

JOVEN MARQUEZ POLANCOS -v- GOODWILL INDUSTRIES LTDZUARDIN MUSLIN -v- GOODWILL INDUSTRIES LTD

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

Civil Cases Nos. 097 of 2003

Date of Hearing: 26<sup>th</sup> May 2004

Date of Judgment: 28<sup>th</sup> May 2004

P. Watts and R. Ziza for the Plaintiffs.

No appearance for the Defendant.

RULING

Kabui, J. Civil Case No. 096 and Civil Case No. 097 both of 2003 were listed before me on 21<sup>st</sup> May 2004. Miss Ruddock of the Public Solicitor's Office stood in for Mr. Ziza in Civil Case No. 097. Mr. Tegavota appeared for the Defendant. Mr. Watts appeared for the Plaintiff in Civil Case No. 096. One of the orders sought by the Plaintiff in Civil Case No. 096 was to disqualify Mr. Tegavota from acting for the Defendant in both cases on the ground of conflict of interest. Anticipating that application, Mr. Tegavota applied for leave to disengage himself from both cases as Solicitor and Counsel for the Defendant. Leave having been granted, Mr. Tegavota vacated the Court and left. As from that time, the Defendant has been without a lawyer to attend to its case in each of the claims against it. Mr. Watts said something about consolidation of the two cases and then cited Order 35 of the High Court (Civil Procedure) Rules, 1964 "the High Court Rules" and then sought an adjournment which I granted. Civil Case No. 096 was then re-listed for hearing on 25<sup>th</sup> May 2004. At that hearing, Mr. Ziza acting for the Plaintiff in Civil Case No. 097 and Mr. Watts for the Plaintiff in Civil Case No. 096 appeared but there was no appearance for the Defendant. At that hearing, both Counsels assumed that the two cases had been consolidated and proceeded on that basis.

In writing my judgment, I discovered that no order by the Court to consolidate the two actions had been made under Order 52 of the High Court Rules. An application for this purpose is usually made by summons. Nothing of this sort has been done here. The other thing is that at the hearing of the Notice of Motion there was no confirmation by both Counsels that the hearing date and time had been served on the Defendant. With Mr. Tegavota departing on 21<sup>st</sup> May 2004, no lawyer seems to have taken his place or that the Defendant has chosen to appear for itself. I also noticed in

both files that no new Notice of Hearing had been sent to the parties by the Registrar for the hearing on 26<sup>th</sup> May 2004 and so the Defendant was left out altogether. This is an error and must be corrected when the matter is next set down for hearing. For these reasons, I will adjourn this matter. I therefore direct that the Plaintiffs, if they wish to consolidate the two actions, apply by summons to do so within 14 days from today and serve the Defendant and thereafter apply within 7 days for re-listing and that the Notice of Hearing be served on the Defendant. The orders of the Court therefore are-

1. The matter be adjourned;
2. The Plaintiffs to apply for an order for consolidation within 14 days if they so wish and serve the Defendant with the summons and affidavits, if any;
3. Thereafter, the Plaintiffs to apply within 7 days for a re-listing of the matter for hearing;
4. The Notice of Hearing to be served on the Defendant.

It is unfortunate that I have to make these orders at this stage of the proceedings but Solicitors would need to study the rules of practice well in order to serve their clients well. Failing to do this may result in lots of delay and costs. Costs will be costs in the cause.

F.O. Kabui  
Puisne Judge