Francis Pitabelama, Zebede Kiko and Manoa Navala (*representing Katakak Tribe*) and Voyce Pitakaka (*representing Riqi/Sopere Tribe*) v. Moses Biliki, Amos Qurusu, Jacob Panada, Nicholas Biliki, Mark Maqa and Patson Pitatogae (*Trading under the firm name or style of True Apple Enterprise*) and Cartar Polosoboe, Melechior Qoqonokana, John Wesley Sokuru, Isaac Qalotaba, Pita Pitakaka, John Rurui, Cornelius Pitaboe, Daniel Dalapakia, Kevin Keroboe and Marlon Togara (*representing Kona Tribe*) and Pacific Metro Limited.

High Court of Solomon Islands
(Palmer CJ)

Civil Case Number 537 of 2005

Date of Hearing: 6 December 2005
Date of Judgement: 30 December 2005

M. Pitakaka (Jnr) for the first and second Plaintiffs
A. Radclyffe for the first and second Defendants
G. Suri for the third Defendant

Palmer CJ.: This is an application for interlocutory orders inter alia, to stop True Apple Enterprises, (the first Defendant), representatives of the Kona Tribe (the second Defendant), and Pacific Metro Limited, (the third Defendants) ("hereinafter referred to together as "**the Defendants**") from entering, felling trees and removing logs from Zarakana customary land. The first and second Plaintiffs (representing the Kataka and Riqi/Sopere Tribes respectively) claim ownership rights over the said land.

This application was initiated by Writ of Summons and Statement of Claim filed 28 October 2005. The gist of the claim of the Kataka and Riqi/Sopere Tribes is based on a decision of the Ririo House of Chiefs of East Choiseul, Choiseul Province dated 22nd December 2003 in respect of Zarakana land. The Ririo House of Chiefs awarded ownership of the land to the Kataka and Riqi/Sopere tribes. These tribes say that that decision overtakes the grant of timber rights determination of the Provincial Executive of the Choiseul Provincial Assembly ("**the Provincial Executive**") dated 2 October 2002, under the Forest Resources and Timber Utilisation Act [Cap. 40]. They say it conferred on them rights of ownership recognised in law and enabling them to come to court to seek restraining orders against the Defendant's logging operations. They say until that decision is overturned by the Local Court, it binds the Defendants and this court should consider granting interlocutory restraining orders to protect their legal rights over the said land.

The Plaintiffs do not dispute that a valid timber rights hearing had been conducted by the Provincial Executive pursuant to the timber rights provisions set out in sections 8 and 9 of the Forest Resources and Timber Utilisation Act [cap. 40]. They do not dispute that the Provincial Executive had determined that *Cartar Polosoboe, Melechior Qoqonokana, John Wesley Sokuru, Isaac Qalotaba, Pita Pitakaka, John Rurui, Cornelius Pitaboe, Daniel Dalapakia, Kevin Keroboe and Marlon Togara* ("**the second Defendants**") were the persons lawfully entitled to grant timber rights on behalf of Kona tribe; Kona tribe being the tribe determined to be the rightful owner of the timber rights over that land by

virtue of its claims of ownership over the said land agitated extensively at that timber rights hearing. The Plaintiffs do not dispute that the matter had gone on appeal and heard by the Western Customary Land Appeal Court on or about 14 August 2003 and judgement delivered on 26 August 2003, in which the appeal of the Riqi/Sopere tribes was dismissed.

Are there serious issues?

In order for any application for interlocutory injunction to succeed it is a prerequisite for the Plaintiffs to show that serious or triable issues exist. If none exist the application will be dismissed from the outset.

The claim of the Plaintiffs.

The claim of the Plaintiffs in essence is ownership in custom over Zarakana land; a claim which was agitated at the timber rights hearing conducted before the Provincial Executive on 24-27 September 2002. They had objected to the grant of timber rights to the second Defendants on the basis that they not the Kona tribe were the rightful owners of Zarakana land and persons therefore rightfully entitled to grant timber rights over the said land. Shortly after losing their appeal in the Western Customary Land Appeal Court on 26 August 2003, they lodged a land dispute case with the Ririo House of Chiefs under the Local Court's Act on the presumption that they were entitled to do so.

Issue for determination

Their action raises an issue *in limine* on the status and effect of the decision of the Western Customary Land Appeal Court of 26 August 2003. In his submissions before this Court on 6 December 2005, Mr. Pitakaka pitches his client's case on the supposition that they were entitled to lodge a fresh case under the Local Court's Act and that in so far as a decision in their favour had been obtained it overtook the timber rights hearing determinations. Learned Counsel however had failed or omitted to address the status and effect of that decision of the Western Customary Land Appeal Court. If his submission is accepted it will have the effect of overriding that crucial decision of the Western Customary Land Appeal Court.

Status of the Customary Land Appeal Court's Decision

The status and effect of a Customary Land Appeal Court's decision under the Forest Resources and Timber Utilisation Act was made crystal clear by the Court of Appeal in **Gandly Simbe and East Choiseul Area Council and Eagon Resources Development Company Limited v. Steven Taki and Peter Madada**[1] at paragraph 8:

> "It remains true to say that, in making a determination for the limited purposes of s. 5C(3), it is no part of the function of an area council to decide questions of ownership of customary land in a way that is either binding or final in effect. It is one of the features of the statutory procedure under Part IIA that an area council is a tribunal, and not a court of record, or indeed a

[1] CAC-SI 8 of 1997 9th February 1999 at page 6

> court of any kind whether of customary or common law. It has long been recognised that its determination gives rise to no guarantee that the contracting customary owners are the true owners. See *Hyundai v. A-G (1993) CC 79/93*, at pp. 8-10 [72-74], citing with approval the remarks in the High Court of Commissioner Crome in *Fugui v. Solmac Construction Co. Ltd [1982] SILR 100*, 107. **If a binding determination is desired it must be obtained from a local court** under s. 8 of the Local Courts Act as amended by the Local Courts (Amendment) Act 1985 inserting ss. 8C, 8D and 8F; **or on appeal, instituted under s. 5E(1) of the Forest Resources Timber and Utilisation Act by a person who is aggrieved by a determination of the area council under s. 5C(3)(b) of that Act, to a customary land appeal court having jurisdiction for the area in which the customary land is situated.** In contrast to an area council determination, the order or decision of a customary land appeal court on an appeal pursuant to s. 5E(1) is "final and conclusive": see s. 5E(2). Such an order or decision has been said to create an estoppel by judgement as between the parties: *Beti v. Allardyce Lumber Co. Ltd. (1992) CAC 5/92*, at p.9; and, since by s. 5E(2) it is "not [to] be questioned in any proceedings whatsoever", an order or decision of that kind has been held to be immune from review by certiorari in the High Court: *Talasasa v. Biku (1988) CAC 2/1987*, at pp. 8-10." [emphasis added]

The effect of the decision of the Western Customary Land Appeal Court of 26 August 2003 therefore is that it binds the Plaintiffs in this action. The doctrine of estoppel by judgement applies. It means the Plaintiffs are estopped from re-opening or commencing a land dispute case afresh under the Local Court's Act arising from similar issues and facts which had been agreed to and previously raised in an earlier case. In this instance, the issue of timber rights ownership originating from their claims of ownership over the said land had been agitated before the Provincial Executive and finally determined by the Western Customary Land Appeal Court on appeal. Until that decision therefore is dislodged, which has not been done, they are bound by it! The Ririo House of Chiefs has no jurisdiction to re-hear the very same issues which the Plaintiffs had agitated before the Provincial Executive and confirmed on appeal before the Western Customary Land Appeal Court. Their claim of right over the trees on Zarakana land, which stem from their claims of ownership over the said land, had been finally disposed off. If one looks at the objections of the Plaintiffs against the claims of the Kona tribe before the Provincial Executive in the timber right's hearing held on 24th September 2002, it is clear those same issues of ownership over Zarakana land were to form the same claims before the Ririo House of Councils. The minutes of that timber rights hearing clearly showed that issues and matters pertaining to boundaries, genealogies, historical meetings and incidents events, previous court cases/hearings (1933, 1978/1979), customary transactions, sacrificial and tabu sites etc., were all canvassed at the timber rights hearing to enable the Provincial Executive determine which persons were the rightful representatives of the tribe which owned the trees and to be able to grant timber rights. The persons claiming to be entitled to grant timber rights in that hearing were the second Defendants on behalf of Kona tribe. In conducting that timber rights hearing, the Provincial Executive heard objections from the Kataka and Riqi/Sopere tribes in full; the minutes of that timber rights hearing running up to 38 pages, including their determination. It was a full and comprehensive timber rights hearing which occurred

over a period of 3-4 days from 24 – 27 September 2002. It appears from the records that the Provincial Executive adjourned for a couple of days before delivering its determination on 2nd October 2002. It dismissed their objections and ruled in favour of the submissions of the Kona tribe represented by the second Defendants. On appeal, the Western Customary Land Appeal Court confirmed the findings of the Provincial Executive. In so far therefore as the claims of ownership of the Plaintiffs over the trees on Zarakana land are concerned, they have had opportunity to be heard. At the end of the day, one party will win and the other party will lose its case; that is the crux of the adversarial system of justice that we have inherited in our laws. Also there must be finality at some point of time. Again that is a crucial requirement to any litigation in the courts otherwise there will be a never ending cycle of litigation. It may be unfortunate for the Plaintiffs the decision has gone against them and therefore bound by it. On the other hand the Defendants have a decision which they can rely on and be able to conduct commercial logging operations.

The claims that the Plaintiffs now seek to assert under the Local Courts Act are therefore not new claims. They relate to the very same issues raised at the timber rights hearing and on appeal to the Western Customary Land Appeal Court. It is important to appreciate that in hearing an appeal on timber rights, a Customary Land Appeal Court has jurisdiction to deal with issues of customary rights so as to enable it reach a decision that is final and conclusive. Where it has exercised its jurisdiction as conferred upon it under that legislation, its decision is final and conclusive and this court's jurisdiction to interfere is ousted. The Plaintiffs in turn are bound by that decision and estopped from taking the matter before the Chief's Council under the Local Court's Act. Where the Chief's have purported to hear the referral, they do not have jurisdiction and any such decision has no validity.

It is important to distinguish other cases in which it may have been suggested that the decision of a Customary Land Appeal Court may not be binding on the parties. In such cases, what one will find is that either no appeal is pending before the customary land appeal court or that the applicant is not a party to the original timber rights hearing. That is not the case here.

The law therefore in so far as the issue of the authority or power to grant timber rights over Zarakana land as between the Kataka tribe and Riqi/Sopere tribe of one side and the Kona tribe of the other side is concerned, has been finally determined by the Western Customary Land Appeal Court. To that extent, the question whether an interlocutory injunction should issue does not arise as the Plaintiffs have failed to show that they have standing or that there are triable issues for consideration by this court. The application for interlocutory injunction accordingly must be denied with costs.

But even if triable issues exist, I would have declined to grant restraining orders on the grounds of the application of the doctrine of *laches*. According to the affidavit material before this court, the Plaintiffs were aware all along of the intentions of the first and second defendants to commence logging operations following execution of the logging agreement on 15 August 2004 and issue of a timber licence number A1423 dated 21 October 2004. The Plaintiffs were in contact with the first and second Defendants throughout the months of November, December 2004 right through to 27 April 2005 when logging operations commenced. No action was commenced in this court until 28

October 2005. By then, a shipment of logs had already left on 21 October 2005. A period of well over a year had lapsed and yet the Plaintiffs took no action in running to this Court to protect its interest. They already had a decision of the Ririo House of Chiefs as early as 22 December 2003 and ought then to have run to the courts. Delay therefore would have been very much uppermost in my mind in deciding whether to grant restraining orders had I found serious/triable issues in the cause of action of the Plaintiffs.

ORDERS OF THE COURT:

Dismiss application for interlocutory injunction with costs.

The Court.