

**BETWEEN:** Ivin MINDU and Letipiko BALESi representing  
the Nono Landowners/Tribe  
*1st Plaintiffs*

Skinner RENCE and Abraham HITU representing  
the Mohi/Talumu Landowners/Tribe  
*2<sup>nd</sup> Plaintiffs*

Chillion MAEPIO and Donald DAVIS representing  
the Guva Landowners/Tribe  
*3<sup>rd</sup> Plaintiffs*

Jonathon KEVEVU, Jairus SALATO and Watson  
RITI representing the Choki Landowners/Tribe  
*4<sup>th</sup> Plaintiffs*

Elma KORYAR, Watson TIVURU and Abrose  
NGATU representing the Chale Landowners/Tribe  
*5<sup>th</sup> Plaintiffs*

Jospeh BATES, Lawrence KILIVISI and Timothy  
SUSA representing the Kalivarana/Limbo land  
*6<sup>th</sup> Plaintiffs*

JP Enterprises  
*7<sup>th</sup> Plaintiffs*

**AND:** Rodney HIVA and Nilton CHITE representing the Choe  
Landowners/Tribe  
*1<sup>st</sup> Defendants*

Chachabule AMOI  
*2<sup>nd</sup> Defendant*

Alick NGIRA and Silas TOTOLO representing themselves and  
other deceased registered title holders  
*3<sup>rd</sup> Defendants*

Commissioner of Forests  
*4<sup>th</sup> Defendant*

Commissioner of Lands  
*5<sup>th</sup> Defendant*

Registrar of Titles  
*6<sup>th</sup> Defendant*

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## RULING ON MOTION TO STRIKE OUT

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This is a motion to strike out the claim of the first to seventh Plaintiffs filed 26 September 2007. The claim relates to the registration of what was customary land. The motion was heard on 13 November 2007. The grounds put forward for striking out are that the claim as pleaded does not disclose any fraud or mistake as regards to the registration of the land, and further that the relief sought could never be obtained.

The amended writ of summons and statement of claim filed 7 November 2007 to an extent disposes of the first matter. Even without those amendments it appears to me to be clear what is alleged as against the defendants or some of them and for that reason this part of the motion should, in my view, fail.

To suggest that the relief sought could never be achieved also appears to me to be an erroneous view.

The allegations raised question the registration of the land formerly identified for lease or purchase by the then Government. Whether the land should have been recently registered and whether the process to secure its registration was proper appears to me to be the question raised which requires resolution. In the event that a finding is made that demonstrates the registration process to have been undertaken by fraud or mistake then there should be a remedy available to an aggrieved party.

For those reasons I do not agree with the motion to strike out and that motion is dismissed.

During the hearing of the motion and in the alternative to strike out, counsel for the first second and third defendants raised the issue of interim relief pending suit. I do consider that such relief is appropriate and order that the Registrar draw up an order in terms of paragraph 3 (a) of the notice of motion to strike out. That is to say that each of the Plaintiffs their servants or agents or any person or company invited by the Plaintiffs jointly or severally are restrained from carrying out any logging or other commercial undertaking affecting and within the Parcel Number 123-008-1. This injunction shall be contingent upon the said defendants providing the usual undertaking as to damages. This issue was not addressed at the hearing of this matter as Counsel understandably were more concerned with the strike out

issue, and so I am prepared should it be necessary to hear any party on the question of the undertaking required. However in the event that there are no submissions to be made on the question of the undertaking the restraining order may be perfected and sealed by the Registrar as and when he receives the undertaking.

Dated this Friday 16<sup>th</sup> November 2007

Goldsbrough J

To be delivered by the Registrar Monday 19<sup>th</sup> November 2007