

## HIGH COURT OF SOLOMON ISLANDS

### HEDLEY VIKASI –V- JOHNSON VUNAGI anors AND COMMISSIONER OF LANDS

*Land Law - By earlier decision the defendant was ordered to compensate the plaintiff for the value of his equitable right to a fixed term estate in the plaintiff to plantation land from which the plaintiff had been forced by action of the defendant-the defendant had the registered perpetual estate to the land.*

The facts appear from the judgments.

- Held:*
1. The manner of the acquisition of the perpetual estate and loss of the fixed term estate was extraordinary; a valuation in the normal course would be of limited use.
  2. It is appropriate in the circumstances of this case, to apply the current exchange rate to the price paid for the plantation in 1981 (when the exchange rate vis a vis the Aus\$ was 1:1) to establish a fair value of the plaintiff's loss.
  3. To the purchase price should be added the cost of new plantation trees planted by the plaintiff, for the defendant may be expected to have their benefit.
  4. The interest rate referred to in the High Court Rules is not an appropriate rate to apply to the value of a capital sum expended on a commercial plantation in 1981 so as to reach a present value of such sum.

No further cases were cited.

#### **Assessment of Compensation for loss of equity in land.**

Date of Hearing: 5<sup>th</sup> April 2004

Date of Judgment: 9<sup>th</sup> July 2004

*Andrew Radclyffe for the Plaintiff*

*Thomas Kama for the First Defendants*

*Attorney General for the Second Defendant*

**Brown J:** By judgment of the 13<sup>th</sup> May 2003 I ordered –

The plaintiff shall have judgment in relation to his claims for relief connected with and incidental to the provisions or purposes of the Land and Titles Act (cap 133) in these terms;

- i) his equitable right to become registered as the owner of the Fixed Term Estate in Dadale Plantation more particularly described as LR 327 Parcel 106-002-1 is recognized subject to,
- ii) the legal right of the 1<sup>st</sup> defendants as Perpetual Estate holders to seek to compensate the plaintiff for adversely affecting his right to occupation and lawful enjoyment of his equitable interest in the FTE, which through effluxion of time and the registration of the PE in the 1<sup>st</sup> defendants, now, may be extinguished on just terms as to compensation.

In the absence of agreement the parties have come back to this court to seek an order determining "just compensation".

The plaintiff claimed compensation for moneys that he had spent on the plantation. In support of the plaintiff's application his affidavit at the 10<sup>th</sup> December last was read.

These moneys may be summarized as follows.

He reiterated the fact that he paid a total of \$8,000.00 by installments for the Dadali Plantation in the 1980s. I accepted the fact of this payment in the earlier proceedings.

He referred to page 116/117 of the agreed bundle of documents to show a valuation of the coconut trees and other trees of value on that plantation. That valuation was prepared using 1985 Ministry of Agriculture compensation rates. He attached a copy of the Ministry of Agriculture 2001 compensation rates which he says should be applied to his claim for loss of trees.

In addition at page 121 of the agreed bundle he had itemized money spent in connection with the Plantation, in a sum of \$97,342.00.

He importantly attached a copy of the NBSI exchange rates in 1986. That showed the parity of the Solomon dollar with the Australian dollar.

Mr Radclyffe address me on how just compensation should be arrived at. He said that an assessment should be made in terms claimed above.

In so far as the earlier payments are concerned, Mr Radclyffe says there are three ways to determine the value of 1981 money, today.

1. The capital sum expended then plus interest to date;
2. The capital sum now expressed in current Solomon dollar terms after applying the current exchange rate *viz a viz* the Aus\$ to represent the equivalent buying power of that earlier sum, in current terms.

3. A valuation by licensed valuers of the Plantation now.

When I have regard to the terms of document 121, I see that the plaintiff assertions, in reality are subsumed in the land value. He seeks labor costs, value of his own work, various travel costs, and the labor associated with the cost of coconut planting. In consequence those individual claims amount to \$97,342.00 (which includes the initial contract price paid Symes). The method of claim in terms of 121 of the bundle rather undermines the weight of the plaintiff's assertions when I see included in that total is a charge of "\$1,000.00 per year for the cost of purchasing the Plantation for the period of some 18 years". If this \$1,000.00 is to be seen as a cost of capital expended on the property, there is no balancing of the account by allowing an offset for the profit produced from the produce of the Plantation. On a cost accounting basis they do not support the plaintiff's claim.

Dealing with Mr Radclyffe's three suggested approaches I should say that the third approach is artificial. There is no marketable value of the Plantation, for it now stands in the name of the defendant who has the perpetual estate in the land. It has no marketable value and cannot in terms of these proceedings (which are extraordinary) be expected to be valued by a licensed valuer of land.

### **Valuation Models**

It is not available to apply western concepts of valuation models. It is pointless to consider expected cash flows or income streams as affording a basis for valuation, for instance here there is no income stream and a zero growth property (for it cannot be sold or encumbered in any financial sense). I propose then, to apply a historical value and adjust it.

The plaintiff bought the Plantation 1981 for \$8,000.0 Solomon dollars. He paid the purchase price by installments. It made be said the vendor was expecting a series of cash flows over a period of time so that the net present value of those cash flows casting back to 1981 would perhaps be something less than \$8,000.00. No argument has been raised on these issues; rather the plaintiff has used the sum of \$8,000.00 as a starting point and gone from there.

The defendant on the other hand has relied on a convoluted argument over the plaintiff's failings under the Agriculture Holdings Act 1948 (U.K) which Mr Kama says has been adopted and applied in the Solomon Islands. He says S.67 sets out Tenants rights to compensation and for improvements. As a consequence having regard to the various agricultural officers' reports no compensation should

be contemplated in terms of the Act for the plaintiff carried out no improvements. His arguments fail for two reasons.

1. There is no relationship of landlord and tenant between these parties.
2. The Act can have no bearing on this case when the Land & Titles Act (Cap.133) has provided for the incidents of land tenure in this country and the UK Act cannot any longer be said to affect those incidents. In other words the Agricultural Holdings Act (UK) is of no force or effect in this country in this case.

Mr Kama in answer to Mr Radclyffe's argument said to recompense the plaintiff by paying in money terms \$40,000.00 (which is now said to represent the value of the \$8,000.00) would be wrong for that would accept the application of foreign currency exchange rates as a means to quantifying the value of this plaintiff's interest in the Plantation in the 80's when the asset is domestic and an interest in land. A more correct and logical way would be to allow interest on the \$8,000.00 from that earlier date, 1981. Interest provided for by the Rules of Court is simply interest on a judgment at 5% per annum. On that basis, annual accruals of \$400.00 could be expected. The total interest over some 22 years approximates \$9,600.00.

It is not unreasonable to rely on one aspect of the Plantation valuation process suggested by the plaintiff as affording this Court assistance in reaching a fair value of the property lost to the plaintiff as a result of my earlier order. That aspect is to look at exchange rates.

Had the plantation been seriously worked with present prices for copra and domestic production costs, the returns may be such that an increased property value may result, based on cash flow return analysis. But the plantation had not been worked so that method is not viable.

A far simpler and understandable way in this case is to apply the currency exchange rate variation to the value of money used to buy a plantation in 1981 to ascertain a current value, for as I say, the exchange rate does reflect world market pressures. A Solomon dollar in 1981 would buy what requires some SI\$5.50 today.

It is reasonable to assume since this plantation is of coconuts and having heard the evidence, that its principle purpose was for copra production. Copra is a marketable commodity which trades on the world commodity market. Its value fluctuates and its market price in the Solomons reflects this. This aspect also

weighs on relative exchange rates. It would not be idle to think that plantation values in 1981 bore some relationship to these considerations for it was Symes' fixed-term estate which attracted the plaintiff to the plantation in the first place. It would not than be unreasonable to rely on that aspect of the plantation valuation process, justifying reliance on the exchange rate process to reach a fair value of the capital lost to the plaintiff but used in the purchase of a copra plantation.

It follows that the value of the old trees must be seen to have been included in the price paid for the plantation. The new trees planted however were valued by the Agricultural officers in 1998 according to 116/117 in the bundle of documents, prepared by Mr Edwin Ero the Agricultural officer. His report showed the value of bearing (local tall well maintained 52) and non bearing (local tall well maintained 113) new coconut trees planted was \$1,949.45.

On the 1<sup>st</sup> June 2001 a further assessment of the value (or "rate") of coconut trees showed a "rate" of \$29.30 applied by the Agriculture officer for trees cut down. Those trees have been lost to both the plaintiff and the defendant by the defendant's actions. Those trees were cut down through the agency of the defendant who cannot expect to have an allowance made for their loss. I am prepared however, to apply that later "rate" to those trees detailed in the earlier Report (116/117) since I am satisfied it is appropriate to use that "rate" for the purposes of this valuation about the time when the plaintiff was forced from the plantation.

The earlier Report (116/117) clearly designates that these "new coconut developments" is in terms of tree value. So those trees planted by the plaintiff may be said in 1995 to have value of \$1,949.45 but in June 2001 value  $\$29.30 * 165 = \$4834.50$ .

That value of trees planted by the plaintiff I propose to use as an accretion to the value of the plantation.

It may be argued that the addition of the \$4834.50 in this fashion gives the plaintiff a windfall for that the new trees were planted over a period, more recent than 1981. But it must be remembered that the exchange rate is applied in point of time so that the accrued total worth of the plantation is the sum to be used and the multiplier is the exchange rate.

I accept Mr Radclyffe's argument on the point that an exchange rate applied to this earlier sum may be seen as a fair and equitable means of ascertaining a present day value for this early 80's capital sum was utilized to buy a commercial plantation. It was not money remaining but is represented by the plantation. I

accept the exchange rate at the time of these submissions was SI\$5.5-AUS\$1 (not disputed).

I propose to add the value of the new trees (the defendants ultimately will benefit) planted by the plaintiff, to the original purchase price.

	\$8,000.00
	\$4,834.50
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	\$12,834.50 x 5.5
Grand Total	<u><u>\$66,189.75</u></u>

To accept the cost plus interest submission of the defendant is inherently unfair. It takes no account of present day values. The use of the HC Rules in this fashion is not a proper basis for my consideration.

#### **Order for judgment**

This shall be a verdict and judgment for the plaintiff in the sum of \$66,189.75. Interest shall accrue from this date. The defendant shall pay the plaintiff's cost of these proceedings.