

**IN THE HIGH COURT OF SOLOMON ISLANDS**

**SUCCESS COMPANY LIMITED -V- ISABEL PROVINCIAL GOVERNMENT**

G. Suri for Applicant

S. Manetoali for Respondents

Writ of Summon for Mandamus

**At Honiara**

Date of Hearing: 27 April 2004

Date of Judgment: 4 August 2004

**ORDERS.**

**Brown J.** The applicant is proposing to obtain timber right to land, including customary land and registered land (parcel no. 071-001-7) situate within Northwest Isabel Island, Kia District, Isabel Province. To that purpose the company has been dealing with persons who, the company says, are the rightful representatives and owners of the resource rights.

The applicant is obliged to have an appropriate application concerning its proposal to negotiate to acquire such timber rights in the land areas, made to the Commissioner of Forests who thereupon seeks the local Provincial Executive to do what is necessary and prescribed by the Forest Resources and Timber Utilisation Act (as amended) (Cap.40).

*"Section 8 – Upon receipt of a copy of the application forwarded to it under section 7, the Provincial Authority shall fix a plan within the area of its authority and a date, not being earlier than two months nor later than three months, from the date of receipt of the coy of the application for a meeting to be held with the appropriate Provincial authority officers, the customary landowners and the applicant to determine the matters specified in subsection (3).*

*(2)(3)(4) & (5)"*

In this case, the Deputy Provincial Secretary informed the applicant that by Provincial Assembly executive resolution, no further logging licenses would be countenanced by the Provincial Government until further notice, no meetings as required by s.8 were arranged.

The applicant came to this court to seek mandamus obliging the Provincial Executive to comply with the Provisions of the Act, more particularly s.8 and convene landowner meetings in relation to the customary land applications.

The respondent does not deny the refusal to arrange landowner meetings but says the Provincial Government Executive ordered a moratorium on all future logging activities in the Province.

That is where the matter of the application to log rested until the applicant brought this claim for mandamus for its says, the requisite authority under the Act (the Provincial Government) has refused to carry out its obligations under the Act and convene a meeting.

The Premier of the Province, the Hon. James Kurubangara Habu says the moratorium was necessary to properly monitor logging in Isabel. Also the Provincial Government seeks to ensure that logging companies comply with Provincial Laws, for example the Provincial Business Licenses Ordinance.

Mr. Suri, for the applicant says however, that the Act allows no right in the Provincial Government to impose conditions over the land hearings. He says the use of words in s.8 of the Act are mandatory in effect and the Provincial Government may not, for its own purposes, inhibit the effect of the section. The landowners are entitled to be heard in such meetings.

Mr. Manetoali for the respondent argued variously that the applicants Form 1 (application to negotiate to acquire timber rights) was invalid (for that it had no consent of the Commissioner of Forests); the request of the Commissioner addressed to the Provincial Secretary (Isabel Province) was no proper request under s.8 (for that it was sent under hand of the Forest Officer, not the Commissioner) and consequently the prerequisites envisaged by s.8 had not been fulfilled. Thus the applicant was premature in coming to court to seek orders in terms of mandamus.

*S.3 of the Act- "There shall be appointed a Commissioner of Forest Resources and such number of enforcement officers, forest officer and other officers as may be necessary for carrying into effect the provisions of this Act."*

"Commissioner" means the Commissioner of Forest Resources appointed under section 3. (s.2).

The point Mr. Manetoali seeks to make is that the power and responsibility in s.8 is personal to the Commissioner for the letter to the Provincial Secretary dated 9 October 2003 is signed, not by the Commissioner but by one "Peter Keniharaia, Forest Officer (Licensing) For: Commissioner of Forests."

I find, when I read the letter of the 9 October 2003, clear evidence of the Commissioner's consent to the application proceeding to the stage envisaged by s.8.

The letter, in the 1<sup>st</sup> paragraph, says

*"Pursuant to Section 7(2) of the (Act, a copy of the Form 1 for Central Barora Ite, Kolourungu/Susubelehi, Mbero Island, Sasare Island and Nanabio (Parcel No. 071-001-7) is enclosed and forwarded to the Provincial Executive to meet and deliberate on as required by Section 8 of the aforesaid Act."*

Section 7(2) -*"When the Commissioner gives his consent to an application made under subsection (1), the Commissioner shall forward a copy thereof to the appropriate Government and to the appropriate area Council."*

The maxim *"omnia praesumuntur rite et sollenniter esse acta* (it is presumed that all the usual formalities have been complied with) should be called in aid since the letter clearly refers to s.7(2) of the Act when it affirms that the letter is sent pursuant to that subsection i.e. with the Commissioners' consent. The letter is signed for the Commissioner; the act of the consent is the paramount concern of s.7(2) and the respondent argument on this point must fail.

The next argument relates to my discretion, for the respondent cogently pointed to the "public interest" aspect of the action of the Provincial Assembly in refusing to countenance the application. There was also an argument raised that this applicant company was in breach of the Provinces Business License Ordinance but that was effectively answered by the applicant.

What remains, however, is the clearly expressed wish by the Province to place a moratorium on logging for the Province *"has been flooded with logging activities and it is difficult (sic) to control and monitor."*

This clearly is a "public interest" issue relevant to the exercise of my discretion.

But, as Mr. Suri point out, there has been no divestment or devolution of the powers and responsibilities of the Commissioner, under the Act, to the Provincial Government. I am satisfied no devolution has taken place, under s.28 (4).

The principles of discretion are many and varied but for the purposes of mandamus, do encompass circumstances where the obligation lies on a "Crown servant for the benefit of the public" and the term is sufficiently wide to include this applicant (see Principles of Australian Administrative Law – 6<sup>th</sup> edit.S.D. Hotop ed. The Law Book Co 1985 at 281, 282).

The wish of the Provincial Government to enforce a moratorium on fresh logging, in the absence of enabling devolution of powers under the Act, cannot overcome in my view, the right of the applicant to expect the Provincial authority, burdened by s.8, to call meetings of interested landowners and others to consider the application to log.

If the Provincial authority can convince the forestry resource or usufruct owners, of an overriding public interest not to log at this time, then the Provinces wish for a moratorium will be granted.

But where the powers residing in the appropriate authority, the Commissioner under s.7 of the Act, to approve the "application to negotiate" have been validly exercised, and the appropriate application sent to the Province, circumstances sufficient to allow me to refuse the exercise of my discretion have not been established.

I accordingly made orders in terms of the motion.

**Orders accordingly.**