

**HUGO DIAMANA LALO** (representing the Doko and Talise landholding groups) -**V-**  
**LEVI LIKOHO** (representing the same landholding groups), **M.S.L. Import and Export 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

Date of Hearing: 8<sup>th</sup> November 2002  
 Date of Ruling: 14<sup>th</sup> November 2002

*Mr R. Ziza for the Plaintiff*  
*Mr C. Ashley for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants*

### **RULING**

**Kabui, J.** By a Summons filed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on 31<sup>st</sup> October 2002, the 1<sup>st</sup> and 2<sup>nd</sup> Defendant seek the following orders-

1. that the interim orders of the Court made on 17<sup>th</sup> and perfected, signed and sealed on 18<sup>th</sup> October 2002 be set-aside; and
2. that the Plaintiff's Writ and Statement of Claim be struck out under rule 4 of Order 27 of the High Court (Civil Procedure) Rules; and
3. that the Plaintiff pays the costs of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants connected with and incidental to this application; and
4. any further order the Court deems fit to make.

#### **The Brief Background**

I made interim ex parte orders on 17<sup>th</sup> October 2002, perfected and sealed the next day. I made those orders in favour of the Plaintiff. The 1<sup>st</sup> and 2<sup>nd</sup> Defendant is now asking the Court to discharge those orders and to strike out the Plaintiff's action.

#### **The evidence of the parties**

The application by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants is supported by a number of affidavits. The first one was sworn and filed by Levi Likoho, Richard Fallows, Michael Doko and Elliot Cortis on 31<sup>st</sup> October 2002. They deny that the Plaintiff is a member of the tribes that own Talise/Goe customary land. They say he is only an associate member

of those tribes. They say that the Fitupogu Chiefs had no jurisdiction to determine the ownership of San George Island. They say the appropriate forum is the Bugotu House of Chiefs. They say there had been 12 shipments of logs since the logging operation began. They say royalty money had been paid into a joint trust account with the A.N.Z. Bank from which royalty payments had been made to the members of the two tribes. They say the Plaintiff had received \$19, 500.00 royalty money. Mr. Samuel Habu swore and filed two affidavits, being affidavits filed on 31<sup>st</sup> October 2002 and on 8<sup>th</sup> November 2002 respectively. In these two affidavits, he says the Plaintiff had signed as a person who was present at the meeting to appoint customary representatives. He says that the Plaintiff is a member of the family clan represented by Mr. Doko, the 3<sup>rd</sup> trustee. He says the Plaintiff had recently requested cash advance of \$1000.00 from the royalty money, which had been paid. He says Mr. Ugura had disassociated himself from the Plaintiff by letter dated 30<sup>th</sup> October 2002, addressed to the Solicitor for the 1<sup>st</sup> and 2<sup>nd</sup> Defendant. The Plaintiff filed two further affidavits disputing everything that had been said in the joint affidavit filed by Levi Likoho, Richard Fallows, Michael Doko and Elliot Cortis and the two affidavits filed by Mr. Habu referred to above. The bottom line argument by the Plaintiff is that he and his line are the owners of Talise land and the Fitupogu Chiefs in their favour had decided ownership in September 2002. He accepts having received the sum of \$19, 500.00 but he regards this as proof of his ownership of Talise land than proving that he belongs to Mr. Doko's tribe. He disputes that Mr. Ugura has deserted him. He produces a copy of a letter Mr. Ugura wrote to the Director of the 2<sup>nd</sup> Defendant in which Mr. Ugura explained the circumstances under which he wrote to the Solicitor for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, which Mr. Habu cited in his second affidavit filed on 7<sup>th</sup> November 2002.

### **Relief sought by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants**

The strongest argument advanced by Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants was that the Plaintiff and Mr. Doko were the same people. This, Counsel argued, was demonstrated by the fact that the Plaintiff had been paid \$19,500.00 from the royalty money. Counsel argued that the dispute was really to do with the Plaintiff's belief that he should be receiving more in terms of royalty than Mr. Doko and others. In other words, the dispute is an internal one and the Plaintiff's claim is frivolous and vexatious. Paragraph 2 of the joint affidavit by Levi Likoho, Richard Fallows, Michael Doko and Elliot Cortis is significant in one aspect of this dispute. It effectively sidelines the Plaintiff from any claim to primary or secondary rights over Talise/Goe land. The relevant part of paragraph 2 is in these terms-

**...”The Plaintiff, though not a member of our respective tribes that own Talise/Goe customary land, is regarded as a beneficiary of benefits derived from our land. In other words, the Plaintiff is neither a primary or secondary owner but only an associate member of our respective tribes”...**

If one is not entitled to claim either primary or secondary rights to any customary land, then one is a stranger to the land in question. One does not own that land in

custom. That is my understanding of the customary land tenure system in Solomon Islands whether it be patrilineal or matrilineal or a mix of both. There is indeed a dispute over the ownership of Talise land because the Plaintiff does not accept that the 1<sup>st</sup> Defendants own Talise land. This is why he went to the Fitupogu Chiefs to determine ownership of Talise land. The 1<sup>st</sup> Defendants cannot now say that the Plaintiff and them is one and the same people. They themselves have admitted that the Plaintiff is not one them in paragraph 2 cited above. What the 1<sup>st</sup> Defendants should have done was to produce Form 1 to the Local Court under section 12(2) of the Local Courts Act (Cap. 19) signed by two or more of the Chiefs who heard the dispute. Form 1 is a certificate to certify that the dispute has been before the Chiefs and the referring party does not accept their decision. There is no evidence to show that the 1<sup>st</sup> Defendants had taken that step. Instead, they went before the Bugotu House of Chiefs on 14<sup>th</sup> September 2002 and obtained a decision that declared the decision by the Fitupogu Chiefs as being unenforceable. The Bugotu House of Chiefs made no decision about the ownership of Talise land. In contrast, the Plaintiff had paid the sum of \$50.00 as a fee for the dispute to get to the Local Court. I am not sure whether the Plaintiff had produced Form 1 to the Local Court as well. I assume the Plaintiff would be advised to do the right thing in this regard. What is delaying the hearing of this dispute before the Local Court now is the lack of funding from the Government. I think the resolution of this dispute by the Local Court is fundamental to the discharge of the exparte interim orders. The Local Court has not yet done that and so the exparte interim orders will continue until that is done. The application by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants is refused with costs. I dismiss the application accordingly.

**F.O. Kabui**  
**Judge**