

GWEN JITUKOLO ABANA, FRANK NINAMO LULUKU, WALTER VEVI LULUKU, WEAVER LULUKU, VIRGINIA KUPER AND W.S. LULUKU (TRADING AS LULUKU TIMBER ENTERPRISES COMPANY) Plaintiffs –v- REUBEN TAPALA (Representing Barekasi Tribe), JOHN SINA (Representing Sauro Tribe), WILLIAM NITE (Representing Kubo Tribe), CHILLION RIKIPALA (Representing Kaurubo Tribe), GEORGE GADA (Representing Koloe Tribe) and WINSTON VOUKU (Representing Vauku of Zabana Tribe), Defendants.

HIGH COURT OF SOLOMON ISLANDS
(Mwanosalua, J.)

Civil Case No. 288 of 2002

Date of Hearing: 15 October 2008

Date of Ruling: 31 October 2008

Mr Tigulu for the Plaintiffs

Mr. Pitabelama for the Defendants

RULING

Mwanosalua, J:

1. The Plaintiffs are members of Nathaniel Luluku's family. The Vella Lavela local Court (LC No. 1/89) awarded customary ownership of Vatoro Land to Nathaniel Luluku on 27 May 1989. The Defendants, Monte Jale and Jacob Rove appealed this decision to the Customary Land Appeal Court (CLAC No. 8/89). The CLAC dismissed the appeal and confirmed that Nathaniel Luluku owned Vatoro land in custom.
2. Luluku Timber Enterprise is owned by all members of the Plaintiffs and is the holder of Felling Licence No. A10110, issued on 26 April 2002 to log Vatoro Land.
3. The Plaintiffs executed a Management and Technology Agreement with Kalena Timber Company Ltd to carry out full logging operations on Vatoro Land. Logging machines landed on 21 June 2002. On 24 September 2002, members of the Defendants made a road block and threatened to assault the employees of Kalena Timber Company Ltd

and destroy its properties if the logging operation on Vatoro Land should continue.

4. The Plaintiffs filed their Writ of Summons, statement of claim and ex parte summons for interim orders against the Defendants in the High Court on 20 November 2002. The interim orders were granted on 6 December 2002 and were perfected and signed on 9 December 2002.
5. Their terms were as follows:-

"IT IS ORDERED:

1. That the Defendants, by themselves, members of their tribes, their servants or agents are refrained from entering and/or remaining in the customary land known as Vatoro land.
 2. That the Defendants are refrained from harassing, threatening, assaulting and molesting the Plaintiffs, members of their families and their servants and agents.
 3. That the Defendants, by themselves, members of their tribes, their servants or agents are refrained from interfering, disturbing, and/or creating any road blocks or any activities that may disturb the Plaintiffs logging operation on Vatoro land.
 4. That the Defendants, by themselves, members of their tribes, servants or agents are refrained from harassing, threatening, assaulting and molesting any of the employees, their families, servants and agents of Kalena Timber Company and Luluku Timber Enterprise in Vatoro land.
 5. That the Defendants, themselves, members of their tribes, servants and agents are restrained from removing, destroying or taking into their possession any kind of machines or properties owned by Kalena Timber Company and Luluku Timber Enterprises or their agents for the purpose of logging operations on Vatoro land.
 6. The Plaintiffs' summons be adjourned for inter partes hearing on a date to be fixed by the Registrar of the High Court.
 7. Costs to be in the Cause".
6. The Defendants sought further and better particulars on the Plaintiffs' Statement of Claim on 23 January 2003. The Plaintiffs filed their reply on 25 August 2003.

7. The Inter partes hearing of the Plaintiffs' Summons on the interim orders was held on 28 July 2003. But, advocate for the Defendants was not aware of the interim orders signed on 9 December 2002 against the Defendants. The inter partes hearing was therefore adjourned for relisting for August 2003.
8. This inter parte hearing was held on 28 August 2003. But during the hearing advocate for the Plaintiffs told the court that the Defendants were not served with the Writ of Summons as they lived in the Western Province. The court therefore made orders that: (1) the application for substituted service be filed within 14 days; (2) that date for the inter partes hearing be fixed 14 days thereafter; and (3) that the defence be filed within 14 days thereafter.
9. Advocate for the Defendants filed Memorandum of Appearance, Defence and Counter Claim for the Defendants on 11 September 2003. The advocate also gave notice to the Plaintiffs to strike out the action on this date. No striking proceeding was held. There was no progress on this case until the Plaintiffs and the Defendants appointed their new advocates on 9 and 10 September 2008 respectively.
10. For the meantime Kalena Timber Company Ltd had left Vatoro land without carrying out any tree felling. Another company which expressed interest to log Vatoro land had not carried out any logging and also left due to lack of machines.
11. Felling Licence No. A10110 had expired. The Plaintiff had extended it for 2 more years from 11 July 2008 until July 2010. They executed a Technology and Management Agreement with Glengrow (SI) Company Ltd. The Company landed its machines on Vatoro land around 19 August 2008 and began full logging operations. The Company had so far felled 5000 cubic metres of logs and are ready for hauling to the log pond.
12. The hauling of logs cannot be done because certain members of the Defendants' tribes had invaded the concession area and seized a chainsaw, disturbed company employees and create road blocks. The police had been called to assist and a number of the people who created disturbances and committed offences had been charged but yet to be prosecuted.
13. The stolen chainsaw was recovered by the police. However, its bar and chain are still missing. The Company has stopped working after the disturbances occurred in September 2008.
14. The Plaintiffs filed Amended Application and Amended Statement of claim on 13 October 2008.

15. The Amended Application was heard on 15 October 2008. The Plaintiffs apply for the following orders:
1. An Order that the Interim Orders granted ex parte in favour of the Plaintiffs on 6 December 2002 to continue in force until trial of this action;
 2. An Order that the Defendants, by themselves, members of their tribes, their servants or agents are restrained from:
 - (a) entering and/or remaining in the customary land known as Vatoro land and/or the concession area of Felling Licence No. A10110;
 - (b) harassing, threatening, assaulting or molesting the Plaintiffs, members of their families, servants and agents;
 - (c) entering, disturbing or creating any road blocks or any activities that may disturb the logging operation by the Plaintiffs and Glengrow (SI) Company Limited within Vatoro land under Felling Licence No. A10110;
 - (d) harassing, threatening, assaulting and molesting any of the employees, family members, servants and agents of the Plaintiffs' contractor, Glengrow (SI) Company Limited within Vatoro land;
 - (e) removing, destroying or taking into their possession any kind of machineries, equipments or properties owned by Glengrow (SI) Company Limited and Luluku Timber Enterprise or their agents for the purpose of the logging operation on Vatoro land.
 3. That the Commissioner of Police, Provincial Police Commander Western and all police officers under their command be empowered to arrest any person, breaching these orders;
 4. That the Defendants pay the Plaintiffs costs of this Amended Application; and
 5. Such further orders as this Honourable Court deem fit to make.
16. The Defendants opposed the grant of fresh restraining orders on various grounds. Their advocate went through them in his written submission and during his verbal submission in court. The court will say this. The fresh restraining orders sought by the Plaintiffs are similar to the ones granted to them in the interim orders signed and dated on 9 December

2002. The Defendants have not appealed those interim orders and still bind them. There are only two fresh orders in the current application.

17. The first is the omission of Kalena Timber Company Ltd and replacing it with Glengrow (SI) Company Ltd. The other is the inclusion of an order for the police to arrest persons who breach the fresh orders.
18. The first ground for opposing this application is that Luluka Timber Enterprise and Glengrow (SI) Company Ltd do not have business licence to operate in the Western Province. This is a matter for the relevant officials in the Provincial Administration to consider and act upon. The second ground is that the Defendants claimed that none of their tribal members were involved in the present disturbances on Vatoro land. This can only be established in the identification of people who were charged for the disturbances alluded to earlier in this ruling. The third ground is that certain members of the Defendants tribes merely disrupted the logging operation because logs were felled on their lands. There are boundary disputes in this case. This court lacked jurisdiction to determine boundary disputes over customary land. Such disputes should be taken to the Chiefs by the Defendants who have jurisdiction to deal with them.
19. The ownership of Vatoro land according to custom was confirmed in CLAC No. 8/89. That decision was never appealed by any of the Defendants. Infact the decision binds all persons who are members of Monte Jale and Jacob Rove's tribe(s). The Plaintiffs have filed an undertaking to compensate any person who may suffer damage by their logging operation if they loose their action. Boundary disputes against Plaintiffs must be taken to the Chiefs for determination. The Plaintiffs and their contractor had felled logs to be hauled for export before they get rot. The Plaintiffs' ownership of Vatoro Land had been acknowledged by the defendants. The Plaintiffs have locus standi to make application for restraining orders. This court will therefore grant the orders sought in the Plaintiffs' application in this proceeding. Order accordingly.

F. Mwaneraha
THE COURT