DJOKOVIC & DJOKOVIC -v- TUTUA & OTHERS

High Court of Solomon Islands
(Palmer J.)
Civil Case No. 243 of 1991
Hearing: 19 October 1992
Judgment: 10 November 1992

A. Radclyffe for the Plaintiffs
A. H. Nori for the Defendants

PALMER J: This is a claim for reimbursement of expenses incurred in the purchase of the boat M.V. Tana by the First Plaintiff, Nancy Djokovic pursuant to an agreement made with the Defendants in December of 1987 and a claim for unpaid wages pursuant to an employment contract and related expenses by the Second Plaintiff, Erik Djokovic also from the Defendants.

Facts not in dispute are as follows.

In 1985 to 1986 arrangements were made to raise a loan from the Development Bank of Solomon Islands for the purchase of a trawler (boat) from Australia.

In December of 1986, purchase of the boat was completed and the boat was then brought to Solomon Islands.

It is not disputed that the Second Plaintiff and First Plaintiff played a major part in the organising and raising of the loan and the initial financial contributions in terms of equity and the arrangements surrounding the purchase, registration and transport of the boat to Solomon Islands.

It is not disputed that a loan was eventually approved and paid out by DBSI.

The ship was named M.V. Tana, and for the first 6 months of operations at least in 1987 the boat was under the care and control of the Second Plaintiff.

There is no dispute that the operational control of the boat was handed over to the Velaviuru Development Association some time in the middle of 1987. The Velaviuru Development Association consisted of people from the Volaikana Tribe and were also known as the Posarae Community.

At the same time it was arranged that the name of the First Plaintiff would be deleted from the loan agreement and replaced by the names of the First and Second Defendants in their capacity as representatives of the Velaviuru Development Association. The document however was not executed until in 1989 when the Association was registered under the Registration of Business Names Act as a corporate body.

It is not disputed too that it was agreed at that time that the Plaintiffs would be reimbursed for all of the expenses incurred in raising the loan and buying the boat.

Subsequently, it was agreed to commence payments for reimbursement in instalments of $1,400/month with effect from January 1988. This continued throughout 1988 and stopped in January of 1989. A total of $20,849.00 has been paid and received by the Plaintiffs.

FACTS IN DISPUTE:

The ownership of the boat M.V. Tana is disputed. How much the Plaintiffs expended in getting the loan raised and purchasing the boat is also disputed. The Defendants say the total expended was about $20,000.00 to $21,000.00. The Plaintiffs say it was much more.

The employment contract for payment of wages at the rate of $1,750 per month is also disputed.

FINDINGS OF FACTS:

Having heard the evidence produced by both parties in Court and read through the exhibits and cogitated over them, I make the following findings.

The loan for the purchase of the boat, M.V. Tana was applied for by the Plaintiffs for and on behalf of the Velaviuru Development Association. And I make this finding on the following basis.

The Deputy Managing Director of Development Bank of Solomon Islands stated quite clearly in his evidence that the loan was approved on the understanding that the First Plaintiff was representing the Velaviuru Development Association.

He stated that the name Velaviuru Development Association first came onto their files in 1985. Both the Plaintiffs deny this. I have observed Mr Eta on the witness box and I do not have cause to doubt his sincerity and honesty. I regard him as an objective independent witness.

There is clear documentary evidence to support the Defendant's submissions that the loan for the purchase of the boat was obtained for and on behalf of the Velaviuru Development Association.

Exhibit 7 is a letter dated 19 November 1985, written by the then Manager (Commerce) of Development Bank of Solomon Islands, Mr Nowell Mamau and addressed to the Second Plaintiff. It states and I quote:

> *"Approved Loan $100,400.00*
>
> *We are pleased to advise that a loan of $100,400 has been approved for the purchase of the trawler for the Velaviuru Development Association of Choisuel. As soon as all security documentations are executed by your representatives and documentary evidence of payment of equity and loan fees are sighted by us we will proceed with release of loan.*
>
> *Please do not hesitate to contact us if you need us to clarify any matters relating to this loan."*

The contents of this letter is very clear. There can be no other alternative interpretations given to it.

Besides this, there is also documentary evidence of a copy of a letter dated 12 May 1986 **(Exhibit 8) and written by the Second** Plaintiff, and addressed to the Loans Manager, DBSI.

I quote:

"*RE - FINANCE OF THE BOAT (M.V. TANA)*

Please find enclosed the statement of my account with approximate projection of further expenses in regard to the financing of the boat where you are the major contributor.

*As you understand, I am organising the purchase of the boat on behalf of Velaviuru Development Association. (**Underlinings mine to show important point to note**). However, they have not provided any finance so far but they are confident that they can match any financial requirements through the marketing of their resources, mainly fish and shells at this stage. This will be possible only when they have their own transport which is to be utilised for this work. That's why there is such an urgency for the boat.*

However, my personal finances are being strained to the uttermost so far that I am finding it difficult to operate my 'normal' business due to the diminishing capital (which is channelled towards the boat). Therefore I would appreciate it if you advance further A$10,000.00 and send it to Agent (same as the first instalment) in order that he sends off the boat."

Again the contents of this letter is so clear. Documentary evidence do not lie. Once the document is proven in Court, it is a very powerful piece of evidence. Verbal evidence can be twisted and changed over time. Written evidence cannot be so easily changed without raising doubts as to its originality and truth.

In the second paragraph the Second Plaintiff stated unequivocally, "..... ***I am organising the purchase of the boat on behalf of Velaviuru Development Association.***" The English language can be very simple and clear to understand at times.

In that simple sentence, the Second Plaintiff makes it clear that he is acting on behalf of the Velaviuru Development Association. So any denials that the Velaviuru Development Association was not known by both Plaintiffs cannot be sustained. The boat was being purchased for the Velaviuru Development Association.

In paragraph 3 of that letter, the Second Plaintiff reveals that he is contributing financially towards the equity capital for the loan and also related expenses on the boat.

It has not been denied by the Defendants that the Plaintiffs have contributed financially towards raising the loan and contributing towards making the arrangements for getting the boat to Solomon Islands.

In paragraph 2 of his letter, the Second Plaintiff explains that the Velaviuru Development Association does not have any money or more accurately has not provided any finance, but that they should be able to meet the '***financial requirements***' and I take this to mean the loan repayments, from the sale of their marine resources.

At no time does he say that the loan was raised for his own purposes, for his family business and that he will make repayments through sale of fish or whatever.

The fact that he is organising the loan and personally putting in money towards the boat does not make the boat his.

Development Bank of Solomon Islands could easily turn around and say, I have provided the majority share of the money, the boat is mine. Of course, Development Bank of Solomon Islands does not own the boat. Development Bank of Solomon Islands may have an interest in the boat because its money has been used to purchase the boat. However, it does not own the boat. The interest of Development Bank of Solomon Islands is demonstrated by its loan agreement and terms of repayments, and also the registered Bill of Sale taken over the ship when it was brought to Solomon Islands.

The form that his financial contribution should rightly be described in my view is that of money lent to the Association for purposes of raising the loan.

The money that he has expended towards the equity for the loan and other related expenses came from his own pocket and from their business. He is clearly entitled to be refunded all of these money.

What must be made clear however, is that title or ownership of the boat is vested in the Velaviuru Development Association. All his actions and the First Plaintiffs's actions were done on behalf of the Association.

Counsel for the Plaintiffs has made submissions too on the point that the loan agreement was executed between the Bank and the First Plaintiff only. He submitted that if it was intended that she was signing on behalf of Velaviuru Development Association then that would have been indicated on the agreement.

Mr Eta, however, did explain on this point that, the Association had not yet been registered and therefore could not have been included. He also stated that the terms of the loan clearly stipulated that it was for the Velaviuru Development Association, and that as far as the Bank was concerned, the First Plaintiff was seen as the contact person or representative of the Association.

He did cite the example when the transfer of operations of the boat occurred in 1987, that the documents formalising the transfer were not executed until in 1989 when the Association was then registered under the Registration of Business Names Act.

I am satisfied that when the First Plaintiff executed the deed of covenant, on the 9th February 1986, she was doing so in her capacity as the representative of the Velaviuru Development Association.

It was also submitted by counsel for the Plaintiffs that the option put to the Velaviuru Development Association committee meeting held on the 28 May 1987 and recorded in page 2 paragraph 1 and 2 of the minutes could only have been validly made if the Second Plaintiff was the owner of the vessel.

However, I do not necessarily think and consider that that is the only plausible interpretation. It is my view that the options in actual fact recognised that the Velaviuru Development Association had something more than a mere interest in the ship. The options showed that the Second Plaintiff clearly had an interest in the boat and that that interest together with the interest of Development Bank of Solomon Islands was at stake at that point of time. If the Velaviuru Development Association

did not take over the operations, then the boat was to be sold to recover all the expenses of the Plaintiffs and to repay the loan of the Bank.

If something had happened to the boat, for instance, and the money from the Bank then fell due and had to be repaid, I have my doubts if the Plaintiffs would then accept liability in their personal capacity at that point of time. Rather, it seems liability would have been equally shared by <u>all</u> the members of the Association including the Plaintiffs who were members themselves of the Association.

The Plaintiffs would clearly have been entitled to the refund of any excess contributions they may have made. (See ***Equity Doctrines and Remedies*** *by R.P. Meagner, QC, WMC Gumonow, JRF Lehane Butterworths paragraph 1004 and Cases and Materials on* ***Equity And Trusts*** *Second Edition by J.D. Heydon, WMC Gumnow & R.P. Austin paragraph 2002.*)

I am satisfied that the Plaintiffs were entitled to have their money refunded and any expenses incurred towards the boat. It is quite obvious too that the Plaintiffs expended a lot of their personal and private time towards raising the loan. To a certain extent, they placed their own business at risk to get the loan raised. This contribution on the part of the Plaintiffs needed to be balanced with the claim of the Defendants that the contributions of the Plaintiffs only amounted to about $20,000.00.

It is not disputed that after the boat had been duly fitted out and certified seaworthy for operations in Solomon Islands waters it was then run solely under the control of the Second Plaintiff for some 4 months. Mr Djokovic gave evidence that the boat was operational from about March of 1987.

He ran the boat as his private property for that period.

One can understand how the community could feel aggrieved and let down by the actions of the Second Plaintiff. The name of the community had been used for raising the loan to purchase the boat. It is possible that the loan may never have been approved had it been taken out in the names of the Plaintiffs in their personal capacities.

Further, Mr Joini Tutua stated under oath that the boat was exempted from customs duties because it was a community project and property, and that he personally attended to this aspect. Had it been brought over as private property, it would have attracted some further expense.

The Second Plaintiff's actions naturally was a slap in the face to the community. But as so often happens in such community projects, it took time for the members to wake up to such irregular activity, and it was only after the period of about 4 months that people started asking questions.

On the 28 May 1987 a meeting was held by the Velaviuru Development Association Committee at the Office of the Minister of Education, at Mendana Avenue. The Minister then was Mr Joini Tutua.

At that meeting, the members present were, Hon. J. Tutua, Harrison Benjamin, Lawson Lukisi, and Lowel Lukisi.

Members absent were Eric Djokovic (as Adviser) and Evens Zama.

At page 2 of the minutes the two options put forward by the Second Plaintiff were mentioned and discussed. The two options were:

> *"(i) Whether Velaviuru Development Association would like to take over the operation of M.V. Tana. At present Mr Eric is operating the boat although it was under the Velaviuru Development Association; or*
>
> *(ii) Mr Eric Djokovic to sell the boat roughly for $200,000.00 pay the loan (DBSI) and reimburse his money all in full."*

After some discussions, an agreement was reached. At page 3 it read:

> *"After some discussion, the Committee were all agreed that Velaviuru Development Association to go ahead to take charge of the operation of six months trial - (from 1st June to 31st December 1987). At the end of this period, full report of operation/financial to be made to the Committee."*

It was at that Committee Meeting also that the terms of the takeover were fixed. On the same page at paragraph 2, the minutes read:

> *"The Committee also agreed to transfer the loan from Nancy's name to Velaviuru Development Association. (Joini Tutua and Lawson Lukisi to be Principal Borrowers)*
>
> *The Association would also be responsible for the repayments of loan (DBSI) and Mr Eric's money (instalment)."*

From the evidences of the parties it is clear that the takeover occurred about June or July of 1987. As has been heard in the evidence of Mr Eta, the formal transfer documents were not executed until 1989.

In November of 1987 in another Velaviuru Development Association Committee meeting it was again reiterated that the Plaintiffs should be refunded all their expenses incurred in the raising of the loan and the purchase and refitting of the boat. At this point it is important to note that the rights of the Plaintiffs for reimbursement is not disputed per se. What is disputed is the quantum. How much were the expenses incurred by the Plaintiffs?

The Committee meeting which occurred in November of 1987 seems to have given the green light for the Association and the Plaintiffs to assess the quantum of expenses for reimbursement. As a result, a document marked **'Exhibit 6'** and headed **"Summary of Costs for M.V. Tana"** was produced.

This document contains an undertaking by the Association to refund all the Plaintiffs expenses, and it is dated 10 December 1987.

The bottom part of the document contains the following statement:

> *"We, the management of operations of M.V. Tana do hereby agree to make monthly repayments to R & B. Trading of S.I.$1,400.00 until the above amount contributed by Nancy and Erik is paid in full."*

The document is then signed by Harrison Benjamin in his capacity as Operations Manager for Velaviuru Development Association.

About three-quarters of the way down there is also another statement which read:

"All records (documents, invoices, record of expenses) enclosed."

The above statements could not be made more clearer. There were records and documents and invoices attached to this document. The fact that these two Defendants cannot now sight them makes little difference.

Mr Djokovic stated under oath that he handed all relevant documents over to Mr Harrison Benjamin when the formal transfer of operations occurred. This was acknowledged in writing by Harrison Benjamin and as a result of those documents, receipts, invoices etc, the summary of costs was then worked out.

Mr Harrison Benjamin as the Operations Manager, an authorised officer and a responsible member of the Association could not have lightly appended his signature to that document unless he knew that the claims of the Plaintiffs were justified and true. There has been no evidence produced of any mistake on his part or of any fraud.

That duly signed document by an officer of the Association in my view is satisfactory proof of the validity and truth of the claims of the Plaintiffs. The figures quoted for the deposits and the loans correlate with the evidence of the deputy Managing Director. Mr Eta stated that a total of $113,000.00 (S.I.) was disbursed. This is consistent with the figure of $93,000.00 (AUD) taking into account the exchange rates at that time.

I do not have any good grounds to doubt the honesty and sincerity of the claim of the Plaintiffs in this respect. What seems to have happened is that, when the relations between the parties deteriorated in 1989, the Defendants then simply decided there and then not to continue with any further payments. They cannot do that. The Association is obliged to refund the expenses of the Plaintiffs. The Velaviuru Development Association has greatly benefited from the contributions of the Plaintiffs and the least that the Association can do is to repay all of their expenses. What is important to note here is that the Plaintiffs are not claiming even the time that they have personally devoted to the project.

It cannot be doubted that the Plaintiffs were the only persons in the community with the money to float the loan. This was acknowledged unequivocally in the letter of the Second Defendant dated 19 July 1989 (**Exhibit 4**), at page 1 paragraph 1.1:

"In the meantime there are only 2 outstanding investors with the Association and that is the Development Bank of Solomon Islands and you."

Without this crucial financial contribution and managerial expertise and time given by the Plaintiffs, it seems quite clear that the loan would never have been approved and the project for the purchase of the boat never realised. Surely, the Association is duty bound to refund all of the expenses of the Plaintiffs as accurately and correctly portrayed in the summary of costs for M.V. Tana, in the bare minimum.

I am satisfied that the figures in that summary reflected the true state of affairs.

The only other comment to make on this document is that there has been a line drawn across the figure of $93,000.00 (in Australian currency) being the amount of the

loan and another figure substituted as $89,900.90. There is an asterisk beside it and at the bottom of the page an explanation to say that that new figure was in the DBSI record. There has been no initials on the crossings made and the explanations at the bottom. This new figure was not put in evidence. Accordingly, whoever put that new figure cannot rely on it now. It may be that that was the actual figure spent by the loan. It is not for me to speculate. The original figure of $93,000.00 remains and is the correct figure for purposes of calculating how much the Plaintiffs should be reimbursed.

I give judgment for the sum of AUD 34,804 plus SBD 7,655.00. This is to be off-set with the amount of SBD 20,849.00 which has already been paid to the Plaintiffs and duly acknowledged receipt of it.

There is however another matter that must be taken into account in the calculation of figures.

There is clear evidence that the Second Plaintiff had sole use of the ship when it began operations in March of 1987 to June of 1987, a total of 4 months. There has been no accounts submitted to the Velaviuru Development Association. The Second Plaintiff stated in evidence that the boat was his and so it was not necessary to submit any accounts to anyone. However, as I have found, that is not correct. He has benefited from the use of the ship in that period.

There is little evidence to show how much profit he could be making per month. I am of the view that the sole use and benefit that the Second Plaintiff derived from the use of the boat as his own during that four months period must be deducted from his claim as to reimbursement. When he ran the boat for that four months period, he was accountable to the Association. He felt no one had a right to know about the accounts and so he must bear the consequence of whatever amount this Court considers reasonable to be deducted from his claim for reimbursement.

An estimate figure of gross profit was referred to in page 3 of the Velaviuru Development Association Committee meeting held on the 28 May 1987. It was mentioned that a boat of a similar size could be making gross profit of $7,000 to $10,000.00 monthly. Using this lower figure as the base figure for calculations and estimating expenses at about 50% of this, then net profit would roughly be at about $3,500.00 per month. This could increase or decrease depending on how the boat was run. For a period of four months therefore, he would be making profit at $14,000.00 that is 4 x $3500.00.

I consider this figure to be a very conservative one but this is the most that I can give.

He definitely derived other benefits from the sole use of the boat for that four months which if quantified could easily bring the figure much higher. But even if no profits were made the use and benefit of the boat for that period must be accounted for and $14,000.00 is not an altogether an unreasonable sum.

Accordingly I order that the sum of $14,000.00 (S.I.) be deducted from the total amount of money he is entitled to be reimbursed from.

I also order that the conversion rates for the Australian currency must be the rates in application in 1986 for purposes of calculating the amounts in Solomon Island

dollars and cents. Where there is no agreement, this is to be referred to a Chambers hearing for settlement.

The Plaintiffs are also entitled to interest at the rate of 5% effective from 1989 when the payments were stopped.

A suitable arrangement should be worked out for repayments to be made by consent and forwarded to the Court to be incorporated as an order by consent. Failing this, the matter is to be heard in Chambers for settlement.

I will now turn to the issue of the claim under the contract of employment between the Second Plaintiff and the Velaviuru Development Association.

The claim of the Second Plaintiff is based on a letter dated 23 January 1988 written to him by the Chairman of the Velaviuru Development Association, Joini Tutua. It read:

> "*Re - Conditions of Employment with Velaviuru Development Association.*
>
> *In response to your statement of 10th December 1987 regarding preparations for commencement of operations under Velaviuru Development Association and your request to define terms and conditions with the Association I recommend the following:*
>
> - *Monthly salary of $1,700.00 gross, commencing from 1st January 1988.*
> - *12½% of royalties for timber used for logging/milling for the first twelve months (thereafter to be reconsidered) calculated from the start of production.*
> - *Reimbursement of all expenses incurred during preparations for the operation.*
>
> *As you are aware, the Association has no operating capital until the commencement of production therefore all your dues will be met when we start generating income, that is when we start production."*

That letter was written in response to a statement from the Second Plaintiff dated the 10th December 1987, in respect of two matters:

(i) regarding preparations for commencement of operations under Velaviuru Development Association; and

(ii) a request to define terms and conditions of employment with the Association.

Those two matters were dealt with in the second and the last paragraph of the letter.

The crucial question surrounding this letter is whether it can be regarded as an offer of employment by the Association on the terms and conditions specified therein, or was it a mere suggestion, an invitation to treat only?

It appears from the tone of the letter that prior discussions had been made with the view to employing the Second Plaintiff. Those prior discussions culminated in the recommendation as listed in that letter. Those recommendations or suggestions however, in my view were yet to be responded to by the Second Plaintiff. If he accepts them,

then he must communicate that to the Chairman. The Chairman on behalf of the Association would then have to consult with the Association before advising him whether he has been accepted or not.

The fact that the terms as stipulated in that letter of the 23 January 1988 were acceptable to him did not mean automatically that a contract of employment had been entered into. The right to hire belongs to the Employer (in this case, the Velaviuru Development Association). Even if he accepted the terms, the Velaviuru Development Association can still refuse to employ him.

The learned author of ***Chitty On Contracts - Specific Contracts,*** *26th Edition paragraph 3852* had this to say:

> *"In the normal case of employment the employee is selected by his employer, works* ***"full-time"*** *as part of the employer's organisation, with regular working hours, at a fixed place of work, with equipment provided by the employer, and under some degree of supervision (arranged by the employer) over his method of working; he enjoys a fixed wage or salary paid at regular intervals, fixed holidays on full pay, and has some security of employment in that he cannot be dismissed without notice (except for misconduct), and until the expiration of his notice of dismissal he is entitled to receive his full wages or salary whether or not his employer can actually provide him with work to do."*

There is no written evidence before me as to whether the Second Plaintiff was ever appointed or employed by the Association. The letter of the 23 January 1988 cannot be construed as an offer capable of being legally binding on its acceptance by the Second Plaintiff. The Second Plaintiff did state that he accepted the terms. And on that basis appears to have commenced working on the logging/milling project.

There is evidence from the Second Defendant when he was asked under cross-examination whether he agreed to employ Mr Djokovic, and his answer was -

> *"Yes, because we still had some hope in Eric."*

The evidence adduced shows that the Second Plaintiff was employed as an adviser on the proposed logging/milling and agricultural projects. He was to be involved in the preparatory stage and his knowledge and skill was to be tapped for this purpose.

There is evidence that he did incur expenditure related to the preparatory arrangements as shown in exhibit 3.

It appears that there were arrangements for the logging/milling projects to be a joint venture thing.

There is evidence also that the Second Plaintiff was to be retained as adviser on the shipping project. This is gleaned from the minutes of the Velaviuru Development Association Committee Meeting held on the 29 May 1987. At page 3 paragraph (d) it read:

> *"Mr Eric Djokovic would still be our adviser and he would be responsible in checking the operation to see that it is profitable."*

Whether he would be remunerated for this is never made known.

At the same time, it is clear that the Second Plaintiff was also running his own business under the name R & B Enterprises. What came out in the evidence is that during that period of operations in 1988, the fishing licence was obtained in the name of R & B Enterprises, the company of the Plaintiffs.

This fact was not discovered it seems until early 1989. All payments to the Second Plaintiff were then stopped. The arrangement appear to be that the Second Plaintiff was supposed to get the licence for Velaviuru Development Association.

The actions of the Second Plaintiff were considered by the Association to be a serious breach of trust placed on him to the extent that relations between the Association and the Second Plaintiff deteriorated from then on and finally collapsing in 1989.

The form of employment if there is such a thing in which the Second Plaintiff was involved in is never made clear. There are no documents to show what form of employment the Second Plaintiff was involved in.

In his capacity as adviser, where was he based? What were his working hours? Who was he answerable to? What was his daily job description? How many days paid leave is he entitled to?

There are many unanswered questions. The letter of 23 January 1988 only provides a guideline.

An important factor that must be borne in mind is that the employment referred to in the letter dated 23 January 1988 was solely for the purposes of getting off the ground the logging/milling and agricultural projects. Those projects never got off the ground and this was explained by the Second Defendant to be due to the loss of trust that the Association had on the Second Plaintiff. The example of the fishing and processing licence was an example. Another was the way he had handled the purchase and initial running of the boat, M.V. Tana.

It was also alleged by the Second Defendant that during that period, the Second Plaintiff got his own licence for milling as well, instead of the Association.

It appears to me that in reality the employment of the Second Plaintiff was not on a contract of employment but one of contract for services; utilising his skill and expertise in milling and agriculture, and commercial enterprises.

In the case of ***Ready-Mixed Concrete (South East) Ltd -v- Minister of Rensions and National Insurance*** *[1968] 1 All E.R. 433 at page 440*, Judge Mackenna pointed out 3 conditions which distinguishes a contract of service from others:

> "*(i) The servant agrees that in consideration of a wage or other remuneration he will provide his own work and skill in the performance of some service for his master.*
>
> *(ii) He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master.*
>
> *(iii) the other provisions of the contract are consistent with its being a contract of service.*"

Applying the above test to this case, there appears to be under the first condition an agreement for remuneration at the rate of $1,750/month. But this does not in my view show that he was engaged as an employee.

On the second condition however, the element of control appears to be lacking. There is no evidence or very little evidence of what work was actually done. The evidences of the Defendants was that the Second Plaintiff was equally busy at the same time with running his own private business.

There are no documents, receipts, to verify the expenses incurred by the Second Plaintiff in his travels overseas and within the country.

It is an unfortunate state of affairs when responsible people enter into relationships and agreements with legal consequences without taking the time to specify exactly what those terms are and more importantly seeking legal advice about them. In the end it is the parties themselves who will and must bear the consequences of their actions and no one else.

In this particular case, there are no details about sick pay or leave pay. There does not appear to be any form of supervision or control of the Second Plaintiff (***Chitty on Contracts - Specific Contracts*** *paragraph 3860*).

It seems clear that the Second Plaintiff was given a particular task to do and left to do it at his own pace. His remuneration would be done on a monthly basis effective from January 1988 and was to be paid when production began. The issue of a regular pay in my view did not reflect an employment contract but rather was indicative of the payment for his services.

That he did some work is clear. Exhibit 3 shows that there was work done in January to March of 1988 and November of the same year. That he is entitled to be paid for these cannot be disputed.

The claim for unpaid wages for a period of two and half years is completely unjustified. Taking into account all the evidences available before me, I assess the amount of work actually put in towards the preparations of the logging/milling projects to be only justifiably amounting to a period of not more than six months work.

He is therefore entitled to remuneration at $1,750.00 x 6 months.

I comment briefly on the submission of learned counsel for the Defendants concerning payment of dues to be made only when operation actually begins.

In an employment contract, when the service has been rendered, the employee's claim is not one for damages but for a debt, "***viz. payment of an agreed sum***" (See *Chitty on Contracts - Specific Contracts, paragraph 3985*).

The same principle applies in my view in a contract for services, being work done for an agreed sum. The work or service has been provided and so the Second Plaintiff must be paid.

The particular paragraph referred to in the letter of the 23 January 1988 was one of convenience and one that assumed that everything will work out as arranged. It

therefore has little effect in depriving or denying the Second Plaintiff of a valid claim for debt owed for services rendered at an agreed rate.

The Second Plaintiff is also entitled to a refund of all of his expenses incurred in performing the services as requested.

I give judgment as follows:

(i) **$10,500.00 (SI) for unpaid wages.**

(ii) **AUD650.00 and SBD 4,089.90 for expenses.**

(iii) **interest at 5% with effect from January 1989.**

(iv) **Costs.**

Arrangements for repayment should be mutually agreed failing which it will be heard in Chambers.

(A. R. Palmer)
JUDGE