ALLARDYCE LUMBER CO LTD -v- MATHIAS ELIKANA First Defendant
BARLEY RIAN Second Defendant
JOHN WESLEY LEVO Third Defendant
(Representative of Kariki Tribe)

High Court of Solomon Islands
(Palmer J.)
Civil Case No. 242 of 1992
Hearing: 15 September 1992 at Gizo
Ruling: 22 September 1992

J. Sullivan & T. Kama for the Applicant
P. Lavery for the Respondents

PALMER J: This is an inter partes application by the Plaintiff seeking continuation of the restraining order obtained on the 29th of August 1992 before His Lordship the Acting Chief Justice made ex parte, and extended on the 27th of August 1992 by me until the present time.

The restraining order in essence prevents the defendants and all members of the Kariki tribe from interfering with the Plaintiff, its servants and agents from conducting timber operations on Lots LR 148 and 245 and from interfering with plant and equipment and other property of the Plaintiff.

The application of the Plaintiff is based in essence on a timber licence obtained on the 1st of July 1974 and numbered T/1/74.

Paragraph 1 of that licence refers to parcels' of land on Shortland Island and Mbava Island held by the Government and also areas of land contiguous and those islands adjacent to the said parcel, whose boundaries are delineated on Plans A and B. Unfortunately no plan A or B was annexed. However, a map of the licence area has been submitted, which seems to cover the whole of the Shortland Islands group. The Plans A and B I understand can be produced later on at trial if they do exist.

An issue has been raised challenging the extent of the licence, by learned Counsel for the Defence. However, that is a matter that can be raised in detail at the trial.

In practice and pursuant to an amendment of the licence dated 6 January 1991, the area covered by the licence was then described as 'Shortland and Mbava Islands'. Again learned Counsel for the defence has submitted that the plurality in the word 'islands' referred to the two islands, Shortland Island and Mbava Island. The Plaintiff on the other hand maintains that it referred to the Shortland Islands group and Mbava Islands group.

The licence was then extended to 30 June 1994, in that amendment.

On the basis of the description of the extent of the licence area, together with its map of the licence area and that no objections seemed to have been raised by the Commissioner of Forests, the Company began logging operations in Fauro Island in 1991.

As a result of disputes over ownership of customary land at Fauro, the Company withdrew and sought to commence logging on Government land. These are described as Lot LR 148 comprising 406 hectares and Lot LR 245 comprising 130 hectares.

It is not disputed that these 2 lots are Government land. What is disputed is the validity of the licence to log in this Government land. The submission on this is based on the fact that these two lots were registered well after the licence had been issued. This is also a matter that can go to trial as well.

The Company then sought to commence logging operations on the morning of the 20th August 1992. An incident happened that day which gave rise to the application for ex parte orders by the Company. I have now had a look at the affidavits of Mathais Elikena and Barley Rian. Mathais Elikena did say that on the 20 August 1992 he did went to the place where the Company had landed its equipment to start logging operations. He denied using any threats or violence.

Barley Rian did say too that on that day he with 6 others went to the area where the Company had landed. Their intention he said was to stop them doing damage to their properties. And although damage had been done to properties, fences and pasture lands, he denied being

confrontation. The affidavit of John Henry Howden Beverley on the other hand at page 7 paragraph b, (c), (d) and (e) indicated that there was some sort of confrontation.

I am inclined to believe that there was some sort of confrontation and as a result the Company had to withdraw its equipment and employees. Clearly, if there was no confrontation as alleged by Elibena and Barley Rian, then there would not have been need to withdraw by the Company until an injunction was obtained.

The injunction purposely was to prevent hindrance, harm, injury or damage to employees and equipment, so that the Plaintiff could continue logging on Government land until the matter is heard in detail on trial. The learned Counsel for the defendants has applied however by notice of motion to restrain the Plaintiff from continuing to log within the Kalia Peninsula. By this I take it that the application refers to the continued logging on Government land only and does not include customary land as the Plaintiff had voluntarily withdrawn from it.

I will consider this notice of motion with the application for continuation of the injunction together because both have direct effect on each other.

For the purposes of this application only, based on the affidavit evidences and exhibits before me I will accept for the time being that the Plaintiff indeed has a valid licence to log on Government land.

Counsel for the Defendants has sought to show that the defendants have some sort of interest. Interests that have arisen through use of the land in planting coconut trees, cultivating gardens and raising of cattle, although the raising of cattle has now been stopped due to fear of raids from Bougainvilleans across the border.

It is not disputed that there are food gardens, coconut trees and pasture land on the Government land. The extent of these is not clear.

The perpetual estates in the two lots are vested in the Commissioner of Lands for and on behalf of the Government. Section 4(4) of the Land and Titles Act specifies the powers of the Commissioner of Lands. Section 4(1) deals with the Commissioner's duties one of which is to advise the Minister concerning land policy.

The main thrust of the Defendants' submission is based on the letter attached to Beverley's second affidavit and marked "A", a letter written on the 19 August 1991 by the Commissioner of Lands and addressed to the General Manager of the Plaintiff's Company.

The contents of that letter is as follows and I quote:

"Dear Sir,

RE: LRs 148 AND 245 - FAURO IS. SHORTLANDS

Refer our telephone conversation Hon. Laore/Riogano regarding the confrontation experienced by your company within LRs 148 and 245.

It is true to say that the perpetual title to LRs 148 and 245 is vested with me and the following information may assist you to know the current affair of the estates:

1. *LR 148: also known as Maero Plantation and in the early eighties, the land was allocated to the Kariki people for their community project.*

2. *LR 245: also known as Sinasoru land has been subdivided into twelve (12) blocks and allocated to individuals under licence, also in 2/2/90, through the Agriculture Division of the Western Province, the Renai Community has applied for four (4) sites for their livestock development.*

It is understood however, that these areas are included under your Logging licence but due to the fact that LRs 148 and 245 had been subdivided and allocated to individuals and community projects, I am of the opinion that your Logging licence should be amended to exclude these areas, provided the allocatees and this office are further consulted.

By copy, the Commissioner of Forests is hereby informed of my decision and assist where necessary."

The question now before me is whether the licence issued in 1974 and amended in 1981 takes priority or precedence over the rights that have been exercised by the people of Kariki over the same land for several years already through the concurrence of Government.

The above letter of the Commissioner of Lands to the General Manager of Allardyce Lumber Company Limited is quite significant.

It states that LR 147 in the early eighties was *allocated* to the Nardii people for their community projects.

LR 248 it says has been subdivided into 12 blocks and allocated to individuals under licence, in 2 February 1990, through the Agriculture Division of the Western Province, and goes on to state that a community called Renai has applied for 4 sites for their livestock development.

The word '*allocated* or '*allocate*' is not defined in the Land and Titles Act. '*The Australian Little Oxford Dictionary*' edited by George Turner, defines the word '*allocate*' as '*assign*', which is not very helpful either. It's use is unfortunate because it does not clarify what is meant. However, the sentence covering LR 148 states that the land was allocated for community projects. What those projects are is not specified. It could be cattle, coconut, cocoa, palm oil, tourism or whatever. However, for the purposes of this application it is clear that there is something more than just a temporary thing being intended. Community projects are not necessarily temporary and small things. However, I need not speculate on what projects were envisaged, that is a matter that can be revealed in the trial.

The paragraph dealing with LR 248 is more enlightening. It says two things:

(i) that the land has been subdivided into 12 blocks; and

(ii) that the land has been allocated to individuals under licence.

A licence under the Land and Titles Act is defined in section 2 as a:

> *"permission given by the owner of an estate ..... which allows the licensee to do some act in relation to the land comprised in the estate ..... which would otherwise be a trespass, but does not include a lease, easement or a profit."*

What the terms of the licences given to the individuals by the Commissioner of Lands is a matter that can be raised at the trial. Licences issued by the Commissioner of Lands are not required to be noted in the Land Registers. This is the same with the licences or permits issued by the Conservator or any Forest Officer.

To argue that a licence issued under the Forest Resources and Timber Utilisation Act, at that time it was the Forest and Timber Act, takes priority over licences issued by the Commissioner of Lands is not correct.

For the purposes of this application a licence to fell and remove trees, covering an area has been issued. That licence [illegible] pursuant to section 5 of the then Forest and Timber Ordinance. Section 5(1) of that Act states:

> *"Upon application therefor and payment of the prescribed fee (if any) the Conservator may, after consultation with the Commissioner of Lands and Surveys, and subject to the approval of the High Commissioner issue a licence authorising. .... subject to such terms and conditions as he may therein specify ...."*

The first point to note is that the issue of the licence is made **after** consultation with the Commissioner of Lands.

The second point to note is that the licence may be issued **subject** to such terms and conditions as he may therein specify. Clause 15 of the licence (it is the same clause too in the amended licence) states and I quote:

> *"the Licensee shall interfere as little as may be with the rights, licences and privileges of any person to hunt, fish and to collect and take away, for any purpose, canoe trees and ebony trees and, for personal use, building materials, leaf, stick, nuts and fruits .... "*

In clause 1(i) the licence specifically excludes trees planted by human agency.

So the granting of the licence is not an absolute licence permitting the licence holder to fell and remove trees at will. There are already restrictions and requirements imposed.

The licence that this Plaintiff seeks to exercise over the two lots was not exercised until 1991. By then it appears that certain things have already been done by the Commissioner of Lands which the Licence Holder is obliged to take into account. The Commissioner of Lands is the Landlord for and on behalf of the Government. The Conservator or Conservator of Forests is another arm or agent of the

[illegible]

[illegible] of Forests and the Commissioner of Lands must work in close consultation and agreement with each other in order to ensure that the policies of the Government are being consistently followed. This would appear to be the case as stated in the letter of the Commissioner of Lands dated 19 August 19[illegible].

It does appear from the letter of the Commissioner of Lands that there are licences and/or rights that have been given to the peoples of Kariki which are not mere puff but something much more substantive than that and which requires proper inquiry. Otherwise, he would not have needed to say and I quote the second last paragraph, he says.

> *"I am of the opinion that your Logging licence should be amended to exclude these areas, provided the allocatees and this office are further consulted.*
>
> *By copy, the Commissioner of Forests is hereby informed of my decision and assist where necessary."*

The nature of the licences and the extent of those licences granted by the Commissioner of Lands would need to be clarified, that can be done at the trial. Those licences however do not extend to felling and removing of trees.

The licence to fell and remove trees is vested currently in the Plaintiff and until such licence is revoked, amended or declared null and void the Plaintiff is entitled to log on such lands <u>provided</u> that the licences and rights of the defendants are not interfered with. To do this I will incorporate in my order that the coconut plantations, garden areas and pasture lands (lands that can be reasonably identified as having been used at one stage as pastures for grazing cattle) shall not be interfered with and the Company is hereby restrained from logging within 100 metres of those areas.

Restraining order made accordingly, and the time for notice of the motion is abridged.

The injunctions sought by the Company shall continue as against the two defendants, Matheis and Harley and also as against Levo in his capacity as representative of the Kariki tribe.

I am satisfied that there has been some sort of confrontation and although no physical force was used, there was [illegible] at some

[illegible]

[illegible] injury and damage. Injunction enlarged until the trial.

I now make the following directions:-

1. That discovery be made within 21 days.

2. Inspection 14 days after.

3. That the matter be listed for hearing on filing of Certificate of Readiness signed by both Counsels.

4. Costs to be costs in the Cause.

(A. R. Palmer)
JUDGE