ELIJAMA (As Representative of the NAGEI SOREJARU Tribe) -v- OLAVAE, SOLO, THE ATTORNEY GENERAL, HYUNDAI TIMBER COMPANY LTD, ZAPO, BAIZOVAKI, ZUNA, PUTAVIRI and JAMITI

High Court of Solomon Islands
(Palmer J.)
Civil Case No. 52 of 1992
Hearing: 16 September 1992 at Gizo
Judgment: 19 October 1992 at Honiara

A. Radclyffe for the Applicant
A. H. Nori for the First and Second Defendants
P. Afeau for the Third Defendant

PALMER J: This is an application under a notice of motion filed on the 26th of June 1992 for an order for Certiorari to quash the decision of the Vella La Vella Area Council dated 26 November 1990 and to revoke the timber licence granted by the Commissioner of Forest represented by the Attorney General.

The Plaintiff is **Mark Elijama**, representing the Nagei Sorejaru Tribe. The first Defendant is **Donald Olavae**, the President of the Vella La Vella Area Council. The second Defendant is the Secretary, the third, the Attorney General, fourth, Hyundai Timber Company Ltd, fifth to the tenth Defendants are the persons listed as lawfully entitled to granted timber rights in the Form II application determined by the Vella La Vella Area Council.

The background of this case briefly is as follows.

On the 27th of September 1989 the Forestry Division received a Timber Rights application from Hyundai Timber Company Limited.

On the 28th September 1989 a letter was sent to the Provincial Secretary of the Western Province, informing it of the requirements under Part IIA of the Forest Resources and Timber Utilisation Act in which the Province and the Area Council would play an important role. A copy of this letter is annexed to the affidavit of Eddie Dolaiamo, the Principal Forestry Officer of the Ministry of Natural Resources and marked "**EDB**".

On the 26th of November 1990 the meeting of the Vella La Vella Area Council was convened at Supato Village and attended by more than a hundred people it seems. The meeting continued for two days and was completed on the 28th of November 1990. After the meeting was closed the Area Council members retired to the house of the Vice President, Simeon Hong for decision. The public meeting had been told by the President, Donald Olavae that a written decision would be given.

It seems that the Area Council members meeting took about an hour and then they all left for their homes.

It is important to note what the purpose of the Area Council meeting was. Section 5C (3) covers the matters the Area Council needed to consider.

At the Area Council members meeting on the 28 November 1990, the Area Council made a decision or determination. It is this determination or decision that is in dispute.

The Plaintiff alleges that the Area Council members meeting's decision was contained in page 6 at paragraph 10 of the copy of the unsigned minute marked **PK1** attached in the affidavit of Patrick Koloqeto.

The Defendants rely on the re-written signed minutes issued after the first unsigned minutes had been sent out. A copy is attached to the affidavit of Patrick Koloqeto marked **PK2**.

Based on this re-written minutes a copy of a notice of determination of entitlement to grant timber rights and a Certificate of Customary Ownership (Form II) were received by the Forestry Division on the 28th January 1991.

On the 5 August 1991 a memorandum dated 24 July 1991 was received from the District Magistrate (Western) by the Principal Forestry Officer enclosing a copy of the CLAC (Western) decision in respect of Vaululu and Miga lands.

On the 10 August 1991 the Premier of Western Province approved the Timber Rights Agreements and authorised the Conservator of Forests to issue a licence. On the 14th August 1991 the Conservator of Forests issued a licence to Hyundai Timber Company Limited to fell trees and remove timber.

The Plaintiff's claim hinges on the submission that the re-written minutes containing the recommendation or decision which stated that the six persons, Oliver Zapo, Rimu Baizovaki, Reuben Evala, Joseph Zuna, Milton Putaviri, and Silas Jamiti were entitled to grant timber rights in respect of Naigao, Vaululu, Makavore and Sarapaito lands was false, and fabricated by the President and the Secretary as a result of pressure applied to them. And further that the affidavits made by the other members in support of the re-written minutes were also false.

It is clear to me and not disputed that the Plaintiff is a person aggrieved and has interests in the land in respect of which the Area Council made its determination and which interests or rights have been affected and that therefore he has standing to bring this case to court.

I am satisfied that the application for certiorari is in order. It is applied to a purported decision of the Vella La Vella Area Council made on the 28 November 1990, contained in the re-written minutes and which it alleges is false.

It is that decision that this Court is being asked to quash.

Atkin LJ in *R -v- Electricity Commissioner Ex Parte London Electricity Joint Committee Company Limited [1924] 1 KB 171* stated and I quote at page 205:

> *"Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the Kings Bench Division exercised in these writs."*

This oft quoted statement by Atkin LJ has been widely interpreted to include the control of administrative decisions affecting rights. Certiorari will therefore apply where there has been some purported decision or determination, which is irregular or futile. (*See **H.W.R. Wade's Administrative Law** 4th Edition page 536 paragraph 3 and top of page 539*).

The Plaintiff has called 3 Area Council members in support of his submission that the first minute contained the true decision or determination of the Area Council.

Mr Nori on the other hand, counsel for the other Defendants, excluding the Attorney General, called all the other members of the Area Council including the Secretary to give evidence.

This case really turns on what the decision of the Vella La Vella Area Council was.

It would not be necessary to go through in this judgment in detail the evidence of each witness. I have heard the evidence in Court and seen the witnesses. There have been exhibits too that have been submitted.

There are however some witnesses whose evidence I will consider in detail.

The first witness is Jason Qora. He was a witness for the defence. He was an Area Council member in the hearing and was involved in the decision-making of the Area Council's private members meeting.

The importance of Mr Qora's evidence lies in the fact that he had put his signature to a written document, a letter dated 6 November 1991 and marked as **"PK3"** in the affidavit of Patrick Koloqeto. The contents of that letter in essence queried the re-written minutes and stated that it was null and void.

In his evidence under oath, Mr Qora stated that Patrick Koloqeto had bought him a blank paper to sign and so he signed it. Under cross-examination, he stated that he was forced to sign by Mr Koloqeto. He stated he was not told why he should sign. Mr Koloqeto simply wanted all Area Council members to sign and so he did. He stated that the paper given to him to sign had no writing on it.

There were two persons who were present when Mr Qora signed. They were Patrick Koloqeto, the bearer of the letter and another old man, whose house the parties met in and the signing took place.

Mr Koloqeto in his evidence stated that Mr Qora signed in his presence, voluntarily, and after he had explained to Mr Qora the contents of the letter and which

he understood. The actual day the signing took place was on the 28th of November 1991, although the letter was dated 6 November 1991.

The other person who was present at the signing was Levi Kondo. He confirmed that Mr Qora signed a paper which had writing on it.

I do not see any reason for this old man to lie. He is a truthful witness and I can rely on his evidence. His evidence supports the evidence of Patrick Koloqeto. It is my view that Mr Qora knew what he was signing. I do not believe him that he was forced. There was no evidence of any force used whatsoever.

In that respect I find it difficult to rely on his evidence under oath. His evidence savours of half-truths and lies.

The next witness whose evidence will be considered in detail is Joseph G. Vaevoro. He also had his signature appended to the letter dated 6 November 1991 (PK3). He admitted to signing a blank paper but not one with writing in it. He denied being shown a draft copy of the letter and being told of the contents.

Again, this seems to be either one of those ridiculous things that people do in appending their signatures to a blank piece of paper without any understanding of what they are doing or a deliberate act done with understanding but then later recanting under pressure.

The evidence of Mr Mahlon Kuve expressly stated that he gave a blank paper to Mr Vaevora to sign, but this was after he had shown and explained to him the contents of a draft copy of the letter.

Mr Vaevora denied that any proper explanation was made to him. He stated under cross-examination that he was asked and so he felt obliged to sign.

I have observed Mr Vaevora giving evidence. I do not believe that he did not understand and know what he was signing.

There is another document, marked **Exhibit 6**, in which this same witness happily appended his signature to, dated 20 August 1991.

When asked about it in Court, he said *"I signed by force"*. What that force was, was never explained.

He did say that the letter was written by Mr Seth Lekelalu. The contents however, impinge a great deal on his credibility as it mentions things contrary to his evidence under oath.

It would be very difficult for this Court or any other Court to rely on such a person as the likes of Mr Vaevora, who voluntarily sign a written document and then in Court say something else. Such a person is basically unreliable and accordingly, I give very little weight to his evidence.

The fourth witness whose evidence is important to look at is the Secretary of the Vella La Vella Area Council. He is Gideon Solo from Choiseul Island and a

Government employee. He was responsible for recording what was discussed and said, and the decisions made.

He stated that the decision of the Council was that where land has been objected to, then no timber rights would be given. Where there has been no objection however, timber rights would be given. He stated that when the first minutes were produced and he realised that no determination had been made, he approached the President about them and then re-submitted another set of minutes to complement the first minutes.

Under cross-examination, he stated that the original minutes were hand-written and then later typed up. He stated that it was due to an oversight that he did not include the matters relating to the four lands in which approval was granted.

I have listened and observed this witness carefully. He did not sound convincing in the witness box. His explanation of mere oversight in missing out a very, if not the most crucial part of the whole deliberations of the Area Council meeting is very suspicious. And even if it was an oversight, he had all the time in the world to check, re-check and correct his minutes before typing up and stencilling and distributing.

He stated that he returned to Gizo on the afternoon of the 28 November 1990 and on the very next day he had the minutes properly drawn up and typed up.

The question that anyone is entitled to ask is: *"If the decision of the Area Council was to grant timber rights in Naigao, Vaululu, Makvore and Sarapaito, then how on earth did he not include it in the record of the first minutes before he sent them out?"* He had all the time to check through the minutes and to correct it.

There wasn't anything in the minutes anyway that was of vital importance other than the findings and determinations in paragraph 9 of the minutes (**Exhibit 3**) and paragraph 10, the conclusions.

It would be so surprising and in fact little short of gross incompetence to say that it was due to "oversight" that the decision of the Area Council was not correctly stated.

If one examines the records of the first minutes closely it will be seen that the conclusion was logical and reasonable.

Paragraph 9(i) referred to Mr Rimu Baizovaki and Milton Putaviri as the only persons whose land owning groups have held preliminary discussions regarding land ownership. It is not clear what is meant here. Probably, it meant that they have held preliminary discussions with the Company, or that they have held preliminary discussions about the ownership of their land amongst themselves.

Paragraph 9(ii) however states, and I quote:

"The Area Council noted that no agreement is reached between the Applicant (Rimu Baizovaki and Putaviri's group) and the objectors and this questions the Area Council who could be the true Customary landowners, i.e. while the objectors are claiming the area from Oula to Matupalepale, the Applicant

disputed against the claims and confirmed that only the landowning groups in 8(a) are the true ownership."

The words in brackets are put in by me.

Already, one can see from this paragraph that ownership of the land is being disputed and that the Area Council is not sure who the true landowners are.

The only landowning group referred to in 8(a) is that of Rimu Baizovaki, and his ownership or title in custom was being challenged at the Area Council hearing by the Objectors.

In Paragraph 9(iii), it read:

"The Area Council noted that no proper consultation and negotiations was made at the first place with landowning groups, chiefs and Tribes before the Form I Application is submitted, for the respective required areas for Timber Rights."

The conclusion then was as follows:

"The Area Council has no power to decide the true landowning groups to grant Timber Rights hence it rejected the present Form 1 application so that both parties i.e. Objectors and Applicants may first sought out themselves in the normal procedure under the Local Act."

The conclusion seems so clear to require any further explanation and interpretation. Paragraph 9(ii) states that the Applicant disputed against the claims of the Objectors and sought to show that they are the only true landowning group. Paragraph 9(iii) then stated that no proper consultation and negotiations was made at the first place with the landowning groups, chiefs and tribes before the Form 1 Application was submitted. It would seem so logical then for the Council to make a decision as in paragraph 10. Yet it seemed that the decision was incomplete. And so a separate page containing recommendations was subsequently made. This is marked **Exhibit 4**, and I quote the relevant part:

"10(ii) The Vella La Vella Area Council further gives its consideration by only rejecting the Application for the Timber Right in relation to Areas on Vella La Vella where there are objectors but the areas where there are no objectors should proceed to Form II respectively and accordingly.

10(iii) The following persons can grant timber right i the undisputed Customary land areas shown in the map:-

(a)	*Naigao*	-	*Oliver Zapo, Rimu Baizovaki*
(b)	*Vaululu*	-	*Reuben Evala*
(c)	*Mekavore*	-	*Rimu Baizovaki, Joseph Zuna*
(d)	*Sarapaito*	-	*Milton Putaviri, Silas Jamiti."*

The minutes were then signed by the President and the Secretary and dated November 29th 1990. The first minutes were not signed and not dated.

What is quite significant in the oversight of the Secretary is in not including a very important and specific determination in its decision.

The question that I ask is:

Can a reasonable intelligent person, taking down minutes of a meeting ever inadvertently not record a very important part of its decision?

The significance of the oversight is that it deprives a certain number of tribes from entering into further dealings with a logging company.

I do not find it plausible and tenable.

The Secretary did not sound impressive on the witness box and offered in my view unsatisfactory explanations for his actions.

I have heard the Plaintiff's witnesses. They sounded very sure and firm in their responses to questions under cross-examination. The witnesses for the defence on the other hand were shaky, apart from the witness Simeon Hong. This witness did it seems try to get the members to make a determination, other than to have the form rejected, and it seems that there were two views being held in the meeting. However, at the end of the meeting it seems clear to me that the decision then was to reject the form I application.

I have heard the evidence of the President, Mr Donald Olavae. However, he too wasn't impressive in the witness box. As President, he had the responsibility of ensuring that the decision of the Area Council was correctly recorded by the Secretary before he left for Gizo to have them typed and stencilled. It is incumbent on him to ensure that the minutes were in order and if he did not have the time to check through the minutes, then at least the decision should be checked before the Secretary left for Gizo.

Any decision of the Area Council is to be done collectively. If there are members who disagree, then the matter should be voted on and the majority's decision must prevail in such situations. The decision of the Council would then be a majority decision and is binding on all the members.

It is clear to me that in this particular case the decision was to reject the Form I application. However, due to some unknown reason and it would seem that some sort of pressure, although this is denied, was exerted on the President to the extent that he felt it his duty to have the minute re-written with a purported decision containing recommendations. What he did not bargain for was that there were honest members in the Council who would not be swayed to accept something that was not decided by the Council, collectively.

The integrity and honesty of the Area Council members in such a decision making responsibility cannot be taken for granted. Members must be seen to be objective, honest and fair in their deliberations. They have a function given to them by

Act and therefore proper records of deliberations and decisions must be taken, made and agreed to by all before dispatch to the relevant authorities. There should never be room for abuse by the President or Secretary or any member of the Council after a decision has been made.

Any dissenting member on a majority decision of the Council should never demean, degrade or despise the decision made by the Council. This will add respectability to the work of such a body created by statute.

The requirements imposed on the Area Councils are not easy to comprehend, because of the way the Act has been drafted. However the Secretary or the President should be well versed in what the requirements are and should take the time to absorb what the Area Council is required to do under the Act.

Without delving unnecessarily into section 5C(3), it is sufficient to point out that there are at least five things that the Area Councils are required to do. Any determination made should therefore for ease of reference be done in the order as set out from paragraphs (a) to (e) and the records accordingly made in that way. There should be an administrative mechanism available where the members either must have the decision written up immediately after their meeting and all the members append their signature to the decision or that draft copies are first sent out for approval before being formally distributed to the relevant authorities. These are administrative functions of which the Courts do not interfere or intrude into. However, for the effective progress in such applications, there must be clarity, certainty and finality in the decision or determination of an Area Council. An Area Council Committee should never have to be called one by one to give evidence in a Court of Law as to what its decision was.

The very thought of it smacks of incompetence, and if not, can easily bring such a respectable body into disrepute with the local community. The last thing that anyone can ever want happening in these islands is for the people to lose confidence and trust in their leaders to make just and fair decisions in respect of their claims.

I am satisfied that the decision of the Vella La Vella Area Council in respect of the application by the Company, Hyundai Timber Company Limited, under the Form I application form was to reject it. This decision was changed by the President and the Secretary. They had no authority to do that.

There was no evidence of any subsequent meeting in which the changes made by the President and the Secretary were ratified. There have been compelling evidence produced to show that the application in the Form I was to be rejected and that was the decision of the Council.

The recommendations subsequently made therefore were ultra vires the President and the Secretary and invalid. Any reliance placed on them were also invalid and the timber licence subsequently issued on the 14th of August 1991 is also invalid.

Accordingly I make the following orders:

(1) **That the purported determination of the Vella La Vella Area Council of 26 November 1990 and recorded in the minutes of the 26 November 1990 and exhibited as Exhibit 4 or PK2 in the affidavit of Patrick Koloqeto is hereby revoked.**

(ii) **That the timber licence issued on the 14th August 1991 and numbered TIM 2/30 is revoked.**

(iii) **Costs of this application to be paid by the First and Second Defendants.**

(A. R. Palmer)
JUDGE