

**IN THE HIGH COURT  
OF SOLOMON ISLANDS**

*Civil Jurisdiction*

**BETWEEN: SUCCESS COMPANY LIMITED** First Claimant

**AND: BULACAN INTEGRATED WOOD INDUSTRIES COMPANY LIMITED** Second Claimant

**AND: ONESIMO REINUNU AND KASIANO VEOMATE** Third Claimants

**AND: MARK TOVA** Defendant

**Date of Hearing:** 15 March 2010

**Date of Decision:** 9 April 2010

*Mr. M. Tagini for first, second and third Claimants*

*Mr. D. Tigulu for Defendant*

**DECISION ON APPLICATION  
TO VARY COURT ORDERS**

**Cameron PJ:**

- 1 At all material times the first claimant Success Company Limited (Success Co. Ltd) was said to be the holder of a timber licence in respect of a concession area in Wards 1 and 2, West Guadalcanal.
- 2 It would appear that in about 2006 the second claimant Bulacan as the contractor felled various timber on what is described as the "SP" block contained within the concession area and over which the defendant Mark Tova had rights to the timber.
- 3 Then in 2008 Bulacan returned to the area and created access roads in anticipation of further felling. In March 2009 it commenced felling on a block known as the "OK" block, owned by the third claimants, which shared a common boundary with the "SP" block.
- 4 When the felling of trees commenced in the "OK" block in March 2009, the defendant Mark Tova and others from the adjoining "SP" block intervened and claimed that some or all of

the felled trees had been cut down from the "SP" block, and so belonged to them. They installed a portable sawmill in the bush and cut into sawn planks various felled trees and removed them for their own use. This provocative action resulted in the claimants applying for a restraining order preventing the defendant from interfering with the logging operations.

- 5 In his defence, Mark Tova argued not only that ownership of the logs was disputed, but that the timber licence of Success Co. Ltd was invalid. It was pointed out that the logging agreement dated 10 September 1993 between the grantors of timber rights and Success Co. Ltd contained a clause requiring logging operations to begin not later than 12 months from the date of the agreement i.e. by 11 September 1994. However, from the timber felling licence dated 23 December 2004, it would appear that logging did not commence until about the end of 2004 at the earliest. Thus it was said that the felling was in breach of that provision of the logging agreement, and that no timber licence ought to have been issued in respect of it.
- 6 It was also pointed out that the agreement provided for a finite period of logging of 15 years from its inception, which period would have expired on 10 September 2008. Thus it is said that the March 2009 felling was without the authority of the original grantors of the timber rights.
- 7 The High Court heard the application for restraining orders against the defendant in May 2009, and issued orders on 3 July 2009. Those orders restrained all parties "from any further logging in the subject land", and ordered that "Proceeds of disputed logs be hereby restrained".
- 8 It is clear that from the judgment that the restraint on logging in "the subject land" was a reference to the entire concession area the subject of the 23 December 2004 timber licence, and was not restricted to the "OK" block only. The judgment canvasses the defendant's arguments as to the alleged invalidity of the entire logging operation and notes that the prima facie documentary evidence pointed to the logging agreement having lapsed on 10 September 2008. Thus all logging after 10 September 2008 was arguably without authority, and not simply the logging of the "OK" block.
- 9 By application dated 20 July 2009, the claimants applied to the Court to vary the 3 July 2009 orders. Importantly, they sought

to limit the restraint imposed by the 3 July 2009 orders to only the "OK" block of land. They also sought permission to export logs already felled prior to the 3 July 2009 orders.

- 10 On 5 August 2009 the High Court did vary the 3 July 2009 orders. It permitted export of the logs felled prior to 3 July 2009, and ordered that the net proceeds of sale be paid into a joint trust account. It also ordered a joint inspection of logs felled within the land area disputed by the defendant, and an accounting for all logs already felled. Significantly, the Court did not vary the original orders so as to limit the restraint on logging to only the "OK" block or to limit the restraint on the net proceeds of sale to only those logs felled in the "OK" block. Nor did it vary the orders to permit the payment out of royalty moneys to landowners, other than to the owner of a block known as "RH" on the western side of Boneghe river.
- 11 The subject application dated 13 October 2009 seeks to vary previous orders by limiting the restraining order in relation to sale proceeds of logs to only the royalty moneys which apply in respect of the "OK" block. This would enable royalty moneys in respect of undisputed blocks to be paid, and for Success Co. Ltd to retain the net proceeds of sale of all the logs.
- 12 The present application differs from the claimants' previous application of 20 July 2009. That sought that only the net proceeds of sale of logs felled within the "OK" block be restrained, and that logging operations be allowed to continue on the other undisputed blocks. The present application seeks that only the royalty moneys from the "OK" block be restrained, and does not seek an order allowing the continuation of logging operations.
- 13 It is not apparent from the decision of this Court dated 5 August 2009 why there was no order restricting the restraint on net proceeds of sale of logs to only the "OK" block. In ordering a joint inspection of logs felled within the area disputed by the defendant (i.e. the boundary area of the "OK" block), the Court clearly accepted that the defendant's interests were limited to what may have occurred in and around the adjoining block to which the defendant had rights (the "SP" block). It would therefore have been consistent with that approach for there to have been a further order limiting the restraint to the proceeds of sale of logs felled within the "OK" block. I note that there is reference to counsel drafting the consent orders of 5 August 2009, and the situation may have arisen from those consent orders being drafted rather confusingly. What is clear is that

the Court did not at that time consider the merits of the argument that the restraint should be limited to the "OK" block.

- 14 It is also clear that the weight of the evidence currently before the Court points to the defendant only having rights in respect of the "SP" block. I appreciate that he asserts that he has rights to other blocks within the concession area, but the preponderance of evidence, including a Council of Chiefs determination dated 20 November 2009, suggests otherwise.
- 15 As the evidence points to the dispute being over felling in and around the "OK" block in 2008, I see no valid reason to continue the restraint on net proceeds of sale on blocks in respect of which the defendant has no interest. The effect of the order which I intend to make will therefore be to release from restraint the proceeds of sale from blocks other than the "OK" block.
- 16 If at trial the defendant succeeds in establishing a valid claim to other blocks on the east side of the Boneghe river, then he will have a claim in damages against the claimants. However, on the evidence so far before the Court, it appears that he has no valid claim to those other blocks.
- 17 An issue at trial will be the validity or otherwise of the timber licence of Success Co. Ltd. This in turn is likely to depend on whether the logging agreement was breached and whether the nature of any such breach was such that it no longer applied. Because the validity of the timber licence is at issue, I decline to make any order that allows continuation of any logging prior to trial.
- 18 The only empirical evidence currently before the Court as to the quantity of disputed export timber extracted from in and around the "OK" block is a report from a principal forestry officer dated 14 August 2009 (exhibit JS 1 of John Suga Junior's sworn statement dated 25 September 2009). This shows that following an inspection which included persons said to be representatives of the respective parties, 41.23 cubic metres of export timber was identified as being in dispute. While the defendant's counsel made it clear that this finding was not accepted by the defendant, it is nevertheless the best evidence currently available to the Court.
- 19 I therefore vary the Court's orders by discharging order 2 of the Court's orders dated 3 July 2009 and by discharging orders 2 and 4 of the Court's orders dated 5 August 2009 and

substituting the following:

“That the claimants pay all proceeds from the sale of the logs exported and identified as “Export grade – 9pcs with volume of 41.23 cubic metres” in the Field Data report dated 14/8/09 less government export duty into an interest bearing joint solicitors trust account in the names of the solicitors for the parties”.

- 20 I direct that the costs of the application are to be in the cause, and that the matter be listed by the Registrar for a further pre-trial conference.

**BY THE COURT**

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**Justice IDR Cameron  
Puisne Judge**