IN THE HIGH COURT OF SOLOMON ISLANDS
(Goldsbrough J)

Civil Case No. 36 of 2010

BETWEEN:	CHIEF DANIEL DALAPAKIA (Representing Ngava Tribe of North East Choiseul)	First Claimant)
AND:	CHIEF COLLIN KOBALA (Representing Kekepongo Tribe of North East Choiseul)	(Second Claimant)
AND:	ATTORNEY-GENERAL (Representing the Commissioner of Forests)	(First Defendant)
AND:	ATTORNEY GENERAL (Representing Choiseul Provincial Government Executive)	(Second Defendant)

Date of Hearing: 15 July 2010
Date of Judgment: 16 August 2010

Pitakaka M for First and Second Claimants
Firigeni R for First and Second Defendants

JUDGMENT

Goldsbrough J:.

1. The agreed facts in this matter are comprehensively set out in submissions by the claimant and the defendant Provincial Executive. There is no value in setting them out again. This application for a mandatory order, requiring the relevant authority to issue a certificate under the Forest Resources and Timber Utilisation Act [Cap 40], has reached the Rule 15.3.17 Conference.

2. Rule 15.3.17 requires that the Court be satisfied of the matters set out in Rule 15.3.18 prior to a full hearing. The relevant matters in this case are whether the claimants have an arguable case and whether there is no other remedy that resolves the matter fully and directly.

3. The claimants have a decision in their favour relating to land the subject of a Timber Rights hearing. During the course of that statutory procedure followed for the grant of a Timber Rights Licence by the Commissioner of Forest Resources, initiated by the applicant which is

not a party to these proceedings, a decision was made that the claimants are the persons entitled to represent the customary landowners in the negotiations to grant timber rights.

4. Again during the course of the statutory procedure, those persons found to have the right to negotiate in those proceedings indicated that they were not prepared to negotiate with the applicant. That resulted in no agreement under section 8 and a recommendation under section 9 to the Commissioner to reject the application. There is no discretion provided to either body in those circumstances.

5. Now those persons identified in the statutory process have a different company with which they presently wish to do business. The essence of this claim is that they now no longer need to follow the statutory process but may instead circumvent it because of the earlier finding that they are the persons entitled to represent the customary owners. The Court is invited to order that the statutory process need not be followed by making a mandatory order that the relevant authority does not follow the scheme.

6. It is not a difficult conclusion to reach that this action cannot be sustained. It is not an arguable case. Whilst it is argued that an important principle is at stake this is clearly not the case. There is no criticism of the statutory scheme under Cap 40 as being less than fair or appropriate, just that these claimants do not consider that they should be bound to follow it. They prefer to be allowed to mix and match those parts that are favourable to them. It is not far from an abuse of process.

7. Counsel instructed had the good sense to agree to the appropriate amendment to allow the matter to proceed this far, and conceded abridgement of time and filed submissions within very short time frames, for which they can only be commended. The submissions filed are of a high standard. Regardless of the quality of submissions, a good submission cannot disguise a misguided claim.

8. The mandatory order sought, that the finding already made in the completed application that resulted in no agreement be transported into a new application made by another entity not previously involved in the first application and then made into a completed and successful application without a further hearing is misconceived. If made it would order a failure to follow a statutory procedure in circumstances where other matters in addition to the one matter that the claimants rely upon have not yet been determined. That cannot be correct, and is indicative of the fact that the claimants do not have an arguable case.

9. It also creates the risk that the claimants are encouraged to elevate this decision into something which it is not. In the context of an application for consent to negotiate timber rights, the claimants have been identified as the persons who, and represent all the persons who, are lawfully entitled to grant such rights. Whilst this is close to a declaration of customary ownership of land, it is not such and does not therefore give the claimants the right as against all people to ownership of the land. It is a right which they may claim as having previously been determined as against the same person or group of people in similar circumstances but not a right *in rem* to the land in question.

10. The Court under Rule 15.3.19 at a Conference has considered the papers filed and has heard submissions. It is not satisfied of the matters in Rule 15.3.18 and therefore must decline to hear the claim. The claim is struck out. Costs are ordered to be paid by the claimant to the First and Second Defendants. Those costs will be agreed or taxed.

Dated this 16th day of July 2010

GOLDSBROUGH J