

HUGO DIAMANA LALO (representing the Doko and Talise landholding groups) –V–
LEVI LIKOHO (representing the same landholding group), **M.S. L. Import and
 Export Company Limited and Attorney-General** (representing the Commissioner of
 Forests and the Isabel Provincial Government)

HIGH COURT OF SOLOMON ISLANDS
 (KABUI, J.).

Civil Case No. 225 of 2002

Hearing: 14TH October 2002

Ruling: 17th October 2002

Mr M. Ziza for the Plaintiff

RULING

Kabui, J. This is an exparte application filed by the Applicant on 7/10/2002 for injunctive orders. The orders are these as are set out in the exparte Summons-

1. An order restraining the First and Second Defendants, by themselves, their servants or agents, are restrained from felling, extracting and removing any trees, logs or timber from Talise Land until the substantive issue of ownership is determined by the Land Courts.
2. An order that the First and Second Defendants within 14 days account to the Court for all marketable trees felled on Talise Land since the commencement of the operation to the date hereof and to provide details of:-
 - [a] species, quantity and price of the logs extracted from Talise land;
 - [b] the quantity of logs already sold and/or exported and the amount note yet sold and/or exported as at the date hereof.
3. That the First and Second Defendants within 14 days pay any monies received to date from logs exported and/or sold as mentioned in paragraph 3[b] above into an interest bearing trust account to be opened in the joint names of the parties' solicitors or their nominees and to remain until trial or until further order of the court.
4. An order that the remaining logs at the log pond or which are still lying in the bush within the concession to be exported or loaded onto any vessel and the proceeds to be paid into the joint names of the parties' Solicitors of their nominees.
5. Such further or other orders as the Court thinks fit.
6. Costs be in the cause.

The Brief Facts

The Plaintiff is a member of the Veko and Ugura tribe that owns in custom Talise land. The Fitupogo Chiefs at a hearing at Talise village between 4th -6th September 2002 ruled in favour of the Plaintiff's landholding group. By a Timber Rights Agreement signed on 20th December 2000 between the 1st Defendants and the 2nd Defendant, the 2nd Defendant was allowed to fell trees for sale from Talise Land in Ward 12 on San George Island. The area to be logged is between Togilei to Beapegu and Hiahirata to Beapila. The 2nd Defendant has commenced logging operation on the Talise Land to the dissatisfaction of the Plaintiff and the landholding group he represents.

The relief sought

This application was said to be urgent and so it came to the Court *exparte*. The reason given was that the 1st and 2nd Defendants could not be served in time because in doing so would take much time. Instructions to any Solicitor acting for them would have to come from Isabel Province. In the meantime, the Plaintiff wanted to preserve the status quo and thus safeguard the land from further damage whilst the Court was determining their claim. The sense of urgency obviously arose from the fear that any further delay would work an injustice on the Plaintiff in terms of the real possibility of irreparable damage being done to the land. I accepted the *exparte* application on that basis. In this sort of application, the Court must identify a triable issue or issues as a first step in the exercise of its discretion as to whether or not it can grant the application for *exparte* orders. The Plaintiff in the Statement of Claim alleges non-compliance with sections 8 and 9 of the Forests and Timber Utilization Act and thus the Licence issued and the Timber Rights Agreement signed were invalid for that reason. The issue of non-compliance with sections 8 and 9 above is a serious triable issue, provided the Court has jurisdiction to decide it. There is also the issue of ownership of customary land that in this case has been determined by the Fitupogo Chiefs in favour of the Plaintiff. The Fitupogo Chiefs' decision will not however become the decision of the Local Court until the Chiefs or any of parties to the dispute within 3 months cause a copy of the decision to be recorded by the Local Court. (See section 14 of the Local Courts Act (Cap. 19). The Plaintiff had paid a fee of \$50.00 on 26th September 2002. Counsel said that this fee was to enable the dispute to get into the Local Court. I was not too sure about that but it would appear that the Plaintiff was assuming in advance that Form 2 would be lodged soon to record acceptance of the Chiefs' settlement. In any case, I find no difficulty in assuming the jurisdiction to grant the orders sought if I find the other relevant factors to be also in favour of granting the orders sought. Accepting the determination by the Fitupogo Chiefs' determination as giving ownership of Talise Land to the Plaintiff pending endorsement by the Local Court within 3 months or the filing of Form 1 by the 1st Defendant signifying unaccepted settlement, the issue of ownership has been settled for the moment. The least I can say is that the issue of the determination of ownership has been referred to the Chiefs and the Local Court. I think I do have the jurisdiction to grant the orders in aid of the Chiefs and the Local Court in this case. The issue of non-compliance with sections 8 and 9 of the Act whilst is a serious triable issue that can technically be regarded as sufficient to confer jurisdiction upon me, the issue of ownership of Talise Land is yet to be made final at a later date between the disputing parties. That is, the Local Court is yet to endorse the Fitupogo Chiefs settlement if accepted by both parties by the end of 3 months or the Local Court may have to deal with the dispute again if the Chiefs' settlement is unacceptable. For this reason, as I have said, I regard it safe to assume jurisdiction and consider the Plaintiff's application on the basis that this Court is being asked to assist the Chiefs and the Local Court in the performance of their duty by granting the orders being sought by the Plaintiff. (See Gandy Simbe's case). The Plaintiff has not provided any undertaking for damages that may arise from the granting of the orders being sought by the Plaintiff. If the Defendants should win the case at the end of the day, they will not be compensated for any loss they may have incurred as a result of the imposition of injunctive orders being sought by the Plaintiff. The Plaintiff has said nothing about providing an undertaking for damages that may be incurred by the Defendants and so I assume that no undertaking does exist in favour of the Defendants. The balance of convenience then comes into play. If the Plaintiff is denied the orders being sought and he wins his case at the end of the day, would he be adequately be

compensated? The answer is no in this case. Once the trees are felled and gone, there will be no substitute for them, apart from any damage that may be caused to the land itself and other environmental damage. Exhibit "HDL 5" attached to Mr. Diamana's affidavit is evidence of that sort of damage that may occur to the land. The terms of the Timber Rights Agreement between the 1st Defendant and the 2nd Defendant do not provide for the payment of damages out of royalty money or from the pocket of the contractor. Whilst there is no direct evidence of a felling licence, there is evidence by implication that there is one, based upon the Timber Rights Agreement signed by the parties on 20th December 2000. Similarly, the evidence of entry by the 2nd Defendant upon the land and extraction of logs there from is rather scanty. Nevertheless, there is evidence of entry and extraction of logs. I think the balance of convenience lies in favour of granting the orders sought by the Plaintiff. I grant the orders sought. The application is granted. However, the imposition of 14 days as proposed in the *ex parte* Summons is too harsh and unrealistic. Accounting for the logs and providing details of logs as to species, quantity etc. takes time. This will undoubtedly affect the payment of monies into a joint interest bearing trust account as well. I reject the 14 days time limit proposed by the Plaintiff. To be fair to the Defendants, the terms of the orders will be without any time limit. It is in the interest of the 1st Defendant that the Local Court endorses the Fitupogu Chiefs' settlement as soon as possible, if accepted, or be challenged in the Local Court as soon as possible, if unaccepted. The Plaintiff on his part should not use the orders as a sword against the Defendants but only as a lull to crystallize his ownership rights in Talise Land as against the 1st Defendant in the fight for ownership and control over the said Talise Land. There will be costs in the cause.

F. O. Kabui
Judge