

PETER SILOKO AND ANOHTER (REPRESENTING THE KIDO AND MARUTU TRIBES) OF GATOKAE ISLAND, MAROVO, WESTERN PROVINCE -v- JERRY TEKOPU (Representing The Kongu Ngoloso Tribe) OF TEGOMO ISLAND, GATOKAE ISLAND, MAROVO, WESTERN PROVINCE, AND KENNETH NORMAN AND OTHERS (Trading as the Kongu Ngoloso Timber Company) AND DELTA TIMBER COMPANY LTD

HIGH COURT OF SOLOMON ISLANDS  
(KABUI, J.)

Civil Case No. 513 of 2005

Dates of Hearing: 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup>, November, 2005.

Date of Ruling: 17<sup>th</sup> November 2005.

*Mr. J. Apariai for the Plaintiff.*

*M. Pitakaka for the 1<sup>st</sup> Defendant.*

*Mrs. Tongarutu for the 3<sup>rd</sup> Defendant.*

## RULING

**Kabui J:** The Kindo and Mamutu tribes on Gatokai Island in the Western Province, applied by summons filed on 24<sup>th</sup> October 2005 for interim restraining orders/injunctions against the Kongu Ngoloso tribe, the Kongu Ngoloso Timber Company and Delta Timber Company Limited. The Writ of Summons and the accompanying Statement of Claim were filed simultaneously on the same date cited above.

The issue to be determined.

Whether or not interim restraining orders/injunctions can be granted pending the resolution of the main action filed by the Kindo and Mamutu tribes is the issue in this application.

Disputes over timber rights on customary lands.

Customary land and the harvesting of trees that grow on it do present a big problem for logging companies. Disputes over timber rights, in custom, are in reality disputes over the ownership of customary lands. One cannot separate natural forests from the ownership of customary lands. Customary land and the natural forest on it is one and the same thing in terms of ownership in custom. That is however not the law that Parliament passed in 1977. The present law is that timber rights are separate things from the ownership of customary land on which the trees stand.

Disputes are over ownership of customary land and not over timber rights.

This law causes practical problems to Solomon Islanders who own and occupy customary land. The sorting out of timber rights by the Provincial Executives may result in one group of people being accepted as being the right persons to grant timber rights to a logging company leaving the ownership issue of the land aside. If the persons found to be the persons lawfully entitled to grant timber rights are indeed the true owners of the land upon which the trees stand, then there is no problem. If it is not the case, then the problem begins

check spelling

to raise its ugly head. Appeal to the CLAC against the determination of the relevant Provincial Executive does not solve the question of ownership of customary land because that is not the purpose of an appeal under section 10 of the Forests and Timber Utilization Act (Cap. 40) "the Act".

Any dispute over the ownership of customary land has to go to the Chiefs first and then to the Local Court and the CLAC, if necessary. The danger for the losing party in a timber rights hearing can be real in that by the time the ownership issue is decided, if it needs be, the trees will have been harvested, sold and gone. Any damage that may have been done to the land and its environment cannot be compensated in dollar terms because the logging company will have moved elsewhere and the royalty money will have been spent and gone. It goes without saying that the hearing of the dispute over customary ownership may take a long time to conclude. In the meantime, the harvesting of the trees on the land follows the harvesting schedule of the logging company and may finish before the ownership issue is decided by the Chiefs, the Local Court and the CLAC, whichever is the case. By that time, it will be too late to do anything to protect the land and its resources and environment.

### **Injunctions or restraining orders are only a breathing a space and not the solution.**

Resorting to interim restraining orders/injunctions by the complaining party is only a temporary measure whilst any complaint about any matters such as the acquisition procedure for timber rights is being sorted out by the Court. If the timber rights procedure is found to be lacking in law, the licence may be declared invalid. However, the matter does not end there because a determined investor may decide to have a re-run and would end up with a valid licence for the harvesting of the trees on the same area of land. Much time may have been lost in doing it all over again but it does not solve the ownership of the land on which the trees stand.

### **Why the 1977 amendment in Parliament.**


Parliament may be criticized for having passed the law in 1977 to separate timber rights from the ownership of customary land by those who do not know about the history of that law. The need to pass that law was a result of the landowners on North New Georgia not wanting the Government to be involved in the harvesting of timber by first acquiring their land and then issuing a licence to a logging company to harvest the trees on that land. The landowners argued that they were the resource owners and they decided who would come on to their land as investors to harvest their trees.

That attitude played into the hands of Government officials who believed that sorting out ownership of customary was a very slow process which delayed the harvesting of trees on customary land. That process was believed to be counter-productive to investment and revenue for the country. The process was thought to be too slow by the then major player, the Levers Pacific Timbers Limited. For this reason, the law was devised to simply facilitate the acquisition of timber rights on customary land by the Government through the Act. That is, the Government only controls the licensing system for the acquisition of timber rights. Everything else is left in the hands of the landowners and the investors.

### **The present dispute.**

The present dispute is really about the ownership of land. The Kindo and Mamutu tribes claim that they are the owners in custom of Kalekakado land and to support their claim, they cite the Marovo Chiefs determination 20/2/2001. The Kongungaloso tribe, on the other

hand, claim that Kalekakado land does not exist but Kongu Ngaloso land, also known as blocks 1 and 2. In terms of location, both parties are talking about the same area of land.

The ~~Kongu Ngaloso~~ tribe through an alleged timber rights hearing on 6<sup>th</sup> June 2005, had granted timber rights to the Kongu Ngaloso Timber Company which have contracted Delta Timber Company Limited to harvest the trees and sold them for the Kongu Ngaloso Timber Company.

The problem though is that the Kindo and the Mamutu tribes say that they knew of no timber rights hearing having taken place after the Western Provincial Executive adjourned its hearing on 6<sup>th</sup> June 2005 at Seghe about the acquisition of timber rights on Kalekakado land. They say that because of that fact, section 8 of the Act had been breached and so the licence that Kongu Ngaloso Timber Company is holding issued by the Government is invalid.

However, the Kongungaloso tribe, on the other hand, says that a timber rights hearing did in fact take place on 6<sup>th</sup> June 2005 at Seghe but about Kongu Ngaloso land and not Kalekakado land. Indeed, a determination by the Western Provincial Executive did take place on 6<sup>th</sup> June 2005 at Seghe but the Kindo and the Mamutu tribes did not attend because they did not know about it. They did not therefore have the opportunity to make any objections and to appeal against the determination by the Western Provincial Executive if they wished.

As said above, the area of land that the Kindo and Mamutu tribes call "Kalekakado" and the Kongungaloso tribe calls "Kongu Ngaloso, (blocks 1 and 2)" is found in the same location. It is the same land on the ground but named differently by the parties.

**The serious issue that is to be tried.**

The validity of the licence being questioned on the basis that section 8 of the Act had been breached is the serious issue to be tried in a court of law in the main action. This issue is not being decided today.


What I must decide today is whether I should grant the interim restraining orders being sought. There being already a serious issue to be tried, I must now consider the balance of convenience in this case as the next step.

**The balance of convenience and where it lies.**

Where does the balance of convenience lie? Supposing I deny the restraining orders being sought, and the Kindo and Mamutu tribes win their case at the end of the day, can they be adequately compensated in damages for their loss? I do not think so because the trees will have gone from the land and damage to the environment and everything else attached to the land will be beyond repair. However, it is possible to grant the restraining orders if the Kindo and Mamutu tribes do undertake to meet any order for damages the court may make in favour of the Kongu Ngaloso Timber Company and Delta Timber Company Limited. In this respect, the Kindo and Mamutu tribes have stated that they are not in a position to make any undertaking of this sort. In spite of the lack of an undertaking, should I still consider granting the restraining orders being sought?

The answer is yes. Restraining orders had been granted in the past in this jurisdiction in the absence of an undertaking where damage had been done to customary land by the harvesting of trees for commercial purposes by logging companies. The risk of losing the trees and the risk of damage being done to the land and the environment are grave for the Kindo and the

Mamutu tribes. If they are truly the customary owners of timber rights in the trees on the land called Kalekakado, which they appear to be, they will lose much if the logging is allowed to continue.

The ~~Kongungaloso~~ tribe would have known that different names being given to that same area of land under dispute would not solve the problem of land ownership. By not involving the Kindo and Mamutu tribes in the timber rights hearing at 1.30pm at Seghe on 6<sup>th</sup> June 2005 or simply disregarding them as being irrelevant was a risk on the part of the Kongungaloso tribe. That risk was deliberately taken with the inevitable consequence of being challenged in court for that decision.

It is not disputed that Delta Timber Company Limited has landed machines and logging equipment in the area of land under dispute and logging work has commenced. The aim of the restraining orders/injunctions is to maintain the status quo between the parties until the main action is determined by the Court. To allow logging work to continue will simply defeat the need for the protection of the trees, the land and its environment. There is evidence to show that the parties have been disputing the ownership of the area of land under dispute since 1997 and there is no solution as yet in sight. That is another matter. For the moment, the concern is that the land and the resources on it should be protected by the Court until the complaint by the Kindo and Mamutu tribes is sorted out by the Court on a date to be fixed. The quicker this is done, the better it is for the parties.

#### Conclusion.

The balance of convenience clearly lies in the granting of the restraining orders sought. The application is granted and the orders therein are hereby made. I order accordingly.

F.O. Kabui,  
Puisne Judge