

IN THE HIGH COURT OF SOLOMON ISLANDS
(Goldsbrough J)

Civil Jurisdiction – Civil Case No. 156 of 2007

BETWEEN: Raynick Pulesea AQUILLAH Claimant
(Representing the Kua Tribe of Marovo/Western Province)
(Represented by Mr M Ipo)

AND: Ricky Namusu and Others 1st Defendant
(Representing the Gevala/Bituri Landowners of Marovo/Western Province)
(Represented by Mr D Tigulu)

AND: Jessina Limited 2nd Defendant
(Represented by Mr D Tigulu)

AND: Pacific Crest Enterprises Limited 3rd Defendant
(Represented by Mr D Tigulu)

Date of Hearing: 20 August 2010

Date of Decision: 23 August 2010

Ipo M for the Claimant
Tigulu D for 1st, 2nd and 3rd Defendants

Decision Upon Application to end Proceedings Early and Related Matters

Goldsbrough J

1. This is an application for strike out or in the alternative to vary existing interim relief. I have heard submissions on the former and have indicated that I will hear submissions on the later if necessary having delivered a decision on strike out.
2. These proceedings concern customary land. They were initiated in April 2007 and the last step taken by the claimant in them was to obtain interim relief which was granted on 15 May 2008. Since that date the claimant has taken no step in the proceedings. That period of inactivity is two years and three months.

3. The application to strike out is based on that inactivity. It is said that the proceedings should not be allowed to continue because of a failure to prosecute diligently. It is further submitted that in the normal course of events these proceedings may have been struck out with notice given after six months of inactivity or without notice on twelve months of inactivity. Those provisions both appear in the present Civil Procedure Rules. The power to take that action is with the Registrar of the High Court but he took neither course.
4. Under the previous Civil Procedure Rules after a period of inactivity of one year, the plaintiff could take no further action without leave. There is presently no equivalent step. A claimant who has done nothing for a period of time may take a step after a long period without seeking leave to revive, although this is always subject to the Registrar not having taken a step to strike out sooner.
5. Material read on the application shows the inactivity and seeks to explain it. On the part of the claimant it is submitted that his previous lawyer let him down, that he is a layman not conversant with proceedings and that his reliance was placed on his lawyer to do everything for him and to keep him informed. There is no evidence submitted as to what steps he did or did not take to ensure that his lawyer did just that, nor is there any evidence as to his specific instructions to his lawyer or details as to whether he was up to date with request from his lawyer for payment for payment of fees or of keeping appointments made by his lawyer.
6. In setting out how the parties had reached this juncture over this land, it is clear that various proceedings have been taken in various fora and that the claimant is not the ignorant layman that his present counsel seeks to make out.
7. Further it is the case that in seeking to defend this application the claimant without hesitation and without accepting any responsibility himself for the failure sets out to show that it rests only with his previous lawyer without giving his previous lawyer notice of the allegations to be made against him or to respond to them.
8. This court has previously indicated the need to serve previous counsel with notice of allegations of failure of act in the client's best interest often amounting to professional misconduct. It is very simple to suggest in the absence of the other person that he is the one responsible but this is not likely to succeed if that person is available to agree or disagree but not given notice.
9. Counsel for the claimant makes the further point that the defendants did not serve their defence until 22 March 2010 and that they have not complied in full with the interim orders in any event. He submits that because they are not in compliance with the orders they can expect no relief from them and that they delayed in filing their defence so this justifies the claimant in delaying to prosecute his case.
10. As to the proposition that non-compliance bars a litigant from relief, that may be the case in equity, and may be relevant on the application for variation of the interim orders, but is not relevant in terms of the application for strike out.

11. As for the late filing of the defence, this merely serves to demonstrate how important it is that parties stick to time limits and take action promptly when a limit expires without action. The claimant may have taken steps when the defence was not filed on time, but did not. That is the benefit he gets when the defence is not filed on time, not to be able later to claim the benefit of extra time because the other parties have taken extra time.
12. The present Civil Procedure Rules take away from the parties the right to litigate at their own pace. The notion that a litigant could obtain interim relief and thereafter sit back and watch what takes place without progressing their action is dispelled by those Rules. Inactivity by either party has the potential to cause injustice. The civil courts are available to the public to resolve not to prolong their disputes.
13. Whilst lawyers have the clear duty to act in the best interests of their clients, subject to their duty as officers of the court, the client has a duty to ensure that his lawyer is always kept up to date with instructions. The case, after all, is that of the client and not the lawyer. Lawyers may only act on instructions and if they cannot get those instructions they may not act. A party who seeks to demonstrate that his or her previous lawyer should be held responsible for a failure to progress his or her case is unlikely to be able to establish that successfully without giving that lawyer an opportunity to be heard on the question.
14. In this instance the question of giving notice to the previous lawyer was raised by the Court. Counsel for the claimant conceded that no such notice had been given but sought no delay in order for that notice to be given and response, if any, to be filed. In that event the claimant cannot successfully demonstrate that the failure to prosecute may be condoned.
15. Regardless of the provisions relating to failure to take a step within a specified time period, the Rules require the Court to consider what is in the interest of justice in any particular case. It is not, in my view, in the interests of justice to permit a claimant to obtain interim relief and thereafter become reluctant to take his or her case to conclusion. This is especially so when the claimant cannot demonstrate that the reluctance is anything other than his or her own fault.
16. The application to strike out is granted. The proceedings are struck out with costs against the claimant. For the avoidance of doubt, the interim relief orders are discharged. I will hear submissions on steps that need to be taken in the regard, if any, and the quantum of costs.

Goldsbrough J