

IN THE HIGH COURT OF SOLOMON ISLANDS

(Registrar Withers)

Civil Claim No. 247 of 1994

BETWEEN

SNYDER RINI

Claimant

-And-

ATTORNEY GENERAL (representing the Commissioner of Forest Resources)

1st Defendant

And

MILIKADA SILAS

2nd Defendant

Mr C Hapa for the Claimant

Ms L Folaumoetu'u for 1st Defendant

Mr P Tegavota for 2nd Defendant

Date of Hearing: 1 March 2011

Date of Judgment: 3 March 2011

1. These proceedings were commenced by the claimant on 14 September 1994 by way of statement of claim under the previous rules. An application seeking an urgent interim injunction was filed at the same time.
2. The now Chief Justice made on the same day interim orders restraining the defendant until judgment or further order from:
 - a. Conducting any timber operations and from felling trees and removing timbers and round logs whether directly or indirectly from Porepore Island covered by milling licence No. TIM 3/159
 - b. Shipping and milling all round logs felled in Porepore Island
 - c. Entering Porepore Island shown in the map annexure marked "SR2" in the affidavit of Snyder Rini sworn on 13th September 1994

3. He made an additional order restraining the 1st defendant from considering any dealing in anyway whatsoever in the export of round logs with the 2nd defendant, his servants or agents for the purpose of obtaining any authority to export from the Central Bank of Solomon Islands.
4. The order was subsequently varied on 28 September 1994 and additional orders were made requiring payment of the proceeds of sale to be paid into a joint account in the names of counsel for the Plaintiff (Claimant) and 2nd defendant pending determination of the question of reasonable expenses for deduction.
5. On 5 May 1995 the now Chief Justice in a reserved judgment partially determined the question of distribution of the funds held.
6. Counsel for the 2nd defendant filed this application to strike out the proceedings on 1 February 2011. The application was supported by a sworn statement by the 2nd defendant Milikada Silas.
7. This application by the 2nd defendant therefore has been filed some 15 years after the last judgment delivered 5 May 1995 of the now Chief Justice.
8. The application filed by the 2nd defendant seeks to have the proceedings struck out under rules 9.71, 9.72 & 9.73.
9. The relevant rules allow the court to consider striking out proceedings if the claimant does not:

9.71 (a) take the steps in a proceeding that are required by these rules to ensure the proceeding continues:

10. The duties of the parties are covered in Rule 1.8:

The parties to a proceeding and their representatives must help the court to act in accordance with the overriding objective. They must avoid undue delay, expense and technicality and consider options for primary dispute resolution as early as possible.

11. The overriding objective of the Solomon Islands Courts (Civil Procedure) Rules 2007 are contained in rules 1.3 & 1.4

1.3 The overriding objective of these rules is to enable courts to deal with cases justly with minimum delay and expense

1.4 Dealing with cases justly, so far as practicable:

(a) ensuring that all parties address the real issues of the proceedings; and

(b) saving expense; and

(c) dealing with the case in ways that are proportionate:

(i) To the importance of the case; and

(ii) To the complexity of the case; and

(iii) To the amount of money involved; and

(iv) To the financial position of each party; and

(d) ensuring the case is dealt with speedily and fairly; and

(e) allocating to each case an appropriate share of the court's resources, while taking into account the need to allocate resources to other cases.

12. I reiterate the point that this application by the 2nd defendant has been filed some 15 years since the last activity on the file.

13. As signaled in the decision of the court dated 5 May 1995 and stated in the sworn statement of the 2nd defendant one of the issues raised by the claim concerned the customary ownership of the Porepore Island.

14. The 2nd defendant has deposed that this matter was referred to the Marovo Council of Chiefs for enquiry and determination. That determination was made on 24 January 1996 and a copy of the decision is on the court file.

15. The 2nd defendant in his sworn statement advises that a challenge to this Chiefs decision was lodged with the Marovo Local Court.

16. The application requesting the proceedings to be struck out elicited from the claimant a Notice of Change of Advocate filed 25 February 2011 together with a sworn statement by Snyder Rini in opposition to the application.

17. The claimant's sworn statement confirms the 1st defendant's sworn statement regarding the matter of the Porepore land issue being referred to the Marovo Council of Chiefs, confirms the decision was given on 26 January 1996 and confirms the filing of an appeal to the Marovo Local Court.

18. He further states that an appeal has been made to the Western Customary Land Appeal Court against a timber rights determination made by the Marovo Area Council on 26 September 1995. This appeal was filed 26 October 1995 and a copy under letter dated 31 October 1995 given to the Ministry of Forest, Environment & Conservation.

19. Miss Folaumoetu'u for the 1st defendant agreed with the claimant that issue of land ownership needs to be determined as signalled in the 1st defendant's Defence filed 29 September 1994 and supported the claimant submission that the proceedings should not be stuck out.
20. From this detailed background it can be seen the High Court proceedings are being held in abeyance subject to 2 appeals by the claimant.
- a. An appeal to the Marovo Local Court against the decision of the Council of Chiefs dated the 26th January 1996
 - b. An appeal to the Western Customary Land Appeal Court against the determination of the Marovo Area Council timber rights determination
21. In respect of the Marovo Local Court appeal which according to the annexure was lodged on 18 June 1996 (although the sworn statement of the claimant states 18 June 2011). The claimant simply states in his sworn statement he does not know why the court has not sat to hear the appeal.
22. No explanation is given by the claimant as to why the appeal against the timber rights determination by the Western Customary Land Appeal Court has not been heard.
23. In this particular application the issue I have been asked to determine is one of delay by the claimant in that he has failed to take any steps in the High Court on his claim since the interim order made on 5 May 1995.
24. I have no hesitation in finding that there is at least one appeal afoot as deposed by both the 2nd defendant and the claimant. This is the appeal to the Marovo Local Court regarding customary ownership not only of Porepore Island but also Hirihove Island.
25. What I do not have is any information from the claimant or his lawyers regarding steps taken to pursue the matter before that court. The trail ends simply with the filing of the appeal on 18 June 1996.
26. I am prepared to accept the claimant's evidence that there is an appeal before the Western Customary Land Court regarding timber rights, and such appeal was lodged 26 October 1995.
27. Again however there is no evidence provided by the claimant as to steps taken to have this appeal determined.
28. I have concerns that the appeals to the Local Court and Customary Land Appeal Court have not taken place. The suggestion in the sworn statement of

the claimant is that the Marovo Local Court has not sat since 1996 and this is due to lack of finances. There is however no evidence produced to support this.

29. The new rules came into force in 2007 and it is unfortunate that Registrars failed to utilize the provision of Rule 9.72 (d) and struck out the proceedings without notice where there had been no step in the proceeding for 12 months. In this instance no steps had been taken in the proceeding since 5 May 1995 some 15 years ago.
30. Rule 7.73 is instituted where no steps have been taken in a proceeding for a period of 6 months and requires the Claimant to show cause why the proceedings should not be struck out.
31. Intervention by the court under both rr9.72 & 9.73 are a case management tool, used by the court who has a responsibility under r 1.6 to actively manage cases.
32. I am satisfied the claimants have not taken any steps to pursue the appellate process on which determination of this claim appears to hinge. I find that this delay is not acceptable, and the claimant has not actively pursued the claim.
33. I therefore make an order to strike out the proceedings.

Dated this 3rd March 2011



Gavin J Withers
Registrar