Provincial Executive) is frivolous and vexatious, so that the determination of the Western Provincial of the 18 September 2002 is effectively revived and recognises the plaintiffs right to grant timber rights in Rodo land.*

There have been various affidavits filed by all parties and following an interlocutory summons of the 1st defendant I granted the 1st defendant an interim injunction stopping the plaintiff from logging Rodo land, for that the Western Customary Land Appeal Court, on the 8th July 2005 quashed the original determination of the Provincial Executive naming the plaintiff as representative of these entitled to grant timber rights. It may be thought the hearing is long past that determination by the Provincial Executive naming Havea Majoria as representative of those entitled to grant timber rights to Rodo land, and consequently the CLAC's purported act in quashing the executive's decision is out of time. But it is transpires that an erroneous certificate of no appeal was given the Commissioner of Forest, so that the logging licences issued notwithstanding the existence of valid appeals against the Executives earlier decision.

What has now became obvious however, is that the particular land, Havahava Customary land was the subject of argument before Chief Justice Palmer in High Court civil case (cc. 152 of 2003) when Steven Veno and Gordon Young sought injunctive orders restraining Oliver Jino, and others including Andrew Lauda Murray from logging that block of land.

The Chief Justice refused relief, finding that the applicants had no standing to seek such relief.

Both Steven Veno and Gordon Young appealed from that decision to the Court of Appeal which up-held the Chief Justice's finding.

In the Chief Justice's Civil Case No. cc 152 of 2003 reference was made to a consent judgment of the Western CLAC dated 17 April 2003 which recited of the various parties, that the following persons represented persons lawfully entitled to grant timber rights over Havahava land: Raevin Revo, Yalu Revo, Seith Piruku, Andrew Landa Murray, Oliver Jino and Witlyn Viulu **(the landowners of the 17 April 2003)**.

As a consequence the Chief Justice refused to hear claims to injunctive orders by Stephen Veno and Gordon Young in that case for they had no standing. The Court of Appeal upheld the Chief Justice's findings.

In that case, the references to the Western CLAC followed a timber rights hearing where-upon a form II certificate dated 18 September 2002 issued naming a group (which the Chief Justice designated as **("the proposed landowners")** comprising Albert Legere, John Legere, Michael Honda, Standley Sidiki and Andrew Landa Murray, as those entitled to grant timber rights. It can be seen that ***"the* proposed landowners"** and the ***"landowners of the 17 April 2003"***

have only Andrew Landa Murray in common. But it was not in issue between the two plaintiff's in that case, Stephen Veno and Gordon Young and the named 1st defendants (who were ***"the landowners of the 17 April 2003")*** that the Veala tribe is the owner in custom over Havahava land, the dispute in that case sought to be argued again (but rejected by the Chief Justice) were the rights of the Veala tribe and the concomitant right to membership of particular clan and hence the Veala Tribe.

For in that case, '**the landowner of the 17 April 2003"** (apart from Seth Piruku of the Duolo clan) say they are members of the Sukiviko clan, part of the Veala tribe. The unsuccessful plaintiffs in that earlier case claimed that the Luma and Kavele clans are part of the Veala tribe, rather than, as the **"landowners of the 17 April 2003"** say the two plaintiffs mistake the genealogy for the Luma Clan which is part of Kadiki tribe, and do not have land rights over Havahava land.

What is of particular interest to these current proceedings is the reference in the plaintiff's claim for relief, para A seeking a declaration that the Western Customary Land Appeal Court had no jurisdiction to determine the appeal from the Provincial Executives findings of the 18 September 2002.

The finding of the Court of Appeal (Civil Appeal No. 2 of 2004) dated 12 April 2006 makes plain, at 13 that the specific provisions of the Forestry Act *"creates another exception to the exclusive jurisdiction of the Local Court in disputes over customary land"*, so that where the Timber Right's Acquisition regime of the Forestry Act expressly provides for a manner of appeal to the CLAC and by s. 10(2) once that appeal, on its merits has been heard and decision handed down, the section can be called in aid to stop further litigation over the issue. That has been the response to the plaintiff's claim, here.

I am consequently satisfied on the material before me and having regard to the findings of the Chief Justice in that earlier case, (findings upheld by the Court of Appeal) that Havahava land, whilst contiguous with Rodo land has been accepted to be a separate block. There is then, no standing in the plaintiff to argue, nor is argument now available over that block dealt with in the decisions of the WCLAC given on the 17 April 2003 (for the determination of the Provincial Executive is so long ago that claim, now, by Havea Majoria is statute barred).

This finding disposes of the claim for relief in A of the plaintiffs originating summons. The plaintiff's summons filed on the 5 September relying on the earlier originating process can have no basis in the face of the finding of "no standing" by the Chief Justice in those earlier proceedings as the geanology of those entitled to Havahava land rests with the 1st defendant's line.

Orders sought by that summons of the 5 September 2006 restraining the 1st defendants and their contractors from logging on Havahava land are refused.

The summons is struck out.

The CLAC decision dated 8 July 2005 was entitled

> *"In the matter of: Rodo Land Timber Rights Appeal.*
>
> *Between:* *Oliver Bekomoro Jino and others – 1st appellant Raevini Revo & others – 2nd appellant Seth Piruku and Others – 3rd appellant Ben Lomulo and Others – 4th appellant*
> *And:* *Have Majoria and Others – Respondents"*

The CLAC recited the fact of the appeal against the determination of the Provincial Executive of the timber right on Rodo Land, Marovo Lagoon. The applicant for the timber was said to be Rodo Development Co. Ltd.

There was, the CLAC said, one appeal signed by 13 people who claimed to have an interest. At the call over on the 27 June, the various appellant were asked to *"sort out which party they represent"*. The representatives, then, were set out above. It is clear that the plaintiff before me, Havea Majoria, was named as the respondent to the appeal (for he represented the successful person found by the Provincial Executive, to be persons able to grant timber rights) and Oliver Jino was named as the 1st appellant.

I have referred to the plaintiffs originating summons which takes issue with this CLAC decision. On the 19 July 2005, an order was made by this court staying the decision of the CLAC and also directed that the Attorney-General be heard on that application for that the Attorney was the appropriate legal representative for the CLAC in such a case.

Yet other proceedings were commenced in cc 462 of 2005 by the plaintiff, seeking to quash by way of certiorari, that CLAC decision. While leave was granted to apply for the prerogative writ, the claim to the writ has not yet been heard. But earlier, on the 13 September the 1st defendant had obtained an interim injunction, still in effect, preventing the plaintiff from logging within Rodo land.

On the 1st February 2006 an order was made consolidating cc 469 of 2005 and cc 255 of 2005 to facilitate trial not yet been held.

Mr. Apaniai says the issue in both cases, now consolidated in these proceedings, relates to the ownership of Rodo land particularly Havahava land. Dependant on the outcome of that argument is the validity or otherwise, of the logging licence of Rodo Development Co. Ltd. The ownership issue is but part of the obligation facing the CLAC over the reference to it by way of appeal over Rodo land. The Havahava land question has been answered.

In its reasons for decision the CLAC formed the view that the Provincial Executive failed to determine matters as required of them under s.8 (3) (b) (c) of the Forest Resources Act. Its decision was expressed to be that the determination of the Provincial Executive was quashed.

It is clear from what the plaintiff relies on in its originating summons and from a reading of the CLAC judgment that the appeal grounds 2 and 3 relate to the Provincial Executives supposed failure to correctly identify (i) persons lawfully entitled to grant timber rights to the applicant, Rodo Development Co. Ltd. and (ii) the nature and extent of the timber rights (S.8 (3) (b) & (c) of the Act).

The Provincial Executives duties then were categorised and particularised in the notice of grounds of appeal which the CLAC was obliged to consider and rule upon in accordance with S.10. The phraseology in s.10 (1) – *"and such court shall hear and determine the appeal,"* when read with subsection (2) makes plain that the CLAC shall determine those matters in issue apparent on the notice of appeal. Quashing, then without proceeding to determine those matters in issue raised by the notice of appeal referrable to s. 8 (3) (b) and (c) cannot be said to be a proper determination of the appeal so as to be a *"final and conclusive"* finding on those *"persons lawfully entitled to grant such (timber) rights"* and the extent (or boundaries) of such timber rights available to such persons. It has not, on the evidence or argument given it, made a ruling on the two issues. The CLAC has no power to "quash" the determination of the Executive rather a power to hear de novo the appeal and make proper findings in accordance

with s. 8. There is no purpose, then in further hearing on the question of a prerogative writ of certiorari, and I order that the writ issue, directed to the CLAC.

In that earlier case affecting Havahava land which came before the Court of Appeal, (Civil Appeal No. 02 of 2004 – *Steven Veno and Gordon Young v. Oliver Jino; Andrew Landa Murray and Others* unreported judgement dated 12 April 2006) the Court of Appeal reiterated the Chief Justice's comments that the appellants in that case, Steven Veno & Gordon Young lacked standing to usurp the timber rights agreement and the licence granted to the 2nd respondent, Orion Limited, for that the basis of the two appellants claim to customary rights in Havahava land are no more than mere assertions. In the case before me, there has been no determination by the CLAC within the meaning of S. 10(2) of the Forest Resources Act, either of the persons entitled to grant or of the extent of Rodo land so that the earlier proceedings before the Chief Justice which involved these very issues must be looked at to see whether they were determinative of the two issue raised here. For clearly, those earlier proceedings, by the consent judgment given in the CLAC matter under review by the Chief Justice, identified particular persons entitled to grant timber rights over Havahava land. That consent judgment was given on the 17 April 2003. It is clear from the terms of the Court of Appeals judgment, that those aggrieved by the Western Provincial Executive's determination (Form II) of the persons lawfully entitled to grant timber rights over Havahava customary land were those successful respondents to the appeal, Oliver Jino, Andrew Landa Murray and others so named in those proceedings before the CLAC but that no appeal was instituted in that case by the plaintiff, here. The time limited for appeal by S. 10 (1), one month, has long past. The plaintiff then cannot now seek to interfere with the established relationships which followed the grant of certificate of customary ownership (Form II) and subsequent logging licence **affecting Havahava land which must be deemed also, to have identified as to "nature and extent" for the purpose of S. 8 (3)(c) of the Act and consequently cannot now be impugned by these proceedings**. It was far too late when the plaintiff initiated his originating process to now say, (by seeking injunctive orders affecting Havahava land) that Rodo land encompasses Havahava land therefore this court should bring up and review all that has gone before, affecting Havahava land. The Judgment of the Chief Justice upheld by the Court of Appeal may be seen to extinguish any later argument over the grant of timber rights affecting Havahava land.

Havahava land was undisputedly that land having customary boundaries starting from the mouth of Taveacha river, Havahava ridge up to Bitana river source to Manavo river source then across to Alongo river source and down to the mouth of Nama river. In those earlier proceedings, it was not confused with Rodo land which was expressed to be adjacent, and was separately dealt with by the Provincial Executive in its timber rights hearing.

In the CLAC hearing impugned before me, the aggrieved persons objecting to the findings of the Provincial Executive over Rodo land (the 1st defendants in this case) spoke of –

1. Oliver Bikomoro Jino (Rodo Customary Land block)
2. Raevini Revo (Sasara Customary land block)
3. Seth Piruku (Kinudi Customary land block)

and sought to differentiate Sasara and Kinudi blocks from Rodo customary land proper. Havahava Ridge was mentioned in the context of Sasara block having to be exercised for the person claiming Rodo land is the same person whose right to Havahava land in those earlier proceedings was unsuccessfully impugned. There is then a presumption that the defendant, here is the proper authority able to grant timber rights over Rodo land but this court cannot make that finding.

So there remains, a dispute over Rodo land. That dispute came before the CLAC and was not finally determined. It is not for this court to substitute its findings on the issues left unresolved by the CLAC on the 8 July 2005. The timber rights issues relating to Rodo land have not been settled in accordance with the statutory obligation imposed on the CLAC by s.10 of the Forest Resources Act. While it is plain from a reading of its reasons; that the CLAC was satisfied the Provincial Executive had erred in finding that those named in the Form I (para 6 – Names of Land owning groups with whom preliminary discussions have been had with the applicant/developer) whilst corresponding with those *"landowners"* named in the Form II (following the proper enquiry by the Executive on the ground as to those landowners) but that the later Form II (naming the plaintiff) was unsubstantiated by evidence, apart from the plaintiff's assertion that *"Rodo land is owned by Rodo Tribe"*. To quote further from the reasons of the CLAC, at 5:

> *"what are also clear here is that the names appearing in Form II are the very names that appear in Form I. The Provincial Executive Committee's minute and their determination of 18 September 2002 stated above confirm this view of Mr. Kimitora. There is nothing in the record to show that persons named in Form II are the proper persons to grant timber rights on Rodo land".*

As a consequence the CLAC (without power so to do) purported to *"quash"* the findings of the Executive recorded in the Form II where it listed those (including Havea Majoria) as entitled to grant timber rights. That entitlement relates to custom. The CLAC recited the grounds of appeal by Oliver Bikomoro Jino and those other appellants, including the 1st ground which criticised the Executive for its absence of knowledge of customary land rights about Rodo land.

As I have shown, the timber rights issue over Rodo land has not been settled for that the CLAC has not carried out its function. It remains for the CLAC to determine those questions posed by s. 8(3)(b) & (c). The appellants argument and evidence brought before the CLAC leading to its purported determination of the 18 September, with the respondents case may be sufficient for the CLAC to make a proper determination according to custom. The CLAC may, in its discretion, also have regard to the decision of the Marovo Council of Chiefs given at the behest and in favour of Havea Majoria and his line on the 7 August 2003, although I see that the 1st defendant, here Oliver Jino and his line did not attend the hearing. What weight, if any, the CLAC places on the fact of the finding is entirely for the CLAC in its further deliberations on the issue yet to be decided, for the specific provisions of s.10 (1) of the Forest Resources Act creates another exception to the exclusive jurisdiction of the Local Court (and the Council of Chiefs) to decide matters arising in connection with customary land (see *Steven Veno's* case; (Court of Appeal) infra at para 13). That power given the CLAC by s. 10 seems to have been misapprehended when I read its reasons at p, 6;

> *"Any issue relates to ownership of land is to be determined under the Lands and Title Act and Local Court Act, while the acquisition or persons to grant timber rights to be determined under the FRTU Act. However, persons identified to own the land may only assist the Provincial Executive Committee to identify the proper persons to grant timber right or the Land concerned".*

The Court of Appeals judgment in *Steven Veno* made plain that customary land ownership (and I may suggest the extent of usufructuary rights to timber growing on the land) may need to be determined where the Forest Resources Act has come into play. Such is the case here and the duty arises because of the interplay of ss.8 and 10 of the Act. The CLAC is clothed with power by s. 10 to determined those issues named in s. 8 (3) when persons aggrieved are dissatisfied with the Provincial Executive finding, and give notice of appeal.

The Lands and Titles Act and Local Court Act do not envisage the circumstances created by the Forest Resources Act, the manner and regime for utilisation of the forest resource. Consequently the Forest Resource Act sets out that regime and provides, by s.10, a statutory authority entrusted with finding and enunciating customary rights to land or usufructuary rights to harvest timber or as it is described in the Act, *"those persons lawfully entitled to grant timber rights"* (s. 8 (3)(b)).

There is, because of the apparent failure of the CLAC to apprehend the obligation imposed by s.10 of the Forest Resources Act, a right of a appeal and review in the High Court, of such error of law.

The plaintiff, in its originating summons, seeks declarations relating to the jurisdictional extent of the CLAC power. It bases its claim on, what it says, were pre-existing customary law findings which the CLAC was estopped from reconsidering because of the doctrine of *res judicata*. That doctrine has no place in the statutory regime of the Forest Resources Act. It stands to reason that the evidentiary effect of various historical. pronouncements by predecessors in title in chief's hearings concerned with matters other than *"those able to grant timber rights"* cannot amount to a *"judgment" or "determination"* understood in English common law to predicate the use of the doctrine of *res judicata* so as to stop the CLAC from determining the very matters required by the Forestry Act. Just as surely, however, the CLAC will be obliged to consider the fact of chiefs findings in previous disputes in arriving at its determination required following appeal under the Forestry Act. But the effect and weight, if any, after this passage of time, of those earlier decisions, unrelated to the regime of timber utilisation, is wholly one for the CLAC.

At this juncture it is appropriate to deal with the originating summons of the plaintiff for declarations. The effectiveness of declaratory orders suffer for that they cannot change exiting relations, rather, as the plaintiff seeks, recognition of a status of *res judicata*.

(Punton v. Ministry of Pensions and National Insurance (No. 2) (1964, ALL ER 448)

If I were, to accede to the plaintiffs' claim and make a declaration recognising the CLAC had no jurisdiction to entertain the appeal, this court would be acting contrary to the line of decisions given by the Court of Appeal, (most recently given in *Steven Veno's* case) recognising the statutory regime of forest utilisation and the concomitant power in the CLAC to entertain appeals from decisions of the Provincial Executive. I am bound by the Court of Appeal decision in *Steven Veno's* case.

For the reasons given, declarations sought in para's 2, 3 & 4 of the summons are not available to the court in these circumstances. Orders are accordingly refused. These findings necessarily flow from the legal effect of the Forestry Act coupled with the Court of Appeal decision in those lines of authorities most recently expressed in *Steven Veno.* For a declaration is a binding statement of an existing legal situation and that situation, supposed by the plaintiff, and does not exist on a proper view of the Forestry Act or on the facts pleaded.

I refused the injunction orders sought against the 1st defendant for that the order purports to relate to Havahava land, customary land specifically dealt with in those earlier proceedings before the Chief Justice where the Chief Justice found for the 1st defendant herein named, a finding up held by the appeal court.

There is in effect, my earlier injunctive order against the plaintiff and his logger in relation to Rodo Land for that the balance of convenience lies with the 1st defendant when I see that the CLAC sought to set aside the Province Executives finding in favour of the plaintiff's right to

grant timber rights over that parcel of customary land. I am also mindful of the undertaking as to damages given by the 1st defendant.

It is appropriate, therefore for me to direct the CLAC to further entertain the 1st defendants appeal against the findings of the Provincial Executive of the 18 September 2003 in having the plaintiffs and others as entitled to grant timber rights over Rodo Land, and make a decision on the outstanding issues raised by the notice of appeal. Since that determination is unlikely to be soon, I must consider whether to continue the injunctive orders stopping logging over Rodo land for that indefinite time.

The original order was granted the 1st defendant on the 21 September last year, some 12 months ago.

It would be logical to think the partes are conducting their affairs in full knowledge that there is a real possibility the injunction will be made permanent when the fact of the unsuccessful civil appeal decision given on the 12 April this year affecting Havahava land placed the 1st defendants (in these proceedings) in that favourable position to pursue the balance of his claim for rights to Rodo Land.

That claim depends upon the outcome of the CLAC decision on the issues raised in the 1st defendant notice of appeal to that tribunal.

Consequently it would be appropriate to continue the injunctive orders pending that outcome, for that act may be seen to recognise the CLAC jurisdiction to determine who has rights to assign timber, before more felling takes place. For the rights of the logger under the Technology Agreement to fell logs are no better than the rights if any of the assignor.

That felling licence of Hup Lee (SI) Co Ltd with Rodo Development Co. then affecting Rodo Land does not afford Hup Lee (SI) Co. Ltd. any better title, if you like, to timber standing on the land than the assigned right, if any, of Rodo Development Co. That assigned right has been impugned and is the subject of the argument before the CLAC, an argument which the CLAC has failed to hear according to law. In the exercise of my discretion I continue the injunction against logging on Rodo land until further order. I direct the CLAC to reconvene to hear the appeal according to law in terms of the Forestry Act and the determinations and directions afforded by the various Court of Appeal decisions and make findings as required by S.8 of the Act.

The Order of the CLAC in terms of S.8 as it affects the appellants and respondent in the Rodo Land Appeal, will came back to me so that I may hear further argument and determine any outstanding claims amongst the parties.

THE COURT