



The application

4. The Claimant's application is premised upon rule 9.57 of the Solomon Islands Courts (Civil Procedure) Rules 2007 (CPR) which provides:  
*Rule 9.57 - The claimant may apply to the court for a summary judgment where the defendant has filed a response or a defence and believes that there is no real prospect of defending the claimant's claim.*
5. In support of the application, the Claimant has filed a sworn statement deposing to the facts he is relying upon. He is a prominent member of the Bina Gwelabu Tribe. His tribe owns the Bina Gwelabu customary land. That is the land in issue in this proceeding. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants were conducting an illegal logging operation therein.
6. The Claimant's case is based on the assertion that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants do not have a valid felling license entitling them to conduct their logging activities on the disputed land. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants were using Felling License No. A10501 to carry out logging therein. That felling license is in respect of Bakoilangi customary land. It does not cover Bina Gwalebu customary land.
7. That assertion is not disputed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. They nonetheless say that they were authorised to enter and harvest timber inside the land for domestic use by landowners. In order to access Bakoilangi customary land, they need an access road through the disputed land. They constructed an access road therein.
8. It is further their position that the 2<sup>nd</sup> Defendant was invited by the Chairman and Vice Chairman of Bina Gwelebu Trust Board to enter the disputed land. They also rely on a Road Access Agreement signed by the Bina Gwelabu Customary Land Committee and the 2<sup>nd</sup> Defendant on the 19<sup>th</sup> April 2023. There is also a Supplementary Agreement signed by the Bina Gwelabu Landowners and the 2<sup>nd</sup> Defendant on the 1<sup>st</sup> May 2023. They therefore are of the view that their entry into the disputed land was authorised and any logging operation conducted within the disputed land is not illegal as alleged.
9. Having noted that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants do not dispute having no felling license covering the disputed land, I will discuss the defence that they are relying upon. I have had the opportunity to peruse the letter of invitation to the 2<sup>nd</sup> Defendant dated the 1<sup>st</sup> May 2023. That letter is titled "Request for logging operation at Bina Gwelabu land". The content of the letter is clear and unambiguous. They requested the 2<sup>nd</sup> Defendant to extract the remaining logs that were left in their previous operation. They also wish to have the logs extracted to be exported.
10. In the Road Access Agreement, it is also clear that the purpose is to assist the 2<sup>nd</sup> Defendant enter into the disputed land and use it for logging related activities. I have especially noted the obligation of the company on page 2 of that agreement.

11. With the Supplementary Agreement, the Bina Gwelabu Landowners were referred to as the resource owners. The 2<sup>nd</sup> Defendant was referred to as the contractor under the Bakoilangi License. It is noted from the company's obligation on the bottom of page 1 to page 2 of the agreement that the purpose was for logging on the disputed land.
12. From their own evidence, it is obvious that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were and have been conducting logging operation inside and within the disputed land since on or about May 2023 up until a restraining order was issued by this court on the 22<sup>nd</sup> June 2023 or thereabout.
13. In this country, if a person, a company or anyone else for that matter intends to carry out any form of logging operation, they must adhere to and follow the laws of the land. The law that governs logging is the Forest Resources and Timber Utilisation Act (Cap 140) (FRTUA). The bottom line therefore is that any person whether it be a company, business name or individuals who wishes to conduct any logging operation must have a valid felling license covering that land.
14. The process that must be followed in such an instant is contained in sections 8, 9, 10, 11 and 12 of the FRTUA. The requirements includes an application in the prescribe Form 1 must lodged with the office of the Commissioner of Forest. That application must be heard and determined by the appropriate provincial assembly. If the application is approved a Form 2 is published detailing the land names and names of persons who were determined as being lawfully able to grant timber right on the lands. From thereon, a felling license (Form 3) is issued upon signing of a Standard Logging Agreement (Form 4). When this process is complete, then logging operation may commence.
15. I have noted from their evidence that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have gone through that very process during their previous logging operation on the disputed land. The Claimant was one of the determined trustees over the land. Felling License No A 10561 was issued to the 1<sup>st</sup> Defendant on the 6<sup>th</sup> October 2011. The license expired on the 6<sup>th</sup> October 2016. That felling license was not renewed. The 1<sup>st</sup> Defendant's Felling License No A 10501 was issued to them on the 3<sup>rd</sup> July 2019. It expired on the 3<sup>rd</sup> July 2024. The alleged illegal operation on the disputed land occurred between May to June 2023 during the existence of F/L 10501 but having noted that the felling license does not cover the disputed land.
16. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants say that the harvesting of logs inside the disputed land was for domestic use. The logs extracted were not intended to be exported. I am not convinced that it was not their intention to export the extracted logs. The letter of invitation, the Road Access Agreement and the Supplementary Agreement that they produced as evidence in this case is contrary to their stated position contained in paragraph 7 of this ruling.
17. I can therefore safely conclude that the entry and subsequent logging activities within the disputed land by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants was done contrary to the provisions of sections 8, 9, 10, 11 and 12 of the FRTUA. The 1<sup>st</sup> Defendant does not have a valid felling license over Bina Gwelabu customary land between May to June 2023. Their felling license covering the land has expired on the 6<sup>th</sup> October 2016 and was never renewed to date. Their Felling License No

10501 that was purportedly used by the 2<sup>nd</sup> Defendant to gain access into the disputed land does not cover that land.

18. In assessing the amended defence of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and applying the ratio in relation to applications for summary judgment in the case of Golden Springs Limited -v- Paia (1999) SBCA 11, CAC 19 of 1998, it is reasonably clear to me that from all of the materials and evidence produced by the parties in this case, they have allowed me to be able to reach a definite and certain conclusion.
19. I have taken note of the court's jurisdiction to summarily terminate a proceeding as discussed by the Court of Appeal in the Golden Spring case. Such jurisdiction must be used sparingly. In any event and by the case authority and together with the contravention of the requirements stipulated under the FRTUA as well as the admission by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants that they do not have a valid felling license over the disputed land, I am of the view that the amended defence of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have no real prospect of success. I hereby enter summary judgment in favour of the Claimant to the effect that the 1<sup>st</sup> and 2<sup>nd</sup> Defendant have conducted illegal logging within Bina Gwelabu customary land. As a consequence of that order there will be a subsequent assessment hearing held to determine the orders sought in paragraphs 2, 3, 4 and 5 of the amended claim. Cost shall be determined upon finalisation of assessment hearing. I hereby order accordingly.



Justice Maelyn Bird

Puisne Judge