

GANDLEY SIMBE AND NATHANIEL MEL (*Representing the Dali Tribe*) -v- HARRISON BENJAMIN AND PETER MADADA (*Representing the Volekana tribe*) AND EAGON RESOURCES DEVELOPMENT COMPANY SI LIMITED

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

Civil Case No. 205 of 2004

Date of Hearing: 1<sup>st</sup> June 2004.

Date of Judgment: 1<sup>st</sup> June 2004.

P. Tegavota for the Plaintiff

No appearance of the Defendants

JUDGMENT

**F.O. Kabui, J:** This is an application by the Plaintiffs for a number of interim orders sought in their ex parte summons filed on 28<sup>th</sup> May 2004. The orders sought are as follow-

1. That the first defendants and any member of the Volekana tribe be restrained by an interim order from dealing with Nola land in any manner whatsoever and including allowing the second defendant, its servants, employees, agents or contractor or any logging company to remain on Nola land and carry out the felling and extraction of logs or carry out any other logging related activities within the said land without the consent of the plaintiffs and members of the Dali tribe.
2. That the second defendant, its servants, agents, contractors be restrained from:
  - (a) entering Nola land to carry out logging,
  - (b) establishing any log pond and or camp site on the said land,
  - (c) remaining on Nola land for any purposes relating to logging,
  - (d) carrying out any felling and extraction of logs from Nola land and

- (e) carrying out any activities whatsoever whether related to logging or not within any of the land covered by the Chiefs determination dated the 30<sup>th</sup> September 1999 from Kozo stream to Lalaguti stream.
3. That the second defendant to immediately remove all its logging machineries, equipment, from Nola land including its camp sites and all its employees and shall cease all logging related activities on the said land forthwith.
  4. Any breach of any of the terms of these orders shall amount to contempt of Court punishable by fine or imprisonment or both.

These following facts are derived from Mr. Galo's affidavit filed on 28<sup>th</sup> May 2004 in this application. He himself is a member of the Dali tribe in Choiseul Island. The 1<sup>st</sup> Defendants are members of the Volekana tribe. In 1995, the then East Choiseul Area Council made determinations as to persons who were entitled to grant timber rights over areas of customary land, including Nola land. The 2<sup>nd</sup> Defendant was then able to obtain logging licence covering those areas of land including Nola land but the acquisition of timber rights over Nola land was challenged in the High Court in Civil Case No.33 of 1997 that went to the Court of Appeal in Civil Appeal No. 8 of 1997. Following the unsuccessful application for injunctive orders, the ownership of Nola land was subsequently determined by the Council of Chiefs on 30<sup>th</sup> September 1999 in favour of the Plaintiffs as members of the Nola tribe. That determination has not been challenged to date by the 1<sup>st</sup> Defendants. Nola land lies between the Kozo stream and Lalaguti. On 18<sup>th</sup> May 2004, the 2<sup>nd</sup> Defendant landed its logging machinery and equipment on Nola land without the consent of the Plaintiffs resulting in damage to land and coconut trees etc. The 2<sup>nd</sup> Defendant also constructed a log pond and a camp site on Nola land.

#### Relief sought.

Exhibit "GS1" attached to Mr. Galo's affidavit is a copy of the Chiefs' determination on 30<sup>th</sup> May 1999. At that hearing, the 1<sup>st</sup> Defendants were not present. There is no evidence to show that the Defendants have challenged the Chiefs' determination since 1999. There has been a time lapse of 5 years without any counter from the Defendants. Whilst it is not clear from any source that the Defendants had in fact been made aware of the hearing before the Chiefs in 1999 and that the Chiefs' determination had been communicated to them, there is in fact a Chiefs' determination though in their absence. Unless that determination is set aside by the Local Court, it remains in place as valid as evidence of ownership. That validity of the Chiefs' determination is the issue before the High Court for determination at a later date. That is the serious triable issue in the main action. Clearly, to refuse the application will pose a threat of irreparable damage to land and trees on it for which no compensation will mend. To

grant the application and maintain the status quo between the parties is the right thing to do. There is no undertaking as to damages as the 1<sup>st</sup> Defendants were absent at the hearing of this application. But the balance of convenience is clearly in favour of the Plaintiffs. I would grant the orders sought on that basis. The application is granted in the terms sought in the ex parte summons. There will be no order as to costs. I order accordingly.

F.O. Kabui, J.  
Puisne Judge