

**JAMES RIZU -V- KOLOLEANA DEVELOPMENT COMPANY LIMITED
AND NAO ROVU, AND OTHERS**

**High Court of Solomon Islands
(Palmer J.)**

Civil Case No. 206 of 2002

Hearing: 11th September 2002

Ruling: 13th September 2002

*G. Suri for the Applicants/ Second Defendants
Thompson Turueke as one of the Directors of First Defendant
A. Radclyffe for the Respondent/ Plaintiff*

Palmer J.: The Applicants/second Defendants (hereinafter referred to as "the second Defendants") apply by summons filed 4th September 2002 for orders inter alia to have the Writ and Statement of Claim of the Respondent/Plaintiff (hereinafter referred to as "the Plaintiff") struck out as being vexatious, frivolous and or without reasonable cause.

The Claim of the Plaintiff

The Plaintiff sues as the representative of the Voko Tribe. He claims ownership of **Voko Land** on Kolombangara Island, Western Province. Ownership over the said land had been finally determined in the High Court Civil Case of **Rizu Pada v. George Lilo (1980/81) SILR 155**. This is not disputed. The seaside boundary of that land from Kolakori to Pepele is also not in dispute having been finally determined in that case as well. The inland boundary on the other hand appears not to have been clearly delineated though Plaintiff claims it is at **Mount Batavana**.

Plaintiff contends that the Logging agreement dated 17th May 2002, of the first and second Defendants over Viuru land had incorrectly described the boundaries of Viuru land as including Mt. Batavana. The boundaries of Viuru land described in that agreement stretches from "*Kolakori River to Ruvu Bay to Kolodeo River to bottom of Rano Hill down to Gevala Hill (Kakaro Ridge) to Mt. Batavana westward to Kolakori River*". He claims thereby there is real likelihood that the first Defendant would trespass into Voko land. He seeks thereby, inter alia permanent injunction to restrain the Defendants from entering into Voko land and carrying out any logging activities.

The submission of the second Defendant

The second Defendants say there is no dispute regarding questions of ownership in custom over either **Voko Land** or Viuru Land. They do not dispute that Plaintiff on behalf of his tribe owns Voko land. At the same time the Plaintiff does not dispute that the second Defendants are the owners in custom over Viuru Land. The only issue in contention between the parties is the demarcation of the inland boundary, which separates Voko Land and Viuru land. The second Defendants say that the boundary of Viuru land extends into Mount Batavana which boundary is also claimed by the Plaintiff.

The second Defendants to that extent concedes and submits that the real issue between the parties is the question pertaining to the inland boundary of Voko land and Viuru land. They say that is a question in custom, which this court does not have jurisdiction to deal with. That being the case, this court ought to have the Writ and Statement of Claim of the Plaintiff struck out.

Is there a reasonable cause?

The second Defendant submits there is no reasonable cause in that the live issue between the parties is a question in custom and which this court does not have jurisdiction to deal with. Unfortunately I do not agree that there is no reasonable cause or that the claim of the Plaintiff thereby is frivolous and vexatious. To the contrary, the pleadings demonstrate the opposite, that the Plaintiff does have right to come to court for relief to protect his interest as owner of Voko land. Unfortunately it seems that the inland boundary of Voko land was not clearly delineated by the land courts when it came before them. That therefore is the cause of the dispute in this case. The Plaintiff says Mt. Batavana is in his land, whilst the second Defendants say it is not. Copies of the decisions in the land courts are yet to be produced but based on submissions of counsels before this court, it does appear that that point (regarding the inland boundary of Mt. Batavana) is yet to be finally determined.

Before the issues of trespass and permanent injunction could be determined therefore, the issue of the inland boundary of Voko land would need to be established. How this is going to be done is another important issue to be determined, but what is important for purposes of this application is that it does not follow thereby that the application of the Plaintiff here is without reasonable cause, frivolous or vexatious. In fact it is a justifiable application because if it is not made, the Defendants may simply enter into the said area, which he claims is part of his land and cause irreparable damage. Plaintiff therefore is entitled to come to court to protect what he claims is his land.

The application to set aside Writ and Statement of Claim therefore must be dismissed with costs. What happens hereafter is a matter, which learned Counsels would have to address. This action may have to be stayed whilst the issue of the inland boundary is channeled through the normal customary land dispute procedures under the Local Courts Act or Counsels may wish to consider whether this court has power to make a referral to the local courts to make a finding as to the inland boundary of Voko land as opposed to Viuru land. Those are matters, which the parties will have to consider hereafter.

ORDERS OF THE COURT:

Dismiss summons of the second Defendant with costs.

The Court.